

FEDERAL TRADE COMMISSION DECISIONS



FINDINGS, ORDERS, AND STIPULATIONS

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MEMBERS OF THE FEDERAL TRADE COMMISSION AS OF
JUNE 30, 1944

ROBERT E. FREER, *Chairman*.

Took oath of office August 26, 1935, and September 19, 1938.¹ Reappointment for second term confirmed January 28, 1939.

GARLAND S. FERGUSON.

Took oath of office November 14, 1927,¹ January 9, 1928, September 26, 1934,¹ and February 9, 1935.² Reappointment for third term confirmed July 15, 1941.

CHARLES H. MARCH.

Took oath of office February 1, 1929, and August 27, 1935.² Reappointment for third term confirmed September 10, 1942.

EWIN L. DAVIS.

Took oath of office May 26, 1933, and August 31, 1939.¹

WILLIAM A. AYRES.

Took oath of office August 23, 1934, and September 24, 1940.²

OTIS B. JOHNSON, *Secretary*.

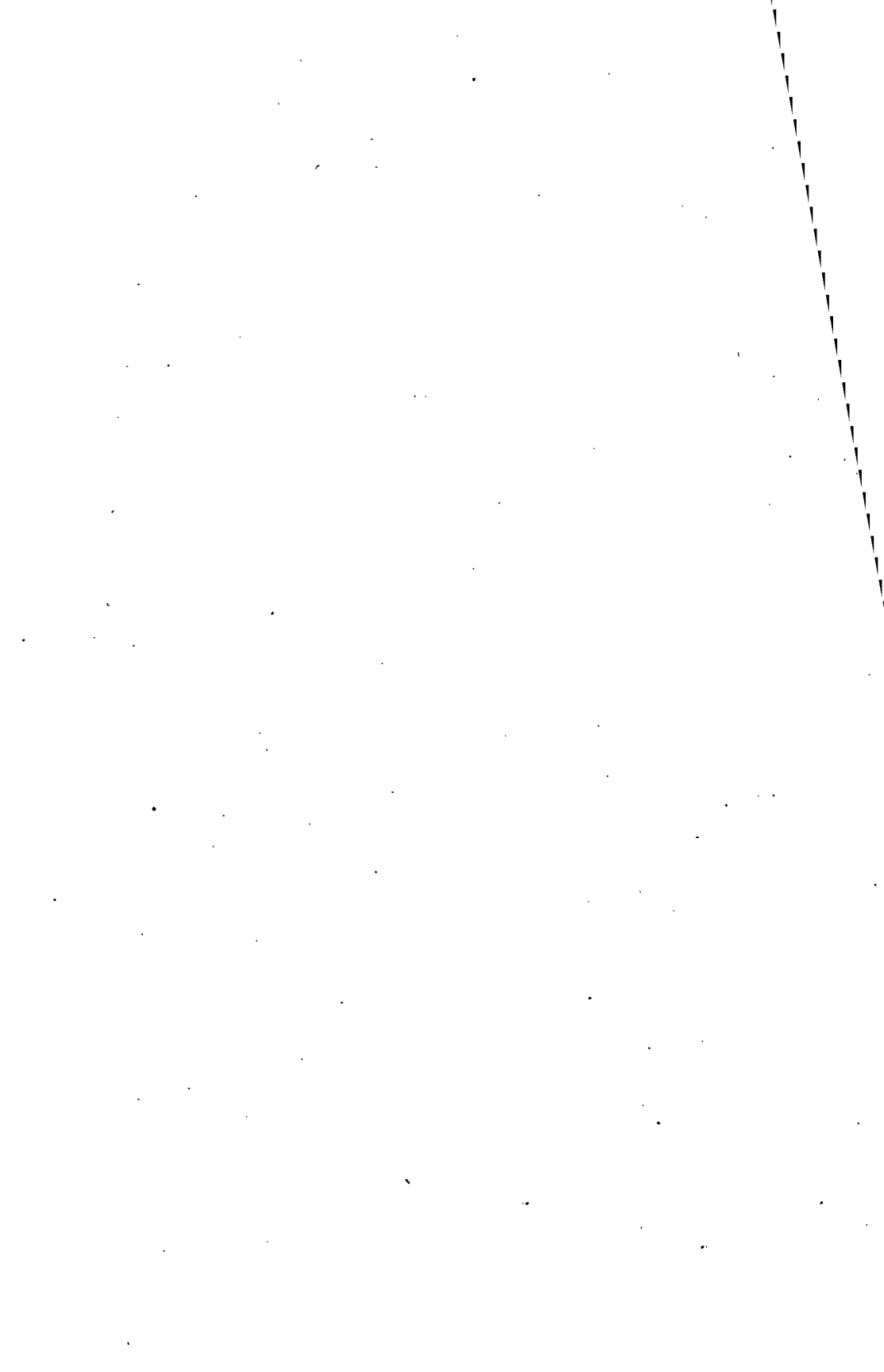
Took oath of office August 7, 1922.

¹ Recess appointment.

² Second term.

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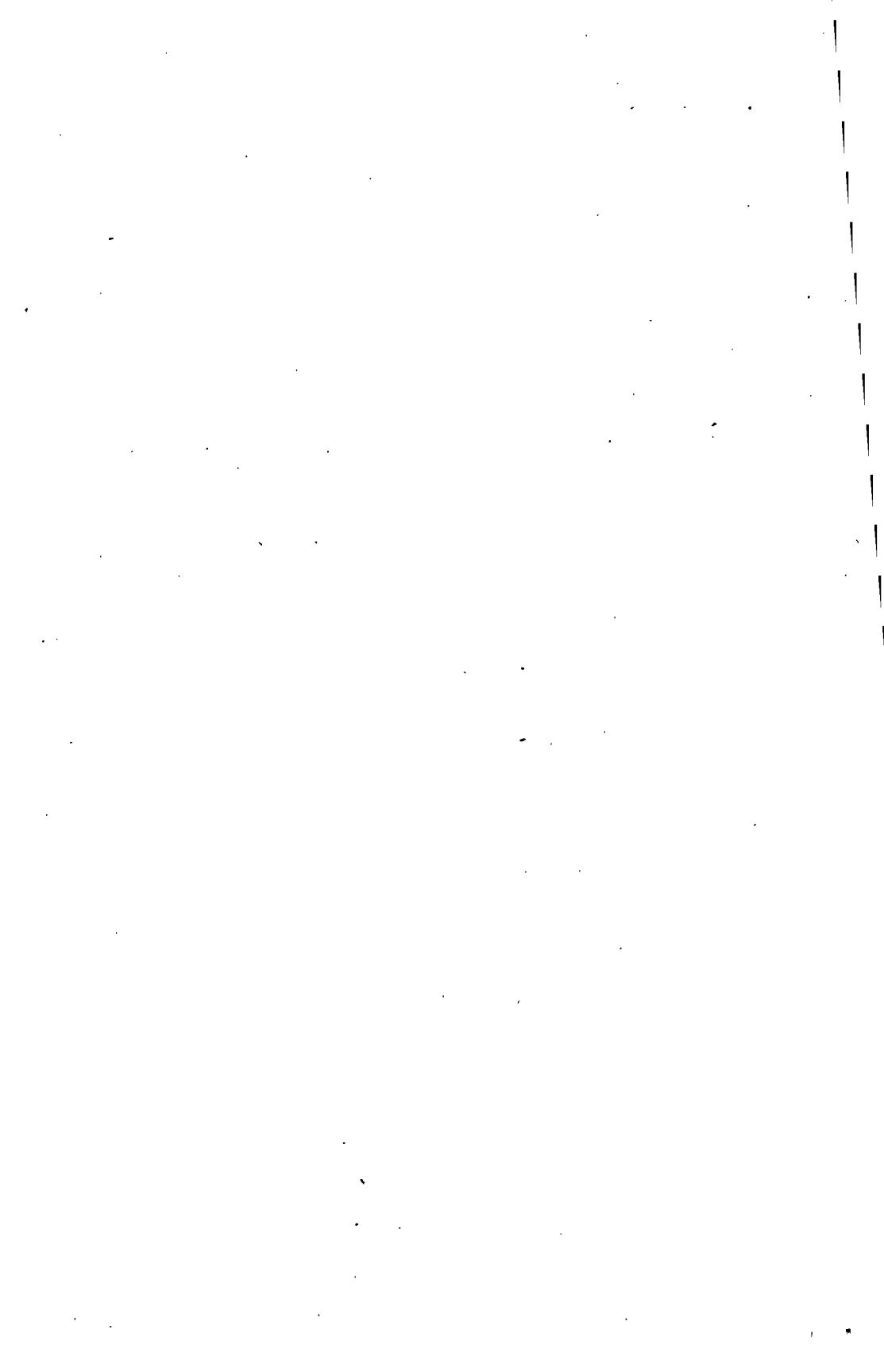


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Abbreviations: S. C. = U. S. Supreme Court; C. C. A. = Circuit Court of Appeals; S. C. of D. C. = Supreme Court of the District of Columbia (changed on June 25, 1936, to District Court of the U. S. for the District of Columbia, and identified by abbreviation D. C. of D. C.); C. A. of (or for) D. C. = U. S. Court of Appeals for the District of Columbia (prior to June 7, 1934, Court of Appeals of the District of Columbia); D. C. = District Court. Hyphenated numbers refer to volume and page of the F. T. C. Reports, the number preceding the hyphen denoting the volume, the numbers following, the page. Citations, such as 1 S. & D.—, 2 S. & D.—, or 3 S. & D.—, refer respectively to the volume and page of the three volumes of Commission publications entitled "Statutes and Decisions—Federal Trade Commission, 1914-1929," "Statutes," etc., "1930-1938," and "Statutes," etc., "1939-1943," in which are published Commission court decisions for said periods.

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¹ Interlineal 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 latter being "1938 S. & D." For "Memorandum of Court Action on Miscellaneous Interlocutory Motions" during the period covered by the second compilation, namely 1930-1938, see said compilation at page 485 et seq.

² For interlocutory order of lower court, see "Memoranda," 28-1066 or 1938 S. & D. 487.

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

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

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⁶ For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 720.

⁷ For order of Circuit Court of Appeals on mandate, see "Memoranda," 20-741 or 1 S. & D. 180.

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⁸ Interlocutory order. See 1 S. & D. 722.

⁹ For interlocutory order, see "Memoranda," 20-743 or 1 S. & D. 716.

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¹⁰ For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 719.

¹¹ For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 718.

¹² For final decree of Supreme Court of the District of Columbia, see footnote, 3-542 et seq., 1 S. & D. 190.

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Cubberley, U. S. ex rel.....	(S. C. of D. C.), footnote, 18-663; 2 S. & D. 240.	
Curtis Publishing Co.....	(C. C. A.) 3-579; 1 S. & D. 93; (S. C.) 5-599; 1 S. & D. 271.	
270 Fed. 881; 260 U. S. 568.		
Davis, John H., et al. (Normandie Et Cie).....	(C. C. A.) 34-1833; 3 S. & D. 465.	
D. D. D. Corp.....	(C. C. A.) 34-1821; 3 S. & D. 455.	
125 F. (2d) 679.		
Deckelbaum, Howard (Sun Cut Rate Drug Store).....	(D. C.) 31-1888; 3 S. & D. 689.	
Decker Products Co.....	(C. A. for D. C.); (C. C. A.) 38-918.	
De Forest's Training, Inc.....	(C. C. A.) 36-1122; 3 S. & D. 552.	
134 F. (2d) 819.		
Delco Novelty Co., etc. (Alvin B. Wolf).....	(C. C. A.) 36-1135; 3 S. & D. 564.	
135 F. (2d) 564.		
DeLuxe Products Co., etc. (Alvin B. Wolf).....	(C. C. A.) 36-1135; 3 S. & D. 564.	
135 F. (2d) 564.		
Deran Confectionery Co., U. S. v.....	(D. C.) 30-1729; 3 S. & D. 724.	
Dietzgen Co., Eugene, et al.....	(C. C. A.) 38-840.	
142 F. (2d) 321.		
Dietz Gum Co. et al.....	(C. C. A.) 29-1557; 3 S. & D. 116.	
104 F. (2d) 999.		
D. J. Mahler Co., Inc.....	(D. C.) 31-1891; 3 S. & D. 691.	
Dodson, J. G.....	(C. C. A.) 20-737; 2 S. & D. 303.	
Dollar Co., The Robert.....	(C. C. A.), footnote, 16-684; "Memoranda," 20-739.	
Douglas Candy Co.....	(C. C. A.) 34-1815; 3 S. & D. 449.	
125 F. (2d) 665.		
Douglas Fir Exploitation & Export Co.....	(S. C. of D. C.), footnote, 3-539; "Memoranda," 20-741.	
Douglass Candy Co., etc. (Ira W. Minter et al.).....	(C. C. A.) 28-1885; 3 S. & D. 51.	
102 F. (2d) 69.		
Dubinoff, Louis (Famous Pure Silk Hosiery Co.).....	(C. C. A.) 27-1673; 2 S. & D. 459.	
Eastman Kodak Co., et al.....	(C. C. A.) 9-642; 1 S. & D. 422;	
7 F. (2d) 944; 274 U. S. 619 (47 S. Ct. 688)	(S. C.) 11-669; 1 S. & D. 616.	
E. B. Muller & Co., et al.....	(C. C. A.) 38-868.	
142 F. (2d) 511.		
Edison-Bell Co., Inc., et al.....	(D. C.), "Memoranda," 28-1969.	
Educators Association, Inc., et al.....	(C. C. A.) 30-1614; 3 S. & D. 171;	
108 F. (2d) 470; 110 F. (2d) 72; 118 F. (2d) 562.	30-1658; 32-1870; 3 S. & D. 356.	

¹³ For interlocutory order, see "Memoranda," 28-1966 or 2 S. & D. 485.

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

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Edwin Cigar Co., Inc.....	(C. C. A.) 20-740; 2 S. & D. 246.
E. J. Brach & Sons.....	(C. C. A.) 29-1577; 3 S. & D. 133.
Electric Bond & Share Co. (Smith, A. E., et al)....	(D. C.) 13-563; 1 S. & D. 709; 17-34 F. (2d) 323; 1 F. Supp. 247.....
Electrolysis Associates, Inc., et al.....	(D. C.) 30-1720; 3 S. & D. 681.
Electro Thermal Co.....	(C. C. A.) 25-1695; 2 S. & D. 412.
91 F. (2d) 477.	
Elmer Candy Co., U. S. v.....	(D. C.) 30-1729; 3 S. & D. 725.
ElMoro Cigar Co.....	(C. C. A.) 29-1616; 3 S. & D. 166.
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Empire Merchandise Corp., et al.....	(C. C. A.) 38-894.
Englander Spring Bed Co., Inc.....	(D. C.), "Memoranda," 28-1969.
Erie Laboratories, Inc., etc.....	(D. C.) 31-1905; 3 S. & D. 704.
E. R. Page Co., Inc., The, U. S. v.....	(D. C.) 36-1175; 3 S. & D. 734.
Estrin, Louis, et al. (Hudson Fur Dyeing Co.)....	(C. C. A.) 34-1805; 3 S. & D. 441.
Etablissements Rigaud, Inc., et al.....	(C. C. A.) 34-1811; 3 S. & D. 446.
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Eugene Dietzgen Co., et al.....	(C. C. A.) 38-840.
142 F. (2d) 321.	
Evans Fur Co. et al.....	(C. C. A.) 24-1600; 2 S. & D. 380.
88 F. (2d) 1008.	
Evans Novelty Co., etc. (Mitchell A. Bazelon et al.)	(C. C. A.) 34-1806; 3 S. & D. 441.
Fair, Albert E., et al.....	(C. C. A.) 38-890.
Fairyfoot Products Co.....	(C. C. A.) 21-1224; 2 S. & D. 330;
80 F. (2d) 684; 94 F. (2d) 844.	26-1507; 2 S. & D. 444.
F. A. Martoccio Co. (Hollywood Candy Co.)....	(C. C. A.) 24-1608; 2 S. & D. 381.
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Fluegelman & Co., Inc., N.....	(C. C. A.) 13-602; 2 S. & D. 62.
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Flynn & Emrich Co. ¹⁵	(C. C. A.) 15-625; 2 S. & D. 141.
52 F. (2d) 836.	
Ford Motor Co.....	(C. C. A.) 31-1833; 3 S. & D. 310;
120 F. (2d) 175.	33-1781, 3 S. & D. 378.
Fox Film Corporation.....	(C. C. A.) 7-589; 1 S. & D. 331.
296 Fed. 353.	
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125 F. (2d) 917; 139 F. (2d) 200.	37-824; 3 S. & D. 617.
Fried, Leo, et al.....	(C. C. A.) 35-978; 3 S. & D. 527.
Froman, Harry (Supreme Sales Co., etc.).....	(C. C. A.) 38-893.
Fruit Growers' Express, Inc.....	(C. C. A.) 3-628; 1 S. & D. 134;
274 Fed. 205; 261 U. S. 629 (42 S. Ct. 518).	footnote, 6-559.
Fulton Co., John J.....	(C. C. A.) 35-946; 3 S. & D. 499.
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	2 S. & D. 215.
Gellman Brothers, U. S. v.....	(D. C.) 37-836; 3 S. & D. 737.
General Merchandise Co. (David Kritzik).....	(C. C. A.) 34-1808; 3 S. & D. 444.
125 F. (2d) 351.	

¹⁵ For interlocutory matter, see "Memoranda," 28-1954, or 2 S. & D. 485.

General Motors Corp. et al.-----	(C. C. A.) 31-1852; 3 S. & D. 282; 114 F. (2d) 33.	35-955; 3 S. & D. 506.
George H. Lee Co.-----	(C. C. A.), "Memoranda," 20-722; 113 F. (2d) 583.	2 S. & D. 291; 31-1846; 3 S. & D. 277.
George Ziegler Co.-----	(C. C. A.) 24-1625; 2 S. & D. 397. 90 F. (2d) 1007.	
Gerrard Co., Inc., The, et al.-----	(C. C. A.) 34-1862; 3 S. & D. 491.	
Gimbel Bros., Inc.-----	(C. C. A.) 32-1820; 3 S. & D. 314. 116 F. (2d) 578.	
Glade Candy Co.-----	(C. C. A.) 29-1584; 3 S. & D. 139. 106 F. (2d) 962.	
Globe Printing Co. (Morris Aron et al.)-----	(D. C.) 36-1130; 3 S. & D. 560. 50 F. Supp. 289.	
Goldman, Jacob L. (Atlas Health Appliance Co.)	(D. C.) 31-1897; 3 S. & D. 696.	
Good-Grape Co.-----	(C. C. A.) 14-695; 2 S. & D. 95. 45 F. (2d) 70.	
Goodyear Tire & Rubber Co.-----	(C. C. A.) 25-1707; 2 S. & D. 422; 92 F. (2d) 677; 304 U. S. 257 (58 S. Ct. 863);	(S. C.) 26-1521; 2 S. & D. 456; (C. C. A.) 28-1899; 3 S. & D. 63.
101 F. (2d) 620.		
Gotlieb, Lenard, et al. (Reed's Cut Rate Drug Store, etc.)	(D. C.) 31-1885; 3 S. & D. 686.	
Grand Rapids Furniture Co.-----	(C. C. A.) 36-1118; 3 S. & D. 550. 134 F. (2d) 332.	
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Gratz et al.-----	(C. C. A.) 1-571, 2-545; 1 S. & D. 258 Fed. 314; 253 U. S. 421 (40 S. Ct. 572).	43; (S. C.) 2-564; 1 S. & D. 69.
Great Atlantic & Pacific Tea Co., The-----	(C. C. A.) 29-1591; 3 S. & D. 146. 106 F. (2d) 667.	
Green Supply Co., etc.-----	(D. C.) 35-958; 3 S. & D. 510.	
Guarantee Veterinary Co. et al.-----	(C. C. A.) 5-567; 1 S. & D. 246. 285 Fed. 853.	
Gulf Refining Co. et al. (Sinclair Refining Co. et al.)	(C. C. A.) 4-552; 1 S. & D. 145; 276 Fed. 686; 261 U. S. 463 (43 S. Ct. 450).	(S. C.) 6-587; 1 S. & D. 306.
Gynex Corp. (Bureau of Hygiene), U. S. v.-----	(D. C.); footnote, 34-1869; 35- 987; 3 S. & D. 731.	
Hall, James B., Jr.-----	(C. C. A.) 20-740; 2 S. & D. 246. 67 F. (2d) 993.	
Halperin, Isidore, et al. (Wellworth Sales Co.)-----	(C. C. A.) 34-1841; 3 S. & D. 472.	
Hamilton-Brown Shoe Co., U. S. v.-----	(D. C.); footnote, 26-1495.	
Hammond Lumber Co.-----	(C. C. A.); footnote, 16-684; 2 S. & D. 682; "Memoranda," 20- 739.	
Hammond, Snyder & Co.-----	(D. C.) 5-578; 1 S. & D. 254; (S. 284 Fed. 886; 267 U. S. 586 (45 S. Ct. 461).	C.) 8-632; 1 S. & D. 408.
Harriet Hubbard Ayer, Inc.-----	(C. C. A.) 10-754; 1 S. & D. 569. 15 F. (2d) 274.	
Hartman Wholesale Drug Co., Inc., et al.-----	(D. C.) 27-1693; 3 S. & D. 629.	
Haskelite Manufacturing Corp.-----	(C. C. A.) 34-1855; 3 S. & D. 485. 127 F. (2d) 765.	
Haynes & Co., Inc., Justin-----	(C. C. A.) 29-1578; 3 S. & D. 134. 105 F. (2d) 988.	

¹⁶ For interlocutory order, see "Memoranda," 20-746, or 1 S. & D. 724.

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Hills Bros.....	(C. C. A.) 10-653; 1 S. & D. 467.
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Hires Turner Glass Co.....	(C. C. A.) 21-1207; 2 S. & D. 315.
81 F. (2d) 362.	
Hoboken White Lead & Color Works, Inc.....	(C. C. A.) 14-711; 2 S. & D. 108;
67 F. (2d) 551.	18-663; 2 S. & D. 241;
Hofeller Candy Co., Bob.....	(C. C. A.) 22-1138; 2 S. & D. 338;
82 F. (2d) 647.	34-1842; 3 S. & D. 473.
Hoffman Engineering Co.....	(C. C. A.) 21-1221; 2 S. & D. 327.
Holloway & Co., M. J., et al.....	(C. C. A.) 22-1149; 2 S. & D. 347,
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Hollywood Candy Co. (F. A. Martocchio Co.).....	(C. C. A.) 24-1608; 2 S. & D. 381.
87 F. (2d) 561.	
Holst Publishing Co., et al., U. S. v.....	(D. C.) 30-1728; 3 S. & D. 724.
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Hudson Fur Dyeing Co. (Louis Estrin et al.).....	(C. C. A.) 34-1805; 3 S. & D. 441.
Hughes, Inc., E. Griffiths ¹⁷	(C. A. of D. C.) 17-660; 2 S. & D.
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tion of, et al.	337.
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Imperial Candy Co.....	(C. C. A.) 28-1894; 3 S. & D. 59.
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Indiana Quartered Oak Co.....	(C. C. A.) 12-721; 1 S. & D. 682;
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70 F. (2d) 370.	20-722; 2 S. & D. 288, 488.
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International Art Co. et al.....	(C. C. A.) 30-1635; 3 S. & D. 188.
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turers, et al.	337.

¹⁷ For interlocutory order, see "Memoranda," 28-1968 or 2 S. & D. 489.

¹⁸ For certain prior interlocutory proceedings, see also "Memoranda," 28-1967 or 2 S. & D. 488.

XXVIII FEDERAL TRADE COMMISSION DECISIONS

International Parts Corp.....	(C. C. A.) 36-1102; 3 S. & D. 535.
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	2 S. & D. 53.
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Irwin, Milton, et al. (Associated Laboratories).....	(C. C. A.) 38-906.
143 F. (2d) 316.	
Jackson Sales Co., The (Robert C. Bundy).....	(C. C. A.) 33-1819; 3 S. & D. 417.
Jaffe, Benjamin.....	(C. C. A.) 34-1785; 2 S. & D. 422.
123 F. (2d) 814.	
Jaffe (Eugene Russell).....	(C. C. A.) 37-816; 3 S. & D. 610.
139 F. (2d) 112.	
J. B. Lippincott Co.....	(C. C. A.) 36-1158; 3 S. & D. 584.
137 F. (2d) 490.	
Jenkins, Edward L., et al. (Antisepto Products Co., etc.).....	(D. C.) 29-1637; 3 S. & D. 649.
Jergens-Woodbury Sales Corp.....	(C. C. A.) 36-1119; 3 S. & D. 550.
J. L. Hudson Co., The.....	(C. C. A.) 32-1839; 3 S. & D. 373.
John J. Fulton Co.....	(C. C. A.) 35-946; 3 S. & D. 499.
130 F. (2d) 85.	
Johnson Candy Co., Walter H.....	(C. C. A.) 21-1195; 2 S. & D. 303.
78 F. (2d) 717.	
Jones Co., Inc., H. C.....	(D. C.) 5-578; (S. C.) 8-632; 1 S. &
284 Fed. 886; 267 U. S. 586 (45 S. Ct. 461).	D. 408.
Justin Haynes & Co., Inc.....	(C. C. A.) 29-1578; 3 S. & D. 134.
105 F. (2d) 988.	
Juvenile Shoe Co.....	(C. C. A.) 6-594; 1 S. & D. 313.
289 Fed. 57.	
K. & S. Sales Co. et al., U. S. v.....	(D. C.) 30-1727; 3 S. & D. 723.
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Keller, Louis, et al. (Casey Concession Co.).....	(C. C. A.) 35-970; 3 S. & D. 520.
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Kinney-Rome Co.....	(C. C. A.) 4-546; 1 S. & D. 140.
275 Fed. 665.	
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Kirschmann Hardwood Co.....	(C. C. A.); footnote, 16-684;
	"Memoranda," 20-739.
Clapp, Charles L. (The Cardinal Co.).....	(D. C.) 29-1639; 3 S. & D. 651.

¹⁹ For interlocutory order, see "Memoranda," 20-745 or 1 S. & D. 722.

²⁰ For interlocutory order, see "Memoranda," 20-745 or 1 S. & D. 723.

TABLE OF COURT CASES IN VOLUMES 1-38, INCLUSIVE XXIX

Klesner, Alfred (Shade Shop, etc.)-----	(C. A. of D. C.) 9-650; 1 S. & D. 430; (S. C.) 11-661; 1 S. & D. 608; (C. A. of D. C.) 12-717; 1 S. & D. 677; (S. C.) 13-581; 1 S. & D. 1166.
6 F. (2d) 701; 274 U. S. 145 (47 S. Ct. 557); 25 F. (2d) 524; 280 U. S. 19 (50 S. Ct. 1).	
Klimate-Pruf Manufacturing Co., U. S. v.-----	(D. C.) 30-1730; 3 S. & D. 725.
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129 F. (2d) 64.	
Kritzik, David (General Merchandise Co.)-----	(C. C. A.) 34-1808; 3 S. & D. 444.
125 F. (2d) 351.	
L. & C. Mayers Co., Inc.-----	(C. C. A.) 27-1675; 2 S. & D. 460.
97 F. (2d) 365.	
Lane, Albert-----	(C. C. A.) 35-949; 3 S. & D. 501.
130 F. (2d) 48.	
Leader Novelty Candy Co., Inc.-----	(C. C. A.) 25-1701; 2 S. & D. 418.
92 F. (2d) 1002.	
Leavitt, Louis ²² -----	(C. C. A.) 11-635; 1 S. & D. 582; 21-1228; 2 S. & D. 334.
16 F. (2d) 1019.	
Lee Boyer's Candy-----	(C. C. A.) 34-1857; 3 S. & D. 487.
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113 F. (2d) 583.	
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290 Fed. 517; 297 Fed. 704 (affirmed 268 U. S. 369; 45 S. Ct. 517).	
Leisenring, Edwin L., et al. (U. S. Drug & Sales Co., etc.)-----	(D. C.) 30-1701; 3 S. & D. 666.
Lesinsky Co., H.-----	(C. C. A.) 4-595; 1 S. & D. 181.
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Levore Co. et al., U. S. v.-----	(D. C.) 33-1883; 3 S. & D. 728.
Lewyn Drug, Inc.-----	(D. C.) 28-1951; 3 S. & D. 633.
Liberty Co., etc. (Joe B. Hill et al.)-----	(C. C. A.) 34-1800; 3 S. & D. 436.
124 F. (2d) 104.	
Lighthouse Rug Co.-----	(C. C. A.) 13-587; 1 S. & D. 1172.
35 F. (2d) 163.	
Lippincott Co., J. B.-----	(C. C. A.) 36-1158; 3 S. & D. 584.
137 F. (2d) 490.	
Liquor Trades Stabilization Bureau, Inc., et al.-----	(C. C. A.) 33-1780; 3 S. & D. 377.
121 F. (2d) 455.	
Loose-Wiles Biscuit Co.-----	(C. C. A.) 7-603; 1 S. & D. 345.
299 Fed. 733.	
Lorillard Co., P.-----	(D. C.) 5-558; 1 S. & D. 239; (S. C.) 7-599; 1 S. & D. 341.
283 Fed. 999; 264 U. S. 298 (44 S. Ct. 336).	
Loughran, Mrs. Alma, et al. (Alma's Home Made Candies.)-----	(C. C. A.) 38-919.
143 F. (2d) 431.	
Lustberg, Nast & Co., Inc.-----	(C. C. A.) 38-895.

²¹ For interlocutory order, see "Memoranda," 20-745 or 1 S. & D. 721.

²² For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 721.

Macfadden Publications, Inc. ²³	(C. A. of D. C.) 13-605; 2 S. & D. 37 F. (2d) 822.	65.
Macher Watch & Jewelry Co., etc.....	(C. C. A.) 34-1835; 3 S. & D. 126 F. (2d) 420.	467.
Mahler Co., Inc., D. J.....	(D. C.) 31-1891; 3 S. & D. 691.	
Maisel Trading Post, Inc.....	(C. C. A.) 20-725; 2 S. & D. 292; 77 F. (2d) 246; 79 F. (2d) 127; 84 F. (2d) 768.	21-1212; 2 S. & D. 319; 23-1381; 2 S. & D. 355.
Maison Pichel.....	(D. C.) footnote, 18-663; 2 S. & D. 266.	
Maloney Oil & Mfg. Co. (Sinclair Refining Co. et al.).	(C. C. A.) 4-552; 1 S. & D. 145; (S. C.) 6-587; 1 S. & D. 306.	
276 Fed. 686; 261 U. S. 463 (43 S. Ct. 250).		
Mandel Brothers, Inc., et al.....	(C. C. A.) 32-1886; 3 S. & D. 371.	
March of Time Candies, Inc.....	(C. C. A.) 29-1557; 3 S. & D. 116.	
104 F. (2d) 999.		
Marietta Mfg. Co.....	(C. C. A.) 15-613; 2 S. & D. 129.	
50 F. (2d) 641.		
Marshall Field & Co., et al.....	(C. C. A.) 32-1886; 3 S. & D. 371.	
Martha Beasley Associates (J. V. Cordes et al.)--	(D. C.) 29-1621; 3 S. & D. 635.	
Martoccio Co., F. A. (Hollywood Candy Co.)----	(C. C. A.) 24-1608; 2 S. & D. 381.	
87 F. (2d) 561.		
Masland Dural leather Co., et al.....	(C. C. A.) 13-567; 1 S. & D. 1155.	
34 F. (2d) 733.		
Mayers Co., Inc., L. & C.....	(C. C. A.) 27-1675; 2 S. & D. 460.	
97 F. (2d) 365.		
Maynard Coal Co. ²⁴	(S. C. of D. C.) 3-555; 1 S. & D. 60; 6-575; 1 S. & D. 294; (C. A. of D. C.) 11-698; 1 S. & D. 647.	
22 F. (2d) 873.		
May's Cut Rate Drug Co.....	(D. C.) 30-1713; 3 S. & D. 676.	
May's Cut Rate Drug Co. of Charleston.....	(D. C.) 30-1710; 3 S. & D. 674.	
McAfee Candy Co., etc. (Joe B. Hill et al.).....	(C. C. A.) 34-1800; 3 S. & D. 436.	
124 F. (2d) 104.		
McKewen, George Earl, et al. (Herbal Medicine Co.).	(D. C.) 31-1913; 3 S. & D. 726.	
McKinley-Roosevelt College of Arts and Sciences.	(C. C. A.) 32-1878; 3 S. & D. 364.	
McLean & Son, A., et al.....	(C. C. A.) 22-1149; 2 S. & D. 347; 26-1501; 2 S. & D. 439; 31-1828; 3 S. & D. 261.	
84 F. (2d) 910; 94 F. (2d) 802.		
Mells Manufacturing Co., U. S. v.....	(D. C.) 32-1907; 3 S. & D. 726.	
Melster Candy Co., U. S. v.....	(D. C.) 36-1173; 3 S. & D. 734.	
Mennen Co. ²⁵	(C. C. A.) 6-579; 1 S. & D. 298.	
288 Fed. 774.		
Mentho-Mulsion, Inc., et al.....	(C. C. A.) 32-1868; 3 S. & D. 355.	
Merit Health Appliance Co. (George S. Mogilner et al.).	(D. C.) 32-1900; 3 S. & D. 715.	
Mid West Mills, Inc.....	(C. C. A.) 25-1688; 2 S. & D. 407.	
90 F. (2d) 723.		
Mid-West Portrait Service, etc. (Cornelius P. Van Schaack, Jr.), U. S. v.....	(D. C.) 36-1171; 3 S. & D. 732.	

²³ For order of the Supreme Court of the District of Columbia, denying petition for writ of mandamus etc., see "Memoranda," 20-742 or 1 S. & D. 704.

²⁴ For order of the Supreme Court of the District of Columbia on mandate from Court of Appeals of the District of Columbia, see "Memoranda," 20-742 or 1 S. & D., footnote, 650.

²⁵ For interlocutory order, see "Memoranda," 20-743 or 1 S. & D. 715.

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Millers National Federation, et al.....	(S. C. of D. C.) 10-739; 1 S. & D. 554; (C. A. of D. C.) 11-705; 1 S. & D. 654; (S. C. of D. C.) 14-675 (footnote); (C. A. of D. C.) 14-712; 2 S. D. 110.
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Mills Novelty Co., et al., U. S. ex rel.....	(S. C. of D. C.) 22-1137.
Minneapolis, Chamber of Commerce of, et al. ²⁶	(C. C. A.) 4-604; 1 S. & D. 193; 10-687; 1 S. & D. 502.
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Minter Brothers, etc.....	(C. C. A.) 28-1885; 3 S. & D. 51.
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Mishawaka Woolen Mfg. Co.....	(C. C. A., S. C.) 5-557; 1 S. & D. 238.
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M. J. Holloway & Co., et al.....	(C. C. A.) 22-1149; 2 S. & D. 347, 439; 31-1829; 3 S. & D. 263.
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National Candy Co.....	(C. C. A.) 29-1557; 3 S. & D. 116.
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261 Fed. 170; 268 Fed. 705.	570; 1 S. & D. 86.

²⁶ For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 719.

²⁷ For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 718.

²⁸ For interlocutory order, see "Memoranda," 20-743 or 1 S. & D. 716.

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National Kream Co., Inc., and National Foods, Inc.	(C. C. A.) 27-1681; 2 S. & D. 466.
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National Press Photo Bureau, Inc. et al.	(C. C. A.) 37-799; 3 S. & D. 594.
National Silver Co.	(C. C. A.) 24-1627; 2 S. & D. 399;
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	3 S. & D. 223.
National Supply Co., etc. (Perce P. Green et al.)	35-958; 3 S. & D. 510.
Neff, George G. (Prostex Co.)	(C. C. A.) 32-1842; 3 S. & D. 332.
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254 Fed. 988.	
Oberlin, Robert C. (Research Products Co.)	(D. C.) 29-1626; 3 S. & D. 640.
Ohio Leather Co. ³⁰	(C. C. A.) 4-699; 1 S. & D. 724.
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Oppenheim, Oberndorf & Co. (Sealpax Co.) ³¹	(C. C. A.) 9-629; 1 S. & D. 409.
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Ostler Candy Co.	(C. C. A.) 29-1584; 3 S. & D. 139.
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²⁹ For interlocutory order, see "Memoranda," 28-1965 or 2 S. & D. 485.

³⁰ For interlocutory order, see "Memoranda," 20-745 or 1 S. & D. 724.

³¹ For interlocutory order, see "Memoranda," 20-743 or 1 S. & D. 717.

³² For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 720.

³³ For interlocutory order, see "Memoranda," 28-1967 or 2 S. & D. 487.

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Perfect Voice Institute et al.....	(C. C. A.) 35-975; 3 S. & D. 524.
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Petrie, John (B-X Laboratories and Purity Prod- ucts Co.), U. S. v.	(D. C.) 29-1643; 30-1727; 3 S. & D. 723.
Phelps Dodge Refining Corp. et al.....	(C. C. A.) 37-828; 3 S. & D. 621. 139 F. (2d) 393.
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Queen Anne Candy Co. et al.....	(C. C. A.) 22-1149; 2 S. & D. 347; 84 F. (2d) 910. 31-1832; 3 S. & D. 265.

³⁴ For interlocutory order, see "Memoranda," 20-743 or 1 S. & D. 716.

³⁵ For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 719.

Queen Chemical Co. (Charles Shrader).....	(D. C.) 32-1904; 3 S. & D. 718.
Rabhor Co., Inc., The.....	(C. C. A.) 34-1847; 3 S. & D. 477.
Radio Wire Television, Inc., of New York et al....	(C. C. A.) 31-1882; 3 S. & D. 309.
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Raymond Bros.-Clark Co.....	(C. C. A.) 4-625; 1 S. & D. 212;
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Reed's Cut Rate Drug Store, etc. (Lenard Gotlieb	(D. C.) 31-1885; 3 S. & D. 686.
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	3-543.
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Rex Products Co., etc. (Earl Aronberg).....	(D. C.) 29-1634; 3 S. & D. 528;
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	& D. 475; (C. A. of D. C.) 29-
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Ron-Al Medicine Co., Dr., etc. (Irving Sofronski).	(D. C.) 29-1624; 3 S. & D. 638.
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	(C. A. of D. C.) 12-740; 1 S. &
	D. 701.
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ing Co., etc.)	
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134 F. (2d) 354.	

³⁶ For interlocutory order of lower court, see "Memoranda," 28-1966 or 2 S. & D. 486.

³⁷ For interlocutory order in proceeding terminating in decision in 281 Fed. 744 (4-614), see "Memoranda," 20-743 or 1 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 1 S. & D. 651.

For order of Supreme Court of the District of Columbia on May 17, 1929, denying company's petition for writ of mandamus to require certain action of Commission re certain affidavits and motions, see "Memoranda," 20-742 or 1 S. & D. 703, 704.

³⁸ For interlocutory order of lower court, see "Memoranda," 28-1966 or 2 S. & D. 486.

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Schachnow, Jacob (Modern Hat Works)	(C. C. A.) 32-1875; 3 S. & D. 361.
Scientific Manufacturing Co. Inc., et al.	(C. C. A.) 34-1793; 3 S. & D. 430. 124 F. (2d) 640.
Screen Broadcast Corp., et al.	(C. C. A.) 38-890.
Sea Island Thread Co., Inc.	(C. C. A.) 11-705; 1 S. & D. 653. 22 F. (2d) 1019.
Sealpax Co. (Oppenheim, Oberndorf & Co.) ³⁹	(C. C. A.) 9-629; 1 S. & D. 409. 5 F. (2d) 574.
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Shapiro, William, et al.	(C. C. A.) 35-978; 3 S. & D. 527.
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Sherry's Cut Rate Drug Co., Inc.	(D. C.) 31-1903; 3 S. & D. 701.
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Shrader, Charles (Queen Chemical Co.)	(D. C.) 32-1904; 3 S. & D. 718.
Shupe-Williams Candy Co.	(C. C. A.) 29-1584; 3 S. & D. 139. 106 F. (2d) 962.
Sifers Confection Co. (H. I. Sifers, etc.)	(C. C. A.) 22-1147; 2 S. & D. 346. 84 F. (2d) 999.
Signode Steel Strapping Co.	(C. C. A.) 35-960; 3 S. & D. 511. 132 F. (2d) 48.
Silver Co., L. B.	(C. C. A.) 6-559, 608; 1 S. & D. 278, 327. 289 Fed. 985; 292 Fed. 752.
Sinclair Refining Co.	(C. C. A.) 4-552; 1 S. & D. 145; 276 Fed. 686; 261 U. S. 463 (43 S. Ct. 450). (S. C.) 6-587; 1 S. & D. 306.
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Stadley, Nolan B. (Sterling Appliance Co.)	(D. C.) 32-1896; 3 S. & D. 712.

³⁹ For interlocutory order, see "Memoranda," 20-743 or 1 S. & D. 717.

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XXXVIII FEDERAL TRADE COMMISSION DECISIONS

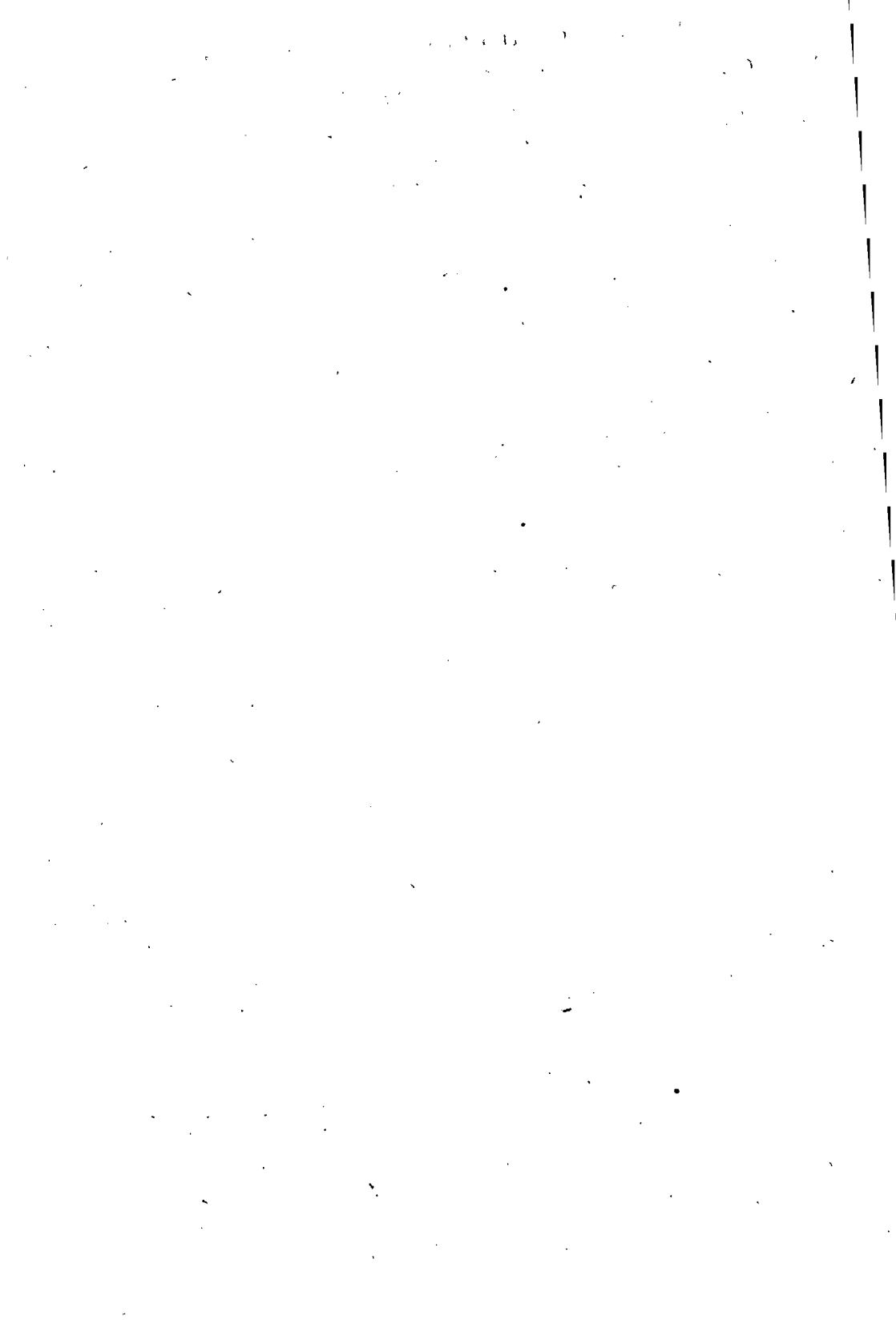
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⁴¹ For interlocutory order, see "Memoranda," 28-1968 or 2 S. & D. 490.

⁴² For interlocutory order, see "Memoranda," 20-742 or 1 S. & D. 715.

⁴³ For interlocutory order, see "Memoranda," 20-743 or 1 S. & D. 716.

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FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JANUARY 1, 1944, TO JUNE 30, 1944

IN THE MATTER OF

A. P. W. PAPER COMPANY, INC.

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

Docket 4747. Complaint, Apr. 11, 1942—Decision, Jan. 7, 1944

Where a corporation engaged in the manufacture and interstate sale and distribution of various brands of toilet tissues and paper towels—

Represented or implied, through use of the words "Red Cross" and a red Greek cross prominently displayed on such products and featured in advertising in periodicals of nationwide circulation that its "Red Cross Toilet Tissue" and "Red Cross Towels" were endorsed or approved by the Red Cross, that latter was financially interested in the sale thereof, that it used said products, that they were made in accordance with standards set up by it, or that it had some other connection with them; and printed on its letterheads "Makers of Red Cross Towels and Tissue," with a red cross following the words "Red Cross";

When in fact there was no connection of any kind between said corporation's products and the Red Cross organization, work and interests of which were solely of a charitable nature, and which had no connection with any commercial enterprise, endorsed or approved no articles, derived no benefit from the sale thereof and set up no standards, sanitary or otherwise, for commercial products;

With tendency and capacity to mislead a substantial portion of the public into such mistaken belief as to products in question, and thereby cause it to purchase substantial quantities thereof:

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 alleged misleading use of the name "Red Cross" and the mark of the Greek red cross to designate seller's products, through use thereon and in extensive advertising thereof: other statements that the products were made by the seller and that the name or mark was registered in the patent office, did not serve to correct the erroneous and misleading impression created through the use of the trade name and mark in question.

As regards contention with respect to the alleged misleading use of a red cross on seller's products, that the use of such a cross as an emblem or insignia dates back several centuries and long antedated the Red Cross organization: the use of a red cross in the particular form and coloration involved in the instant proceeding, i.e., a Greek red cross on a white ground, had its origin in the Geneva Convention of 1864, whereas the red cross used prior thereto was usually in the form of an ecclesiastical cross or differed otherwise.

The contention in a proceeding involving the alleged misleading use of the words "Red Cross" and the Red Cross emblem, that the saving proviso in an Act of Congress of 1910, which excepted from the prohibited use of the word and emblem those who had actually made use thereof "for any lawful purpose prior to January 5, 1905" constituted a bar to proceedings by the Commission is unsound, since the primary purpose of said proviso was to save those coming within its terms from the penalties provided by the particular act. Furthermore, whatever the effect might be in a proceeding based upon said statute or in litigation involving conflicting trade-mark claims between private parties, the provision has no application in a proceeding under the Federal Trade Commission Act where the principal inquiry is as to the effect of the Red Cross name and mark upon the general public, since the Act, by way of contrast to the prior much more restricted legal concept of trade practice legality, with its emphasis on competitive rather than public effect, recognizes the interest of the general public in unfair trade practices, and particularly so under the 1938 amendment prohibiting unfair and deceptive acts and practices irrespective of the effect thereof on competition.

Before *Mr. Miles J. Furnas*, trial examiner.
Mr. Marshall Morgan for the Commission.
Sullivan & Cromwell, 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 A. P. W. Paper Company, 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, A. P. W. Paper Company, Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of New York, having its principal offices and place of business at the foot of Bridge Street in the city of Albany, N. Y. Branch offices are maintained by respondent in a number of the principal cities of the various States of the United States. Respondent company was incorporated originally on July 19, 1877, as Albany Perforated Wrapping Paper Company. On June 6, 1930, respondent changed its corporate name to its present title.

PAR. 2. Respondent is now, and for more than five years last past has been, engaged in the manufacture, offering for sale, sale and distribution of toilet tissues and paper towels for household and institutional use. Said products are sold and distributed under various brand names and trade-marks. Respondent causes and has caused this toilet tissue and paper towels, when sold by it, to be transported from its said place of business in Albany, N. Y., to the purchasers thereof at their respective points of location in the various States of the United States other than the State of New York, in the District of Columbia, and in foreign countries. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said toilet tissues and paper towels in commerce between and among the various States of the United States, in the District of Columbia, and with foreign countries.

PAR. 3. On August 8, 1864, a diplomatic conference was convoked at Geneva Switzerland, attended by representatives of some 26 European governments. The outcome of this conference was the Geneva convention of August 22, 1864, known as the Red Cross convention for the "Amelioration of the Condition of the Wounded in Time of War."

Article VII of this convention provided that a distinctive and uniform flag should be adopted for hospitals, ambulances and evacuations, such flag to be accompanied on every occasion by the National flag. Arm-badges (brassards) were allowed for individuals neutralized. It was further provided in this article:

The flag and the arm-badge shall bear a red cross on a white ground.

Twelve European countries were signatories to this convention and some thirty-eight countries throughout the world, including the United States, gave their adherence to the convention and thereby became parties thereto.

As a result of a further international convention concluded at Geneva, Switzerland, on October 8, 1868, the provisions of the original Red Cross Convention were adapted and made applicable to Naval warfare. Hospital ships were to make themselves known by hoisting, together with their national flag, "the white flag with a red cross provided by the Geneva Convention."

Leading world powers, including the United States, "animated by a desire to lessen the inherent evils of warfare as far as within their power, and wishing for this purpose to improve and supplement the provisions agreed upon at Geneva on August 22, 1864, for the amelioration of the condition of the wounded in armies in the field," concluded a further international Red Cross convention at Geneva on July 6, 1906.

This convention enlarged, extended and clarified former provisions of the original 1864 convention and more clearly defined the responsibilities of belligerents with respect to the sick and wounded.

Article 18 of Chapter VI of the 1906 convention provided:

Out of respect to Switzerland, the heraldic emblem of the red cross on a white ground formed by the reversal of the Federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies.

Articles 19, 20, 21 and 22 of Chapter VI, provided respectively: That this emblem was to appear on flags and brassards as well as upon all material appertaining to the sanitary service; that protected personnel should wear attached to the left arm brassards bearing a red cross on a white ground; that the distinctive flag of the convention could only be displayed over the sanitary formations and establishments which were given protection, and that the sanitary formations of neutral countries should fly the flag of the convention. Articles 23 and 27 of this convention prohibited, or undertook to prohibit, commercial use of the Red Cross name or emblem.

Article 27 of Chapter VII of the 1906 convention, entitled "Repression of Abuses and Infractions," provided as follows:

The signatory powers whose legislation may not now be adequate engage to take or recommend to their legislatures such measures as may be necessary to prevent the use, by private persons or by societies other than those upon which this convention confers

The contention in a proceeding involving the alleged misleading use of the words "Red Cross" and the Red Cross emblem, that the saving proviso in an Act of Congress of 1910, which excepted from the prohibited use of the word and emblem those who had actually made use thereof "for any lawful purpose prior to January 5, 1905" constituted a bar to proceedings by the Commission is unsound, since the primary purpose of said proviso was to save those coming within its terms from the penalties provided by the particular act. Furthermore, whatever the effect might be in a proceeding based upon said statute or in litigation involving conflicting trade-mark claims between private parties, the provision has no application in a proceeding under the Federal Trade Commission Act where the principal inquiry is as to the effect of the Red Cross name and mark upon the general public, since the Act, by way of contrast to the prior much more restricted legal concept of trade practice legality, with its emphasis on competitive rather than public effect, recognizes the interest of the general public in unfair trade practices, and particularly so under the 1938 amendment prohibiting unfair and deceptive acts and practices irrespective of the effect thereof on competition.

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Mr. Marshall Morgan for the Commission.
Sullivan & Cromwell, of New York City, for respondent.

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PAR. 3. On August 8, 1864, a diplomatic conference was convoked at Geneva Switzerland, attended by representatives of some 26 European governments. The outcome of this conference was the Geneva convention of August 22, 1864, known as the Red Cross convention for the "Amelioration of the Condition of the Wounded in Time of War."

Article VII of this convention provided that a distinctive and uniform flag should be adopted for hospitals, ambulances and evacuations, such flag to be accompanied on every occasion by the National flag. Arm-badges (brassards) were allowed for individuals neutralized. It was further provided in this article:

The flag and the arm-badge shall bear a red cross on a white ground.

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Article 27 of Chapter VII of the 1906 convention, entitled "Repression of Abuses and Infractions," provided as follows:

The signatory powers whose legislation may not now be adequate engage to take or recommend to their legislatures such measures as may be necessary to prevent the use, by private persons or by societies other than those upon which this convention confers

the right thereto, of the emblem or name of the Red Cross or Geneva Cross, particularly for commercial purposes by means of trade-marks or commercial labels.

The prohibition of the use of the emblem or name in question shall take effect from the time set in each act of legislation, and at the latest five years after this convention goes into effect. After such going into effect, it shall be unlawful to use a trade-mark or commercial label contrary to such prohibition.

Article 30 of the convention provided that it shall become operative, as to each power, six months after the date of deposit of its ratification. Article 31 provided that the convention, when duly ratified, should supersede the convention of August 22, 1864, in the relations between the contracting States, the 1864 convention to remain in force between the parties who signed it but who may not also ratify the 1906 convention.

Article 33 of the 1906 convention provided that each of the contracting parties should have the right to denounce the convention, but that this denunciation should only become operative one year after a notification in writing should have been made to the Swiss Federal Council, which should forthwith communicate such notification to all the other contracting parties, such denunciation to become operative only in respect to the power giving it.

The Government of the United States adhered to the original Red Cross convention of 1864 on March 1, 1882. The convention of July 6, 1906, was ratified by the Senate December 19, 1906, ratified by the President January 2, 1907, ratification was deposited February 9, 1907, and the convention was proclaimed August 3, 1907. The 1906 convention became operative as to the United States six months from February 9, 1907, that is, in August, 1907. This convention has never been denounced by the United States either in whole or in part.

The United States became a party signatory to a new and still further Red Cross Convention concluded at Geneva on July 27, 1929, by some 45 countries of the world "equally desirous of diminishing, so far as lies within their power, the evils inseparable from war, and wishing to perfect and complete, for this purpose, the provisions agreed upon at Geneva, August 22, 1864, and July 6, 1906, to ameliorate the condition of the wounded and the sick of armies in the field." This Convention, after broadening and making more definite existing treaty provisions relating to the foregoing, including the rights and duties of belligerents in such relation, provides in Article 19 that "out of respect to Switzerland the heraldic emblem of the red cross on a white ground, formed by a reversal of the Federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies."

Article 20 of this Convention provides that this emblem shall appear on flags and brassards as well as upon all materiel appertaining to the sanitary service.

Article 24 provides that the emblem of the red cross on a white ground and the words Red Cross or Geneva Cross may be used, whether in time of peace or war, only to protect or designate sanitary formations and establishments, the personnel and materiel protected by the Convention.

Article 25 provides that the provisions of the Convention shall be respected by the high contracting parties under all circumstances.

Articles 28 to 30 inclusive, of Chapter VIII, deal with "The Repression of Abuses and Infractions." Article 28 provides that the Governments of the high contracting parties whose legislation may not now be adequate

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shall take or shall recommend to their legislatures such measures as may be necessary at all times:

(a) to prevent the use by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or the name of the Red Cross or Geneva Cross, as well as any other sign or designation constituting an imitation thereof, whether for commercial or other purposes.

Sub-paragraph (b) of article 28 obligates each state to enact legislation prohibiting the use of the arms of the Swiss confederation or any imitation thereof as a trade-mark, label, or in any way contrary to commercial ethics or under conditions wounding Swiss pride. It is provided in sub-paragraph (c) that these respective prohibitions shall take effect from the time set in each act of legislation or at the latest five years after the convention goes into effect, and that after such going into effect it shall be unlawful to take out a trade-mark or commercial label contrary to such prohibitions.

The United States Senate ratified this convention January 7, 1932; it was ratified by the President on January 16, 1932, ratifications were deposited at Geneva February 4, 1932; and on August 4, 1932, the convention was proclaimed by President Hoover "to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof."

Thus the United States in 1906 and in 1932 respectively, if it had not already done so, obligated itself by solemn treaty to enact legislation prohibiting commercial use and exploitation of the Red Cross name and emblem.

The United States on June 20, 1936, carried out the obligation undertaken in paragraph 28 (b) of the convention of July 27, 1929, as to the Swiss flag, by enacting a law prohibiting the commercial use of the coat of arms of the Swiss Confederation.

Nearly all countries of the world have now adhered to the Geneva convention as revised in 1906 and 1932 by diplomatic conferences. Conferences held at the Hague in 1899 and 1907 extended to sea warfare the principles of the Geneva conventions. The white flag bearing the red cross has now become the protecting symbol of the Red Cross throughout the world.

Red Cross Societies have been established in all civilized countries as a result of the international conferences at Geneva.

From 1866 on down to the present time, the Red Cross Service has been employed in ministering to sick and wounded military forces throughout the world. The ministrations of this service, particularly in the United States, have also been extended to cover relief and succor to victims of great peacetime disasters.

PAR. 4. The introduction and development of the Red Cross movement into the United States were chiefly due to the zeal and activities of Clara Barton, known as the founder of the American branch of the organization. The American National Association of the Red Cross was first incorporated in July, 1881 under the laws of the District of Columbia. It was reincorporated April 17, 1893, again under the laws of the District of Columbia, and on June 6, 1900, the organization was incorporated by Act of Congress as the American National Red Cross. The Act recited that whereas a permanent organization or agency was needed in every nation to carry out and execute the humane objects and purposes con-

templated by the Geneva Convention of 1864, with the power to adopt and use the distinctive flag and arm badge provided in Article 7 of that Convention, which should be the sign of the Red Cross, it was believed that the importance of the work demanded a reincorporation by the Congress of the United States. The new corporation succeeded to all the rights and property which had been hitherto held, and to all the duties which had theretofore been performed, by the American National Red Cross as a corporation organized under the laws of the District of Columbia, which organization was thereby declared dissolved.

Under the 1900 Act it was made a misdemeanor for any person to falsely and fraudulently hold himself out as, or to represent, or pretend himself to be, a member of, or an agent for, the American National Red Cross for the purpose of soliciting, collecting or receiving money or material, or to wear, or display the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he was a member of or an agent for the American National Red Cross.

The Act further provided that the American National Red Cross should on the first day of January of each year transmit to Congress an itemized report of all receipts and expenditures and of its proceedings during the preceding year and should also give such information concerning its transactions and affairs as the Secretary of State might from time to time require, and that in respect of all business and proceedings in which it might be concerned in connection with the War and Navy Departments of the Government it should make reports to the Secretary of War and to the Secretary of the Navy, respectively. Congress reserved the right to repeal, alter, or amend this Act at any time.

The United States being one of the signatory powers of the Treaty of Geneva guaranteeing the neutrality of persons caring for the sick and wounded and all supplies for the same, and the American National Red Cross being the official organization in the United States existing under this treaty, and so recognized by the International Red Cross Committee of Geneva, it became important to place the American organization under Government supervision, which the charter of June 6, 1900, had not provided. All the well-organized, foreign Red Cross societies had already been placed under government control, being generally subordinate to the war or navy departments of such governments. This was particularly true in the case of Great Britain, France, Germany, Austria, Italy and Japan.

The American National Red Cross was nationally incorporated by an Act of Congress of January 5, 1905, which repealed the prior Congressional Act of June 6, 1900. The Act of 1905 undertook to give statutory protection to the Red Cross emblem, which was then being used by the American National Red Cross and the medical societies of the Army and Navy. Among other powers confirmed was that "to have the right to have and to use, in carrying out its purposes hereinafter designated, as an emblem and badge, a Greek Red Cross on a white background, as the same has been described in the Treaty of Geneva, August twenty-second, Eighteen Hundred and Sixty-Four, and adopted by the several nations acceding thereto." The Society was authorized to act in matters of relief arising under that convention by furnishing volunteer aid to the sick and wounded of armies in time of war, in accordance with the spirit and conditions of the Geneva Conference, and a provision in the 1905 Act extended the national and international relief to be carried on by the Society to, that of investigating the sufferings caused by pestilence,

famine, fire, floods and other great national calamities, and to devising and carrying on measures for preventing the same.

The Act of 1905 also made it unlawful for any person within the jurisdiction of the United States to falsely hold himself out as, or to represent or pretend himself to be a member of, or an agent for, the American National Red Cross Society, for the purpose of soliciting, collecting or receiving money or material; or for any person to wear or display the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he was a member of, or an agent for, the American National Red Cross. This section then proceeded to prohibit commercial use of the Red Cross name and emblem by declaring it to be unlawful within the territory of the United States and its exterior possessions, for any person, corporation, or association other than the American National Red Cross and its duly authorized employees and agents and the Army and Navy sanitary and hospital authorities of the United States, to use the emblem of the Greek Red Cross on a white background, or any sign or insignia made or colored in imitation thereof, or the words "Red Cross" or "Geneva Cross" or any combination of these words, for the purpose of trade or an advertisement to induce the sale of any article whatsoever or for any business or charitable purpose. This section further provided that any one violating its provisions should be guilty of a misdemeanor and be liable to a fine of not less than one or more than five hundred dollars, or imprisonment of a term of not more than one year, or both, the fine so collected to be paid to the American Red Cross.

By Act of June 23, 1910, Congress amended Section 4 of the Red Cross Statute of 1905 so as to read:

* * * It shall be unlawful for any person, corporation, or association other than the American Red Cross and its duly authorized employees and agents the army and navy sanitary and hospital authorities of the United States for the purpose of trade or as advertisement to induce the sale of any article whatsoever or for any business or charitable purpose, to use within the territory of the United States of America and its exterior possessions the emblem of the Greek Red Cross on a white background, or any sign or insignia made or colored in imitation thereof, or the words "Red Cross" or "Greek Cross" or any combination of these words: Provided, however, that no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia or words for any lawful purpose prior to June fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods * * *

This amending act retained the same penalties that had been previously enacted into Section 4 of the original Red Cross Act.

PAR. 5. In pursuance of the organic act of 1905 chartering the American National Red Cross "Under Government supervision" the organization became and has continued to be a great charitable association, quasi-governmental in character and in respect of the duties assigned to it. Under that act the society was created as a permanent organization to carry out the purposes of the Geneva Treaty, especially to send supplies and to execute the humane objects contemplated by the treaty.

Under Section 5 of the organic act the President of the United States names not only the chairman of the Central Committee or governing body of the organization but also designates certain members of the committee,

one each to be named by him from the Departments of State, War, Navy, Treasury and Justice.

This organic act designates the Secretary of War to have authority and supervision over the organization and its accounts. A copy of the society's annual report to the Secretary of War must also be transmitted to Congress.

In pursuance of its by-laws the President of the United States shall, upon his acceptance, be ex-officio President of the American National Red Cross. He shall preside at the annual meetings and make such appointments and perform such duties as may be prescribed.

Under Section 12 of the Act the Secretary of War was authorized to permit the Red Cross to erect and maintain on any military reservation within the jurisdiction of the United States buildings, etc.

The American Red Cross being a quasi-governmental organization, operates under Congressional Charter, is officered in part, at least, by governmental appointment, disburses its funds under the security of a government audit, and is designed by Presidential order for the fulfillment of certain treaty obligations into which the Government has entered. The American Red Cross owes to the Government which it serves the distinct duty of discharging all those functions for which it was created.

The American Red Cross has become and is a great charitable institution, of both national and world-wide reputation. It has experienced a tremendous growth and development throughout the years of its history. Its individual membership comprises many million persons; was over 20,000,000 at the close of the World War. It has sent its trained representatives into the United States and throughout the world to aid and succor those who have suffered from such national calamities as war, epidemics, fire, flood, volcanic eruptions, earthquakes, mine disasters and hurricanes.

It has expended and continues to expend hundreds of millions of dollars on behalf of stricken humanity. In one Mississippi River flood 300,000 homeless individuals were cared for by the American Red Cross.

PAR. 6. The Red Cross name and emblem as provided by the Geneva convention of 1864 soon became heralded throughout the world. Various manufacturers and commercial houses in the United States were quick to capitalize on its popularity and public appeal. In a few years following the conclusion of the Geneva convention, American manufacturers began to use trade-marks employing the Red Cross name and emblem, and articles of commerce bearing the Red Cross name and emblem began appearing all over the United States. This practice began as early as 1872, soon became indiscriminate, and has continued. Most of the articles so sold under the Red Cross emblem and name in no way related to or suggested any article or thing that might be employed by the Red Cross in carrying out its humane and charitable work, and most of the articles now sold do not bear any relation to any article or thing that the Red Cross employs or has ever employed in its great relief work. The first registered trade-mark employing the Red Cross name and emblem covered wines, liquors, beers and mineral waters. Then followed throughout the succeeding years Red Cross marks covering such products as cambrics, hermetically sealed goods, oysters, fruits and vegetables; hydraulic hose, domestic lye, medicine for skin diseases, portland cement, bitters, flour, spices, coffee, baking powder, hard soap, crackers, candy;

stoves, ranges and furnaces; flavoring extracts, cough syrups, velvets and plushes; wood wool and padding; vinegar, tools, meat extracts, sausage coloring, cotton fabrics; tripe, hocks, feet and tongues; yarns and thread, kindling wood, pills, malt liquors, button fasteners; boots, shoes and shoelaces; bathrobes, white flour; rubber goods, sheep casings, salt, condensed milk, bicycles, thermometers, peanuts, stationery; pile remedies, elastic goring, antiseptic dressing, plasters, macaroni, brooms, wheeled vehicles, bottles and syringes, shears and scissors, disinfectants, windmills, spoons, whiskey; brushes, insect powder, fishnetting; shirts, collars and cuffs; musical instruments, wiring, olive oil, advertising cabinets, surgical silk, coal, flavoring extracts, fabric hose, skin preparations, canned fish, mineral paint, cereals, laundry blueing, toilet paper, toothbrushes, beef extract; mattresses, suspensory bandages, catheters and bougies; safety pins, metal absorbents, fertilizers, washboards, and numerous other articles claimed to be of the same respective class of goods as that for which the user of the Red Cross mark employed it, such use also being claimed to be for the same purpose.

The foregoing widespread indiscriminate commercial use of the Red Cross name and emblem early resulted in general confusion and misunderstanding on the part of the public concerning the activities, aims and purposes of the American Red Cross. Members of the consuming public became convinced thereby that the Red Cross manufactured or was financially backing the manufacture of, products sold under its name, and derived financial benefit therefrom. Quack medicines, even alcoholic preparations, were sold under the Red Cross name and insignia. Manufacturers repeatedly sought to enlist the Red Cross in various commercial ventures, offering division of profits in connection with the use of the society's name and emblem, such offers being occasioned by the publication and circulation of advertisements of others using the Red Cross name and emblem.

PAR. 7. On December 16, 1908, respondent (then known as Albany Perforated Wrapping Paper Company) applied at the United States Patent Office for registration of a Red Cross Trade-mark for packages of toilet paper. This mark consisting of a pictorial representation of the Greek Cross with the words "RED CROSS" appearing over it in conspicuous capital letters, was granted registration on June 13, 1911. It was recited in the application for this trade-mark that the mark had been continuously used in the applicant's business since the year 1897. It was further recited in the application that "the class of merchandise to which this trade-mark is appropriated is Class 37. Paper and stationery, and the particular description of goods comprised in said class on which the trade-mark is used is packages of toilet paper."

On October 4, 1933, respondent A. P. W. Paper Company, Inc., filed two applications with the United States Patent Office for registration of its Red Cross trade-mark so as to cover "Paper for Toilet Purposes—namely, paper towels—in class 37, Paper and Stationery . . ." and the containers or cartons of paper towels. It was recited that the company had adopted and used the trade-mark for paper towels since September 21, 1933. Registration was granted to these applications March 13, 1934.

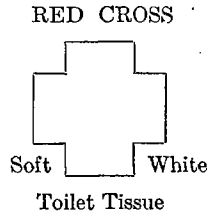
In the course and conduct of its aforesaid business described in Paragraph 2 herein, respondent A. P. W. Paper Company, Inc., for the purpose of inducing the purchase of its said toilet tissue and paper napkins between and among the various States of the United States, has made and

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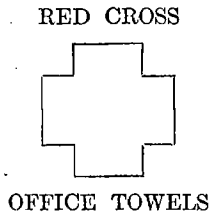
is now making certain advertising representations concerning its said products. In advertisements appearing in nationally known magazines of general circulation, on letterheads and invoices circulating in commerce, on wrappers of packages of toilet paper and paper towels and on cases and cartons in which said products are distributed in commerce among and between the various States of the United States, in the District of Columbia, and in foreign countries, and by various other means in such commerce, respondent uses and has used, for more than five years last past, and prominently displays, and has displayed, the emblem of the American National Red Cross Society and the words "Red Cross."

On wrapping, cartons and containers for its said toilet tissue appears the following:



The words "Red Cross" are printed in large heavy capital letters and the facsimile of the Red Cross of the Geneva convention is produced in red coloring. The words "Toilet Tissue" below the red cross also appear in large conspicuous letters.

On wrappings, cartons and containers used for its paper towels appears the following:



Here the words "Red Cross" are printed in large red capital letters again over a heavy facsimile of the red cross of the Geneva convention. The words "office towels" below the red cross are also printed in heavy red capital letters. In other instances the words "Individual Fold Double Towels" are used with the Red Cross design for towels.

In other places on its wrappers and containers for its said products respondent employs and has employed a facsimile of the red cross together with the words "Red Cross." In other instances wrappers for said products contain designs of smaller red crosses.

Through the aforesaid use of the Red Cross name and emblem in advertising, trade-marking, marking, and branding its said products, as described in Paragraph 7 of the complaint herein, respondent variously represents and implies and has represented and implied to customers and to prospective customers:

That there is some connection between the American National Red

Cross Society, hereinafter referred to as the Red Cross, and the respondent company; that the Red Cross is financially interested in the sale of respondent's said products and obtains a royalty or percentage thereon; that respondent's said products are endorsed, approved, or sponsored by the Red Cross, and are put on the market with the approval of the Red Cross; that respondent's said products are used by the Red Cross; that respondent's said products are manufactured in accordance with sanitary standards prescribed by the Red Cross, or manufactured in mills operated by the Red Cross; and that respondent company is financially connected or affiliated with and receives financial support from the Red Cross.

PAR. 8. The aforesaid acts and practices used and employed by respondent and the aforesaid representations and implications made and disseminated by respondent as aforesaid, are false, misleading, deceptive and confusing, for in truth and in fact respondent is not connected or associated with the Red Cross in any way, financially, contractually or otherwise; the Red Cross has not endorsed, sponsored or approved respondent's aforesaid products sold and distributed under the Red Cross name and emblem; the Red Cross is not now engaged in and has never been engaged in any commercial enterprise with respondent company and the Red Cross is not now and has never been interested directly or indirectly in the sale of any product or products sold by respondent under a Red Cross brand or otherwise; the Red Cross does not prescribe and has never prescribed any sanitary or other standard for any article of commerce produced by respondent; no article of commerce manufactured or distributed by respondent is now or ever has been sold with the approval of the Red Cross and the Red Cross has not given respondent permission to use the Red Cross name and emblem for commercial purposes.

In truth and in fact, the American Red Cross has never been engaged in any kind of commercial enterprise, directly or indirectly; has never been engaged directly or indirectly in the sale of any product; has never prescribed any sanitary or other standard for any article of commerce; no article of commerce is now or ever has been sold with the approval of the Red Cross, and the Red Cross has never given any manufacturer, wholesaler, retailer or other dealer, permission to employ the Red Cross name or emblem as a trade-mark or otherwise in advertising, branding, labeling or marking any product.

PAR. 9. Respondent's aforesaid acts, practices and representations in connection with the sale of its products have had and now have the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers of respondent's said products into the erroneous and mistaken belief that respondent has some association, connection or affiliation with the Red Cross, that respondent's products are approved, sponsored or endorsed by the Red Cross, that the Red Cross is interested financially in the sale of respondent's products and that the use by respondent of the Red Cross name and emblem indicates that respondent is manufacturing its said products according to standards prescribed by the Red Cross. By reason of said beliefs, engendered as above stated, a substantial number of the consuming public have been and are being induced to purchase substantial quantities of respondent's said products.

Furthermore, the extension of the use of the Red Cross name and emblem so as to cover and apply to paper towels as well as toilet tissue is not and never has been a use for the same purpose and the same class of goods, and is an unlawful use of said name and emblem.

PAR. 10. Said acts and practices of respondent as described herein are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of, and are in violation 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 11, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, A. P. W. Paper Company, 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 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, briefs in support of and in opposition to the complaint, and oral argument; and the Commission, having duly considered the matter, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion based thereon;

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, A. P. W. Paper Company, Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at the foot of Bridge Street, Albany, N. Y. In addition to its main office in Albany, respondent maintains a number of branch offices in various cities throughout the United States. The company was originally incorporated in 1877 under the name of Albany Perforated Wrapping Paper Company, but in 1930 the corporate name was changed to A. P. W. Paper Company, Inc. The corporation is engaged in the manufacture, sale, and distribution of toilet tissues and paper towels.

PAR. 2. In the course and conduct of its business, respondent causes and has caused its products, when sold, to be transported from its principal 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 products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Among the various brands of toilet tissues and paper towels manufactured and sold by respondent are certain brands designated by it as "Red Cross Toilet Tissue" and "Red Cross Towels." The toilet tissue was placed on the market by respondent in 1897 and the paper towels in 1933. Both products have been and are widely advertised in periodicals having nation-wide circulation. On each package or roll of toilet tissue and towels the words "Red Cross" are prominently displayed, and in connection with the name there is also prominently displayed a Greek red cross. Both the trade name and the cross are also

featured in respondent's magazine advertisements, and on respondent's letterheads there appear the words "Makers of Red Cross Towels and Tissue," the words "Red Cross" being immediately followed by a red cross similar to that which appears on the packages and in the advertisements. Both the trade name and the mark of the cross have been registered by respondent in the United States Patent Office.

PAR. 4. The organization known as the Red Cross had its beginning in August, 1864, when diplomats representing a number of European nations met in Geneva, Switzerland, for the purpose of drafting a treaty looking to the alleviation of the suffering of soldiers wounded on the battlefield. Among the articles adopted by the convention was Article VII, which provided that:

A distinctive and uniform flag shall be adopted for hospitals, ambulances and evacuations. It must, on every occasion, be accompanied by the national flag. An arm-badge (brassard) shall also be allowed for individuals neutralized, but the delivery thereof shall be left to military authority.

The flag and the arm-badge shall bear a red cross on a white ground.

Some two years after the Geneva convention, certain individuals in the United States who had followed with interest the work of the convention organized in New York City an association known as "The American Association for the Relief of the Misery of Battlefields," which it was hoped would be the beginning of a permanent Red Cross organization in this country. The Association adopted as its emblem the same one as that which had been adopted by the Geneva convention, that is, a Greek red cross on a white ground. The United States, however, had not at that time ratified the treaty of Geneva and the Association remained active for only about two years.

PAR. 5. In July, 1881, there was incorporated, under the laws of the District of Columbia, an association designated "The American Association of the Red Cross." One of the principal organizers of the Association was Miss Clara Barton, who had, since the Geneva convention, been very active in the movement to effect a permanent Red Cross organization in the United States and to obtain the ratification by this country of the Geneva treaty. In the meantime, there had been held at Geneva in 1868 a second convention, which extended the articles adopted by the original convention so as to include naval warfare. Among the objects of the Association, as set forth in the articles of incorporation, were the following:

1st. To secure by the United States the adoption of the treaty of August 22, 1864, between Italy, Baden, Belgium, Denmark, Holland, Spain, Portugal, France, Prussia, Saxony, Wurtemberg, and the Federal Council of Switzerland.

* * * * *

3d. To organize a system of national relief and apply the same in mitigating the sufferings caused by war, pestilence, famine and other calamities.

PAR. 6. The treaty of Geneva was formally ratified by the United States in March, 1882, and in April, 1893, the Red Cross organization which had been incorporated in 1881 was reincorporated under the laws of the District of Columbia under the name "The American National Red Cross." During the period of time which had intervened between the original incorporation in 1881 and the reincorporation in 1893, the organization had been very active, particularly with respect to the relief of

distress caused by a series of calamities, including the Mississippi floods of 1882; the Ohio floods of 1883, the Mississippi cyclones of 1883, the Ohio and Mississippi floods of 1884, the Texas drought of 1886, the Charleston earthquake of 1886, the Florida yellow-fever epidemic of 1888, and the Johnstown disaster of 1889.

PAR. 7. On June 6, 1900, the organization was incorporated under the same name (The American National Red Cross) by Act of Congress (31 Stat. 277-280), and on January 5, 1905, it was reincorporated by Congress under the same name (33 Stat. Part I, pp. 599-602). It appears that the principal purpose of the reincorporation was to provide more definitely for the supervision of the organization by the Federal Government. Under the Act of 1905, six of the eighteen members of the Central Committee, which is the governing body of the Red Cross, are appointed by the President of the United States. One of the six members so appointed is designated by the President as Chairman, and one of the six is named by the President from each of the Departments of State, War, Navy, Treasury, and Justice. The organization is required to transmit to the Secretary of War each year a full report of its receipts and expenditures for the preceding fiscal year, which report is audited by the War Department and a copy transmitted by that Department to Congress. The by-laws of the organization provide that the President of the United States shall, upon his acceptance, be *ex officio* president of the organization.

PAR. 8. From the time of its first incorporation under the laws of the District of Columbia in 1881 down to the present time, the American Red Cross has not only used the words "Red Cross" as a part of its name and in connection with its various activities, but has also used the emblem adopted by the Geneva convention, the Greek red cross on a white ground. All of the Acts of Congress having to do with the organization have recognized this emblem and have provided penalties for its misuse. Thus, Section 4 of the Act of 1900 provided:

That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely and fraudulently hold himself out as, or represent or pretend himself to be a member of or an agent for the American National Red Cross for the purpose of soliciting, collecting, or receiving money or material; or for any person to wear or display the sign of the red cross, or any insignia colored in imitation thereof, for the fraudulent purpose of inducing the belief that he is a member of or an agent for the American National Red Cross. If any person violates the provisions of this section he shall be guilty of a misdemeanor, and shall be liable to a fine of not less than one nor more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense. The fine so collected shall be paid to the American National Red Cross. * * * (31 Stat. 279)

The corresponding section in the Act of 1905 was as follows:

That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely and fraudulently hold himself out as, or represent or pretend himself to be, a member of, or an agent for, the American National Red Cross, for the purpose of soliciting, collecting, or receiving money or material; or for any person to wear or display the sign of the Red Cross, or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of, or an agent for, the American National Red Cross. Nor shall it be lawful for any person or corporation, other than the Red Cross of America, not now lawfully entitled to use the sign of the Red Cross, hereafter to use such sign or any insignia colored in

imitation thereof for the purposes of trade or as an advertisement to induce the sale of any article whatsoever. If any person violates the provisions of this section, he shall be guilty of a misdemeanor and shall be liable to a fine of not less than one nor more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense. The fine so collected shall be paid to the American National Red Cross. (33 Stat. Part 1, pp. 600-601)

In 1910 this section was further amended by Congress to read as follows:

That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely or fraudulently hold himself out as or represent or pretend himself to be a member of or an agent for the American National Red Cross for the purpose of soliciting, collecting, or receiving money or material; or for any person to wear or display the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of or an agent for the American National Red Cross. It shall be unlawful for any person, corporation, or association other than the American National Red Cross and its duly authorized employees and agents and the Army and Navy sanitary and hospital authorities of the United States for the purpose of trade or as an advertisement to induce the sale of any article whatsoever or for any business or charitable purpose to use within the territory of the United States of America and its exterior possessions the emblem of the Greek Red Cross on a white ground, or any sign or insignia made or colored in imitation thereof or of the words "Red Cross" or "Geneva Cross" or any combination of these words: Provided, however, That no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods. If any person violates the provision of this section, he shall be deemed guilty of a misdemeanor and, upon conviction in any federal court, shall be liable to a fine of not less than one or more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense. (36 Stat. Part I, p. 604)

PAR. 9. From a relatively small membership in 1881 the American Red Cross has grown until it now numbers fifteen million adult members and fourteen million junior members. It has an active chapter in practically every county in the United States. Its reputation as a great charitable institution is of world-wide, as well as national, scope. It has expended and continues to expend many millions of dollars annually on behalf of stricken humanity. In one Mississippi River flood, it cared for 300,000 homeless individuals. It has sent its trained representatives throughout the world to aid those suffering from such calamities as war, epidemics, fire, flood, volcanic eruptions, earthquakes, mine disasters, and hurricanes. It is particularly active in time of war, now having representatives attached to every American Army task force throughout the world. Both the name "Red Cross" and the emblem of the Greek red cross on a white ground have long been familiar to the American public and are associated in the minds of the public with the Red Cross organization.

PAR. 10. The Commission finds that the use by respondent of the words "Red Cross" and of the mark of the Greek red cross to designate its products has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public, in that such name and mark represent or imply that respondent's products are sponsored, endorsed, or approved by the Red Cross; that the Red Cross is financially interested in

the sale of the products; that the products are used by the Red Cross; that the products are manufactured in accordance with sanitary standards set up by the Red Cross; or that there is some other connection between the products and the Red Cross. Not only are these, in the opinion of the Commission, reasonable inferences to be drawn from the use of the name and mark, but the record affirmatively shows that the name and mark are in fact so understood and interpreted by many members of the public. Twenty-nine members of the public testified at the hearings, and it was stipulated between counsel for the Commission and counsel for respondent that if twenty-five other prospective public witnesses had been introduced their testimony would have been substantially the same as the testimony of those who were actually introduced. Of the twenty-nine witnesses who testified, some fifteen, upon examining samples of respondent's products and advertising, stated that they would understand from the trade name and mark that there was some connection between the products and the Red Cross organization, although they did not agree as to the exact nature of such connection. Some interpreted the name and mark as implying that the products were sponsored, endorsed, or approved by the Red Cross; others, that the products conformed with sanitary standards set up by the Red Cross; others, that the products were used by the Red Cross, etc.

There is no connection of any kind between respondent's products and the Red Cross organization. In fact, the Red Cross has no connection with any business or commercial enterprise. It does not sponsor, endorse, or approve any articles of merchandise nor derive any benefit from the sale thereof. It does not set up standards, sanitary or otherwise, for commercial products. The work and interests of the organization are solely of a charitable nature.

PAR. 11. While there appear on respondent's products, in addition to the name "Red Cross" and the mark of the cross, other words stating that the products are made by respondent and that the trade name and mark are registered in the United States Patent Office, the Commission is of the opinion and finds that these additional words do not serve to correct the erroneous and misleading impression created through the use of the trade name and mark.

PAR. 12. It is insisted by respondent that the use of a red cross as an emblem or insignia dates back several centuries and that such use long antedated the Red Cross organization. The record indicates, however, that the use of a red cross in the particular form and coloration here involved—a Greek red cross on a white ground—had its origin in the Geneva convention of 1864. The emblem was formed by reversing the colors of the flag of Switzerland. The red cross used prior to that time was usually in the form of an ecclesiastical cross or in some other form differing from the Greek red cross.

PAR. 13. It is further urged by respondent that the provision of the Act of Congress of 1910 reading,

No person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods,

constitutes a bar to this proceeding. The Commission is of the opinion, however, that this position is unsound. Among the considerations leading

the Commission to this view is that the Act in question is a penal statute. The primary purpose of the quoted provision was to save those coming within its terms from the penalties provided by this particular Act.

Moreover, the provision expressly states that the use must be for a "lawful purpose." At the time of the passage of this Act the legal concept with respect to unfair trade practices was much more restricted than at the present time. Then the legality of a trade practice depended largely, if not entirely, upon its effect on competition, the effect upon the general public being given little, if any, consideration. Since that time there has been enacted the Federal Trade Commission Act, which recognizes the interest of the general public in unfair trade practices. Particularly is this true under the 1938 amendment to the Federal Trade Commission Act, which prohibits unfair and deceptive acts and practices in commerce, irrespective of their effect on competition.

Whatever effect the provision relied upon by respondent might have in a proceeding based upon the 1910 statute, or in litigation involving conflicting trade-mark claims between private parties, the Commission is of the opinion that the provision has no application in a proceeding under the Federal Trade Commission Act, where the principal inquiry is as to the effect of the Red Cross name and mark upon the general public.

No finding is made as to whether the paper towels made by respondent are of the same class of goods as its toilet tissue.

PAR. 14. The acts and practices of the respondent have the tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that respondent's products are sponsored, endorsed, or approved by the Red Cross; that the Red Cross is financially interested in the sale of the products; that the products are used by the Red Cross; that the products are manufactured in accordance with sanitary standards set up by the Red Cross; or that there is some other connection between the products and the Red Cross, 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 matter 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, A. P. W. Paper Company, 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 respondent's toilet tissues and paper towels in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Red Cross" or any abbreviation or simulation thereof, either alone or in combination or connection with any other word or words, to designate, describe, or refer to respondent's products.

2. Using or displaying on respondent's products or in any advertisement of such products the mark of a Greek red cross, or any other mark, emblem, sign, or insignia simulating or resembling such cross.

3. Representing in any manner or by any means, directly or by implication, that respondent's products are sponsored, endorsed, or approved by the Red Cross; that the Red Cross is financially interested in the sale of said products; that said products are used by the Red Cross; that said products are manufactured in accordance with sanitary standards set up by the Red Cross; or that there is any other connection between said products and the Red Cross.

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

MICHEL LIPMAN AND JACK SILVERMAN TRADING AS
CHIEF STATISTICIAN AND AS J. SILVERMAN &
ASSOCIATES, 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 4809. Complaint, Aug. 12, 1942—Decision, Jan. 8, 1944

Where two individuals, (along with a third, associated therewith as below set forth) engaged in interstate sale and distribution of printed mailing cards for use in obtaining information concerning delinquent debtors by collection agencies and business concerns selling on credit, including, as typical, their perforated "Chief Statistician" combined addressee and information cards, which, respectively, (1) under Washington heading and over signature of one of said individuals as "Chief Statistician," advised addressee that it was necessary that current place of employment of person named on "the attached voucher be verified," that immediate compliance was requested in order to bring certain special records up to date," and that "this office has no connection with any local or field offices"; (2) addressed to, "Chief Statistician, Suite 302, Bond Building, Washington, D. C.," contained provision for "subject's" name and address, and those of his employer, and statement as to his salary, and other details; (3) in case of information card set forth words "index register" followed by certain letters and numerals, words "posted by agent for" followed by blank line and some such words as "West Coast Area"; and (4) resembled notices and vocational questionnaire and similar requests sent out from time to time by certain government agencies, including the Selective Service System;

Making use of a plan under which (1) they identified particular creditor customer concerned by letters and numerals inserted by them following words "index register" on the information card; (2) creditor customer addressed the addressee part to the debtor at his last known address, or to some other person likely to have information concerning him, and mailed the card, and (3) the aforesaid third individual, to whose office in Washington, as "Chief Statistician," etc., the information cards were all addressed, forwarded to the other two, pursuant to his agreement, cards returned by debtors—

Falsely represented and placed in the hands of others the means of representing to debtors and others from whom information was sought that the request for information was from some department or agency of the United States Government; when in fact the cards were in no way connected therewith, but were merely devices used by said individuals and their customers for the sole purpose of obtaining, through subterfuge, information concerning debtors;

With the result that many persons who received said cards were misled by the general make-up thereof and by the various statements and legends thereon into the belief that the cards originated from some Governmental department or agency, and were thereby induced to and did supply information which they would not otherwise have supplied:

Held, That such acts and practices of said individuals, as above set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Complaint

38 F. T. C.

Before *Mr. Andrew B. Duval* and *Mr. James A. Purcell*, trial examiners.
Mr. Randolph W. Branch for the Commission.
Seaman & Jackson, of San Francisco, Calif., for Michel Lipman and Jack Silverman.
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 Michel Lipman and Jack Silverman, individually and as copartners trading as Chief Statistician, and J. Silverman & Associates, 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:

PARAGRAPH 1. The respondents, Michel Lipman and Jack Silverman, are copartners, who in the commission of the acts hereinafter alleged, make use of the names Chief Statistician and J. Silverman & Associates and who have their office and principal place of business at 866 Pacific Building, 821 Market Street, in the city of San Francisco, State of California. The respondent, William Edgar Spicer, is an individual, whose office and principal place of business is in the Bond Building, city of Washington, District of Columbia.

PAR. 2. The respondents, Michel Lipman and Jack Silverman are now, and for more than six 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 California 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 Lipman and Silverman maintain, and at all times herein mentioned 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.

The said mailing cards sold and transported by the respondents Lipman and Silverman, 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 a perforated line, 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 purchasers of the cards. 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 is already addressed to "Chief Statistician, Bond Building, Washington, D. C." Said information card so addressed is delivered by the Post Office Depart-

Complaint

ment to respondent Spicer, in accordance with instructions given by him. Said Spicer then forwards the information card with the information thereon supplied, from Washington, District of Columbia, to the respondents Lipman and Silverman in San Francisco, California. Respondents Lipman and Silverman then return the information card and information so forwarded to them to the original purchaser of the cards.

PAR. 3. The respondents Michel Lipman and Jack Silverman 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 prepared and printed in the manner hereinafter set forth. The upper left-hand corner of the address side of the addressee cards, intended for the name and address of the debtors or other informants, bears the words, "Return to CHIEF STATISTICIAN, Bond Building, Washington, D. C." The reverse side of said addressee cards bears the words:

Washington, D. C.

To Addressee:

It is necessary that the current place of employment of the person whose name appears on the attached voucher be verified.

Please complete the attached card and mail it not later than 5 days after its receipt by you.

Your immediate compliance is requested in order to bring certain special records up to date. This office has no connection with any local or field offices.

M. Lipman,
Chief Statistician.

The information cards bear the address:

CHIEF STATISTICIAN
Bond Building
WASHINGTON, D. C.
Suite 302.

The reverse side of said information card bears a statistical table, purporting to have a relation to the debtor concerning whom inquiry is made, and to the information supplied by him or other informant. To the left of this table, and at right angles thereto, are the words:

Do not Write Above This Line.

EMPLOYMENT VOUCHER

Use Ink. Fill all spaces, and mail promptly.

Complaint

38 F. T. C.

At the left of these words is printed the following form:

Subject:-----

Subject's Address:-----

Subject's

Employer:-----

Address:-----

Monthly
Salary:----- Does this include

Room?----- Board?----- Service?-----

Employed since (approximate date)-----

The above information is correct to the best of my knowledge and belief.

Your name:-----

DETACH BEFORE MAILING.

At the left side of this form are the words: "INDEX REGISTER," followed by letters and numbers and words "Posted by," followed by the words "West Coast Area," or other words indicating a geographical area of the United States.

By the use of the aforesaid mailing cards, prepared and printed as aforesaid, the respondents Lipman and Silverman falsely represent, and place in the hands of their customers a means of falsely representing, to the customers' debtors and others to whom said cards are addressed by the said customers, that the request for information comes from an agency or branch of the Government of the United States. Respondent Spicer, who well knows that the said information cards have not been prepared by and are not intended for the Government of the United States, or any branch or agency thereof, by forwarding the said information cards with the information thereon appearing, as heretofore alleged, assists in the fruition of the purpose for which the said misrepresentations were originally made by the respondents Lipman and Silverman 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 said mailing cards nor the requests for information 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 purposes.

Many persons who receive the aforesaid mailing cards believe that said requests for information and 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 United States do and for some time past have sent out to members of the public, vocational questionnaires re-

sembling the forms used by respondents on said mailing cards. Among the agencies of the United States which have sent out such vocational questionnaires is the Selective Service System. Among the persons receiving said 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 by the Selective Service System. As a result of such beliefs and such doubts many inquiries, both in person and by mail, are addressed to local boards and other divisions of said Selective Service System, and correspondence and other effort on the part of the various divisions of said Selective Service System, the Army of the United States, and other governmental divisions and agencies is made necessary, all of which is contrary to the public interest.

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 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 12, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Michel Lipman and Jack Silverman, individually, and trading as Chief Statistician and as J. Silverman & Associates, and William Edgar Spicer, individually, 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 respondents' answers, testimony and other evidence in support of and in opposition to the allegations of 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. 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 examiners 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. Respondents, Jack Silverman and Michel Lipman, are individuals, trading under the names Chief Statistician and J. Silverman & Associates, with their principal office and place of business located at 821 Market Street, San Francisco, Calif. They are, and for a number of years last past have been, engaged in the sale and distribution of printed mailing cards designed for use in obtaining information concerning delinquent debtors, such cards being sold to collection agencies and to business concerns engaged in the sale of merchandise on credit. Respondent Silverman, is in active charge of the business, and directs the

advertising and sale of the cards and their subsequent handling, as hereinafter described. Respondent Lipman, is the originator of the cards and holds the copyright thereto. He shares in the profits of the business in proportion to the number of cards sold. He also negotiated the agreement with respondent William Edgar Spicer, hereinafter referred to.

Respondent, William Edgar Spicer, is an individual, whose principal office and place of business is located in Suite 302, Bond Building, Washington, D. C. With full knowledge of the real nature and purpose of the mailing cards sold by respondents, Silverman and Lipman, he participates in the use and handling of such cards, as hereinafter set forth, thereby assisting in the effectuation of the purpose of the cards. For his services respondent Spicer receives compensation from respondents, Silverman and Lipman.

PAR. 2. In the course and conduct of their business respondents Silverman and Lipman cause and have caused their mailing cards, when sold, to be transported from their 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. They maintain and have maintained a course of trade in such cards in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Among the cards sold by respondents, Silverman and Lipman, is one known as the "Chief Statistician" card. These cards are made up in units composed of two cards separated by a perforated line, one of the cards of the unit being known as the addressee card and the other as the information card. Upon purchasing the cards, the creditor addresses the addressee card to the debtor at his last known address, or to some other person likely to have information concerning the debtor, and deposits the card in the United States mail. On the addressee card appears the following:

Washington, D. C.

To Addressee:

It is necessary that the current place of employment of the person whose name appears on the attached voucher be verified.

Please complete the attached card and mail it not later than 5 days after its receipt by you.

Your immediate compliance is requested in order to bring certain special records up to date. This office has no connection with any local or field offices.

M. Lipman
Chief Statistician

In those cases where the debtor or other addressee responds to the request for information, he fills in the blank spaces on the information card, detaches it from the addressee card, and deposits it in the United States mail. The information card bears the address:

CHIEF STATISTICIAN

Bond Building

WASHINGTON, D. C.

SUITE 302

the post office address being that of respondent Spicer. Upon receipt of the card, respondent Spicer forwards it from his office in Washington,

D. C., to respondents Silverman and Lipman, who in turn forward the card to the creditor.

On the information card there appears the following:

Subject:-----

Subject's address:-----

Subject's
employer:-----

Address:-----

Monthly salary:----- Does this include

Room?----- Board?----- Services?-----

Employed since (approximate date):-----

The above information is correct to the best of my knowledge and belief.

Your name:-----

DETACH BEFORE MAILING

In addition to the foregoing, there also appear on the information card the words; "Index Register" followed by certain letters and numerals, and the words, "Posted by Agent for" followed by a blank line and the words, "WEST COAST AREA" or other words indicating a geographical area of the United States. The letters and numerals following the words, "Index Register" serve as the means of enabling respondents Silverman and Lipman to identify the card as belonging to a particular creditor. The card also bears a statistical table captioned "STATISTICAL CONTROL" similar to that frequently found on punch cards used by Government agencies and large business organizations. This statistical table purports to relate to the person concerning whom inquiry is made.

PAR. 4. Through the use of these cards and the various legends and statements thereon, respondents represent and place in the hands of others the means of representing to debtors and others from whom information is sought that the request for information is from some department or agency of the United States Government. This representation is wholly false. The cards are in no way connected with the United States Government or any department or agency thereof, but are merely devices used by respondents and their customers for the sole purpose of obtaining, through subterfuge, information concerning debtors.

Certain agencies of the United States Government, including the Selective Service System, do send out to the public from time to time notices and vocational questionnaires and other requests for information which resemble the forms used by respondents. Many persons who receive respondents' cards are misled by the general make-up of such cards and by the various statements and legends thereon into the belief that the cards originated from some Governmental department or agency, and as a result of such impression such persons are induced to and do

supply information which they would not otherwise supply. Contributing to this erroneous impression is the use by respondents of the trade name "Chief Statistician" and of a mailing address in Washington, D. C., the seat of the National Government.

In addition to the cards herein described, respondents Silverman and Lipman have sold and used at various times other mailing cards which, while varying in detail, were designed and used for the same purpose as the present cards, to wit: the obtaining, through subterfuge, of information concerning debtors.

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, 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 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 respondents, Michel Lipman and Jack Silverman, individually, and trading as Chief Statistician and as J. Silverman & Associates, or trading under any other name, and respondent, William Edgar Spicer, and respondents' 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 mailing 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 words "Chief Statistician," or any other words of similar import, to designate, describe, or refer to respondents' business.
2. Using, or supplying to others for use, mailing cards or other material which represents, directly or by implication, that such cards or other material are from any department or agency of the United States Government, or that the information sought through such cards or other material is for the use of the United States Government or any department or agency thereof.
3. Using, or supplying to others for use, mailing cards or other material which represents, directly or by implication, that respondents' 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 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

ABRAHAM FRIEDMAN AND SAMUEL FRIEDMAN, TRADING
AS S. FRIEDMAN & SONS, AND AS SUNRAY YARN HOUSE

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

Docket 4891. Complaint, Jan. 22, 1943—Decision, Jan. 8, 1944

Where two individuals engaged in interstate sale and distribution of knitting yarns; in price lists, sample cards and other advertising material and on labels attached to their products—

(a) Made use of such terms as "Burma Yarn, 50% Synthetic Fiber, 50% Cotton Yarn"; "Sportswear Angora, 85% Wool, 15% Angora"; "Rainbow Tweed, 60% Spunsilk, 40% Rayon"; "Crash Tweed, 90% Cotton, 10% Rayon"; "Zephyr Nub, All Virgin Wool"; and "Lustre Worsted, 50% Wool, 50% Rayon":

The facts being that said "Burma Yarn," made to simulate wool, was composed, in addition to 50% cotton, of 50% rayon, presence of which was not disclosed, with tendency and capacity to induce purchasing public to believe that it contained wool or other fiber and no rayon; the "Sportswear Angora" contained no Angora goat hair, but rabbit, and the "Tweeds" no wool, as understood by purchasing public from use of word; and the "All Virgin Wool" and "Lustre Worsted" were not, as thus represented, all wool, but contained cotton and rayon, respectively;

(b) Falsely represented as silk, yarns composed partly of wool and partly of rayon through use of the designations "Mystic Crepe" and "Crinkle Crepe"; and

(c) Falsely represented certain of their products as composed entirely of wool from the Shetland Islands or contiguous mainland of Scotland, or from Saxony or Burma, as case might be, through use of designations "Lustre Shetland," "Shetland Floss," "Saxony Zephyr," and "Burma Yarn";

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the constituent fibers of their said products, and their place of origin, whereby it was induced to purchase substantial quantities thereof:

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

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

Mr. Merle P. Lyon for the Commission.

Fineman & Stillman, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Abraham Friedman and Samuel Friedman, trading as S. Friedman & Sons and as Sunray Yarn House, 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, Abraham Friedman and Samuel Friedman, are individuals, trading as S. Friedman & Sons and as Sunray Yarn

House, with their principal place of business located at 349 Grand Street, New York, N. Y.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the business of selling and distributing various grades and types of knitting yarns. Respondents sell their products to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and cause said products when sold, to be 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 the State of New York and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in 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, respondents have engaged in the practice of falsely representing the constituent fiber or material of which various products sold and distributed by them are made, and of falsely representing the place of origin of certain of their products, by means of false representations on labels attached to their products and on sample cards and other advertising matter circulated among prospective purchasers. In furtherance of the foregoing practices and for the purpose of inducing the purchase of said products, respondents have caused false and misleading statements and representations, purporting to be descriptive of such products and of their respective constituent fibers or materials, and places of origin, to be inserted in price lists, sample cards and other advertising matter distributed by means of the United States mails and otherwise to prospective purchasers of such products situated in various States of the United States.

PAR. 4. The words "tweed" and "worsted" are words long and favorably known to a substantial portion of the purchasing and consuming public as descriptive of certain types of fabrics composed entirely of wool.

The word "crepe" has been and is associated in the minds of the purchasing public with fabrics made from silk, the product of the cocoon of the silk worm. When the term "crepe" is used to designate knitting yarn, it is understood by the purchasing public as denoting that such product is made from silk.

The word "Angora" has long been understood by the purchasing public as denoting products made from the hair of the Angora goat, and when such term is used to designate or describe a product having the appearance of wool fiber, such term is understood by the purchasing public as denoting a product made from the hair of the Angora goat.

The word "rayon" is the name of a chemically manufactured fiber or fabric which may be manufactured to simulate either silk or wool and not designated as rayon, is readily believed and accepted by the purchasing public as being either silk or wool, as the case may be.

PAR. 5. Among and typical of the representations used to falsely represent the constituent fiber or material of which various products sold and distributed by respondent are made are the following:

Burma Yarn, 50% Synthetic Fiber, 50% Cotton Yarn"
Sportswear Angora, 85% Wool, 15% Angora
Rainbow Tweed, 60% Spunsilk, 40% Rayon
Mystic Crepe, 70% Wool, 30% Rayon

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Crinkle Crepe, 60% Wool, 40% Rayon
 Crash Tweed, 90% Cotton, 10% Rayon
 Zephyr Nub, All Virgin Wool
 Lustre Worsted, 50% Wool, 50% Rayon

PAR. 6. Respondent's product "Burma Yarn" represented by the respondents as containing 50% synthetic fiber in addition to 50% cotton is in fact composed of 50% of rayon in addition to 50% cotton. It is so manufactured as to simulate wool, and the nondisclosure of its rayon content has a tendency and capacity to induce the purchasing public to believe that it does not contain rayon but does contain some other fiber, such as wool.

Respondent's product "Sportswear Angora" contains 15% rabbit hair in addition to 85% wool. The purchasing public is induced by the respondent's designation "Angora" in the description of said product to believe that said product contains hair of the Angora goat, when in fact it is composed of rabbit hair and does not contain any hair of the Angora goat.

The designation of certain of respondent's products as "Rainbow Tweed" and "Crash Tweed" are representations to the purchasing public that said products are composed entirely of wool, when in fact they contain no wool.

By designating certain of their products as "Mystic Crepe" and "Crinkle Crepe" respondents represent to the public that said products are made from silk, when such is not the fact. Said products are composed partly of wool and partly of rayon, and do not contain any silk.

By representing one of their products as "Zephyr Nub, All Virgin Wool" respondents represent to the public that said product is composed wholly of wool, whereas in fact it contains cotton in addition to wool.

By the designation of one of their products as "Lustre Worsted," respondents represent to the public that said product is composed entirely of wool, when in fact it is composed partly of rayon.

PAR. 7. Among and typical of the representations made by the respondents to falsely represent the places of origin of certain of their products are the following: "Lustre Shetland," "Shetland Floss," "Saxony Zephyr" and "Burma Yarn." Through the use of such legends the respondents represent that the yarns designated "Lustre Shetland" and "Shetland Floss" are made from wool of sheep from the Shetland Islands or the contiguous mainland of Scotland, that the yarn designated "Saxony Zephyr" is made from wool of sheep from the Province of Saxony, and that the yarn designated "Burma Yarn" is made of material imported from Burma or of wool grown in Burma.

The words "Shetland," "Saxony" and "Burma," when used in connection with the designation and description of yarns sold by the respondents are considered by members of the purchasing public as being descriptive of wool products composed entirely of wool from sheep found only in the Shetland Islands or the contiguous mainland of Scotland, the Province of Saxony, and Burma, respectively.

In truth and in fact, none of said yarns are made from wool grown in the Shetland Islands or the contiguous mainland of Scotland, the Province of Saxony, or Burma.

PAR. 8. The acts and practices of the respondents, as herein set forth, have the tendency and capacity to, and do, mislead and deceive a sub-

stantial portion of the purchasing public with respect to the constituent fibers or materials of which respondents' products are made and the places of origin of such products. As a result, the purchasing public has been induced to, and has, purchased substantial quantities of respondents' products.

PAR. 9. 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 January 22, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, Abraham Friedman and Samuel Friedman, trading as S. Friedman & Sons, and as Sunray Yarn House, 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 respondents' answer, 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 the respondents, and certain testimony and other evidence were also introduced at such hearing, the stipulation, testimony, and other evidence being duly recorded and subsequently 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, the stipulation as to the facts, 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 respondents, Abraham Friedman and Samuel Friedman, are individuals, trading as S. Friedman & Sons and as Sunray Yarn House, with their principal place of business located at 349 Grand Street, New York, N. Y. Respondents are now, and for a number of years last past have been, engaged in the sale and distribution of various grades and types of knitting yarns to members of the purchasing public.

PAR. 2. Respondents cause and have caused their products, when sold, to be transported from their 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. Respondents maintain and have maintained a course of trade in their products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents have engaged in the practice of falsely representing the constituent fibers or materials of which certain of their products were made and the place of origin of

certain of their products. These representations were made by means of labels attached by respondents to their products, and also by means of price lists, sample cards, and other advertising material distributed by respondents through the United States mails and otherwise among prospective purchasers.

PAR. 4. The words "tweed" and "worsted" are words which have been long and favorably known to a substantial portion of the purchasing public as descriptive of certain types of fabrics composed entirely of wool.

The word "crepe" has been and is associated in the minds of the purchasing public with fabrics made from silk, the product of the cocoon of the silkworm. When the term "crepe" is used to designate knitting yarn, it is understood by the purchasing public as denoting that such product is made from silk.

The word "Angora" has long been understood by the purchasing public as denoting products made from the hair of the Angora goat, and when such term is used to designate a product having the appearance of wool fiber, it is understood by the purchasing public as denoting a product made from the hair of the Angora goat.

Rayon is a chemically manufactured fiber or fabric which may be manufactured to simulate either silk or wool and, when manufactured to simulate silk or wool and not designated as rayon, it is readily believed and accepted by the purchasing public as being silk or wool, as the case may be.

PAR. 5. Among and typical of the representations used by respondents falsely to represent the constituent fibers or materials of which certain of their products were made were the following:

Burma Yarn, 50% Synthetic Fiber, 50% Cotton Yarn

Sportswear Angora, 85% wool, 15% Angora

Rainbow Tweed, 60% Spunsilk, 40% Rayon

Mystic Crepe, 70% Wool, 30% Rayon

Crinkle Crepe, 60% Wool, 40% Rayon

Crash Tweed, 90% Cotton, 10% Rayon

Zephyr Nub, All Virgin Wool

Lustre Worsted, 50% Wool, 50% Rayon.

The product designated "Burma Yarn," represented by respondents as containing 50% synthetic fiber in addition to 50% cotton, was in fact composed of 50% rayon in addition to 50% cotton. It was so manufactured as to simulate wool, and the nondisclosure of the rayon content had the tendency and capacity to induce the purchasing public to believe that it did not contain rayon, but did contain some other fiber, such as wool.

The product "Sportswear Angora" contained 15% rabbit hair in addition to 85% wool. The purchasing public was induced by the designation "Angora" in the description of the product to believe the product contained hair of the Angora goat, when in fact the fiber in question was rabbit hair. The product did not contain any hair of the Angora goat.

The designations "Rainbow Tweed" and "Crash Tweed" constituted representations to the purchasing public that the products so designated were composed entirely of wool, when in fact they contained no wool.

The designations "Mystic Crepe" and "Crinkle Crepe" constituted representations to the public that the products so designated were made from silk, when such was not the fact. These products were composed partly of wool and partly of rayon and did not contain any silk.

The designation "Zephyr Nub, All Virgin Wool" constituted a representation to the public that the product so designated was composed entirely of wool, when in fact it contained cotton in addition to wool.

The designation "Lustre Worsted" constituted a representation to the public that the product so designated was composed entirely of wool, when in fact it was composed partly of rayon.

PAR. 6. Among and typical of the representations used by respondents falsely to represent the place of origin of certain of their products were the following: "Lustre Shetland," "Shetland Floss," "Saxony Zephyr," and "Burma Yarn." Through the use of these designations, the respondents represented that the yarns designated "Lustre Shetland" and "Shetland Floss" were made from the wool of sheep found only in the Shetland Islands or the contiguous mainland of Scotland; that the yarn designated "Saxony Zephyr" was made from the wool of sheep found only in the Province of Saxony; that the yarn designated "Burma Yarn" was made from the wool of sheep found only in Burma.

The words "Shetland," "Saxony," and "Burma," when used in connection with the designation and description of yarns, are considered by members of the purchasing public as being descriptive of wool products composed entirely of wool from sheep found only in the Shetland Islands or the contiguous mainland of Scotland, the Province of Saxony, and Burma, respectively. In truth and in fact, none of the yarns so designated by respondents was made from wool grown in the Shetland Islands or the contiguous mainland of Scotland, the Province of Saxony, or Burma.

PAR. 7. The acts and practices of the respondents as herein set forth had the tendency and capacity to and did mislead and deceive a substantial portion of the purchasing public with respect to the constituent fibers or materials of which respondents' products were made and the place of origin of such products. As a result, the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondents' products.

The use of the representations herein set forth was discontinued by respondents some two years ago.

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, a stipulation 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 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, Abraham Friedman and Samuel Friedman, individually, and trading as S. Friedman & Sons and as Sunray Yarn House, or trading under any other name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondents' knitting yarns in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "wool," "tweed," or "worsted," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of wool: Provided, however, that in the case of a product composed in part of wool and in part of other fibers or materials, such words may be used as descriptive of the wool 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. Using the word "Shetland," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of wool 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 part of such wool and in part of other fibers or materials, such word may be used as descriptive of the Shetland wool 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.

3. Using the word "Angora" or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of hair of the Angora goat: Provided, however, that in the case of a product composed in part of hair of the Angora goat and in part of other fibers or materials, such word 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 or materials.

4. Using the unqualified word "crepe," or any other descriptive term indicative of silk, to designate, describe, or refer to any product which is not composed entirely of silk, the product of the cocoon of the silkworm: Provided, however, that such word or descriptive term may be used truthfully to designate or describe the type of weave, construction, or finish if such word is qualified by using in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words accurately describing the fibers or materials from which such product is made.

5. Advertising, offering for sale, or selling products composed in whole or in part of rayon without clearly disclosing such rayon content, and when such products are composed in part of rayon and in part of other fibers or materials, all such fibers or materials, including the rayon, shall be clearly and accurately disclosed.

6. Using the word "Saxony," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to desig-

nate, describe, or refer to any product which is not composed entirely of wool from sheep found only in the Province of Saxony.

7. Using the word "Burma," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of wool from sheep found only in Burma.

8. Misrepresenting in any manner or by any means, directly or by implication, the fibers or materials of which respondents' products are made, or the place of origin of such products.

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

It is further ordered, That no provision of this order shall be construed as relieving the respondents 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.

Syllabus

IN THE MATTER OF

ROCK CRUSHER MANUFACTURERS ASSOCIATION ET AL.

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

Docket 5026. Complaint, Aug. 14, 1943—Decision, Jan. 8, 1944

Where a number of manufacturers and some 300 distributors of rock crushers and other heavy road-building and construction machinery, together with their respective trade associations, and their officers, governors and directors, acting in cooperation with each other—

Entered into, maintained and carried out a common course of action, understanding, agreement, combination and conspiracy among themselves to hinder and suppress competition in interstate sale and distribution of rock crushing machinery to the United States government and agencies thereof, to State governments and agencies, and to governmental sub-divisions of the states, including counties and cities, and other buyers and users; and to create in themselves a monopolistic control therein; and in furtherance of such understandings, etc.—

- (a) Agreed to, and did, issue and adhere to price lists increasing price quotations on such machinery and establish and maintain a 20 percent discount to their dealers from the prices quoted therein; and agreed on terms and discounts to be extended to customers, including the federal government;
- (b) Agreed upon, and used, during 1935 and subsequently, a scheme of allocating among themselves in rotation the contracts and orders awarded by the government in its purchase of such machinery, according to the designated member in each instance the privilege of submitting a lower bid to the government than the bids of others;
- (c) Agreed not to, and did not, accept used rock crushing machinery in trade from customers for new machinery, or rent such machinery to them; and agreed to, and did, limit to 90 days guarantees on rock crushers which theretofore had been guaranteed by some members for as long as two years; and
- (d) Agreed to, and did, act through one member and its agents, including a certain individual of Washington, D. C., in seeking to have written into the United States Government specifications for rock crushing machinery certain provisions designed to eliminate from competition with them another seller who had frequently submitted lower prices than they on Government bids; and

Where said member manufacturers, and the member officers, etc., of said distributors' association—

- (e) Inaugurated and promoted a program which was designed to establish in the members of said distributors' association a monopolistic control over price quotations on rock crushing machinery made to government or private buyers, which — at the instance of said member distributors — included a collective agreement on the part of members of said manufacturers' association to file with said distributors a statement of sales policy in the form of a written pledge providing that such manufacturer members "will not bid direct on local government business in competition with distributors except at list price, and that they will not allow any price concessions to distributors for their use on public bids"; and providing that said manufacturers' list prices include a profit differential for distributors maintaining said list prices substantially 20 percent above the prices actually quoted and charged them by said member manufacturers; and thereafter and in accord-

ance therewith and at the further instance of said distributors filed with them desired statements of policy and adhered thereto;

With the result that such understandings and agreements increased the prices to buyers of rock crushing machinery and deprived them of the benefit of competition between manufacturers and distributors in sales of such machinery, net prices of which to users are less when sales are made by the manufacturers direct than when made through distributors or at distributors' prices; and

Where the members of said manufacturers' Association and of said distributors, when, on occasion they made sales direct to the government and its agencies—

(f) Included statements in sealed bids and price quotations to the effect that the prices, terms and conditions of sale set forth therein were competitively arrived at and did not result in whole or in part from any collusive act, practice, or method:

Held, That said common course of action, understanding, etc., and the acts and things done thereunder and pursuant thereto as above set forth were to the prejudice of actual and potential competitors and to that of the public, had a dangerous tendency to and did hinder, suppress and prevent competition, in the sale in commerce of such machinery; had capacity and tendency to and did restrain unreasonably such commerce therein; tended dangerously to create in said manufacturers and distributors a monopolistic control over prices and sale and distribution of said machinery, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Mr. Everette MacIntyre for the Commission.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for Rock Crusher Manufacturers Ass'n, Arthur W. Daniels, Diamond Iron Works, Inc., Gruendler Crusher & Pulverizer Co., Iowa Manufacturing Co., Pioneer Engineering Works, Inc., Universal Crusher Co., Universal Engineering Corp., and, together with—

McNab, Holmes & Long, of Chicago, Ill., for Western-Austin Co.

Vesey, Wheeler, Poole & Prince, of Washington, D. C., for Associated Equipment Distributors, its officers, board of governors, directors and members, generally, and also—

Birkhead, Beckmann, Stanard & Vance, of San Antonio, Tex., for George A. Cooper and J. E. Ingram Equipment Co.; and

Mr. Oscar Furuset, of Portland, Oreg., for Clyde Equipment 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 corporations, partnerships, associations and individuals named in the caption hereof and hereinafter 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, Rock Crusher Manufacturers Association, sometimes hereinafter referred to as respondent Association, is an unincorporated trade association with its principal office and place of business located at 625 C Avenue N. W., Cedar Rapids, Iowa.

Respondent, Arthur W. Daniels, is an individual, named herein as such, and as Secretary of respondent Association, with his office at 625 C Avenue, Cedar Rapids, Iowa. The membership of said respondent Asso-

ciation includes several manufacturers of rock crushers and other heavy road building and other construction machinery. Such manufacturers are located in various States of the United States and are engaged in the manufacture of rock crushing machinery, and in the sale and distribution of the same in interstate commerce. A number of such members are named as respondents herein as follows:

Respondent, Diamond Iron Works, Inc., is a Minnesota corporation, located at 18th Avenue N. and 2d Street, Minneapolis, Minn.

Respondent, Gruendler Crusher & Pulverizer Company, is a Missouri corporation, located at 2915 North Market Street, St. Louis, Mo.

Respondent, Iowa Manufacturing Company, is an Iowa corporation, located at 916-16th Street, N. E., Cedar Rapids, Iowa.

Respondent, Pioneer Engineering Works, Inc., is a Delaware corporation, located at 1515 Central Avenue, Minneapolis, Minn.

Respondent, Universal Crusher Company, is a Delaware corporation, located at 625 C Avenue, N. W., Cedar Rapids, Iowa.

Respondent, Universal Engineering Corporation, is an Iowa corporation, located at 625 C Avenue, N. W., Cedar Rapids, Iowa.

Respondent, Western-Austin Company, is an Illinois corporation, sometimes trading as Austin-Western Road Machinery Co., located at 601 Farnsworth Avenue, Aurora, Ill.

PAR. 2. Respondent, Associated Equipment Distributors, sometimes hereinafter referred to as respondent Distributors, is a trade association, incorporated under the laws of Ohio, with executive offices located in the National Press Building, Washington, D. C. Its membership consists of approximately 300 individuals, partnerships and corporations engaged in selling and distributing rock crushers and other heavy road building and construction machinery in interstate commerce. They are located in various States of the United States.

The names and addresses of the officers, members of the boards of governors and directors of the said respondent Distributors, who are named as respondents herein, individually and as such officers, members of the boards of governors and directors, are as follows:

Respondent, James C. Alban, is a member of the board of directors of respondent Distributors, and an official of respondent, Alban Tractor Company, Inc., with address at 725 East 25th Street, Baltimore, Md.

Respondent, W. W. Bucher, is a member of the board of directors of respondent Distributors, and an official of respondent, R. E. Brooks Company, with address at 50 Church Street, New York City, N. Y.

Respondent, George A. Cooper, is a member of the board of directors of respondent Distributors, and an official of respondent, J. E. Ingram Equipment Co., with address at 1146 West Laurel Street, San Antonio, Tex.

Respondent, Wm. A. Danner, is an officer and a member of the board of directors of respondent Distributors, and an official of respondent, Parker, Danner Co., with address at 817 Albany Street, Boston, Mass.

Respondent, Chas. O. Finn, is a member of the board of directors of respondent Distributors, and an official of respondent, The Finn Equipment Co., with address at 2525 Duck Creek Road, Cincinnati, Ohio.

Respondent, J. S. Gilman, is a member of the board of governors of respondent Distributors, and an official of respondent, Wm. H. Ziegler Co., Inc., with address at 2331 University Ave., S. E., Minneapolis, Minn.

Respondent, A. E. Hahnan, is a member of the board of directors of respondent Distributors, and an official of respondent, Tractor, & Ma-

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chinery Co., Inc., with address at 351 Whitehall Street, S. W., Atlanta, Ga.

Respondent, T. W. Harron, is an officer and a member of the board of directors of respondent Distributors, and an official of respondent, Harron, Rickard & McCone Co., with address at 2070 Bryant Street, San Francisco, Calif.

Respondent, M. R. Hunter, is a member of the board of governors of respondent Distributors, and an official of Hunter Tractor & Machy. Co., with address at 327 South 16th Street, Milwaukee, Wis.

Respondent, G. F. Lowe, is a member of the board of governors of respondent Distributors, and an official of respondent, Lowe Machinery Company, with address at 612 North Michigan Avenue, Chicago, Ill.

Respondent, Frank McBath, is a member of the board of directors of respondent Distributors, and an official of respondent, Columbia Equipment Company, with address at 1240 S. E. 12th Avenue, Portland, Oreg.

Respondent, Fred Mattheis, is a member of the board of governors of respondent Distributors, and an official of respondent, Hedge & Mattheis Co., with address at 285 Dorchester Avenue, Boston, Mass.

Respondent, W. G. Morgan, is a member of the board of governors of respondent Distributors, and an official of respondent, The Geo. F. Smith Co., Inc., with address at 3343 Franklin Avenue, St. Louis, Mo.

Respondent, R. R. Nixon, is an officer and a member of the board of governors of respondent Distributors, and an official of respondent, Nixon-Hasselle Co., with address at Carter at Thirteenth Streets, Chattanooga, Tenn.

Respondent, R. S. Patten, is a member of the board of directors of respondent Distributors, and an official of Patten Tractor & Equipment Co., with address at 1056 North Kolmar Avenue, Chicago, Ill.

Respondent, Ed. P. Phillips, is an officer and a member of the board of directors of respondent Distributors, and an official of respondent, Phillips Machinery Company, with address at 900 East Cary Street, Richmond, Va.

Respondent, R. S. Rosholt, is a member of the board of directors of respondent Distributors, and an official of respondent, Thorman W. Rosholt Co., with address at 3138 Snelling Avenue, Minneapolis, Minn.

Respondent, A. F. Sersanous, is a member of the board of governors of respondent Distributors, and an official of respondent, Loggers & Contractors Machinery Co., with address at 240 S. E. Clay Street, Portland, Oreg.

Respondent, G. W. Van Keppel, is an officer and a member of the board of directors of respondent Distributors, and an official of respondent, The G. W. Van Keppel Company, with address at 2440 Pennway, Kansas City, Mo.

Respondent, C. F. Winchester, is Secretary of respondent Distributors, with address at National Press Building, Washington, D. C.

The membership of said respondent, Associated Equipment Distributors, constitutes a class so numerous and changing as to make it impracticable to specifically name them all as parties respondent herein. The following corporations, among others, are members of said respondent Distributors, are fairly representative of the whole membership, and are named as respondents herein in their individual capacities, as members of the said respondent Distributors, and as representatives of all members of said respondent Distributors as a class, including those not herein

specifically named but who are thus made respondents herein by representation:

1. Alban Tractor Company, Inc., with office and principal place of business located at 725 East 25th Street, Baltimore, Md.

2. Borchert-Ingersoll, Inc., with office and principal place of business located at 2375 University Ave., St. Paul, Minn.

3. R. E. Brooks Company, with office and principal place of business located at 50 Church Street, New York City, N. Y.

4. Clyde Equipment Co., with office and principal place of business located at 1631 N. W. Thurman Street, Portland, Oreg.

5. Columbia Equipment Co., with office and principal place of business located at 1240 S. E. 12th Avenue, Portland, Oreg.

6. The Film Equipment Co., with office and principal place of business located at 2525 Duck Creek Road, Cincinnati, Ohio.

7. Fuchs Machinery & Supply Co., with office and principal place of business located at Fifteenth and Jackson Streets, Omaha, Nebr.

8. Harron, Rickard & McCone Co., with office and principal place of business located at 2070 Bryant Street, San Francisco, Calif.

9. Hedge & Mattheis Co., with office and principal place of business located at 285 Dorchester Avenue, Boston, Mass.

10. Hunter Tractor & Machy. Co., with office and principal place of business located at 327 South 16th Street, Milwaukee, Wis.

11. J. E. Ingram Equipment Co., with office and principal place of business located at 1146 West Laurel Street, San Antonio, Tex.

12. Loggers & Contractors Machinery Co., with office and principal place of business located at 240 S. E. Clay Street, Portland, Oreg.

13. Lowe Machinery Company, with office and principal place of business located at 612 North Michigan Avenue, Chicago, Ill.

14. Nixon-Hasselle Co., with office and principal place of business located at Carter at Thirteenth Streets, Chattanooga, Tenn.

15. Parker, Danner Co., with office and principal place of business located at 817 Albany Street, Boston, Mass.

16. Patten Tractor & Equipment Co., with office and principal place of business located at 1056 North Kolmar Avenue, Chicago, Ill.

17. Phillips Machinery Company, with office and principal place of business located at 900 East Cary Street, Richmond, Va.

18. The Victor L. Phillips Co., with office and principal place of business located at 1600 Baltimore Street, Kansas City, Mo.

19. Thorman W. Rosholt Co., with office and principal place of business located at 3138 Snelling Avenue, Minneapolis, Minn.

20. Smith Booth Usher Company, with office and principal place of business located at 2001 Santa Fe Avenue, P. O. Box 1378 Arcade Annex, Los Angeles, Calif.

21. The Geo. F. Smith Co., Inc., with office and principal place of business located at 3343 Franklin Avenue, St. Louis, Mo.

22. Tractor & Machinery Co., Inc., with office and principal place of business located at 351 Whitehall Street, S. W., Atlanta, Ga.

23. The G. W. Van Keppel Company, with office and principal place of business located at 2440 Pennway, Kansas City, Mo.

24. Wm. H. Ziegler Co., Inc., with office and principal place of business located at 2331 University Ave., S. E., Minneapolis, Minn.

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PAR. 3. Respondent members of said respondent Association and respondent members of said respondent Distributors, acting in cooperation with each other and through and in cooperation with said respondent Association, its officers and directors and each of them, and through and in cooperation with said respondent Distributors, and its officers, governors and directors, and each of them, during the year 1935 entered into and have since continued, maintained and carried out a common course of action, understanding, agreement, combination and conspiracy among themselves and with and through said respondent Association, its officers and directors, and said respondent Distributors, its officers, governors and directors, to hinder and suppress competition in the interstate sale and distribution of rock crushing machinery to the United States Government, the agencies thereof, various State governments, the agencies thereof, and various governmental subdivisions of the various States, including counties, cities and other buyers and users of rock crushing machinery, and to create a monopolistic control in the interstate sale and distribution of said machinery in said respondents. Pursuant to said common course of action, understanding, agreement, combination and conspiracy, and in furtherance thereof, the respondents have followed a common course of action, have acted in concert and in cooperation with each other in doing the following acts and things:

(a) Respondent members of the said Rock Crusher Manufacturers Association

1. Agreed to issue, and pursuant to such agreement did issue, and use price lists increasing price quotations on rock crushing machinery.
2. Agreed to adhere, and did adhere, to said price lists as issued.
3. Agreed to establish, and did establish, the maintenance of a 20% discount from the prices quoted in said price lists to their dealers.
4. Agreed on terms and discounts to be extended to customers, including terms and discounts to be accorded to the Federal Government.
5. Agreed upon and used, during 1935 and subsequently, a scheme of allocating and dividing among themselves the contracts and orders awarded by the Federal Government in its purchase of rock crushing machinery. As a part of said respondents' scheme of allocation and division they arranged to designate by agreement each of their number in rotation as entitled to the award of a particular Federal Government order for rock crushing machinery and by agreement arranged to accord to such designated respondent the privilege of submitting in such instance a lower bid to the Federal Government than the bids of others.
6. Agreed not to accept, and did not accept, pursuant to said agreement, used rock crushing machinery in trade from customers for new machinery.
7. Agreed not to rent, and did not rent, pursuant to said agreement, rock crushing machinery to customers.
8. Agreed to limit, and did limit pursuant to said agreement, guarantees on rock crushers to 90 days, although some respondents previously had been guaranteeing rock crushing machinery for a period as long as two years.
9. Agreed to act through respondent Iowa Manufacturing Company and its agents, including one Alfred Peter Shirley, of Washington, D. C., in seeking to have written into the United States Government specifications for rock crushing machinery certain provisions designed to eliminate from competition with said respondents another seller of rock crushing

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machinery who had frequently submitted lower prices than said respondent members on bids to the Federal Government.

10. During 1939, and subsequent thereto, said respondents cooperated with respondent officers, governors, directors and members of respondent Associated Equipment Distributors in inaugurating and promoting a program designed to establish in the hands of respondent members of respondent Associated Equipment Distributors a monopoly control over price quotations made Federal, State, county or city governments, or private buyers on rock crushing machinery.

(b) Respondent Distributors, its officers, governors, directors and members in 1939 inaugurated and thereafter put into effect a scheme, plan and program, which, upon the initiative of said Distributors, included a collective agreement on the part of members of respondent Association to file with respondent Distributors a statement of sales policy in the form of a "written pledge" providing that said members of respondent Association "will not bid direct on local government business in competition with distributors except at list price, and that they will not allow any price concession to distributors for their use on public bids." The common collective agreement of both respondent Distributors and respondent members of respondent Association was and is to the effect that the said list price of said members shall include a profit differential for said distributors which maintains said list price substantially 20% above prices actually quoted and charged said distributors by said members of respondent Association.

(c) As a part of the aforesaid scheme, plan, program and agreement one C. G. Borchert, representing respondent Associated Equipment Distributors, addressed a meeting of respondent Rock Crusher Manufacturers Association in Chicago, Ill., on or about August 18, 1939, urging full concurrence with and adherence to said scheme, plan, program and agreement referred to in (b) above. Thereupon, said respondent members of respondent Rock Crusher Manufacturers Association resolved and agreed that "each manufacturer of portable rock crushing machinery comply with suggestions of the Associated Equipment Distributors . . ." Thereafter respondent members of respondent Rock Crusher Manufacturers Association did further express their agreement and concurrence in and adherence to the aforesaid scheme, plan, program and agreement as outlined in (b) above, by filing with respondent Associated Equipment Distributors statements of policy as desired by such respondent, and further met the demands of such respondent through adherence to said written statements of sales policies.

PAR. 4. The acts, things, practices and methods alleged in paragraph 3 hereof have operated to increase amounts paid for rock crushers and other heavy machinery used for the defense, war and regular needs by the United States Government, State, county and city governments and other buyers. Said acts, things, practices and methods have also deprived buyers of the benefit of having the various respondent manufacturers and the various respondent distributors bid against and compete with each other. As a result buyers have been deceived because they have relied upon respondents' false representations that their bids were competitive and free from collusion.

PAR. 5. The results of said common course of action, understanding, agreement, combination and conspiracy, and the acts and things done thereunder and pursuant thereto by said respondents, as hereinbefore

set forth, have been and now are to the prejudice of actual and potential competitors of respondents and to the prejudice of the public; have been to perpetrate a fraud upon the United States Government and other buyers; have a dangerous tendency to and have actually hindered, suppressed, eliminated, frustrated and prevented competition in the sale of rock crushing machinery in interstate commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said products; have a dangerous tendency to create in respondents a monopolistic control over prices in the sale and distribution of said products, and constitute unfair methods of competition and unfair, deceptive and fraudulent acts and practices 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 Federal Trade Commission Act, the Federal Trade Commission on August 14, 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 methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act. After the issuance of said complaint, the several respondents filed their answers admitting certain allegations of the complaint, and thereafter stipulations were entered into whereby it was stipulated and agreed that statements of facts signed and executed by counsel for respondents and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as facts in this proceeding in support of the charges in the complaint or in opposition thereto, and that the Commission may proceed upon such statements of facts and any and all admissions made by respondents in their answers to the complaint to make its report stating its findings as to the facts, its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and stipulations, said stipulations 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. (a) Respondent, Rock Crusher Manufacturers Association (sometimes hereinafter referred to as respondent Association), is an unincorporated trade association having its principal office at 625 C Avenue, N. W., Cedar Rapids, Iowa. Its membership includes a number of manufacturers of rock crushers and other heavy road-building and other construction machinery.

(b) Respondent, Arthur W. Daniels, an individual, is secretary of respondent Association and has his offices at 625 C Avenue, N. W., Cedar Rapids, Iowa.

(c) Respondent, Diamond Iron Works, Inc., is a corporation, organized and existing under the laws of the State of Delaware, with its office and principal place of business at Eighteenth Avenue North and Second Street, Minneapolis, Minn. It has been at various times since 1935 a member of respondent Association, and is now a member.

(d) Respondent, Gruendler Crusher & Pulverizer Company, is a corporation, organized and existing under the laws of the State of Missouri, with its office and principal place of business at 2915 North Market Street, St. Louis, Mo. It has been at various times since 1935 a member of respondent Association, and is now a member.

(e) Respondent, Iowa Manufacturing Company, is a corporation, organized and existing under the laws of the State of Iowa, with its office and principal place of business at 916 Sixteenth Street, N. W., Cedar Rapids, Iowa. It has been at various times since 1935 a member of respondent Association, and is now a member.

(f) Respondent, Pioneer Engineering Works, Inc., is a corporation, organized and existing under the laws of the State of Delaware, with its office and principal place of business at 1515 Central Avenue, Minneapolis, Minn. It became a member of respondent Association in 1935, and is now a member.

(g) Respondent, Universal Crusher Company, is a corporation, organized and existing under the laws of the State of Delaware, with its office and principal place of business at 625 C Avenue, N. W., Cedar Rapids, Iowa. It has been at various times since 1935 a member of respondent Association, and is now a member.

(h) Respondent, Universal Engineering Corporation, is a corporation, organized and existing under the laws of the State of Iowa, with its office and principal place of business at 625 C Avenue, N. W., Cedar Rapids, Iowa. It has been at various times since 1935 a member of respondent Association, and is now a member.

(i) Respondent, Western-Austin Company, is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business at 601 Farnsworth Avenue, Aurora, Ill. This company sometimes trades as Austin-Western Road Machinery Company. It has been at various times since 1935 a member of respondent Association, and is now a member.

(j) Respondent, Associated Equipment Distributors (sometimes hereinafter referred to as respondent Distributors), is a trade association, organized and existing as a membership corporation under the laws of the State of Ohio, with its principal offices located in the National Press Building, Washington, D. C. Its membership consists of more than 300 individuals, partnerships, and corporations engaged in the sale and distribution of rock crusher, heavy road-building, and construction machinery.

(k) Respondent, James C. Alban, an individual, is an official of respondent, Alban Tractor Company, Inc., of 721-727 East Twenty-fifth Street, Baltimore, Md., and is a member of the board of directors of respondent Distributors.

(l) Respondent, W. W. Bucher, an individual, is an official of respondent, R. E. Brooks Company of 50 Church Street, New York, N. Y., and is an official of respondent Distributors and was during 1942 a member of its board of directors.

(m) Respondent, George A. Cooper, an individual, is an official of respondent, J. E. Ingram Equipment Company of 1146 West Laurel Street, San Antonio, Tex., and is a member of the board of directors of respondent Distributors.

(n) Respondent, William A. Danner, an individual, is an official of respondent, Parker, Danner Company of 25 Factory Street, Hyde Park, Mass., and was during 1942 an officer and is now a member of the board of directors of respondent Distributors.

(o) Respondent, Charles O. Finn, an individual, is an official of respondent, The Finn Equipment Company of 2525 Duck Creek Road, Cincinnati, Ohio, and is a member of the board of directors of respondent Distributors.

(p) Respondent, J. S. Gilman, an individual, is an official of respondent, William H. Ziegler Company, Inc., of 2331 University Avenue, S. E., Minneapolis, Minn., and was during 1942 a member of the board of governors of respondent Distributors.

(q) Respondent, A. E. Hahnan, an individual, is an official of respondent, Tractor & Machinery Company, Inc., of 351-355 Whitehall Street, S. W., Atlanta, Ga., and is a member of the board of directors of respondent Distributors.

(r) Respondent, T. W. Harron, an individual, is an official of respondent, Harron, Rickard & McCone Company of 2070 Bryant Street, San Francisco, Calif., and was during 1942 a member of the board of directors of respondent Distributors.

(s) Respondent, M. R. Hunter, an individual, is an official of respondent, Hunter Tractor & Machinery Company of 327 South Sixteenth Street, Milwaukee, Wis., and was during 1942 a member of the board of governors of respondent Distributors.

(t) Respondent, G. F. Lowe, an individual, is an official of respondent, Lowe Machinery Company of 612 North Michigan Avenue, Chicago, Ill., and was during 1942 a member of the board of governors of respondent Distributors.

(u) Respondent, Frank McBath, an individual, is an official of respondent, Columbia Equipment Company of 1240 S. E. Twelfth Avenue, Portland, Oreg., and is a member of the board of directors of respondent Distributors.

(v) Respondent, Fred Mattheis, an individual, is an official of respondent, Hedge & Mattheis Company of 285 Dorchester Avenue, Boston, Mass., and was during 1942 a member of the board of governors of respondent Distributors.

(w) Respondent, W. G. Morgan, an individual, was until January 1, 1943, an official of respondent, the George F. Smith Company, Inc., of Franklin and Channing Avenues, St. Louis, Mo., and was during 1942 chairman of the board of governors of respondent Distributors. He is now an honorary member of respondent Distributors in his individual capacity.

(x) Respondent, R. R. Nixon, an individual, is an official of respondent, Nixon-Hasselle Company of Carter and Thirteenth Streets, Chattanooga, Tenn., and was during 1942 an officer and a member of the board of governors of respondent Distributors.

(y) Respondent, R. S. Patten, an individual, is an official of respondent, Patten Tractor & Equipment Company of 1056 North Kolmar Avenue,

Chicago, Ill., and is a member of the board of directors of respondent Distributors.

(z) Respondent, Ed. P. Phillips, an individual, is a partner in respondent, Phillips Machinery Company of 900 East Cary Street, Richmond, Va., and is an officer of respondent Distributors.

(a-2) Respondent, R. S. Rosholt, an individual, is an official of respondent, Thorman W. Rosholt Company of 3138 Snelling Avenue, Minneapolis, Minn., and is a member of the board of directors of respondent Distributors.

(b-2) Respondent, A. F. Sersanous, an individual, is an official of respondent, Loggers & Contractors Machinery Company of 240 S. E. Clay Street, Portland, Oreg., and was during 1942 a member of the board of governors of respondent Distributors.

(c-2) Respondent, G. W. Van Keppel, an individual, is sole proprietor of respondent, The G. W. Van Keppel Company of 2440 Pennway, Kansas City, Mo., and is an officer and a member of the board of directors of respondent Distributors.

(d-2) Respondent, C. F. Winchester, an individual, is secretary of respondent Distributors and has his offices in the National Press Building, Washington, D. C.

(e-2) Respondent, Alban Tractor Company, Inc., is a corporation, organized and existing under the laws of the State of Delaware, with its office and principal place of business at 721-727 East Twenty-fifth Street, Baltimore, Md. In 1938 it became a member, and is now a member, of respondent Distributors.

(f-2) Respondent, Borchert-Ingersoll, Inc., is a corporation, organized and existing under the laws of the State of Delaware, with its office and principal place of business at 2375 University Avenue, St. Paul, Minn. In 1920 it became a member, and is now a member, of respondent Distributors.

(g-2) Respondent, R. E. Brooks Company, is a corporation, organized and existing under the laws of the State of New Jersey, with its office and principal place of business at 50 Church Street, New York, N. Y. In 1937 it became a member, and is now a member, of respondent Distributors.

(h-2) Respondent, Clyde Equipment Company, is a corporation, organized and existing under the laws of the State of Maine, with its office and principal place of business at 1631 N. W. Thurman Street, Portland, Oreg. In 1926 it became a member, and is now a member, of respondent Distributors.

(i-2) Respondent, Columbia Equipment Company, is a corporation, organized and existing under the laws of the State of Oregon, with its office and principal place of business at 1240 S. E. Twelfth Avenue, Portland, Oreg. In 1937 it became a member, and is now a member, of respondent Distributors.

(j-2) Respondent, The Finn Equipment Company, is a corporation, organized and existing under the laws of the State of Ohio, with its office and principal place of business at 2525 Duck Creek Road, Cincinnati, Ohio. In 1939 it became a member, and is now a member, of respondent Distributors.

(k-2) Respondent, Fuchs Machinery & Supply Company, is a partnership, with its office and principal place of business at Fifteenth and Jackson Streets, Omaha, Nebr. In 1938 it became a member, and is now a member, of respondent Distributors.

(l-2) Respondent, Harron, Rickard & McCone Company, is a corporation, organized and existing under the laws of the State of Nevada, with its office and principal place of business at 2070 Bryant Street, San Francisco, Calif. In 1927 it became a member, and is now a member, of respondent Distributors.

(m-2) Respondent, Hedge & Mattheis Company, is a corporation, organized and existing under the laws of the State of Massachusetts, with its office and principal place of business at 285 Dorchester Avenue, Boston, Mass. In 1923 it became a member, and is now a member, of respondent Distributors.

(n-2) Respondent, Hunter Tractor & Machinery Company, is a corporation, organized and existing under the laws of the State of Wisconsin, with its office and principal place of business at 327 South Sixteenth Street, Milwaukee, Wis. In 1933 it became a member, and is now a member, of respondent Distributors.

(o-2) Respondent, J. E. Ingram Equipment Company, is a corporation, organized and existing under the laws of the State of Texas, with its office and principal place of business at 1146 West Laurel Street, San Antonio, Tex. In 1940 it became a member, and is now a member, of respondent Distributors. None of the subsequent findings herein apply to this respondent.

(p-2) Respondent, Loggers & Contractors Machinery Company, is a corporation, organized and existing under the laws of the State of Oregon, with its office and principal place of business at 240 S. E. Clay Street, Portland, Oreg. In 1934 it became a member, and is now a member, of respondent Distributors.

(q-2) Respondent, Lowe Machinery Company, is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business at 612 North Michigan Avenue, Chicago, Ill. In 1926 it became a member, and is now a member, of respondent Distributors.

(r-2) Respondent, Nixon-Hasselle Company, is a corporation, organized and existing under the laws of the State of Tennessee, with its office and principal place of business at Carter and Thirteenth Streets, Chattanooga, Tenn. In 1926 it became a member, and is now a member, of respondent Distributors.

(s-2) Respondent, Parker, Danner Company, is a corporation, organized and existing under the laws of the State of Massachusetts, with its office and principal place of business at 25 Factory Street, Hyde Park, Mass. In 1936 it became a member, and is now a member, of respondent Distributors.

(t-2) Respondent, Patten Tractor & Equipment Company, is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business at 1056 North Kolmar Avenue, Chicago, Ill. In 1940 it became a member, and is now a member of respondent Distributors.

(u-2) Respondent, Phillips Machinery Company, is a partnership, consisting of respondent, Ed. P. Phillips and others, with its office and principal place of business at 900 East Cary Street, Richmond, Va. In 1933 it became a member, and is now a member, of respondent Distributors.

(v-2) Respondent, The Victor L. Phillips Company, is a corporation, organized and existing under the laws of the State of Missouri, with its

office and principal place of business at Sixteenth and Baltimore Streets, Kansas City, Mo. In 1927 it became a member, and is now a member, of respondent Distributors.

(w-2) Respondent, Thorman W. Rosholt Company, is a corporation, organized and existing under the laws of the State of Minnesota, with its office and principal place of business at 3138 Snelling Avenue, Minneapolis, Minn. In 1938 it became a member, and is now a member, of respondent Distributors.

(x-2) Respondent, Smith Booth Usher Company, is a corporation, organized and existing under the laws of the State of California, with its office and principal place of business at 2001 Santa Fe Avenue, Los Angeles, Calif. In 1924 it became a member, and is now a member, of respondent Distributors.

(y-2) Respondent, The George F. Smith Company, Inc., is a corporation, organized and existing under the laws of the State of Missouri, with its office and principal place of business at Franklin and Channing Avenues, St. Louis, Mo. In 1920 it became a member, and is now a member, of respondent Distributors.

(z-2) Respondent, Tractor & Machinery Company, Inc., is a corporation, organized and existing under the laws of the State of Georgia, with its office and principal place of business at 351-355 Whitehall Street, S. W., Atlanta, Ga. In 1933 it became a member, and is now a member, of respondent Distributors.

(a-3) Respondent, The G. W. Van Keppel Company, is a sole proprietorship of respondent, G. W. Van Keppel, with its office and principal place of business at 2440 Pennway, Kansas City, Mo. In 1936 it became a member, and is now a member, of respondent Distributors.

(b-3) Respondent, William H. Ziegler Company, Inc., is a corporation, organized and existing under the laws of the State of Minnesota, with its office and principal place of business at 2331 University Avenue, S. E., Minneapolis, Minn. In 1920 it became a member, and is now a member, of respondent Distributors.

(c-3) Those concerns affiliated with respondent Distributors and now designated as "allied members" thereof are not subject to an order in this proceeding and no general references herein to respondents or members of respondents include them in any way. All regular and associate members of respondent Distributors were made respondents herein, and those not specifically named in the complaint were made respondents by representation and are as follows: A-W Company, Inc. of Minnesota; Aberthaw Company; Alabama Machinery & Supply Company; Alamo Iron Works; Allied Construction Equipment Company; American Machinery & Supply Company; Anderson Equipment Company (Pittsburgh, Pa.); Anderson Equipment Company (Omaha, Nebr.); W. H. Anderson Company, Inc.; R. A. Armstrong and Brother Company; Arnold Machinery Company, Inc.; Arrow Contractors Equipment Company; Atlas Equipment Corporation; O. B. Avery Company; Edward R. Bacon Company; Bark River Bridge and Culvert Company; J. W. Bartholow Machinery Company; Balzer Machinery Company; Quinn R. Barton Company; Beckwith Machinery Company; James W. Bell Company; Bell-Lott Road Machinery Company; Bemiss Equipment Corporation; Bicknell Manufacturing Company; Blalock Machinery & Equipment Company; The Bode-Finn Company; Boeck Equipment Company; The Clarence L. Boyd Company, Inc.; Brandeis Machinery & Supply Company; Brebner-

Sinz Machinery Company; Brinker Supply Company, Inc.; Brooks Equipment and Manufacturing Company; Brown-Bevis Equipment Company; Herman M. Brown Company; Browning-Ferris Machinery Company; Bublitz Machinery Company; Burford-Toothaker Tractor Company; Burgman Tractor-Equipment Company; Cyril J. Burke; F. H. Burlew Company; J. W. Burrell; Carolina Tractor & Equipment Company; Casey Tractor and Equipment Company; W. C. Caye & Company, Division of Wilson-Weesner-Wilkinson Company; Charleston Tractor and Equipment Corporation; The Chesapeake Supply & Equipment Company; Chicago Construction Equipment Company; Choctaw Culvert & Machinery Company; Clark-Wilcox Company; Coast Equipment Company; Cochran Equipment Company, Inc.; The Colon-Jopson Company; Commercial Concrete Equipment Company; Complete Machinery & Equipment Company, Inc.; Conley-Lott-Nichols Machinery Company; Connelly Machinery Company; William H. Conradi, Inc.; Construction Equipment Company; Construction Equipment Corporation; Construction Machinery Corporation; Construction Machinery & Supply Company; Contractors Equipment Corporation; Contractors Equipment & Supply Company; Contractors Machinery Company (Kansas City, Mo.); Contractors Machinery Company (Detroit, Mich.); Contractors Sales Company, Inc.; Contractors Service, Inc.; A. H. Cox & Company; Cramer Machinery Company; F. C. Crane Company; E. F. Craven Company; G. N. Crawford Equipment Company; George W. Crothers, Ltd.; Cunningham-Ortmayer Company; Curry Equipment Corporation; Dakota Equipment Company, Inc.; Dakota Tractor & Equipment Company; Dale & Rankin, Inc.; Dalrymple Equipment Company; Norris K. Davis, Inc.; Dempster Brothers, Inc.; Dow and Company, Inc.; Dravo-Doyle Company; Drott Tractor Company, Inc.; Dukehart-Hughes Tractor & Equipment Company; Dyar Sales & Machinery Company; The Earle Equipment Company; Eastern Tractor & Equipment Company; Eddy & Cuthbert; Edward Ehrbar, Inc.; Eighmy Equipment Company; D. C. Elphinstone, Inc.; Empire Equipment Company; English Brothers Machinery Company; The Equipment Company; Equipment Corporation of America; Equipos Mecanicos, S. A.; R. B. Everett & Company; John Fabick Tractor Company; Feenaughty Machinery Company; Walter W. Field & Son, Inc.; Fletcher Equipment and Supplies; Frantz Equipment Company; Freeborn Equipment Company, Inc.; H. B. Fuller Equipment Company; Funkhouser Equipment Company; Furnival-Rimmer Company; Ed. Gantt Machinery Company; Garlinghouse Brothers; F. W. Gartner Company; General Construction Equipment Corporation; General Supply & Equipment Company, Inc.; Gibbs-Cook Tractor & Equipment Company; Gibson-Stewart Company; Gierke-Robinson Company; Giles & Ransome; The Gleasner Corporation; The Good Roads Machinery Company of New York, Inc.; Gopher Equipment & Supply Company; J. W. Grass Equipment Company; Great Lakes Supply Corporation, Equipment Division; Griffin Equipment & Supply Corporation; Gulf Tractor & Equipment Company; A. C. Haag & Company; William H. Hale & Company; Hall-Perry Machinery Company; R. L. Harris, Inc.; R. L. Harrison Company, Inc.; Harrod Equipment Company; Hawkins Equipment Company; Hennessey-Forrestal Machinery Company; Highway Equipment Company (Cincinnati, Ohio); Highway Equipment Company (San Francisco, Calif.); Highway Equipment Company, Inc.; Highway Equipment & Supply Company; Highway

Machinery & Supply Company, Inc.; Hillsman Equipment Company; Hobson-McFarland Tractor Company; Hodge and Hammond, Inc.; Hofius-Ferris Equipment Company; The Holmes-Talcott Company; William K. Holt Machinery Company; Howard-Cooper Corporation; Hubbard & Floyd, Inc.; Huebner Sales Company; Industrial Equipment Company; Jeff Hunt Company; Indiana Equipment Company, Inc.; Newlin-Moskacher Company; Industrial Tractor & Equipment Company; Interstate Machinery & Supply Company; The Jaeger-Lembo Machine Corporation; Jenisoh Machinery Company; Johnson & Dealman, Inc.; William C. Johnson & Sons Machinery Company; Karcher-Wolter-Foley Company; H. P. Kelly Equipment Company; Kennedy-Cochran Company; George C. Kenney Machinery Company; Kern-Limerick, Inc.; Joseph Kest Rental Equipment Company; Keystone Builders Supply Company, Inc.; The Klinger-Dills Company; Lakeshore Machinery & Supply Company; R. C. Larkin Company; Laurentide Equipment Company, Ltd.; Leland Equipment Company; Le Roi-Rix Machinery Company; H. W. Lewis Equipment Company; Liberty Trucks & Parts Company; L. K. Lippert Equipment Company; Little Rock Road Machinery Company; Lorenz Equipment Company; John C. Louis Company, Inc.; Lyons Machinery Company; MacAllister Tractor Company; Machinery and Supplies Company; Mahoney-Clarke, Inc.; Maine Truck-Tractor Company; E. F. Marsh Company; E. A. Martin Machinery Company; Martin-Roasa Tractor & Equipment Company; Martin Tractor Company; Charles J. McCarty Company, Inc.; McClung-Logan Equipment Company, Inc.; McClure-Harris Company; Jess McNeel Machinery Company; Neil B. McGinnis Company; McIntyre Implement Company; Metalweld, Inc.; The Henry H. Meyer Company, Inc.; Midland Implement Company, Inc.; Mine and Contractors Supply Company, Inc.; Minneapolis Equipment Company; Mississippi Culvert & Machinery Company, Inc.; Mississippi Road Supply Company; Mississippi Tractor & Equipment Company; Mississippi Valley Equipment Company; Missouri-Illinois Tractor & Equipment Company, Inc.; Mitchell Distributing Company, Inc.; R. G. Moeller Company; Joe Money Machinery Company; H. W. Moore Equipment Company; Municipal Sales Company; Murray Machinery Company; Nagle-Hart Tractor & Equipment Company; Nebraska Tractor & Equipment Company; The Nicoll-Talcott Corporation; The K. B. Noble Company; North Carolina Equipment Company; Northwestern Sheet & Iron Works; Oehlert Tractor & Equipment Company, Inc.; Osborne Equipment Company; H. B. Owsley & Son, Inc.; Overton & Ross; P-D Service, Inc.; The Pacific Hoist & Derrick Company; John W. Patterson Company; The Paving Supply and Equipment Company; Pecaut Industrial Supply Company; H. O. Penn Machinery Company; P. I. Perkins Company; Perrin, Seamans & Company, Inc.; Peterson Tractor & Equipment Company; W. E. Phillips Equipment; J. D. Pittman Tractor Company; Portland Tractor Company, Inc.; Pneumatic & Electric Equipment Company, Inc.; Power Equipment Company or Dean Gillespie & Company; C. F. Rabbeitt, Inc.; Howard W. Read Corporation; Eugene P. Reading; Rainier Equipment Company; Ray-Brooks Machinery Company, Inc.; Richmond Machinery & Equipment Company, Inc.; Road Builders Equipment Company; Roanoke Tractor & Equipment Corporation; Roberts Tractor & Equipment Company; Rupp Equipment Company; Ryan Equipment Corporation; The George T. Ryan Company; The Sawtooth Company;

Sears & Bowers; Service and Supply Division of the Lake Shore Engineering Company; Service Supply Corporation; Shaw-Newlin Company; Shaw Equipment Company; Shovel Supply Company; Smith-Courtney Company; L. B. Smith, Inc.; Smith Tractor and Equipment Company; Southern Ohio Equipment Company; Southern States Equipment Company; Southwest Machinery Company; T. Southworth Tractor & Machinery Company, Inc.; Spears-Wells Machinery Company; Standard Equipment Company; Stanley & Cadigan Company; The O. S. Stapley Company; Star Machinery Company; Steffek Equipment Company; Stockberger Equipment Company; The Stone Manufacturing Company; William F. Surgi Equipment Company; Frank Swabb Equipment Company; Syracuse Supply Company; E. W. Systrom Company; Joseph M. Taylor Corporation; The Taylor Tractor Company; Taylor-Hale Machinery Company; Telford Equipment Company; Townsco Equipment Company; Tractors, Incorporated; Trevor Corporation; Tri-State Culvert & Machinery Company; Tri-State Equipment Company, Inc. United Hoisting Company, Inc.; Fred M. Viles & Company; Virginia Tractor Company, Inc.; J. T. Walsh; The W. T. Walsh Equipment Company; Waterloo Construction Company; Webster & Hedgecock Tractor & Equipment Company; Western Construction Equipment Company; Western Contractors Supply Company; Western Machinery Company; Western Material Company; Western Tractor & Equipment Company; The West Virginia Company; West Virginia Mine Supply Company; West Virginia Tractor & Equipment Company, Inc.; Roy C. Wayne Supply Company; The Wheeler Equipment Company; The W. W. Williams Company; Wilson Machinery & Supply Company; Wilson-Weesner-Wilkinson Company, Inc.; Noel V. Wood, Inc.; Woodward, Wight & Company, Ltd.; Wortham Machinery Company; Yancey Brothers, Inc.; Yancey Tractor Company; Wylie-Stewart Machinery Company, Inc.; and Ziegler Machinery, Inc.

PAR. 2. The members of respondent Association and of respondent Distributors, in the course and conduct of their respective businesses, are engaged in the sale and distribution of rock crushing machinery, and pursuant to sales made transport such machinery, or cause it to be transported, among and between various States of the United States, and maintain, and have maintained, a course of trade in rock crushing machinery in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. The respondent members of the Rock Crusher Manufacturers Association and the respondent members of the Associated Equipment Distributors, acting in cooperation with each other and through and in cooperation with respondent Association, its officers and directors, and each of them, and through and in cooperation with respondent Distributors and its officers, governors, and directors, and each of them, during the year 1935 entered into and have since continued, maintained, and carried out a common course of action, understanding, agreement, combination, and conspiracy among themselves and with and through said respondent Association, its officers and directors, and said respondent Distributors, its officers, governors, and directors, to hinder and suppress competition in the interstate sale and distribution of rock crushing machinery to the United States Government, the agencies thereof; various State governments, the agencies thereof; and various governmental subdivisions of the various States, including counties, cities, and other buyers and users of

rock crushing machinery, and to create in said respondents a monopolistic control in the interstate sale and distribution of said machinery. In furtherance of said common course of action, understanding, agreement, combination, and conspiracy the respondents have done the following acts and things in the manner and to the extent hereinafter set forth.

PAR. 4. The aforesaid members of the Rock Crusher Manufacturers Association have:

1. Agreed to issue and, pursuant to such agreement, did issue and use price lists increasing price quotations on rock crushing machinery.

2. Agreed to adhere, and did adhere, to said price lists as issued.

3. Agreed to establish, and did establish and maintain, a 20 percent discount to their dealers from the prices quoted in the said price lists.

4. Agreed on terms and discounts to be extended to customers, including terms and discounts to be accorded to the Federal Government.

5. Agreed upon and used during 1935 and subsequently a scheme of allocating and dividing among themselves the contracts and orders awarded by the Federal Government in its purchase of rock crushing machinery. As a part of said respondents' scheme of allocation and division, they arranged to designate by agreement each of their number in rotation as entitled to the award of a particular Federal Government order for rock crushing machinery, and by agreement arranged to accord to such designated respondent the privilege of submitting in such instance a lower bid to the Federal Government than the bids of others.

6. Agreed not to accept, and pursuant to said agreement did not accept, used rock crushing machinery in trade from customers for new machinery.

7. Agreed not to rent, and pursuant to said agreement did not rent, rock crushing machinery to customers.

8. Agreed to limit, and pursuant to said agreement did limit, guarantees on rock crushers to 90 days, although some members of the Rock Crusher Manufacturers Association previously had been guaranteeing rock crushing machinery for a period as long as two years.

9. Agreed to act through respondent Iowa Manufacturing Company and its agents, including one Alfred Peter Shirley of Washington, D. C., in seeking to have written into the United States Government specifications for rock crushing machinery certain provisions designed to eliminate from competition with said respondents another seller of rock crushing machinery who had frequently submitted lower prices than said respondent members on bids to the Federal Government.

PAR. 5. During 1939 and subsequent thereto the members of the Rock Crusher Manufacturers Association and the officers, governors, directors, and members of the Associated Equipment Distributors inaugurated and promoted a program designed to establish in the members of the Associated Equipment Distributors a monopolistic control over price quotations on rock crushing machinery made to Federal, State, county, or city governments or private buyers of such machinery. Respondent Distributors, its officers, governors, directors, and members in 1939 inaugurated and thereafter put into effect a scheme, plan, and program which, upon the initiative of respondent Distributors included a collective agreement on the part of members of respondent Association to file with respondent Distributors a statement of sales policy in the form of a written pledge providing that the members of respondent Association "will not bid direct on local government business in competition with distributors except at

list price, and that they will not allow any price concessions to distributors for their use on public bids." This agreement of respondent Distributors and the members of respondent Association was and is to the effect that the list prices of said members shall include a profit differential for distributors which maintains said list prices substantially 20 percent above the prices actually quoted and charged distributors by the members of respondent Association.

As a part of the aforesaid scheme, plan, program, and agreement, one C. G. Borchert, representing respondent Distributors, on or about August 18, 1939, addressed a meeting of the Rock Crusher Manufacturers Association in Chicago, Ill., urging full concurrence with and adherence to the aforesaid scheme, plan, program, and agreement. Thereupon, the members of the Rock Crusher Manufacturers Association resolved and agreed that "Each manufacturer of portable rock crushing machinery comply with suggestions of the Associated Equipment Distributors * * *." Thereafter, the members of the Rock Crusher Manufacturers Association further expressed their agreement and concurrence in and adherence to the aforesaid scheme, plan, program, and agreement by filing with respondent Distributors statements of policy as desired by such respondent and, further, met the demands of respondent Distributors through adherence to said written statements of sales policy.

PAR. 6. When sales of rock crushing machinery are made by the manufacturers thereof directly to users, the net prices to such users are less than when the sales are made through or for the account of distributors, or at prices equal to list prices or the prices quoted by distributors. The understandings and agreements heretofore described have resulted in increased prices to buyers of rock crushing machinery and have deprived buyers of the benefits of having the various respondent manufacturers and distributors bid against and compete with each other in seeking to make sales of such machinery.

PAR. 7. When, on occasion, the members of respondent Association make sales of rock crushing machinery direct to the Federal Government and the agencies thereof, and when in the regular course of their business the members of respondent Distributors engaged in the sale of rock crushing machinery to the Federal Government make such sales, they submit sealed bids and price quotations and include therein statements to the effect that the prices, terms, and conditions of sale set forth in such bids and quotations were competitively arrived at and did not result in whole or in part from any collusive act, practice, or method.

CONCLUSION

The results of the common course of action, understanding, agreement, combination, and conspiracy, and the acts and things done thereunder and pursuant thereto by respondents, as hereinbefore set forth, have been, and now are, to the prejudice of actual and potential competitors of respondents and to the prejudice of the public; have a dangerous tendency to and have actually hindered, suppressed, eliminated, frustrated, and prevented competition in the sale of rock crushing machinery in interstate commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said products; have a dangerous tendency to create in respondents a monopolistic control over prices in

the sale and distribution of rock crushing machinery, and constitute unfair methods of competition and unfair acts and practices within the intent and meaning of Section 5 of the Federal Trade Commission Act.

MODIFIED ORDER TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers thereto of the several respondents named in the caption hereof, and certain stipulations of additional facts, and respondents having expressly waived all intervening procedure and hearings as to the facts and consented that the Commission may, without any further intervening procedure, make and enter its findings as to the facts, its conclusion based thereon, and its order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act, and having entered its Cease and Desist Order herein on January 8, 1944, which respondents have requested be modified; now, therefore,

It is ordered, That respondent, Rock Crusher Manufacturers Association, an unincorporated trade association, Arthur W. Daniels, individually, and as secretary of the Rock Crusher Manufacturers Association, the corporate respondents, Diamond Iron Works, Inc., Gruendler Crusher & Pulverizer Company, Iowa Manufacturing Company, Pioneer Engineering Works, Inc., Universal Crusher Company, Universal Engineering Corporation, and Western-Austin Company, their respective officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of rock crushing machinery 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, 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 acts or practices:

1. Determining upon or using any plan or scheme for the allocation of orders or sales among themselves or in any manner arranging for the distribution of orders or sales among themselves.

2. Establishing or maintaining a policy or practice of refusing to accept used rock crushing machinery or parts thereof in trade from buyers of new rock crushing machinery or parts.

3. Establishing or maintaining a policy or practice of refusing to rent rock crushing machinery to users or prospective users of such machinery.

4. Attempting through any means to have included in Federal Government specifications for rock crushing machinery provisions for the purpose or with the effect of eliminating any other seller of rock crushing machinery from competition with any respondent.

It is further ordered, That respondent, Associated Equipment Distributors, a corporation, its officers, board of governors, directors, and members, including respondents, James C. Alban, W. W. Bucher, George A. Cooper, William A. Danner, Charles O. Finn, J. S. Gilman, A. E. Hahnan, T. W. Harron, M. R. Hunter, G. F. Lowe, Frank McBath, Fred Mattheis, W. G.

¹ Order published as of Feb. 16, 1944.

Morgan, R. R. Nixon, R. S. Patten, Ed. P. Phillips, R. S. Rosholt, A. F. Sersanous, G. W. Van Keppel, C. F. Winchester, individually, and as such officers, governors, and directors, and respondents, Alban Tractor Company, Inc., Borchert-Ingersoll, Inc., R. E. Brooks Company, Clyde Equipment Company, Columbia Equipment Company, The Finn Equipment Company, Fuchs Machinery & Supply Company, Harron, Rickard & McCone Company, Hedge & Mattheis Company, Hunter Tractor & Machinery Company, Loggers & Contractors Machinery Company, Lowe Machinery Company, Nixon-Hasselle Company, Parker, Danner Company, Patten Tractor & Equipment Company, Phillips Machinery Company, The Victor L. Phillips Company, Thorman W. Rosholt Company, Smith Booth Usher Company, The George F. Smith Company, Inc., Tractor & Machinery Company, Inc., The G. W. Van Keppel Company, and William H. Ziegler Company, Inc., individually, and as such members, their respective officers, agents, representatives, and employees, do forthwith cease and desist from agreeing or cooperating with the respondents subject to the above provisions numbered 1 to 4, inclusive, of this order in doing any of the things prohibited therein.

It is further ordered, That each respondent hereinbefore made subject to any provision of this order do forthwith cease and desist, in connection with the offering for sale, sale, and distribution of rock crushing machinery in commerce, as "commerce" is defined in the Federal Trade Commission Act, from entering 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 acts or practices:

(a) Establishing, fixing, or maintaining prices, terms, or conditions of sale or adhering to or promising to adhere to prices, terms, or conditions of sale so fixed.

(b) Determining the amount of any bid or price quotation to be submitted to purchasing officials of any Government agency, or to any other buyer.

(c) Holding or participating in any meeting, discussion, or exchange of information between or among themselves, or under the auspices of respondent Rock Crusher Manufacturers Association, respondent Associated Equipment Distributors, or any other medium or agency concerning proposed or future prices, terms, or conditions of sale to be included in bids to buyers of rock crushing machinery.

(d) Assisting or cooperating with each other in any way in submitting noncompetitive bids to any buyer.

(e) Establishing, maintaining, or carrying out any practice or policy for the purpose or with the effect of restraining, persuading, or otherwise causing any seller of rock crushing machinery to refrain from submitting to any buyer price quotations, terms, and conditions of sale independently arrived at or determined.

(f) Employing or utilizing respondent Rock Crusher Manufacturers Association, respondent Associated Equipment Distributors, or any other medium or central agency as an instrument, vehicle, or aid in performing or doing any of the things prohibited by this order.

It is further ordered, That nothing contained in this order shall be construed as prohibiting any seller of rock crushing machinery from entering into agreements with any of its (his) customers to sell to any such cus-

Order

tomers rock crushing machinery at any price or on any terms and conditions of sale independently determined and offered by either such seller or buyer and independently accepted by either such seller or buyer in any bona fide transaction when such agreements are not for the purpose nor have the effect of restraining trade;

* * * that nothing contained in this order shall be construed as prohibiting the establishment or maintenance of any lawful bona fide relationship between any principal and its (his) agent;

* * * that nothing contained in this order shall be construed as prohibiting any respondent seller of rock crushing machinery from including in any of its (his) sales contracts with any of its (his) customers, a provision for the marketing of its (his) rock crushing machinery exclusively through such customer within any particular territory specified in such sales contracts;

* * * that nothing contained in this order shall be construed as prohibiting any of the respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are permitted under the provisions of the Miller-Tydings Act.

It is further ordered, That the case growing out of the complaint herein be, and the same hereby is, closed as to respondent, J. E. Ingram Equipment 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 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

38 F. T. C.

IN THE MATTER OF

GUS H. COHN, TRADING AS
KOL-TONE MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4515. Complaint, June 5, 1941—Decision, Jan. 13, 1944*

Where an individual engaged in the preparation and interstate sale to coal dealers at wholesale of his "Kol-Tone" chemical spray for use on bituminous coal; in advertisements in newspapers of general interstate circulation—

Represented that the application of his said product to coal served to increase substantially the efficiency of the coal so treated, that such coal produced more heat as a result, and that use thereof resulted in substantial savings in fuel costs;

Facts being that tests by competent experts of his said product—composed of some 87 percent sodium chloride or common salt, and small quantities of impure iron oxide, copper sulphate and zinc sulphate, mixed with a designated amount of water—established that the product was incapable of accomplishing the results claimed therefor;

With tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public with respect to the effectiveness and value of his said product, and thereby cause them to purchase same, or coal treated therewith;

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

As respects the validity of seller's claims that application of a certain chemical spray to bituminous coal resulted in the coal which was so treated producing more heat, and in substantial savings in fuel costs; results of tests of the product by competent experts, and testimony of experts in the heating field, which established that the product was incapable of accomplishing the results claimed therefor, as above indicated, were in harmony with the conclusions reached by the United States Bureau of Mines after extensive study and testing of a number of similar chemical preparations, to the effect that the use of such preparations does not affect to any measurable extent the efficiency or heat-producing value of coal, and while some evidence controverting such conclusions was introduced by the seller, the Commission was of the opinion that it was insufficient to overcome the evidence that such claims were erroneous and misleading.

Before *Mr. James A. Purcell* and *Mr. Randolph Preston*, trial examiners.
Mr. B. G. Wilson for the Commission.

Mr. Jerome F. Duggan, of St. Louis, Mo., 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 Gus H. Cohn, an individual, trading and doing business under the name Kol-Tone Manufacturing Company, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in

Complaint

respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Gus H. Cohn, is an individual, trading and doing business under the name "Kol-Tone Manufacturing Company," with his office and principal place of business at 7516 Delmar Boulevard, in the city of St. Louis, State of Missouri. The respondent is now, and for more than three years last past has been, engaged in the business of mixing and preparing for sale certain chemicals to form respondent's product originally called "Koltreat" and now called "Kol-Tone," designed to be used, when mixed with water, as a treatment for bituminous coal and bituminous coal products, and in selling and distributing said product and a bituminous coal product treated with said "Koltreat" or "Kol-Tone" at wholesale to dealers and at retail to the purchasing public. Respondent has caused and now causes his said products, when sold, to be transported from his present place of business, and from his prior place of business at 6103 Delmar Boulevard, in the State of Missouri to the purchasers thereof located in various States of the United States other than the State of Missouri and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his said product "Koltreat" or "Kol-Tone," respondent has inserted, or caused to be inserted, advertisements in newspapers and magazines having a wide circulation, and has distributed, or caused to be distributed, to purchasers and prospective purchasers of respondent's said product in various States of the United States and in the District of Columbia, circulars and letters. In said advertisements, circulars and letters, many false and misleading statements and representations are made by respondent in describing his said product and the properties thereof. Among and typical of said statements and representations so made and circulated by respondent and his dealers, under his direction, are the following:

KOL-TONE

CUTS COAL BILLS

KOL-TONE is a process that has passed a rigid test, conducted personally by Osborn Monnett, Engineer of the Commercial Testing and Engineering Co.-----
Osborn Monnett's Test on KOL-TONE shows:

1. SMOKE REDUCTION.....	24.8%
2. SAVING IN FUEL.....	11.3%
3. INCREASED EFFICIENCY.....	10.9%
4. LESS COMBUSTIBLES IN ASH.....	17.8%

Order Your KOL-TONE COAL Now While Summer Prices Prevail.

MORE HEAT—LESS COST.

Buy stoker coal processed with

KOL-TONE

For Greater Efficiency—More Heat—
Less Ultimate Cost

KOL-TONE

Complaint

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Abate Smoke
at
Painless Cost

KOL-TONE has stood the TEST With the uniform result that coal treated with Kol-Tone burns hotter and produces a minimum smoke ----- LESS SMOKE--LESS SOOT--LESS COST--MORE HEAT--MORE FOR YOUR MONEY.

PAR. 3. The foregoing statements and representations, together with similar statements and representations not herein set out, purport to be descriptive of respondent's said product, and of its efficiency and of the benefits to be derived from its use. By means thereof, respondent represents and implies, and has represented and implied, that the use of his said product, "Kol-Tone" or "Koltreat," in treating or processing bituminous coal or bituminous coal products results in or accomplishes a material reduction in soot and smoke, a saving in fuel, and increased efficiency with less combustibles remaining in the ash, and gives the purchaser more for his money than would be received through the use of bituminous coal or bituminous coal products not so treated or processed. Respondent also represents that his said bituminous coal product treated with "Kol-Tone" or "Koltreat" sold by him in said commerce as aforesaid produces less soot and smoke and leaves less combustibles in the ash and will give the purchaser more fuel for his money than will untreated bituminous coal or untreated bituminous coal products.

PAR. 4. In truth and in fact, the use of respondent's said product "Koltreat" or "Kol-Tone" in treating or processing bituminous coal products does not effectuate or result in any appreciable reduction in smoke, or in the amount of combustibles remaining in the ash, it does not accomplish any conservation of fuel or any increased efficiency of operation, and does not give the purchaser more for his money. Respondent's said product, in fact, is a chemical mixture consisting largely of common salt, with a small percentage of metallic salts, and has no material or appreciable beneficial effect when used in treating or processing bituminous coal and bituminous coal products. In truth and in fact, respondent's said bituminous coal product treated with said "Koltreat" or "Kol-Tone" does not produce less soot and smoke and leave less combustibles in the ash than untreated bituminous coal and bituminous coal products, or does it give the purchaser more fuel for his money than such untreated products.

PAR. 5. The use by the respondent of the foregoing false and misleading statements and representations, as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that such statements and representations are true, and has caused, and now causes, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said products.

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 June 5, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Gus H. Cohn, an individual, trading under the name Kol-Tone Manufacturing Company, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. Subsequently, respondent tendered to the Commission an answer to the complaint, but because of the fact that such answer contained matter which the Commission regarded as improper, the Commission declined to file the answer and respondent was notified to that effect. No further answer was tendered by respondent. On February 1, 1943, a hearing was held before a trial examiner of the Commission theretofore duly designated by it, and at this hearing testimony and other evidence in support of the complaint were introduced. It subsequently appearing that respondent had not received due notice of this hearing, a second hearing was held on July 8, 1943, before another trial examiner of the Commission theretofore duly designated by it. At this second hearing both respondent and his attorney were present, and testimony and other evidence in support of and in opposition to the complaint were introduced. Thereafter, the proceeding regularly 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 on behalf of 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, such findings and conclusion being based entirely on the testimony and other evidence introduced at the hearing on July 8, 1943.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Gus H. Cohn, is an individual, whose present place of residence is 6621 University Drive, University City, Mo. For some three years immediately preceding the latter part of 1940, respondent traded under the name Kol-Tone Manufacturing Company, with his office and principal place of business located at 6103 Delmar Boulevard, St. Louis, Mo. Respondent was engaged in the preparation and sale of a product designated by him as "Kol-Tone," a chemical spray designed for use on bituminous coal. The product was sold by respondent at wholesale to coal dealers, who used it to treat quantities of coal, and the coal so treated was then sold to the purchasing public.

PAR. 2. During the period of time in question, respondent sold his product to various purchasers located in the State of Illinois and caused the product, when sold, to be transported from his place of business in the State of Missouri to such purchasers at their respective locations in the State of Illinois. Respondent maintained a course of trade in his product in commerce between these two States.

PAR. 3. In the course and conduct of his business respondent advertised his product by means of advertisements inserted in newspapers having general circulation among the purchasing public in portions of both Illi-

nois and Missouri. Among the statements and representations appearing in these advertisements were the following:

ORDER YOUR KOL-TONE COAL NOW

While Summer Prices Prevail

MORE HEAT—LESS COST

Call Your Nearest Kol-Tone Dealer for Prices

(Com. Ex. No. 15)

STOKER OWNERS . . . ATTENTION!

BUY STOKER COAL PROCESSED WITH

K O L - T O N E

For Greater Efficiency—More Heat—Less Ultimate Cost

(Com. Ex. No. 18)

PAR. 4. Through the use of these statements and others of a similar nature respondent represented, directly or by implication, that the application of his product Kol-Tone to coal served to increase substantially the efficiency of the coal so treated, that such coal produced more heat as a result of such treatment, and that the use of coal so treated resulted in substantial savings in fuel costs to the consumer.

PAR. 5. The directions for the use of the product provided for the mixing of a certain amount thereof with a designated quantity of water. The resulting mixture was then sprayed or poured on the coal. The product was composed of some 87% sodium chloride (common salt) and small quantities of impure iron oxide, copper sulphate, and zinc sulphate. The record discloses that tests of the product were made by competent experts, and the results of these tests, as well as the testimony of experts in the heating field, establish that the product was incapable of accomplishing the results claimed for it by respondent. Its use did not increase or improve the efficiency of coal nor increase the heat output, nor effect any saving in fuel costs to the consumer.

It further appears from the record that these conclusions are in harmony with the conclusions reached by the United States Bureau of Mines after extensive study and testing of a number of chemical preparations similar to that sold by respondent. The opinion of the Bureau is that the use of such preparations does not affect to any measurable extent the efficiency or heat-producing value of coal.

While some evidence controverting these conclusions was introduced by respondent, the Commission is of the opinion that such evidence is insufficient to overcome the evidence offered in support of the complaint. The Commission therefore finds that respondent's representations with respect to his product were erroneous and misleading.

PAR. 6. The Commission finds further that the use by respondent of these erroneous and misleading representations had the tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public with respect to the effectiveness and value of respondent's product, and the tendency and capacity to cause such dealers and members of the public to purchase such product, or to purchase coal treated with 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, 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 on behalf of 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, Gus H. Cohn, individually, and trading as Kol-Tone Manufacturing Company, 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 product designated "Kol-Tone," or any other product of substantially similar composition, whether sold under the same name or any other name, do forthwith cease and desist from representing, directly or by implication:

That the use of respondent's product increases the efficiency of coal, causes coal to produce more heat, or results in any saving in fuel costs.

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

HOME DIATHERMY COMPANY, INC. ET AL.

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

Docket 4901. Complaint, Feb. 6, 1943—Decision, Jan. 13, 1944

- Where two corporations and the two individuals who were president and secretary-treasurer, respectively, of both and formulated, controlled and directed their policies and practices; engaged in interstate sale, distribution and servicing of an electrical device designated as "Home Diathermy," recommended by them for the treatment of various ailments and diseases; for the purpose of inducing owners of their diathermy machines to send said machines to their factory for calibration—
- Represented in letters and by oral statements to owners of said machines that in order to comply with the Federal Communications Commission's Order No. 96 requiring registration of diathermy apparatus, it was necessary that all diathermy machines be given a thorough calibration, and that machines purchased from them must be sent to their factory in New York City for such purpose, and they be paid the sum of \$7.50 per machine plus delivery charges, and that unless this was done it was impossible properly and legally to complete the required forms and register the instrument as required by said order, and comply therewith, failing which the owner of a machine was subject to a penalty of \$10,000 or confiscation of his machine;
- Facts being it was not necessary that diathermy machines be calibrated or any servicing or adjustment made to permit full compliance with the requirements of said order, or that machines be sent to the factory, or to pay or compensate anyone, as a prerequisite for compliance therewith;
- With tendency and capacity to mislead and deceive a substantial portion of the owners of diathermy machines, and particularly of those sold by them, into the mistaken belief that such representations were true, thereby inducing many of such persons to enter into agreements with them for the calibration of their machines and the payment of money to them by reason thereof:
- Held*, That such acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Zeitz & Harris, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that the Home Diathermy Company, Inc., a New York corporation, and Home Diathermy Company, Inc., a Pennsylvania corporation; Arnold Steindler and Isadore Teitelbaum, individually, and as officials of Home Diathermy Company, Inc., a New York corporation, and Home Diathermy Company, Inc., a Pennsylvania 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, Home Diathermy Company, Inc., is a New York corporation having its office and principal place of business located at 1780 Broadway, New York, N. Y.

The respondent, Home Diathermy Company, Inc., is a Pennsylvania corporation having its office and principal place of business located at 15 Public Square in the city of Wilkes-Barre, Pa., and is a totally owned subsidiary of respondent, Home Diathermy Company, Inc., a New York corporation. Both corporate respondents operate a factory located at 1780 Broadway in the city of New York, State of New York.

The respondents, Arnold Steindler and Isadore Teitelbaum, are individuals, and are president and secretary-treasurer, respectively, of both corporate respondents. These individual respondents formulate, control and direct the policies, practices and methods of the corporate respondents.

PAR. 2. The respondents are now, and have been for more than two years last past, engaged in selling, distributing and servicing an electrical device designated as "Home Diathermy" recommended by respondents for the treatment of various ailments and diseases of the human body.

Respondents cause and have caused their device, when sold or serviced, to be transported from their places of business in the States of New York and Pennsylvania to purchasers and owners thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said device in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The Federal Communications Commission is a duly constituted and acting independent agency of the United States government, duly and regularly created by Act of Congress. Pursuant to the powers vested in it, said Federal Communications Commission issued on May 18, 1942, order #96 as follows:

Federal Communications Commission 60074
Washington, D. C.

May 18, 1942

Order No. 96

Registration of Diathermy Apparatus

Pursuant to the authority conferred on it by Order No. 4, dated April 16, 1942, of the Defense Communications Board, the Federal Communications Commission hereby orders every person or organization in possession of apparatus designed, constructed, or used for generating radio frequency energy for therapeutic purposes (hereinafter referred to as "diathermy apparatus") to apply for registration of such apparatus with the Federal Communications Commission within 20 days from the date of this order in accordance with the following provisions:

- (1) Application for registration shall be made on forms furnished by the Federal Communications Commission.
- (2) Such application forms shall be obtainable from the Federal Communications Commission, Washington, D. C., or from any of the field offices of the Commission, as set out in Appendix A attached to this Order.
- (3) Individual applications must be made for each set of diathermy apparatus to be registered; therefore, all requests for application forms should state the number of sets to be registered.

(4) All application forms should be returned to the Secretary, Federal Communications Commission, Washington, D. C. (*not to the field offices.*)

(5) If, upon receipt of an application for registration, the Commission finds that sufficient and reliable information has been furnished, it will issue a non-transferable certificate of registration to the applicant.

(6) The applicant shall be responsible for having the certificate of registration conspicuously affixed to the diathermy apparatus for which it is issued.

(7) Any person or organization in any manner coming into possession of apparatus required to be registered under the terms of this Order shall apply to the Commission for a certificate of registration within 15 days after obtaining such possession.

(8) If diathermy apparatus for which a certificate of registration has been issued should be transferred, sold, assigned, leased, loaned, stolen, destroyed, or otherwise removed from the possession of the registrant (holder of a certificate of registration) he shall notify the Commission within five days thereafter of such loss, disposal, or disappearance, furnishing the name of the recipient of the diathermy apparatus if such person is known to the registrant.

(9) (a) Whenever the registrant of diathermy apparatus shall be the manufacturer thereof, he shall stamp on each set of such apparatus in his possession the name of the manufacturer and a serial number.

(b) Whenever any set of diathermy apparatus has impressed upon it, or it is in any way marked with the name of the manufacturer and a serial number, the registrant in possession shall be responsible for preserving such marking from obliteration, removal, or alteration.

(10) Any apparatus required to be registered for which there is no valid registration certificate outstanding, and any apparatus from which the name of the manufacturer and serial number shall have been obliterated, removed, or altered after the date of this order, shall be subject to closure and removal in such manner as shall be prescribed at the time by the Commission.

(11) The following apparatus shall not be subject to the registration provisions of the order:

Apparatus which is in the possession of the United States Government, its officers or agents; or apparatus which is under contract for delivery to the United States Government.

(12) Any person or organization having in his possession diathermy apparatus which is exempt from registration under paragraph 11 of this order, shall immediately apply for registration of such apparatus if for any reason such exemption shall cease to apply to such apparatus.

FEDERAL COMMUNICATIONS COMMISSION

/s/ T. J. Slowie,

T. J. Slowie,
Secretary

PAR. 4. In the course and conduct of their business and for the purpose of inducing owners of their diathermy machines to send said machines to respondent's factory for calibration, respondents have disseminated false, deceptive and misleading statements and representations with respect to the requirements provided by said order No. 96 issued by the Federal Communications Commission under date of May 18, 1942, said statements and representations being made and disseminated by means of letters sent to purchasers of their machines and by oral statements and representations made to owners of said machines by the respondents. Typical of such

Complaint

statements and representations are those made in letters sent to owners of respondents' machines, a copy of which is as follows:

Dear Sir:

We are at this time notifying you about an order that was issued by the Federal Communications Commission in Washington due to the fact that enemy aliens in the United States are using Short Wave Diathermy to transmit illegal messages to the enemies of our country. Since it would be a very costly and lengthy procedure to track down each and every person of the thousands who own diathermy units, the government has ordered that anyone owning a diathermy in the United States must fill out forms FCC #410 and FCC #410D. This calls for:

Exact frequency
Trade name
Range of serial No.
Medical or Surgical

Exact kilocycles
Type of model No.
Power input & output
Type & serial No. of tubes

In other words, a thorough calibration. To do this, your unit must be brought to our factory. We, of course, will try to give you the quickest service possible. We say this, because the many instruments that are coming in from all parts of the United States must all be given the same service as yours. This new Federal Communications Commission ruling is very costly to us since we must take our mechanics from their usual work to spend a few hours on each unit. To calibrate properly these many units for the public, in an institution such as ours the cost of operation is very high since we use radio to bring our message to the public. We therefore feel that by us being willing to cooperate with you that you in appreciation would willingly defray part of the expense.

Your part of the cost to do this work properly is \$7.50 for complete calibration as described above. If you wish to have your apparatus picked up at your home and then redelivered, there is an additional charge of \$2.50.

Since you are the owner of an apparatus and have been informed as to what the order calls for — that if said apparatus is not registered, it may be confiscated or you may be penalized \$10,000. We have reported this to you and therefore the burden of responsibility is with you. You have received this notice and cannot say that we did not bring this very important matter to your attention, since we have a duplicate on our files which the government can check at any time.

Please attend to this vital matter immediately so that you may avoid unnecessary complications. Kindly sign the attached form below so that we can take immediate steps in the calibration of your unit. Please sign your name where "X" is indicated.

Yours very truly,

/s/ E. Scherber
HOME DIATHERMY CO., INC.

as/ab

Complaint

38 F. T. C.

I authorize you to perform the following services:

Exact frequency.....	
Trade name.....	
Type & serial No. of tubes.....	
Power input and output.....	
Medical or surgical.....	
Exact kilocycles.....	
Range of serial No.....	
Type or model No.....	
	\$7.50
Pick up and delivery charge.....	2.50
(charge for shipping unit to New York and back.)	
Total	\$10.00

X ACCEPTED BY:

ADDRESS:

DATE:

PAR. 5. Through the use of the aforesaid statements and representations and others of similar import and nature not set forth herein, respondents represent that in order to comply with order No. 96 issued by the Federal Communications Commission, above set out, it is necessary that all diathermy machines be given a thorough calibration; that machines purchased from respondents, or any of them, must be sent to respondents' factory in New York City for the purpose of calibration; that unless this work is done it is impossible to properly and legally complete the required forms and register the instruments as required by said order; that it is necessary to pay respondents the sum of \$7.50 for calibrating each machine, together with delivery charges, in order to comply with said order and that unless this work is done and the forms properly completed the owner of a machine is subject to a penalty of \$10,000 or confiscation of the machine.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, it was not and is not necessary that diathermy machines be calibrated or any servicing or adjustments made to permit full compliance with the requirements of order No. 96 of the Federal Communications Commission. It is not necessary and has never been necessary that machines purchased from respondents be sent to respondents' factory in New York City or to any other factory for the purpose of calibration or for any other purpose in order to comply with the terms of said order. It was not and has never been necessary for owners of respondents' machines or any other diathermy machines to pay any money or compensation of any nature to respondents or any other person or pay the transportation charges to factory or any other place as a prerequisite for compliance with said order and no shipping, calibration or other services were or have been necessary in order to properly register any and all diathermy machines and to avoid confiscation of such machines or the assessment of a penalty of \$10,000 or any other amount under the terms of said order.

PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements and representations, disseminated as aforesaid, with respect to the requirements of order No. 96 issued by the Federal Communications Commission has had the tendency and capacity to, and did mislead and deceive a substantial portion of the owners of diathermy machines, and particularly owners of machines sold by respondents, into the erroneous and mistaken belief that such statements and representations were true and induced many of such persons to enter into agreements with the respondents for the calibration of their said machines and to obligate themselves to pay and to pay sums of money to respondents by reason thereof.

PAR. 8. 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 February 6, 1943, issued and subsequently served its complaint in this proceeding on the respondents; Home Diathermy Company, Inc., a New York corporation, and Home Diathermy Company, Inc., a Pennsylvania corporation, and Arnold Steindler and Isadore Teitelbaum, individually, and as officers of such corporate respondents, charging them 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 any of the respondents. 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 respondents, subject to the approval of the Commission, 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, and that the 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 presentation of argument or the filing of briefs. 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 this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Home Diathermy Company, Inc., is a New York corporation, having its office and principal place of business located at 1780 Broadway, New York, N. Y.

Respondent, Home Diathermy Company, Inc., is a Pennsylvania corporation, having its office and principal place of business located at 15 Public Square, Wilkes-Barre, Pa., and is a subsidiary of respondent, Home

Diathermy Company, Inc., a New York corporation. Both corporate respondents operate a factory located at 1780 Broadway, New York, N. Y.

Respondents, Arnold Steindler and Isadore Teitelbaum, are individuals, and are president and secretary-treasurer, respectively, of both corporate respondents. These individual respondents formulate, control, and direct the policies, practices, and methods of the corporate respondents, except that Isadore Teitelbaum was inactive in directing the policies of the corporations concerning the subject matter at hand and knew nothing of it. His activities concerned themselves mainly with the financial and labor policies of the corporations.

The Commission finds that although the respondent Isadore Teitelbaum may not have directly participated in the acts and practices charged in the complaint and admitted in the stipulation as to the facts, he is properly chargeable with such acts and practices since it is further admitted that he, together with Arnold Steindler, formulates, controls, and directs the policies, practices, and methods of the corporate respondents as an officer thereof.

PAR. 2. The respondents are now, and have been for more than two years last past, engaged in selling, distributing, and servicing an electrical device designated as "Home Diathermy" and recommended by respondents for the treatment of various ailments and diseases of the human body.

Respondents cause and have caused their device, when sold or serviced, to be transported from their places of business in the States of New York and Pennsylvania to purchasers and owners thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain and at all times herein mentioned have maintained a course of trade in said device in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The Federal Communications Commission is a duly constituted and acting independent agency of the United States Government duly and regularly created by Act of Congress. Pursuant to the powers vested in it, said Federal Communications Commission issued on May 18, 1942, Order No. 96, as follows:

Federal Communications Commission
60074

Washington, D. C.
May 18, 1942

Order No. 96

Registration of Diathermy Apparatus

Pursuant to the authority conferred on it by Order No. 4, dated April 16, 1942, of the Defense Communications Board, the Federal Communications Commission hereby orders every person or organization in possession of apparatus designed, constructed, or used for generating radio frequency energy for therapeutic purposes (hereinafter referred to as "diathermy apparatus") to apply for registration of such apparatus with the Federal Communications Commission within 20 days from the date of this order in accordance with the following provisions:

(1) Application for registration shall be made on forms furnished by the Federal Communications Commission.

(2) Such application forms shall be obtainable from the Federal Communications Commission, Washington, D. C., or from any of the field offices of the Commission, as set out in Appendix A attached to this order.

(3) Individual applications must be made for each set of diathermy apparatus to be registered; therefore all requests for application forms should state the number of sets to be registered.

(4) All application forms should be returned to the Secretary, Federal Communications Commission, Washington, D. C. (*not to the field offices.*)

(5) If, upon receipt of an application for registration, the Commission finds that sufficient and reliable information has been furnished, it will issue a nontransferable certificate of registration to the applicant.

(6) The applicant shall be responsible for having the certificate of registration conspicuously affixed to the diathermy apparatus for which it is issued.

(7) Any person or organization in any manner coming into possession of apparatus required to be registered under the terms of this Order shall apply to the Commission for a certificate of registration within 15 days after obtaining such possession.

(8) If diathermy apparatus for which a certificate of registration has been issued should be transferred, sold, assigned, leased, loaned, stolen, destroyed, or otherwise removed from the possession of the registrant (holder of a certificate of registration) he shall notify the Commission within five days thereafter of such loss, disposal, or disappearance, furnishing the name of the recipient of the diathermy apparatus if such person is known to the registrant.

(9) (a) Whenever the registrant of diathermy apparatus shall be the manufacturer thereof, he shall stamp on each set of such apparatus in his possession the name of the manufacturer and a serial number.

(b) Whenever any set of diathermy apparatus has impressed upon it, or it is in any way marked with the name of the manufacturer and a serial number, the registrant in possession shall be responsible for preserving such marking from obliteration, removal, or alteration.

(10) Any apparatus required to be registered for which there is no valid registration certificate outstanding, and any apparatus from which the name of the manufacturer and serial number shall have been obliterated, removed, or altered after the date of this order, shall be subject to closure and removal in such manner as shall be prescribed at the time by the Commission.

(11) The following apparatus shall not be subject to the registration provisions of the order:

Apparatus which is in the possession of the United States Government, its officers or agents; or apparatus which is under contract for delivery to the United States Government.

(12) Any person or organization having in his possession diathermy apparatus which is exempt from registration under paragraph 11 of this order, shall immediately apply for registration of such apparatus if for any reason such exemption shall cease to apply to such apparatus.

FEDERAL COMMUNICATIONS COMMISSION

/s/ T. J. Slowie,

T. J. Slowie,
Secretary.

PAR. 4. In the course and conduct of their business and for the purpose of inducing owners of their diathermy machines to send said machines to respondents' factory for calibration, respondents have disseminated deceptive and misleading statements and representations with respect to the requirements provided by said Order No. 96 issued by the Federal Communications Commission under date of May 18, 1942, said statements and representations being made and disseminated by means of letters

sent to purchasers of their machines and by oral statements and representations made to owners of said machine by the respondents. Typical of such statements and representations are those made in letters sent to owners of respondents' machines, a copy of which is as follows:

Dear Sir:

We are at this time notifying you about an order that was issued by the Federal Communications Commission in Washington due to the fact that enemy aliens in the United States are using Short Wave Diathermy to transmit illegal messages to the enemies of our country. Since it would be a very costly and lengthy procedure to track down each and every person of the thousands who own diathermy units, the government has ordered that anyone owning a diathermy in the United States must fill out forms FCC #410 and FCC #410D. This calls for:

Exact frequency	Exact kilocycles
Trade name	Type of model No.
Range of serial No.	Power input & output
Medical or Surgical	Type & serial No. of tubes

In other words, a thorough calibration. To do this, your unit must be brought to our factory. We, of course, will try to give you the quickest service possible. We say this, because the many instruments that are coming in from all parts of the United States must all be given the same service as yours. This new Federal Communications Commission ruling is very costly to us since we must take our mechanics from their usual work to spend a few hours on each unit. To calibrate properly these many units for the public, in an institution such as ours the cost of operation is very high since we use radio to bring our message to the public. We therefore feel that by us being willing to cooperate with you that you in appreciation would willingly defray part of the expense.

Your part of the cost to do this work properly is \$7.50 for complete calibration as described above. If you wish to have your apparatus picked up at your home and then redelivered, there is an additional charge of \$2.50.

Since you are the owner of an apparatus and have been informed as to what the order calls for — that if said apparatus is not registered, it may be confiscated or you may be penalized \$10,000. We have reported this to you and therefore the burden of responsibility is with you. You have received this notice and cannot say that we did not bring this very important matter to your attention, since we have a duplicate on our files which the government can check at any time.

Please attend to this vital matter immediately so that you may avoid unnecessary complications. Kindly sign the attached form below so that we can take immediate steps in the calibration of your unit. Please sign your name where "X" is indicated.

Yours very truly,

/s/ E. Scherber
HOME DIATHERMY CO., INC.

as/ab

Findings

I authorize you to perform the following services:

Exact frequency.....	
Trade name.....	
Type & Serial No. of tubes.....	
Power input and output.....	
Medical or surgical.....	
Exact kilocycles.....	
Range of serial No.....	
Type or model No.....	
	\$7.50
Pick up and delivery charge.....	\$2.50
(charge for shipping unit to New York and back.)	
Total	\$10.00

X ACCEPTED BY:

ADDRESS:

DATE:

PAR. 5. Through the use of the aforesaid statements and representations and others of similar import and nature not set forth herein, respondents represented that in order to comply with Order No. 96 issued by the Federal Communications Commission, above set out, it is necessary that all diathermy machines be given a thorough calibration; that machines purchased from respondents, or any of them, must be sent to respondents' factory in New York City for the purpose of calibration; that unless this work is done, it is impossible to properly and legally complete the required forms and register the instruments as required by said order; that it is necessary to pay respondents the sum of \$7.50 for calibrating each machine, together with delivery charges, in order to comply with said order; and that unless this work is done and the forms properly completed, the owner of a machine is subject to a penalty of \$10,000 or confiscation of the machine.

PAR. 6. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, it is not necessary that diathermy machines be calibrated or any servicing or adjustments made to permit full compliance with the requirements of Order No. 96 of the Federal Communications Commission. It is not necessary and has never been necessary that machines purchased from respondents be sent to respondents' factory in New York City or to any other factory for the purpose of calibration or for any other purpose, in order to comply with the terms of said order. It was not and has never been necessary for owners of respondents' machines or any other diathermy machines to pay any money or compensation of any nature to respondents or any other person, or to pay the transportation charges to factory or any other place, as a prerequisite for compliance with said order; and no shipping, calibration, or other services were or have been necessary in order to properly register any and all diathermy machines and to avoid confiscation of such machines or the assessment of a penalty of \$10,000 or any other amount under the terms of said order.

PAR. 7. The use by the respondents of the foregoing deceptive and misleading statements and representations, disseminated as aforesaid, with respect to the requirements of Order No. 96 issued by the Federal

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Communications Commission, had the tendency and capacity to and did mislead and deceive a substantial portion of the owners of diathermy machines, and particularly owners of machines sold by respondents, into the erroneous and mistaken belief that such statements and representations were true, and induced many of such persons to enter into agreements with the respondents for the calibration of their said machines and to obligate themselves to pay, and to pay, sums of money to respondents by reason thereof.

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 (no answer having been filed by 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 issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Home Diathermy Company, Inc., a New York corporation, and Home Diathermy Company, Inc., a Pennsylvania corporation, their officers, and Arnold Steindler and Isadore Teitelbaum, individually and as officers of said corporations and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the servicing of diathermy machines or instruments and the transportation thereof 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 it is necessary that diathermy instruments be calibrated in order to comply with Order No. 96 issued by the Federal Communications Commission on May 18, 1942.

2. That it is impossible to complete the forms required by said Order No. 96 and to register diathermy instruments as provided by said order, unless the instruments are sent to respondents' factory in New York City for calibration.

3. That it is necessary to pay the sum of \$7.50 or any other amount, or to pay delivery charges in any amount to respondents, or any of them, for the calibration of any diathermy instrument in order to comply with said Order No. 96.

4. That the owner of a diathermy instrument is subject to a fine in any amount or confiscation of his instrument unless his instrument is calibrated or otherwise serviced by respondents or any other person.

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

Syllabus

IN THE MATTER OF

L. A. SCHWARZ

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

Docket 5058. Complaint, Oct. 4, 1943—Decision, Jan. 13, 1944

Where an individual engaged under the trade name Southern Michigan Collection Service in the collection of delinquent accounts owed to others, both within and without the State of Michigan, upon a commission basis contingent upon collection, and frequently desirous, as so engaged, of ascertaining the current addresses of persons from whom he was endeavoring to collect monies due to his clients, and the names and addresses of the employers of such persons, and of the banks in which they had money on deposit;

Making use of a plan pursuant to which he used printed reply postcard forms which, (1) addressed to "CONTINENTAL FORWARDING SYSTEM, Distribution Department, 1229 Park Row Bldg., New York, N. Y.," and containing such matter, in addition to trade name "Continental Forwarding System, New York, N. Y.," as "FINAL NOTICE," "Bring or Mail This Card To Us Promptly," and blank spaces adjoining such words as "Package Reference," "Date," "Unclaimed Package Department," "Name and Address Shown on Package," and "IMPORTANT: This prepaid package will be delivered ONLY to OWNER named above and identified below," called for, under direction "FILL IN ALL SPACES BELOW" name and address of the person concerned and those of his employer and bank; (2) were addressed to the persons concerned, and mailed thereto, from New York City, by said individual's agent at said point; and, (3) in the case of those filled out by said persons, and mailed back to New York in accordance with the address printed thereon as above set out, were forwarded therefrom by said agent to individual in question at his place of business in Michigan, and made use of by him in collecting and attempting to collect the amounts due from such persons to the creditors for whom said individual was acting;

- (a) Falsely represented through aforesaid cards, directly and by implication, to the persons to whom they were sent, that such persons were owners of packages sent by persons other than said individual and in his hands in New York City in the usual course of his business; that the shipments involved transportation charges which had been prepaid by the consignors, and that delivery could not be made to the addressees of said cards by reason of differences in address and lack of identification; and that, upon the receipt of the reply cards, properly filled out, the packages would be forwarded; and
- (b) Represented, directly and by implication, to the recipients of said card, through use of the name "Continental Forwarding System," that he was in some capacity, connected with the transportation and movement of goods, and their delivery to the proper consignees;

When in fact his business had nothing to do with the movement or transportation of goods or their delivery to the proper consignees; the persons to whom the cards were sent were not consignees of packages in his hands in the usual course of his business; and no package was sent to those who properly filled out and returned the reply cards; the whole scheme being merely attempt to obtain information by subterfuge, and the sole purpose of the cards being to secure information in order to facilitate the collection of accounts;

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With effect of misleading and deceiving many persons to whom the said cards were sent into the mistaken belief that said statements, representations and designation were true, and correct, and by reason thereof to give information which they would not otherwise have supplied, and incur expense for postage for said reply cards:

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. Haskell L. Nichols, of Jackson, Mich., 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 L. A. Schwarz, 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, L. A. Schwarz, is an individual, doing business under the names Continental Forwarding System and Southern Michigan Collection Service, with an office and principal place of business at room 404 Dwight Building, Jackson, Mich.

PAR. 2. Respondent is now, and has been for more than five years last past, engaged, under the name Southern Michigan Collection Service, in the collection of delinquent accounts owed to others upon a commission basis contingent upon collection. Clients for whom he undertakes the collection of accounts are located both within and without the State of Michigan. Many of his said clients cause goods and other property to be transported from their respective places of business to purchasers thereof in other States of the United States, and maintain, and at all times mentioned herein have maintained courses of trade in such goods and property in commerce between and among the various States of the United States. The course and conduct of his said business by respondent involves communication and intercourse of a commercial and business nature between him and his clients and agent who are located in States other than the State of Michigan.

PAR. 3. In the course and conduct of respondent's collection business, he frequently desires to ascertain the current addresses of persons from whom he is endeavoring to collect moneys due to his clients, the names and addresses of the employers of such persons and of the banks in which such persons have money on deposit.

For this purpose respondent uses, and has used, a reply post card, substantially in the form exemplified by a photostatic copy thereof, marked Exhibit A, attached hereto, and by this reference incorporated herein and made a part hereof.¹

PAR. 4. Respondent causes said cards to be addressed to the persons concerning whom information is sought at their last known addresses, and causes them to be transported to an office in the city and State of New York, where they are received by an agent of respondent who thereafter causes them to be placed in the United States mail. The said cards

¹ See pp. 75 and 76.

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bear addresses of places located in the State of Michigan and in other States of the United States, and many of those addressed to places in Michigan are forwarded by the United States postal authorities to places in States other than Michigan.

Such of the return post cards as are filled out and mailed by the recipients thereof, are received by respondent's agent in the city and State of New York, who thereafter causes them to be transported to respondent at his place of business in Jackson, Mich. Respondent uses the information so obtained in collecting, and attempting to collect, the amounts due from such persons to the creditors for whom he is acting.

EXHIBIT A

READ MESSAGE INSIDE
BRING OR MAIL THIS
CARD TO US PROMPTLY

FINAL NOTICE

**CONTINENTAL FORWARDING
SYSTEM**

New York, N. Y.

Package Reference
No.

Date
UNCLAIMED PACKAGE
DEPARTMENT

NAME AND ADDRESS SHOWN ON PACKAGE

IMPORTANT: This prepaid package will be delivered **ONLY** to **OWNER** named above as identified below

FILL IN ALL SPACES BELOW

Name ----- SIGN FULL NAME OF OWNER -----

Residence ----- STREET ADDRESS IS NECESSARY -----

City -----

Employer -----

Address -----

Bank ----- NAME OF OWNER'S DEPOSITORY -----

Address -----

No postage or addressing necessary

CONTINENTAL FORWARDING SYSTEM

DISTRIBUTION DEPARTMENT

1229 PARK ROW BLDG. NEW YORK, N. Y.

POSTMASTER — IMPORTANT

PLEASE FORWARD IF NECESSARY

FINAL NOTICE

We have a **prepaid** package addressed to the party whose name appears on the attached card. On account of a difference in address and lack of identification we cannot make delivery.

Complaint
 Same will be forwarded with **No Charges** to proper party if you will fill in and return the attached postal card.

=====
**Continental Forwarding
 System**

DISTRIBUTION DIVISION
 UNCLAIMED PACKAGE DEPT.
 New York, N. Y.

 No postage necessary on the attached reply card. Please answer promptly.

CONTINENTAL FORWARDING SYSTEM

1229 Park Row Building

UNCLAIMED PACKAGE DEPT.

Great Lakes Division

New York, N. Y.

PAR. 5. By means of the aforesaid cards respondent has falsely represented, directly and by implication, to the persons to whom they were sent, that such persons are owners of packages sent by persons other than respondent and in the hands of respondent in New York City in the usual course of his business; that the shipments involved transportation charges which had been prepaid by the consignors, and that delivery could not be made to the addressees of said cards by reason of differences in address and lack of identification, and that upon the receipt of the reply cards, properly filled out, the packages would be forwarded.

PAR. 6. Through the use of the name "Continental Forwarding System" respondent has represented, directly and by implication, to the recipients of said cards, that he is, in some capacity, connected with the transportation and movement of goods, and their delivery to the proper consignees.

PAR. 7. The said representations are false and misleading. In truth and in fact respondent's business has nothing to do with the movement or transportation of goods or their delivery to the proper consignees. The persons to whom the cards were sent are not consignees of packages in the hands of respondent in the usual course of his business. No package was sent to those who properly filled out and returned the reply cards. The whole scheme is merely an attempt to obtain information by subterfuge and the sole purpose of the said cards is to secure information in order to facilitate the collection of accounts.

PAR. 8. The use, as hereinabove set forth, of the foregoing false and misleading statements, representations, and designation 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, representations and designation were true, and correct, and by reason thereof to give information which they would not otherwise supply, and to incur expense for postage on the reply cards.

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 October 4, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, L. A. Schwarz, an individual, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act.

On October 16, 1943, respondent filed his answer in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, L. A. Schwarz, is an individual, doing business under the names Continental Forwarding System and Southern Michigan Collection Service, with an office and principal place of business at room 404 Dwight Building, Jackson, Mich.

PAR. 2. Respondent is now, and has been for more than five years last past, engaged, under the name Southern Michigan Collection Service, in the collection of delinquent accounts owed to others upon a commission basis contingent upon collection. Clients for whom he undertakes the collection of accounts are located both within and without the State of Michigan. Many of his said clients cause goods and other property to be transported from their respective places of business to purchasers thereof in other States of the United States, and maintain, and at all times men-

tioned herein have maintained courses of trade in such goods and property in commerce between and among the various States of the United States. The course and conduct of his said business by respondent involves communication and intercourse of a commercial and business nature between him and his clients and agent who are located in States other than the State of Michigan.

PAR. 3. In the course and conduct of respondent's collection business, he frequently desires to ascertain the current addresses of persons from whom he is endeavoring to collect moneys due to his clients, the names and addresses of the employers of such persons and of the banks in which such persons have money on deposit.

For this purpose respondent uses, and has used, a reply post card, substantially in the form exemplified by a copy thereof, marked Exhibit A, attached hereto, and by this reference incorporated herein and made a part hereof.¹

PAR. 4. Respondent causes said cards to be addressed to the persons concerning whom information is sought at their last known addresses, and causes them to be transported to an office in the city and State of New York, where they are received by an agent of respondent who thereafter causes them to be placed in the United States mail. The said cards bear addresses of places located in the State of Michigan and in other States of the United States, and many of those addressed to places in Michigan are forwarded by the United States postal authorities to places in States other than Michigan.

Such of the return post cards as are filled out and mailed by the recipients thereof, are received by respondent's agent in the city and State of New York, who thereafter causes them to be transported to respondent at his place of business in Jackson, Mich. Respondent uses the information so obtained in collecting, and attempting to collect, the amounts due from such persons to the creditors for whom he is acting.

PAR. 5. By means of the aforesaid cards respondent has falsely represented, directly and by implication, to the persons to whom they were sent, that such persons are owners of packages sent by persons other than respondent and in the hands of respondent in New York City in the usual course of his business; that the shipments involved transportation charges which had been prepaid by the consignors, and that delivery could not be made to the addressees of said cards by reason of differences in address and lack of identification, and that upon the receipt of the reply cards, properly filled out, the packages would be forwarded.

PAR. 6. Through the use of the name "Continental Forwarding System" respondent has represented, directly and by implication, to the recipients of said cards, that he is, in some capacity, connected with the transportation and movement of goods, and their delivery to the proper consignees.

PAR. 7. The said representations are false and misleading. In truth and in fact respondent's business has nothing to do with the movement or transportation of goods or their delivery to the proper consignees. The persons to whom the cards were sent are not consignees of packages in the hands of respondent in the usual course of his business. No package was sent to those who properly filled out and returned the reply cards. The whole scheme is merely an attempt to obtain information by subterfuge and the sole purpose of the said cards is to secure information in order to facilitate the collection of accounts.

¹ See pp. 79 and 80.

Findings

PAR. 8. The use, as hereinabove set forth, of the foregoing false and misleading statements, representations, and designation 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, representations and designation were true, and correct, and by reason thereof to give information which they would not otherwise supply, and to incur expense for postage on the reply cards.

EXHIBIT A

READ MESSAGE INSIDE
BRING OR MAIL THIS
CARD TO US PROMPTLY

FINAL NOTICE

CONTINENTAL FORWARDING

SYSTEM

New York, N. Y.

Package Reference
No.

Date
UNCLAIMED PACKAGE
DEPARTMENT

NAME AND ADDRESS SHOWN ON PACKAGE

IMPORTANT: This prepaid package will be delivered **ONLY** to OWNER named above as identified below

FILL IN ALL SPACES BELOW

Name ----- SIGN FULL NAME OF OWNER -----

Residence ----- STREET ADDRESS IS NECESSARY -----

City -----

Employer -----

Address -----

Bank ----- NAME OF OWNER'S DEPOSITORY -----

Address -----

No postage or addressing necessary

CONTINENTAL FORWARDING SYSTEM

DISTRIBUTION DEPARTMENT

1229 PARK ROW BLDG. NEW YORK, N. Y.

POSTMASTER — IMPORTANT

PLEASE FORWARD IF NECESSARY

FINAL NOTICE

We have a **prepaid** package addressed to the party whose name appears on the attached card. On account of a difference in address and lack of identification we cannot make delivery.

Order

Same will be forwarded with **No Charges** to proper party if you will fill in and return the attached postal card.

====

Continental Forwarding System

DISTRIBUTION DIVISION
UNCLAIMED PACKAGE DEPT.
New York, N. Y.

No postage necessary on the attached reply card. Please answer promptly.

CONTINENTAL FORWARDING SYSTEM

1229 Park Row Building

UNCLAIMED PACKAGE DEPT.

Great Lakes Division

New York, N. Y.

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 and waives all intervening procedure and further hearing as to the facts, 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, L. A. Schwarz, individually and trading as the Continental Forwarding System, or trading under any other name, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the use in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's printed cards or any other printed or written material of a substantially similar nature, do forthwith cease and desist from:

1. Using the word "Forwarding" 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 is in any capacity connected with the transportation or movement of goods or their delivery to the proper recipients thereof.

2. Representing, directly or by implication, that persons concerning whom information is sought through respondent's cards or other material are or may be consignees of goods which have been received by respondent in the usual course of his business, or that the information sought through such means is for the purpose of enabling respondent to make delivery of any goods or packages to such persons.

3. Using or supplying to others for use printed cards or other material which represents, directly or by implication, that respondent's business is other than that of the collection of debts or 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 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

38 F. T. C.

IN THE MATTER OF
CHARBOY PRODUCTS, INC.

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

Docket 4756. Complaint, May 1, 1942—Decision, Jan. 20, 1944

Where a corporation, engaged in the compounding and interstate sale and distribution of a medicinal preparation designated "Cuproloid"; in advertisements in newspapers and periodicals and by radio broadcasts, circulars, leaflets, pamphlets and other advertising literature—

Represented falsely that said product was a cure or remedy, and constituted a competent and effective treatment, for pimples, acne, eczema, athlete's foot, ringworm, surface ulcers, skin bruises, insect bites, cuts, burns from heat and chemicals, poison ivy and sunburn; sterilized and healed and would keep the skin healthy; and had been scientifically tested and approved by competent medical authorities, and was extensively prescribed by the medical director of a large life insurance company;

Facts being that, according to the consensus of reliable medical opinion, said preparation "Cuproloid" had no therapeutic value in the treatment of athlete's foot, ringworm and eczema in excess of a slightly deterring effect upon the growth of fungus responsible therefor with which it came in contact, but, lacking any penetrating effect, could not come into contact with fungi embedded in the tissues; and other claims made therefor as aforesaid were false, misleading and deceptive;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby induce it to purchase its said preparation:

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

Mr. S. F. Rose for the Commission.

Dow & Lohnes, 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 Charboy Products, Inc., a corporation, 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, Charboy Products, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey with its principal place of business located at Red Bank, N. J.

PAR. 2. The respondent, Charboy Products, Inc., a corporation, is now and has been for more than three years last past engaged in the compounding, selling and distribution of a certain medicinal preparation which it designates "Cuproloid," recommended for use in the treatment of various skin diseases and ailments. Respondent causes said medicinal preparation, when sold, to be transported from its aforesaid place of

business in the State of New Jersey to purchasers thereof located in other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said preparation in commerce between and among the various States of the United States.

PAR. 3. Respondent, in the course and conduct of its business aforesaid, has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said medicinal 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 medicinal 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 advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers and periodicals and by radio broadcasts, circulars, leaflets, pamphlets and other advertising literature, are the following:

Here is good news for those afflicted with pimples or other itching skin infections. . . . Thousands of enthusiastic users praise its amazing results. It is called Cuproloid—you, too, can now get quick relief.

Acne—eczema and other similar surface skin troubles are quickly relieved by Cuproloid.

Cuproloid is thoroughly tried and proven treatment for—acne . athlete's foot . eczema . ringworm . surface ulcers . pimples from surface causes.

It is most efficient as the quick medical treatment for burns and painful sunburn as well as for poison ivy.

Cuproloid sterilizes and heals.

Depend on Cuproloid to keep your skin healthy.

Cuproloid is a—proven treatment . . .

Cuproloid is also the safe, rapid and dependable preparation to apply when the skin has been affected by bruises . insect bites . cuts . burns from heat and chemicals . ivy poisoning . sunburn.

—a scientifically approved preparation . . .

Cuproloid . . . is now being prescribed nationally by the medical director of one of the largest life insurance companies.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others of similar import not set forth herein, all of which purport to be descriptive of the therapeutic properties of respondent's said preparation, respondent represents, directly and by implication, that said medicinal preparation is a cure or remedy for and constitutes a competent and effective treatment of pimples, acne, eczema, athlete's foot, ringworm, surface ulcers, skin bruises, insect bites, cuts, burns from heat and chemicals, poison ivy and sunburn; that it sterilizes, heals and will keep the skin healthy; that said preparation has been scientifically tested and proved by competent medical authorities and that it is extensively prescribed by the medical director of a large life insurance company.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's medical preparation is not a cure or remedy for, and has no therapeutic value in the treatment of pimples, acne, surface ulcers, skin bruises, insect bites, cuts, burns from heat and chemicals, poison ivy and sunburn. Said preparation has no therapeutic value in the treatment of athlete's foot and ringworm in excess of relieving the symptoms thereof and it has no therapeutic value in the treatment of eczema except in those cases where the condition is caused by fungus infection. Said preparation has not been scientifically tested and proved by competent medical authorities, nor has it been prescribed for use by a medical director of any life insurance company.

PAR. 6. The use by the respondent of the foregoing false and misleading statements and representations and others of similar nature, disseminated 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 such statements, representations and advertisements are true and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's said preparation.

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 the 1st day of May, 1942, issued and served its complaint in this proceeding upon said respondent, Charboy Products, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 10, 1942, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and 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 without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and now being fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Charboy Products, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey with its principal place of business located at Red Bank, N. J.

PAR. 2. The respondent, Charboy Products, Inc., a corporation, has been for more than three years last past engaged in the compounding, selling and distribution of a certain medicinal preparation containing approximately 0.125% of colloidal copper suspended in an aqueous menstrum containing gelatin and salts, which is sold under the trade designation "Cuproloid," recommended for treatment of various skin diseases and ailments. Respondent caused said medicinal preparation, when sold, to be transported from its aforesaid place of business in the State of New Jersey to purchasers thereof located in other States of the United States. Respondent at all times mentioned herein has maintained a course of trade in its said preparation in commerce between and among the various States of the United States.

PAR. 3. Respondent, in the course and conduct of its business aforesaid, has disseminated and has caused the dissemination of, advertisements concerning its said medicinal 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 has caused the dissemination of, advertisements concerning said medicinal preparation by various means, for the purpose of inducing and which were 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 statements and representations contained in said advertisements disseminated and caused to be disseminated as hereinabove set forth by the United States mails, by advertisements inserted in newspapers and periodicals and by radio broadcasts, circulars, leaflets, pamphlets and other advertising literature, are the following:

Here is good news for those afflicted with pimples or other itching skin infections. . . . Thousands of enthusiastic users praise its amazing results. It is called Cuproloid—you, too, can now get quick relief.

Acne—eczema and other similar surface skin troubles are quickly relieved by Cuproloid.

Cuproloid is thoroughly tried and proven treatment for—acne . athlete's foot . eczema . ringworm . surface ulcers . pimples from surface causes.

It is most efficient as the quick medical treatment for burns and painful sunburn as well as for poison ivy.

Cuproloid sterilizes and heals.

Depend on Cuproloid to keep your skin healthy.

Cuproloid is a—proven treatment . . .

Cuproloid is also the safe, rapid and dependable preparation to apply when the skin has been affected by bruises . insect bites . cuts . burns from heat and chemicals . ivy poisoning . sunburn.

—a scientifically approved preparation . . .

Cuproloid . . . is now being prescribed nationally by the medical director of one of the largest life insurance companies.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others of similar import not set forth herein, all

of which purport to be descriptive of the therapeutic properties of respondent's said preparation, respondent represented, directly and by implication, that said medicinal preparation is a cure or remedy for and constitutes a competent and effective treatment of pimples, acne, eczema, athlete's foot, ringworm, surface ulcers, skin bruises, insect bites, cuts, burns from heat and chemicals, poison ivy and sunburn; that it sterilizes, heals and will keep the skin healthy; that said preparation has been scientifically tested and approved by competent medical authorities and that it was extensively prescribed by the medical director of a large life insurance company.

At the time of making the aforesaid statements and representations the respondent had not made or caused to be made scientific tests and experiments to determine the therapeutic properties of Cuproloid, nor had its use by the medical profession or by persons afflicted with the various skin diseases for which it was recommended by respondent been of an extent sufficient to ascertain the nature and extent, if any, of its medicinal properties.

The statements set out in paragraph 3 hereof were disseminated at various times during the year 1938 and a part of the year 1939, and were being made by the respondent at the time of the institution of the investigation concerning said claims by the Federal Trade Commission.

PAR. 5. Athlete's foot is a popular term used to denote a fungus infection of the feet, particularly between the toes. Fungi causing this infection often become embedded in the tissues. Ringworm is a popular term signifying fungus infection usually on other parts of the body. Eczema is a generic term used by skin specialists to cover all those inflammatory conditions, both acute and chronic, which produce lesions of the skin where it is difficult or impossible to determine the exact nature of the condition. Only a small percentage of cases of eczema are due to fungus infections.

The statements and representations made by the respondent concerning Cuproloid were false, misleading and deceptive. According to the consensus of reliable medical opinion, Cuproloid has no therapeutic value in the treatment of athlete's foot, ringworm and eczema in excess of having a slightly deterring effect upon the growth of fungus causing such conditions with which it comes in contact. It has no penetrating effect and will not come into contact with fungi which are embedded in the tissues. Cuproloid has no known curative properties or therapeutic value in the treatment of pimples, acne, surface ulcers, skin bruises, insect bites, cuts, burns from heat and chemicals, poison ivy and sunburn. It has no sterilizing or healing properties nor will it keep the skin healthy. Said preparation has not been scientifically tested and approved by competent medical authorities nor has it been prescribed for use by a medical director of any life insurance company.

PAR. 6. The use by the respondent of the foregoing false and misleading statements and representations and others of similar nature, disseminated as aforesaid, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements were true and induced a substantial portion of the purchasing public, because of such mistaken and erroneous 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, the answer of the respondent, and a stipulation as to the facts entered into between 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 and serve upon the respondent herein findings as to the facts and conclusion based thereon, and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Charboy Products, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or any other device in connection with the offering for sale, sale, or distribution of its medicinal preparation designated "Cuprolid," or any other medicinal 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:

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 preparation is a cure or remedy for pimples, acne, surface ulcers, skin bruises, insect bites, burns from heat and chemicals, poison ivy, and sunburn or that it has any therapeutic value in the treatment of said diseases or conditions;

b. That respondent's preparation possesses sterilizing or healing properties or that its use will keep the skin healthy;

c. That respondent's preparation has any therapeutic value in the treatment of athlete's foot, ringworm, or eczema in excess of slightly deterring the growth of fungi with which it comes in contact;

d. That respondent's preparation has been scientifically tested and approved by competent medical authorities or has been prescribed for use by the medical profession.

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 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.

IN THE MATTER OF

HELEN E. HOECK, TRADING AS HELENA VOLAY COSMETICS; AND CHICAGO UNION ADVERTISING AGENCY, INC.

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

Docket 4967. Complaint, May 26, 1943—Decision, Jan. 20, 1944

Where an individual engaged in the interstate sale and distribution of her cosmetic preparation "Helena Volay Face Oil," together with the corporation acting as her advertising agency; by advertisements in newspapers and periodicals and in circulars, leaflets, pamphlets and other advertising literature—

Represented falsely that use of said preparation improved the skin and caused it to become finer and more youthful looking, and was effective in the treatment of, and combated and prevented the formation of, wrinkles and sagging tissues;

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 to induce it, because of such erroneous belief, to purchase substantial quantities of such preparation:

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

Mr. B. W. Stanley for the Commission.

COMPLAINT

Pursuant to 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 Helen E. Hoeck, an individual, trading as Helena Volay Cosmetics and Chicago Union Advertising Agency, 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Helen E. Hoeck, is an individual, doing business under the trade name Helena Volay Cosmetics, with her principal place of business located at 421 Bazoobuth Street, Needles, Calif.

PAR. 2. Said respondent is now, and has been, for more than three years last past engaged in the sale and distribution of a cosmetic preparation designated Helena Volay Face Oil. The quantitative formula of said cosmetic is stated by respondent to be

Mineral Oil	11 oz.
Olive Oil	1 oz.
Benzoin	1 oz.
Lanolin	1 oz.
Bergamot Oil	1 oz.

In the course and conduct of her said business, respondent causes and has caused said cosmetic preparation, when sold, to be shipped or transported from her said place of business in the State of California to pur-

chasers 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 her said cosmetic preparation in commerce between and among the various States of the United States.

PAR. 3. Chicago Union Advertising Agency, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its offices and principal place of business located at 20 West Jackson Boulevard, Chicago, Ill.

This Respondent is an advertising agency and as such is engaged in formulating, editing, selling and distributing advertising matter. This respondent is the advertising representative or agent of respondent, Helen E. Hoeck, and prepares, formulates, disseminates and aids in the dissemination of the advertising material hereinafter set forth in connection with the sale and distribution of the cosmetic preparation hereinabove designated.

Respondents acted in conjunction and in cooperation with each other in the performance of the acts and practices hereinafter alleged.

PAR. 4. In furtherance of the sale and distribution of the cosmetic preparation sold and distributed by respondent, Helen E. Hoeck, an individual, trading as Helena Volay Cosmetics, the respondents have disseminated and have caused the dissemination of false advertisements concerning said cosmetic preparation by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act, and respondents have also disseminated, and have caused 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, misleading and deceptive representations contained in said advertisements disseminated and caused to be disseminated as hereinabove set forth by the United States mails, by advertisements inserted in newspapers and periodicals and by circulars, leaflets, pamphlets and other advertising literature are the following:

Girls! Why look old?

New FACE OIL does wonders in improving the skin—helps to keep it SMOOTHER, FIRMER, more YOUTHFUL LOOKING * * * Helena Volay Face Oil * * * combats the formation of wrinkles or sagging of the tissues.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others of similar import not set out herein, all of which purport to be descriptive of the therapeutic properties and remedial value of said cosmetic preparation, respondents have represented that the use of said preparation improves the skin and causes it to become firmer and more youthful looking and that said preparation is effective in the treatment of and combats and prevents the formation of wrinkles and sagging of the tissues.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact the use of said preparation will not significantly improve the skin and will not cause it to become firmer and to look more youthful. It is not effective in the treatment of and will not combat or prevent the formation of wrinkles and sagging of tissues.

PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements and representations with respect to said preparation, disseminated as aforesaid, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and to induce a substantial portion of the purchasing public, because of such erroneous belief to purchase substantial quantities of said preparation.

PAR. 8. 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 May 26, 1943, issued and thereafter served its complaint in this proceeding upon respondents Helen E. Hoeck, an individual, trading as Helena Volay Cosmetics, and Chicago Union Advertising Agency, Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 18, 1943, the respondent Helen E. Hoeck, individually and trading as Helena Volay Cosmetics, filed her answer, in which answer she admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. On June 4, 1943, the respondent Chicago Union Advertising Agency, Inc., a corporation, filed its answer and on August 17, 1943, the Commission by order entered herein granted said respondent's motion for permission to withdraw its 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 said answer 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, Helen E. Hoeck, is an individual, doing business under the trade name Helena Volay Cosmetics with her principal place of business located at 421 Bazoobuth Street, Needles, Calif.

PAR. 2. Said respondent is now, and has been, for more than three years last past engaged in the sale and distribution of a cosmetic preparation designated Helena Volay Face Oil. The quantitative formula of said cosmetic is as follows:

Mineral Oil	11 oz.
Olive Oil	1 oz.
Benzoin	1 oz.
Lanolin	1 oz.
Bergamot Oil	1 oz.

In the course and conduct of her said business, respondent causes and has caused said cosmetic preparation, when sold, to be shipped or transported from her said 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 herein mentioned has maintained a course of trade in her said cosmetic preparation in commerce between and among the various States of the United States.

PAR. 3. Chicago Union Advertising Agency, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois with its offices and principal place of business located at 20 West Jackson Boulevard, Chicago, Ill.

This respondent is an advertising agency and as such is engaged in formulating, editing, selling and distributing advertising matter. This respondent is the advertising representative or agent of respondent, Helen E. Hoeck, and prepares, formulates, disseminates and aids in the dissemination of the advertising material hereinafter set forth in connection with the sale and distribution of the cosmetic preparation hereinabove designated.

PAR. 4. Respondents acted in conjunction and in cooperation with each other in the performance of the acts and practices hereinafter alleged.

PAR. 5. In furtherance of the sale and distribution of the cosmetic preparation sold and distributed by respondent, Helen E. Hoeck, an individual, trading as Helena Volay Cosmetics, the respondents have disseminated and have caused the dissemination of false advertisements concerning said cosmetic preparation by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act, and respondents have also disseminated and have caused 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, misleading and deceptive representations contained in said advertisements disseminated and caused to be disseminated by the United States mails, by advertisements in newspapers and periodicals and by circulars, leaflets, pamphlets and other advertising literature are the following:

Girls! Why look old?

New FACE OIL does wonders in improving the skin—helps to keep it SMOOTHER, FIRMER, more YOUTHFUL LOOKING * * * Helena Volay Face Oil * * * combats the formation of wrinkles or sagging of the tissues.

PAR. 6. Through the use of the statements and representations hereinabove set forth, and others of similar import not set out herein, all of which purport to be descriptive of the therapeutic properties and remedial value of said cosmetic preparation, respondents have represented that the use of said preparation improves the skin and causes it to become firmer and more youthful looking and that said preparation is effective in the treatment of and combats and prevents the formation of wrinkles and sagging of the tissues.

PAR. 7. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact the use of said preparation will not significantly improve the skin and will not cause it to become firmer and to look more youthful. It is not effective in the treatment of

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and will not combat or prevent the formation of wrinkles and sagging of tissues.

PAR. 8. The use by the respondents of the foregoing false, deceptive and misleading statements and representations with respect to said preparation, disseminated as aforesaid, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and to induce a substantial portion of the purchasing public, because of such erroneous belief to purchase substantial quantities of said preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Helen E. Hoeck, an individual, trading as Helena Volay Cosmetics, or trading under any other name, her representatives, agents, and employees, and the respondent, Chicago Union Advertising Agency, 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, or distribution of a certain cosmetic preparation designated "Helena Volay Face Oil" 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 that said preparation —

a. Will significantly improve the skin or cause it to become firmer and look more youthful;

b. Is effective in the treatment of or will combat or prevent the formation of wrinkles and sagging 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 of said product, in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations 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

IN THE MATTER OF

KAY LABORATORIES, INC., AND JOSEPH P. KAYATTA

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

Docket 5054. Complaint, Sept. 24, 1943—Decision, Jan. 21, 1944

Where a corporation and an individual, its president, treasurer and principal stockholder, responsible for its operation and management, engaged in the interstate sale and distribution of their "Kaytonik" medicinal preparation —

- (a) Represented falsely by means of radio continuities and advertisements in newspapers that said preparation was a preventive of, and constituted a competent and effective treatment for, colds; and that it would prevent a cold from developing into gripe, influenza and pneumonia; build up strength, health and body resistance to disease, and conquer or destroy germs; and through use of the trade name "Kaytonik" that it was a general tonic; and
- (b) Represented falsely by selling and distributing their preparation under corporate name "Kay Laboratories, Inc.," that it was compounded or manufactured in a place or places appropriately equipped for and devoted to experimental study in medicine or pharmaceutical science or the application of medical or pharmaceutical principles in the testing and analysis or in the preparation of drugs or medicine by persons skilled in those arts, i.e., in "laboratories" within the common and usual meaning of the word when used in connection with the preparation of drugs and medicine;

With capacity and tendency to mislead a substantial portion of the purchasing public into an erroneous belief that such representations were true, and with result of thereby inducing it to purchase preparation in question:

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

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

Mr. Joseph Callaway for the Commission.

Mr. Francis J. O'Brien and *Mr. A. Norman LaSalle*, of Providence, R. I., 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 Kay Laboratories, Inc., a corporation, and Joseph P. Kayatta, individually, and as President and Treasurer of Kay Laboratories, Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Kay Laboratories, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Rhode Island, with its principal place of business at 150 Niagara Street, Providence, R. I.

Respondent, Joseph P. Kayatta, is an individual and is the principal stockholder, president and treasurer of Kay Laboratories, Inc., and also

has his place of business at 150 Niagara Street, Providence, R. I. He directs the policies and is responsible for the operation and management of Kay Laboratories, Inc.

PAR. 2. Respondents are now and for more than two years last past have been engaged in the manufacture, sale and distribution of a certain medicinal preparation designated as Kaytonik, advertised as a remedy for colds and various other ailments of the human body.

In the course and conduct of their business the respondents cause said preparation, when sold, to be transported from their place of business in the State of Rhode Island to the purchasers thereof located 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 said preparation in commerce among and between the various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning 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 respondents have also disseminated and are now disseminating, and have caused and are 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 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 radio and by advertisements inserted in newspapers are the following:

Don't let a cold get you down. Take KAYTONIK, the double action remedy that relieves coughs and colds and also conquers germs. * * * KAYTONIK not only helps to stop coughs but will also build your resistance.

The hypophosphites in KAYTONIK will help to ward off flu or grippe germs.

Stop that cold now. Don't let it develop into grippe, influenza or pneumonia. KAYTONIK helps you resist dangerous germs.

* * * It also builds health and strength to safeguard against colds.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, respondents have represented and now represent that said preparation is a preventative and constitutes a competent and effective treatment for colds; that its use will prevent a cold from developing into grippe, influenza and pneumonia; that it builds up strength, health and bodily resistance to disease and by its use germs can be conquered or destroyed. Through the use of the trade name "Kaytonik," respondents represent that said preparation is a general tonic.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, said preparation is not a preventative nor does it constitute a competent or effective treatment for colds. Its use will not prevent a cold from developing into grippe,

influenza, or pneumonia. It will not build up health, strength or bodily resistance to disease to any significant extent and it is not capable of conquering or destroying germs. Said preparation is not a tonic and when used as recommended will not act as a general tonic to the system.

PAR. 6. In addition to the claims set forth in paragraph 4 the respondents are making and have made false and misleading representations as to their business and professional status. By selling and distributing said preparation under the corporate name "Kay Laboratories, Inc.," the respondents, directly and by inference, represent that said preparation is compounded or manufactured in "laboratories" within the common and usual meaning of the word when used in connection with the preparation of drugs and medicine, that is, a place or places appropriately equipped for and devoted to experimental study in medicine or pharmaceutical science or the application of medical or pharmaceutical principles in the testing and analysis or in the preparation of drugs or medicine by persons skilled in those arts. In truth and in fact, the said preparation is not prepared or manufactured in laboratories or in a laboratory within the common and usual conception of the word when used in connection with drugs and medical preparations.

PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements and representations, disseminated and caused to be disseminated as aforesaid in connection with the offering for sale and sale of said preparation in commerce has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and into the purchase of substantial quantities of said preparation in commerce because of such erroneous and mistaken belief.

PAR. 8. 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 September 24, 1943, issued and thereafter served its complaint in this proceeding upon the respondents, Kay Laboratories, Inc., a corporation, and Joseph P. Kayatta, individually and as president and treasurer of Kay Laboratories, Inc., 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, at a hearing before an examiner of the Commission theretofore duly designated by it, the respondents, by a statement incorporated in the record, admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the said facts. Thereafter, this proceeding came on for final hearing before the Commission on said complaint and the admission of the respondents, 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. The respondent, Kay Laboratories, Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of Rhode Island with its principal place of business at 150 Niagara Street, Providence, R. I.

Respondent, Joseph P. Kayatta, is an individual and is the principal stockholder, president and treasurer of Kay Laboratories, Inc., and also has his place of business at 150 Niagara Street, Providence, R. I. He directs the policies and is responsible for the operation and management of Kay Laboratories, Inc.

PAR. 2. Respondents are now and for more than two years last past have been engaged in the sale and distribution of a certain medicinal preparation designated as Kaytonik, advertised as a remedy for colds and various other ailments of the human body. In the course and conduct of their business respondents cause said preparation, when sold, to be transported from their place of business in the State of Rhode Island to the purchasers thereof located 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 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 their aforesaid business, respondents have disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning their 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 respondents have also disseminated, and have caused and are 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 their 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 radio continuities and by advertisements inserted in newspapers, are the following:

Don't let a cold get you down. Take KAYTONIK, the double action remedy that relieves coughs and colds and also conquers germs. * * * KAYTONIK not only helps to stop coughs but will also build your resistance.

The hypophosphites in KAYTONIK will help to ward off flu or grippe germs.

Stop that cold now. Don't let it develop into grippe, influenza or pneumonia. KAYTONIK helps you to resist dangerous germs.

* * * It also builds health and strength to safeguard against colds.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import and meaning not specifically set out herein, respondents have represented and now represent that said preparation is a preventative and constitutes a competent and effective treatment for colds; that its use will prevent a cold from developing into grippe, influenza and pneumonia; that it builds up strength, health and

bodily resistance to disease and by its use germs can be conquered or destroyed; through the use of the trade name "Kaytonik," respondents represent that said preparation is a general tonic.

PAR. 5. The foregoing representations and advertisements are grossly exaggerated, false and misleading. In truth and in fact, respondents' preparation is not a preventative nor does it constitute a competent or effective treatment for colds. Its use will not prevent a cold from developing into grippe, influenza or pneumonia. It will not build up health, strength or bodily resistance to disease to any significant extent and it is not capable of conquering or destroying germs. Said preparation is not a tonic and when used as recommended will not act as a general tonic to the system.

PAR. 6. In addition to the claims set forth in paragraph 4, the respondents are making and have made false and misleading representations as to their business and professional status. By selling and distributing their said preparation under the corporated name "Kay Laboratories, Inc.," the respondents, directly and by inference, represent that said preparation is compounded or manufactured in "Laboratories" within the common and usual meaning of the word when used in connection with the preparation of drugs and medicine, that is, a place or places appropriately equipped for and devoted to experimental study in medicine or pharmaceutical science or the application of medical or pharmaceutical principles in the testing and analysis or in the preparation of drugs or medicine by persons skilled in those arts. In truth and in fact, the said preparation is not compounded or manufactured in laboratories or in a laboratory within the common and usual conception of the word when used in connection with drugs and medical preparations.

PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements and advertisements with respect to their said preparation, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such 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 respondents' said preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the record, wherein the respondents admitted all the material facts set forth in the complaint and waived all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Kay Laboratories, Inc., a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, and Joseph P. Kayatta, individually and as an officer of Kay Laboratories, Inc., and his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of their medicinal preparation, Kaytonik, 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:

1. Disseminating or causing to be disseminated any advertisement by means of 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 preventative or constitutes a competent or effective treatment for colds;

b. That the use of said preparation will prevent a cold from developing into grippe, influenza, or pneumonia;

c. That the use of said preparation will build up health, strength, or bodily resistance to disease or conquer or destroy germs.

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 respondents' preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

3. Using the word "Kaytonik" as a trade name for the said preparation or otherwise representing that said preparation is a general tonic or will act as a general tonic to the system.

4. Using the word "Laboratories" or any other word of similar import or meaning in respondents' corporate name, or representing through any other means or device, or in any manner, that the respondents own, operate, or control a laboratory equipped for the compounding of medicinal preparations and for research in connection therewith.

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

Complaint

IN THE MATTER OF

GEORGE VON NIEDA, ET AL., TRADING AS
VON DRUG CO., 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 4704. Complaint, Feb. 6, 1942—Decision, Jan. 26, 1944

Where three individuals, owners of a formula for "Von's Pink Tablets," which contained bismuth subnitrate, magnesium oxide and sodium bicarbonate, and which they caused to be manufactured in tablet form and transported in bulk from the place of manufacture to nine distributing concerns at their respective places of business in other states, to be bottled, labeled and sold by them to the purchasing public and to dealers in the various states; and said concerns; acting in cooperation with each other in advertising the same—

Represented falsely that they constituted a remarkable and effective treatment for stomach ulcers including those caused by hyperacidity; that use thereof brought prompt relief to long standing cases of stomach ulcers, which might be satisfactorily and easily thus treated at home, and restored the stomach content to a more correct chemical balance, tending to prevent acid ulcers from forming, helping those suffering therefrom to enjoy hearty eating; and would result in coating stomach ulcers or denuded surfaces of the stomach with a protective film of metallic powder;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that such advertisements were true, and thereby induce it to purchase preparation in question:

Held, That said acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices.

Mr. S. F. Rose for the Commission.

Mr. David E. Bronson, of Minneapolis, Minn., for G. B. McGlenn and C. A. Revell.

COMPLAINT¹

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Com-

¹ Complaint is published as amended by order of Jan. 22, 1944 which, after reciting that —

Whereas, the complaint in this matter named George Von Nieda, an individual, trading as Von Drug Company, as the sole owner of the said Von Drug Company; and

Whereas, in the answer filed by the respondents it is stated that Sadie Von Nieda and Florence Beebe, individuals, not named as respondents, are copartners with the said respondent, George Von Nieda, trading as Von Drug Company and it appearing that the said Sadie Von Nieda and Florence Beebe, in a stipulation signed by them and all of the respondents named in the complaint, have stipulated that they are proper parties to this proceeding as copartners with George Von Nieda, operating as Von Drug Company and have agreed that any order issued by the Commission would be as binding on them as if they had been named in the complaint and served with a copy thereof, and the Commission having duly considered the answer and such stipulated facts, and the record herein, and being now fully advised in the premises.

Orders that the complaint be "amended by joining as respondents therein the said Sadie Von Nieda and Florence Beebe along with the respondent George Von Nieda, as copartners trading under the trade name, Von Drug Company"; that the proceeding be styled accordingly, as set forth in said amended order; and that the first sub-paragraph of paragraph 1 of the complaint and par. 2 of the complaint, be amended to read as set forth in said order, and as published herein.

mission having reason to believe that the firms and individuals named in the caption hereof have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in that respect would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, George Von Nieda, Sadie Von Nieda and Florence Beebe, are copartners, trading and doing business under the name Von Drug Company with their office and principal place of business located at Miami Beach, Fla.

Respondent, Wallace G. Firth, is an individual, trading and doing business under the name of Omaha Von Company, with his office and principal place of business located in the Keeline Building, Omaha, Neb.

The respondents, F. J. Foersterling and Virginia G. Pachaly, are copartners, trading and doing business under the names of Philadelphia Von Company and Chicago Von Company, their respective addresses being 948 East 81st Street, Chicago, Ill., and 8022 Ingleside Avenue, Chicago, Ill.

Respondent, W. A. Egan, is an individual, trading and doing business under the name of Boston Von Company, with his office and principal place of business located at 128A Tremont Street, Boston, Mass.

Respondent, E. W. Downs, is an individual, trading and doing business under the names of Los Angeles Von Company and San Francisco Von Company, with his office and principal places of business being located at 403 West 8th Street, Los Angeles, Calif., and 821 Market Street, San Francisco, Calif.

Respondent, C. M. LeRoux, is an individual, trading and doing business under the name of Atlanta Von Company, with his office and principal place of business located at 709 Walton Building, Atlanta, Ga.

Respondent, Clarence A. Paulson, is an individual, trading and doing business under the name of Twin City Von Company, with his office and principal place of business located at 2938 Pillsbury Avenue, Minneapolis, Minn.

Respondent, Lottie Johnston, is an individual, trading and doing business under the name of Indianapolis Von Company, with her office and principal place of business located at 2161 North Meridian Street, Indianapolis, Ind.

Respondent, M. T. Sughroue, is an individual, trading and doing business under the name of Seattle Von Company, with his office and principal place of business located at 903 Republic Building, Seattle, Wash.

Respondents, G. B. McGlenn and C. A. Revell, are copartners, trading and doing business under the names of Cleveland Von Company and Detroit Von Company, with their principal offices and places of business being located at 238 Old Arcade Building, Cleveland, Ohio, and 310 Stott Building, Detroit, Mich.

Respondent, E. C. Beebe, is an individual, trading and doing business under the name of New York Von Company, with his principal place of business being located at 391 East 149th Street, New York, N. Y., and with his principal mailing address being 1655 Drexel Avenue, Miami Beach, Fla.

PAR. 2. The respondents, George Von Nieda, Sadie Von Nieda and Florence Beebe, are now and for more than one year last past have been, the owners of a medicinal formula for a medicine known as "Von's Pink Tablets" which they cause to be manufactured in tablet form and trans-

ported in bulk from the place where manufactured in the State of Minnesota to the other named respondents at their respective places of business in States other than the State of Minnesota. Said other named respondents are each under similar contracts with the respondents, George Von Nieda, Sadie Von Nieda and Florence Beebe as sales agents or distributors and, upon receipt of said tablets, bottle, label and sell same to the purchasing public and to dealers located throughout the several States of the United States and in the District of Columbia. Respondents have acted in concert with each other in the acts and practices herein set out.

PAR. 3. Respondents in the course and conduct of their business aforesaid have disseminated and are disseminating and have caused and are now causing the dissemination of false advertisements concerning said medicinal preparation designated "Von's Pink Tablets" by the United States mail and by various means in commerce as commerce is defined by the Federal Trade Commission Act, which are likely to induce, directly or indirectly, the purchase of said medicinal preparation. The respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said medicinal 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 representations contained in said advertisement disseminated and caused to be disseminated by the respondents, as aforesaid, are the following:

A remarkable treatment for stomach ulcers due to gastric hyperacidity.

Use of the famous Von's Tablets is bringing prompt relief in thousands of really severe long standing excess acid stomach ulcer cases everywhere for many who thought they might never be better again.

There is hope for sufferers from stomach ulcers due to excess stomach acid.

Stomach ulcers caused by gastric hyperacidity are now being satisfactorily and easily treated at home through the use of Von's Pink Tablets * * * Especially designed to relieve Stomach Ulcers caused by gastric hyperacidity * * * and without operation * * *

Have you found the key to relief from an over-acid stomach?

They tend to neutralize the acidity in the stomach and thus restore a more correct chemical balance.

Von's Pink Tablets Famous For relief in obstinate cases of gastritis and ulcers caused by gastric hyperacidity.

Do Von's Pink Tablets tend to prevent acid-stomach ulcers from forming when one is suffering from gastric hyperacidity? Yes, if taken in time.

Do the food instructions require a liquid or a rigid diet? - No. On the contrary a substantial quantity of food is allowed to build up body strength which should aid in desired relief. How can one who has not been able to eat hardly anything start right in eating some hearty foods? * * * Von's Pink Tablets helps to make this possible * * *

Importance of coating ulcers and of still higher importance, there should be added to the proper kind of an acid neutralizer, a fine metallic powder of unabsorbable nature as will upon being taken into the stomach, cling to the stomach irritations, thus coating any open surfaces on the stomach lining, so giving such open places needed protection.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other statements and representations similar thereto,

not set forth herein, all of which purport to be descriptive of the therapeutic properties of respondents' preparation, "Von's Pink Tablets," respondents represent, directly and by implication, that said preparation is a remarkable treatment for stomach ulcers and stomach ulcers caused by gastric hyperacidity; that its use brings prompt relief to longstanding cases of stomach ulcer; that stomach ulcers may be satisfactorily and easily treated at home by the use of said preparation; that the use of said preparation restores the stomach content to a more correct chemical balance; that the use of said preparation tends to prevent acid stomach ulcers from forming; that the use of said preparation helps one suffering from stomach ulcer to enjoy hearty eating; and that said preparation when taken will coat stomach ulcers or denuded surfaces in the stomach with a protective metallic powder.

PAR. 5. The aforesaid statements and representations of the respondents are grossly exaggerated, false and misleading. In truth and in fact respondents' preparation designated "Von's Pink Tablets" is not a remarkable treatment or an effective treatment for stomach ulcers or stomach ulcers caused by gastric hyperacidity. The use of said preparation will not bring prompt relief to one suffering from a long-standing case of stomach ulcers. Stomach ulcers may not be satisfactorily and easily treated at home by the use of Von's Pink Tablets. The use of said preparation will not restore the stomach content to a more correct chemical balance but will in fact neutralize all or part of the hydrochloric acid content of the stomach, and to the extent that such acid is neutralized, destroy the digestive function of said acid and will also interfere with or destroy the medium necessary to the proper action of pepsin and proper digestion. The use of said preparation will not prevent or tend to prevent stomach ulcers from forming. The taking of said preparation will not make it safe for one suffering from stomach ulcers to eat heartily. The taking of said preparation will not effectively coat stomach ulcers or denuded surfaces of the stomach with any protective film or powder.

PAR. 6. The use by the respondents of the foregoing false and misleading statements and representations, and others of similar nature, disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondents' said preparation.

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 the 6th day of February, A. D., 1942, issued and served its complaint in this proceeding upon the respondents, George Von Nieda, an individual, trading as Von Drug Company, and Wallace G. Firth, an individual, trading as Omaha Von Company; F. J. Foersterling and Virginia G. Pachaly, copartners, trading as Philadelphia Von Company and as Chicago Von Company; W. A. Egan, an individual, trading

as Boston Von Company; E. W. Downs, an individual, trading as Los Angeles Von Company and as San Francisco Von Company; C. M. LeRoux, an individual, trading as Atlanta Von Company; Clarence A. Paulson, an individual, trading as Twin City Von Company; Lottie Johnston, an individual, trading as Indianapolis Von Company; M. T. Sughroue, an individual, trading as Seattle Von Company; G. B. McGlenn and C. A. Revell, copartners, trading as Detroit Von Company and as Cleveland Von Company; E. C. Beebe, an individual, trading as New York Von Company; charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 16, 1942, the foregoing named respondents, joined by Sadie Von Nieda and Florence Beebe, filed their answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and by Sadie Von Nieda and Florence Beebe, as copartners with George Von Nieda, trading as Von Drug Company, 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 without the presentation of argument or the filing of briefs. Thereafter, pursuant to the terms of the answer and stipulation, the complaint was by order of the Commission amended whereby Sadie Von Nieda and Florence Beebe were joined as respondents as copartners with George Von Nieda trading as Von Drug Company, and this proceeding regularly came on for final hearing before the Commission on said complaint, as amended, answer and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and now being fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, George Von Nieda, is an individual, and during the times herein mentioned, has been engaged in business with Sadie Von Nieda and Florence Beebe, individuals, trading and doing business as copartners under the name Von Drug Company, with their office and place of business located at Miami Beach, Fla. The said Sadie Von Nieda and Florence Beebe, not named as respondents in the complaint, voluntarily joined with the other respondents in answering the complaint and have stipulated and agreed that any order made by the Commission in this matter shall be as effective, insofar as they are concerned, as if they had been named in the complaint and served with a copy thereof.

Respondent, Wallace G. Firth, is an individual, trading and doing business under the name of Omaha Von Company, with his office and principal place of business located in the Keeline Building, Omaha, Nebr.

The respondents, F. J. Foersterling and Virginia G. Pachaly, are copartners, trading and doing business under the names of Philadelphia Von Company and Chicago Von Company, their respective addresses being 948 East 81st Street, Chicago, Ill., and 8022 Ingleside Avenue, Chicago, Ill.

Respondent, W. A. Egan, is an individual, trading and doing business under the name of Boston Von Company, with his office and principal place of business located at 128A Tremont Street, Boston, Mass.

Respondent, E. W. Downs, is an individual, trading and doing business under the names of Los Angeles Von Company and San Francisco Von Company, with his office and principal places of business being located at 403 West 8th Street, Los Angeles, Calif. and 821 Market Street, San Francisco, Calif.

Respondent, C. M. LeRoux, is an individual, trading and doing business under the name of Atlanta Von Company, with his office and principal place of business located at 709 Walton Building, Atlanta, Ga.

Respondent, Clarence A. Paulson, is an individual, trading and doing business under the name of Twin City Von Company, with his office and principal place of business located at 2938 Pillsbury Avenue, Minneapolis, Minn.

Respondent, Lottie Johnston, is an individual, trading and doing business under the name of Indianapolis Von Company, with her office and principal place of business located at 2161 North Meridian Street, Indianapolis, Ind.

Respondent, M. T. Sughroue, is an individual, trading and doing business under the name of Seattle Von Company, with his office and principal place of business located at 903 Republic Building, Seattle, Wash.

Respondents, G. B. McGlenn and C. A. Revell, are copartners, trading and doing business under the names of Cleveland Von Company and Detroit Von Company, with their principal offices and places of business being located at 238 Old Arcade Building, Cleveland, Ohio, and 310 Stott Building, Detroit, Mich.

Respondent, E. C. Beebe, is an individual, trading and doing business under the name of New York Von Company, with his principal place of business being located at 391 East 149th Street, New York, N. Y., and with his principal mailing address being 1655 Drexel Avenue, Miami Beach, Fla.

PAR. 2. The respondent, George Von Nieda, together with Sadie Von Nieda and Florence Beebe, trading as Von Drug Company, are now, and for more than one year prior to the issuance of the complaint in this proceeding have been, the owners of a medicinal formula for a medicine known as "Von's Pink Tablets," containing bismuth subnitrate, magnesium oxide, and sodium bicarbonate which they caused to be manufactured in tablet form and transported in bulk from the place where manufactured in the State of Minnesota to the other named respondents at their respective places of business in States other than the State of Minnesota. Said other named respondents are each under similar contracts with the said George Von Nieda, Sadie Von Nieda, and Florence Beebe as sales agents or distributors, and upon receipt of said tablets, bottle, label, and sell same to the purchasing public and to dealers located throughout the several States of the United States and in the District of Columbia. Said respondents have acted in cooperation with each other in the acts and practices set out in the complaint.

PAR. 3. Respondents in the course and conduct of their business aforesaid have disseminated and are disseminating, and have caused and are now causing the dissemination of advertisements concerning said medicinal preparation designated "Von's Pink Tablets" by the United States mail and by various means in commerce, as commerce is defined by the

Federal Trade Commission Act, which are likely to induce, directly or indirectly, the purchase of said medicinal preparation. The respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning said medicinal 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 representations contained in said advertisement disseminated and caused to be disseminated by the respondents, as aforesaid, are the following:

A remarkable treatment for stomach ulcers due to gastric hyperacidity.

Use of the famous Von's Tablets is bringing prompt relief in thousands of really severe long standing excess acid stomach ulcer cases everywhere for many who thought they might never be better again.

There is hope for sufferers from stomach ulcers due to excess stomach acid.

Stomach ulcers caused by gastric hyperacidity are now being satisfactorily and easily treated at home through the use of Von's Pink Tablets * * * Especially designed to relieve Stomach Ulcers caused by gastric hyperacidity * * * and without operation * * *.

Have you found the key to relief from an over-acid stomach?

They tend to neutralize the acidity in the stomach and thus restore a more correct chemical balance.

Von's Pink Tablets Famous For Relief in Obstinate cases of gastritis and ulcers caused by gastric hyperacidity.

Do Von's Pink Tablets tend to prevent acid-stomach ulcers from forming when one is suffering from gastric hyperacidity? Yes, if taken in time.

Do the food instructions require a liquid or a rigid diet? No. On the contrary a substantial quantity of food is allowed to build up body strength which should aid in desired relief. How can one who has not been able to eat hardly anything start right in eating some hearty foods? * * * Von's Pink Tablets helps to make this possible * * *.

Importance of coating ulcers and of still higher importance, there should be added to the proper kind of an acid neutralizer, a fine metallic powder of unabsorbable nature as will upon being taken into the stomach, cling to the stomach irritations, thus coating any open surfaces on the stomach lining, so giving such open places needed protection.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other statements and representations similar thereto, not set forth herein, all of which purport to be descriptive of the therapeutic properties of respondents' preparation, "Von's Pink Tablets," respondents have represented, directly and by implication, that said preparation is a remarkable and effective treatment for stomach ulcers and stomach ulcers caused by gastric hyperacidity; that its use brings prompt relief to long-standing cases of stomach ulcers; that stomach ulcers may be satisfactorily and easily treated at home by the use of Von's Pink Tablets; that the use of said preparation restores the stomach content to a more correct chemical balance; that the use of said preparation tends to prevent acid stomach ulcers from forming; that the use of said preparation helps one suffering from stomach ulcers to enjoy hearty eating; and that said preparation when taken will coat stomach ulcers or denuded surfaces in the stomach with a protective metallic powder.

PAR. 5. The aforesaid statements and representations of the respondents are grossly exaggerated, false and misleading. In truth and in fact

respondents' preparation designated "Von's Pink Tablets" is not a remarkable treatment or an effective treatment for stomach ulcers or stomach ulcers caused by gastric hyperacidity. The use of said preparation will not bring prompt relief to one suffering from a long-standing case of stomach ulcers. Stomach ulcers may not be satisfactorily and easily treated at home by the use of Von's Pink Tablets. The use of said preparation will not restore the stomach content to a more correct chemical balance. The use of said preparation will not prevent or tend to prevent stomach ulcers from forming. The taking of said preparation will not make it safe for one suffering from stomach ulcers to eat heartily. The taking of said preparation will not effectively coat stomach ulcers or denuded surfaces of the stomach with any protective film or powder.

PAR. 6. The use by the respondents of the foregoing false and misleading statements and representations and others of similar nature, disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true, and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondents' said preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents and a stipulation as to the facts entered into between counsel for the respondents 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 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; and the Commission having made its findings as to the facts and conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, George Von Nieda, Sadie Von Nieda and Florence Beebe, copartners, trading as Von Drug Company; Wallace G. Firth, an individual, trading as Omaha Von Company; F. J. Foersterling and Virginia G. Pachaly, copartners, trading as Philadelphia Von Company and as Chicago Von Company; W. A. Egan, an individual, trading as Boston Von Company; E. W. Downs, an individual, trading as Los Angeles Von Company and as San Francisco Von Company; C. M. LeRoux, an individual, trading as Atlanta Von Company; Clarence A. Paulson, an individual, trading as Twin City Von Company; Lottie Johnston, an individual, trading as Indianapolis Von Company; M. T. Sughroue, an individual, trading as Seattle Von Company; G. B. McGlenn and C. A. Revell, copartners, trading as Detroit Von Company

and E. C. Beebe, an individual, trading as New York Von Company, or trading under any other name or names, their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their preparation, "Von's Pink Tablets," 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 said preparation—

(a) Is an effective treatment for stomach ulcers or stomach ulcers caused by gastric hyperacidity.

(b) Will afford prompt relief to a person suffering from a long-standing case of stomach ulcers.

(c) Is an effective and competent home treatment for stomach ulcers.

(d) Will restore the stomach content to a more correct chemical balance.

(e) Will prevent or tend to prevent stomach ulcers from forming.

(f) Will make it safe for one suffering from stomach ulcers to eat heartily.

(g) Will effectively coat stomach ulcers or denuded surfaces in the stomach with a protective coating.

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 "Von's Pink Tablets," which advertisements contain any of the representations 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.

IN THE MATTER OF

BROOKS APPLIANCE COMPANY ET AL.

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

Docket 5072. Complaint, Nov. 26, 1943¹—Decision, Jan. 27, 1944

Where a corporation, and two officers thereof, who dominated and controlled its sales policies and advertising program, engaged in the manufacture and interstate sale and distribution of their "Brooks Rupture Appliance" or "Brooks Automatic Air Cushion," and "Natural Uterine Supporter," for use by women suffering from ailments caused by displacements of the womb; and their advertising agency; in advertisements thereof, directly and by implication—

- (1) Represented falsely that use of their "Rupture Appliance" constituted a competent remedy or cure for hernia, which would assure the user cessation of all discomfort and worry occasioned thereby, enable the wearer comfortably to resume and fully enjoy all activities of a normal life, including hard work and strenuous play, and in all cases of reducible hernia hold it securely and comfortably in place at all times; that the air cushion attachment was automatic and always clung to the spot to which it was adjusted without slipping, and that the device adjusted itself to every bodily movement, enabling nature to heal the hernia so that the need for wearing a truss or support of any kind would be obviated, and eliminating the possibility of strangulation;

Facts being that there are many reducible hernias which can not be retained by merely wearing an appliance or truss, no device or possible truss is the best appliance for use in all cases of reducible hernia, many types being superior for some hernias to that herein involved; fact that where a truss is properly fitted and succeeds in holding back the hernia, a small percentage of cases will heal to a point where the appliance may be laid aside, such does not mean hernia's permanent healing since unusual activity or straining may cause it to become active again; and every person thus affected can not expect through the use of a truss, either their's or others, to return to normal daily activities of manual labor or hard play, but must take reasonable precautions, to avoid further trouble from the hernia including possible strangulation of the part entering the sack; and

- (2) Falsely represented that use of their "Natural Uterine Supporter" constituted a competent and effective treatment for all uterine displacements and would relieve and cure all ailments and diseases caused by womb displacements;

Facts being use of said device might readily exaggerate many uterine or female sex difficulties, and no such device should be used unless it is determined by a competent physician that it will be beneficial and is not likely to be injurious to the wearer;

With capacity to mislead and deceive the purchasing public into the erroneous belief that such representations were true and because of such mistaken belief, into the purchase of said devices:

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. R. P. Bellinger for the Commission.

¹ Amended.

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Brooks Appliance Company, a corporation, Harold C. Brooks, and Craig W. Brooks, individually and as officers of Brooks Appliance Company, and Fogarty-Jordan-Phelps Company, a corporation, hereinafter referred to as the respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its amended complaint in that respect as follows:

PARAGRAPH 1. The respondent, Brooks Appliance Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Michigan with its principal place of business located in Brooks Building at Marshall, Mich., and with branch offices at 500 Fifth Avenue, New York, N. Y. and 5 North Wabash Avenue, Chicago, Ill. The respondents, Harold C. Brooks and Craig W. Brooks, are individuals and officers of the said corporate respondent with their address also Marshall, Mich., and as officers of the said corporation they dominate and control the sales policies and advertising program thereof, particularly with respect to the use of the advertising statements and representations hereinafter referred to.

PAR. 2. The corporate respondent, Brooks Appliance Company, and the individual respondents, Harold C. Brooks and Craig W. Brooks are now, and for more than five years last past have been, engaged in manufacturing and in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of a device generally known as a truss designed for use in cases of hernia and designated as Brooks Rupture Appliance and as Brooks Automatic Air Cushion, and a device designated as Natural Uterine Supporter intended for use by women suffering from ailments caused by displacements of the womb.

The above-named respondents conduct their said business through the mails, selling directly to the individual users of their said devices, and the said respondents cause the same to be transported from their aforesaid places of business in the States of Michigan, New York and Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Said respondents maintain, and at all times mentioned herein, have maintained a course of trade in their said devices in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, Fogarty-Jordan-Phelps Company, is an Illinois corporation with its place of business located at 307 North Michigan Avenue, Chicago, Ill. This respondent is an advertising agency engaged in preparing, disseminating and causing to be published, advertising material for its patrons, and as such is the advertising representative of the respondents, Brooks Appliance Company, Harold C. Brooks and Craig W. Brooks, and prepares and has prepared, and aids and has aided, in the preparation, circulation and placing of the advertising matter used in the manner hereinafter set out, in connection with the sale and distribution in commerce of the said devices. All of the respondents named herein act

and have acted in full cooperation with one another in the performance of the acts and practices herein alleged.

PAR. 4. In the furtherance of the sale and distribution of the said devices sold and distributed by the respondents, Brooks Appliance Company and Harold C. Brooks and Craig W. Brooks, the respondents have disseminated and are now disseminating and have caused and are now causing the dissemination of, false advertisements concerning said devices by means of the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and the respondents have also disseminated and are now disseminating and have caused and are now causing the dissemination of, false advertisements concerning said devices, by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

With respect to the device generally known as a truss:

RUPTURED MEN NOW DO FULL TIME WAR WORK. Stop your rupture worries. Do you want to enjoy life again? Do you want to have a part in its normal activities, to work, to live and to do your share in the winning of the war? Then let us make this simple suggestion. Try a Brooks Rupture Appliance. Over four million rupture sufferers have had heavenly relief through this effective device. This simple acting invention holds reducible rupture in place securely and gives nature a chance to strengthen the muscles.

don't WORRY ABOUT RUPTURE. Why put up with years of needless discomfort and worry? Try a Brooks Automatic Air Cushion. This marvelous appliance permits the opening to close, yet holds reducible rupture securely, comfortably—day and night. Thousands report amazing results.

STOP Your Rupture Worries! Why worry and suffer any longer? Learn about our perfected invention for all forms of reducible rupture in men, women and children. Support fitted with automatic air cushion, assists Nature in a natural strengthening of the weakened muscles. Thousands made happy.

Don't let **RUPTURE** stop you. Although the armed services may not accept you, industry forging the tools of war **CAN** use you, providing you make yourself fit for full-time, all-out war effort. Learn now how the Brooks Rupture Appliance has made it possible for thousands of ruptured men and women to go about their daily duties, with full efficiency and in absolute comfort.

Why worry any longer? Learn now about this perfected invention for all forms of reducible rupture. It has brought comfort and happiness to millions of men, women and children, by assisting Nature to restore strength to the weakened muscles. Imagine how happy thousands of rupture sufferers were to report that they had no further use for any kind of support. How would **YOU** like to be able to feel the same happiness, and to write such a message?

Patented **AIR-CUSHION** Support Gives Nature a Chance. The perfected Automatic Air Cushion supports the weakened parts, allowing Nature, the Great Healer, to swing into action! You should experience the most heavenly comfort and security. . . . Wouldn't you like to say "Goodbye" to rupture worries and enjoy **NEW** glory in living? . . . **NEW** happiness with the help of Mother Nature and the Brooks Perfected Air Cushion Appliance?

Every RUPTURE Sufferer Can Now Have The Benefit of My Automatic Air Cushion Sent on Trial! See for yourself how this marvelously soft, flexible AIR-CUSHION SUPPORT automatically adjusts itself to every move of the body; how it firmly supports reducible Rupture in men, women or children without gouging or punishing; how it stays without slipping . . . and how this light weight Air-Cushion truss invention will enable you to say "Goodbye" to Rupture Worries.

Why put up with days . . . months . . . YEARS of discomfort, worry and fear? Learn now about this perfected invention for all forms of reducible rupture. Surely you keenly desire—you eagerly CRAVE to enjoy life's normal activities and pleasures once again. To work . . . to play . . . to live . . . to love . . . with the haunting Fear of Rupture banished from your thoughts! Literally, thousands of rupture sufferers have entered this Kingdom of Paradise Regained. Why not you? Some wise man said, "Nothing is impossible in this world"—and it is true, for where others fail is where we have had our greatest success in many cases!

Patented AIR-CUSHION Support Gives Nature a Chance to CLOSE the OPENING. Think of it! Here is a surprising yet simple-acting invention that permits Nature to close the opening—that holds the rupture securely, but gently, day and night, at work and at play.

It brings heavenly comfort and security—while the automatic Air Cushion continually works, in its own unique way, to help Nature get results!

Why worry and suffer any longer? Learn now about my perfected invention for all forms of reducible rupture. It has brought ease, comfort and happiness to thousands of men, women and children. You can imagine how happy many of these rupture sufferers were when they wrote to me that they had no further use for any kind of support. How would YOU like to be able to experience that same happiness? The only way to find out is to actually try this remarkable appliance.

Why not Give Nature a Chance? As long as Your rupture can be put back and held in place with the fingers—in other words, if your rupture is completely reducible, why block all hope for a natural recovery by wearing something that prevents Nature from working for you? Why not help Nature by using the Brooks Automatic AIR-CUSHION support, that works with natural physical laws and holds the rupture gently but securely!

Doctor Says Cured.

I discarded your appliance about three months ago, having no further need for it. By that I mean I am perfectly cured and have no discomfort whatever after lifting pianos, etc., at my work.

Completely recovered.

IS YOUR Rupture GETTING Worse? It is terrible to feel that your rupture is constantly getting worse, taking the joy out of life, even making you feel despondent—without your seeming to be able to DO anything about it! And yet, it is so needless! We have information for you that has brought deliverance and joy to thousands of men, women and children.

STOP IT, STOP IT!

Be Yourself Again!

As sure as you live and breathe, if you have a reducible rupture, you can stop your rupture worries—find yourself alive and energetic and rid of all the old fears that made your existence a bad dream! THE FAMOUS BROOKS AUTOMATIC AIR-CUSHION APPLIANCE WILL SET YOU FREE. There is nothing experimental about the famous BROOKS Air-Cushion Rupture Appliance . . . The very day you put on a BROOKS Patented Air-Cushion, you will feel reborn! That's because the Air-Cushion clings as nothing else can! No more fear of slipping, to let the rupture down. No more dread of strangulation!—and—at last!—complete freedom to indulge in every normal activity!

Why continue to suffer with rupture? Stop your worries and fears.

The Cure of Rupture.

According to thousands of reducible rupture sufferers who have written us to report not only relief from pain and suffering but also in many cases a cure through the assisting agency of a Brooks Air Cushion Appliance, it is possible for you to believe that here at last is real proof that brains and inventive power—centered on this long-felt want—have accomplished their great object.

Its efficiency is primarily due to the **AUTOMATIC AIR-CUSHION WHICH** follows every movement of the body, always covers the ruptured spot and is always where it should be to do you the most good.

The Brooks Air Cushion Appliance . . . covers the rupture perfectly and binds the parts together as you would a broken limb, drawing the weakened muscles together and holding them firmly in place, making a cure possible, assuming that your rupture is curable through the assistance of such constant and perfect retention.

The correct Appliance will retain rupture under all circumstances—in heavy lifting and in all positions of the body. With its gentle pressure always over the ruptured parts, it gives instant relief and allows nature to make a cure where cure is possible.

With respect to the Natural Uterine Supporter:

Uterine Displacements and Their Treatments with Our Natural Uterine Supporter.

Many ailments with which women are afflicted are caused by **DISPLACEMENTS OF THE WOMB**, and our object in presenting our **NATURAL UTERINE SUPPORTER** is to furnish an instrument or combination that will not only alleviate the affliction, but entirely eradicate the disease.

PAR. 5. By the use of the statements and representations hereinabove set forth, and others similar thereto, not specifically set out herein, respondents represent, and have represented, directly and by implication, that the use of their device designated as Brooks Rupture Appliance and as Brooks Automatic Air Cushion constitutes a competent remedy or cure for hernia; that its use by one suffering from hernia will assure the cessation of all discomfort and worry occasioned by such ailment; that its use in cases of hernia will enable the user to comfortably resume and fully enjoy all activities of a normal life, including hard work and strenuous play; that its use in all cases of reducible hernia will hold the hernia securely and comfortably in place at all times; that respondents' so-called air cushion attachment is automatic and always clings to the spot to which it is adjusted, without slipping; that it adjusts itself to every bodily movement; that its use will enable nature to heal the hernia so that the need for wearing a truss or support of any kind will be obviated; that its use will eliminate the possibility of a strangulated hernia; that the use of their device designated as Natural Uterine Supporter constitutes a competent and effective treatment for all uterine displacements, and will relieve and cure all ailments and diseases caused by womb displacements.

PAR. 6. The aforesaid representations and advertisements used and disseminated by the respondents as hereinabove described are grossly exaggerated, false and misleading. In truth and in fact, use of respondents' device designated as Brooks Rupture Appliance and as Brooks Automatic Air Cushion does not constitute a competent remedy or cure for hernia; its use by one suffering from hernia will not assure the cessation of all discomfort and worry occasioned by such ailment; its use in cases of hernia will not enable the user to comfortably resume and fully enjoy all activities of a normal life, including hard work and strenuous play; its use in all

cases of reducible hernia will not hold the hernia securely and comfortably in place at all times. Respondents' so-called air cushion attachment is not automatic and does not always cling to the spot to which it is adjusted, without slipping; it does not adjust itself to every bodily movement; its use will not enable nature to heal the hernia so that the need for wearing a truss or support of any kind will be obviated; its use will not eliminate the possibility of a strangulated hernia; the use of respondents' device designated as Natural Uterine Supporter does not constitute a competent and effective treatment for all uterine displacements, and will not relieve and cure all ailments and diseases caused by womb displacements. The use of this device might readily exaggerate many uterine or female sex difficulties, and no such device should be used unless it is determined by a competent physician that it will be beneficial and not likely injurious to the wearer.

PAR. 7. There are many reducible hernias which cannot be retained merely by wearing an appliance or truss, and neither respondents' device nor any other possible truss is the best appliance for use in all cases of reducible hernia; there are types of trusses superior to the Brooks Appliance for some hernias. A very small percentage of reducible hernias may, without the use of a truss, close the opening sufficiently by the ordinary process of healing so as to retain the hernia, provided the individual exercises care to avoid activities or straining which will cause the opening to periodically stretch or become filled with the organs which customarily enter it. Where a truss is properly fitted and where it succeeds in holding back the hernia, a small percentage of cases will heal to a point where the appliance may be laid aside. This does not mean, however, that the hernia has completely and permanently healed. Unusual activity or straining may cause the hernia to become active again. The mere fact that a person who has previously worn a truss reports that he no longer required the truss does not mean that he will not need it again in the future. No person who has a hernia can expect through the use of a truss, either respondents' or others, to return to normal daily activities of manual labor or hard play. Even if a person so afflicted has a well fitted truss, he must take reasonable precautions in order to avoid further trouble from the hernia and possible strangulation of the part which enters the hernia sack.

PAR. 8. The use by the respondents of the foregoing false, deceptive and misleading statements and advertisements with respect to their said devices, disseminated as aforesaid, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and advertisements are true and because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said devices.

PAR. 9. 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 the 26th day of November 1943 issued and subsequently served its amended complaint in this proceeding upon the respondents, charging them with the use of unfair and deceptive acts and

practices in commerce in violation of the provisions of said act. The respondents have not filed answer to the said amended complaint, but a stipulation has been entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents 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 amended complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said amended complaint and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Brooks Appliance Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal place of business located in Brooks Building at Marshall, Mich., and with branch offices at 500 Fifth Avenue, New York, N. Y., and 5 North Wabash Avenue, Chicago, Ill. The respondents, Harold C. Brooks and Craig W. Brooks, are individuals and officers of the said corporate respondent with their address also Marshall, Mich., and as officers of the said corporation they dominate and control the sales policies and advertising program thereof, particularly with respect to the use of the advertising statements and representations hereinafter referred to.

PAR. 2. The corporate respondent, Brooks Appliance Company, and the individual respondents, Harold C. Brooks and Craig W. Brooks, are now, and for more than five years last past have been, engaged in manufacturing and in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of a device generally known as a truss designed for use in cases of hernia and designated as Brooks Rupture Appliance and as Brooks Automatic Air Cushion, and a device designated as Natural Uterine Supporter intended for use by women suffering from ailments caused by displacements of the womb.

The above named respondents conduct much of their said business through the mails, selling directly to many individual users of their said devices, and the said respondents cause the same to be transported from their aforesaid places of business in the States of Michigan, New York; and Illinois to the purchasers thereof located in the various other States of the United States and in the District of Columbia.

Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said devices in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, Fogarty-Jordan-Phelps Company, is an Illinois corporation now in the process of dissolution. This respondent, when

actively engaged in business, was an advertising agency, wholly owned and operated by its three officers, Cecil C. Fogarty, Walter Jordan, and Norman J. Phelps, with its place of business located at 307 North Michigan Avenue, Chicago, Ill. Application for dissolution of said corporation was filed with the Secretary of State of the State of Illinois on October 30, 1943. The said corporate respondent, when active, was engaged in preparing, disseminating and causing to be published, advertising material for its patrons, and as such was the advertising representative of the respondents, Brooks Appliance Company, Harold C. Brooks and Craig W. Brooks, and prepared and aided in the preparation, circulation and placing of the advertising matter used in the manner hereinafter set out, in connection with the sale and distribution in commerce of the said devices.

All of the respondents named herein, including the individuals Cecil C. Fogarty and Norman J. Phelps, act and have acted in full cooperation with one another in the performance of the acts and practices herein described. On October 30, 1943, the individuals Cecil C. Fogarty and Norman J. Phelps formed a copartnership in the name of Fogarty-Phelps Company and as such took over the entire ownership, management, operation and control of the said corporation, Fogarty-Jordan-Phelps Company, since which date the said Cecil C. Fogarty and Norman J. Phelps have been conducting the said business as copartners in the name of Fogarty-Phelps Company, at the same address, with the same connections and relationships to the respondents, Brooks Appliance Company, Harold C. Brooks, and Craig W. Brooks, and their advertising representations, hereinafter set forth, as the corporation Fogarty-Jordan-Phelps Company previously had.

PAR. 4. In the furtherance of the sale and distribution of the said devices sold and distributed by the respondents, Brooks Appliance Company and Harold C. Brooks and Craig W. Brooks, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of advertisements concerning said devices by means of the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and the respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning said devices, by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

With respect to the device generally known as a truss:

RUPTURED MEN NOW DO FULL TIME WAR WORK. Stop your rupture worries. Do you want to enjoy life again? Do you want to have a part in its normal activities, to work, to live and to do your share in the winning of the war? Then let us make this simple suggestion. Try a Brooks Rupture Appliance. Over four million rupture sufferers have had heavenly relief through this effective device. This simple acting invention holds reducible rupture in place securely and gives nature a chance to strengthen the muscles.

don't WORRY ABOUT RUPTURE. Why put up with years of needless discomfort and worry? Try a Brooks Automatic Air Cushion. This marvelous appliance permits

the opening to close, yet holds reducible rupture securely, comfortably—day and night. Thousands report amazing results.

STOP Your Rupture Worries! Why worry and suffer any longer? Learn about our perfected invention for all forms of reducible rupture in men, women and children. Support fitted with automatic air cushion, assists Nature in a natural strengthening of the weakened muscles. Thousands made happy.

Don't let RUPTURE stop you. Although the armed services may not accept you, industry forging the tools of war CAN use you, providing you make yourself fit for full-time, all-out war effort. Learn now how the Brooks Rupture Appliance has made it possible for thousands of ruptured men and women to go about their daily duties, with full efficiency and in absolute comfort.

Why worry any longer? Learn now about this perfected invention for all forms of reducible rupture. It has brought comfort and happiness to millions of men, women and children, by assisting Nature to restore strength to the weakened muscles. Imagine how happy thousands of rupture sufferers were to report that they had no further use for any kind of support. How would YOU like to be able to feel the same happiness, and to write such a message?

Patented AIR-CUSHION Support Gives Nature a Chance. The perfected Automatic Air Cushion supports the weakened parts, allowing Nature, the Great Healer, to swing into Action! You should experience the most heavenly comfort and security . . . Wouldn't you like to say "Goodbye" to rupture worries and enjoy NEW glory in living? . . . NEW happiness with the help of Mother Nature and the Brooks Perfected Air Cushion Appliance?

Every RUPTURE Sufferer Can Now Have The Benefit of My Automatic Air Cushion Sent on Trial! See for yourself how this marvelously soft, flexible AIR-CUSHION SUPPORT automatically adjusts itself to every move of the body; how it firmly supports reducible Rupture in men, women or children without gouging or punishing; how it stays without slipping . . . and how this light weight Air-Cushion truss invention will enable you to say "Goodbye" to Rupture Worries.

Why put up with days . . . months . . . YEARS of discomfort, worry and fear? Learn now about this perfected invention for all forms of reducible rupture. Surely you keenly desire—you eagerly CRAVE to enjoy life's normal activities and pleasures once again. To work . . . to play . . . to live . . . to love . . . with the haunting Fear of Rupture banished from your thoughts! Literally, thousands of rupture sufferers have entered this Kingdom of Paradise Regained. Why not you? Some wise man said, "Nothing is impossible in this world"—and it is true, for where others fail is where we have had our greatest success in many cases!

Patented AIR CUSHION Support Gives Nature a Chance to CLOSE the OPENING. Think of it! Here is a surprising yet simple-acting invention that permits Nature to close the opening—that holds the rupture securely, but gently, day and night, at work and at play.

It brings heavenly comfort and security—while the automatic Air Cushion continually works, in its own unique way, to help Nature get results!

Why worry and suffer any longer? Learn now about my perfected invention for all forms of reducible rupture. It has brought ease, comfort and happiness to thousands of men, women and children. You can imagine how happy many of these rupture sufferers were when they wrote to me that they had no further use for any kind of support. How would YOU like to be able to experience that same happiness? The only way to find out is to actually try this remarkable appliance.

Why not Give Nature a Chance? As long as Your rupture can be put back and held in place with the fingers—in other words, if your rupture is completely reducible, why block all hope for a natural recovery by wearing something that prevents Nature from working for you? Why not help Nature by using the Brooks Automatic AIR-CUSH-

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ION support, that works with natural physical laws and holds the rupture gently but securely!

Doctor Says Cured.

I discarded your appliance about three months ago, having no further need for it. By that I mean I am perfectly cured and have no discomfort whatever after lifting pianos, etc., at my work.

Completely recovered.

IS YOUR Rupture GETTING Worse? It is terrible to feel that your rupture is constantly getting worse, taking the joy out of life, even making you feel despondent—without your seeming to be able to DO anything about it! And yet, it is so needless! We have information for you that has brought deliverance and joy to thousands of men, women and children.

STOP IT, STOP IT!

Be yourself Again!

As sure as you live and breathe, if you have a reducible rupture, you can stop your rupture worries—find yourself alive and energetic and rid of all the old fears that made your existence a bad dream! THE FAMOUS BROOKS AUTOMATIC AIR-CUSHION APPLIANCE WILL SET YOU FREE. There is nothing experimental about the famous BROOKS Air-Cushion Rupture Appliance . . . The very day you put on a BROOKS Patented Air-Cushion, you will feel reborn! That's because the Air-Cushion clings as nothing else can! No more fear of slipping, to let the rupture down. No more dread of strangulation!—and—at last!—complete freedom to indulge in every normal activity!

Why continue to suffer with rupture? Stop your worries and fears.

The Cure of Rupture.

According to thousands of reducible rupture sufferers who have written us to report not only relief from pain and suffering but also in many cases a cure through the assisting agency of a Brooks Air Cushion Appliance, it is possible for you to believe that here at last is real proof that brains and inventive power—centered on this long-felt want—have accomplished their great object.

Its efficiency is primarily due to the AUTOMATIC AIR-CUSHION WHICH follows every movement of the body, always covers the ruptured spot and is always where it should be to do you the most good.

The Brooks Air Cushion Appliance . . . covers the rupture perfectly and binds the parts together as you would a broken limb, drawing the weakened muscles together and holding them firmly in place, making a cure possible, assuming that your rupture is curable through the assistance of such constant and perfect retention.

The correct Appliance will retain rupture under all circumstances—in heavy lifting and in all positions of the body. With its gentle pressure always over the ruptured parts, it gives instant relief and allows nature to make a cure where cure is possible.

With respect to the Natural Uterine Supporter:

Uterine displacements and Their Treatments with our Natural Uterine Supporter.

Many ailments with which women are afflicted are caused by DISPLACEMENTS OF THE WOMB, and our object in presenting our NATURAL UTERINE SUPPORTER is to furnish an instrument or combination that will not only alleviate the affliction, but entirely eradicate the disease.

PAR. 5. By the use of the statements and representations hereinabove set forth, and others similar thereto, not specifically set out herein, respondents represent, and have represented, directly and by implication, that the use of their device designated as Brooks Rupture Appliance and

as Brooks Automatic Air Cushion constitutes a competent remedy or cure for hernia; that its use by one suffering from hernia will assure the cessation of all discomfort and worry occasioned by such ailment; that its use in cases of hernia will enable the user to comfortably resume and fully enjoy all activities of a normal life, including hard work and strenuous play; that its use in all cases of reducible hernia will hold the hernia securely and comfortably in place at all times; that respondents' air cushion attachment is automatic and always clings to the spot to which it is adjusted, without slipping; that the device adjusts itself to every bodily movement; that its use will enable nature to heal the hernia so that the need for wearing a truss or support of any kind will be obviated; that its use will eliminate the possibility of a strangulated hernia; that the use of their device designated as Natural Uterine Supporter constitutes a competent and effective treatment for all uterine displacements, and will relieve and cure all ailments and diseases caused by womb displacements.

PAR. 6. The aforesaid representations and advertisements, used and disseminated by the respondents as mentioned herein, are exaggerated, false and misleading. The use of respondents' device designated as Brooks Rupture Appliance and as Brooks Automatic Air Cushion does not constitute a competent remedy or cure for hernia; its use by all persons suffering from hernia will not assure the cessation of all discomfort and worry occasioned by such ailment; its use in all cases of hernia will not enable the user to comfortably resume and fully enjoy all activities of a normal life, including hard work and strenuous play; its use in all cases of reducible hernia will not hold the hernia securely and comfortably in place at all times. Respondents' air cushion attachment is not fully automatic and does not always cling to the spot to which it is adjusted, without slipping; the device does not adjust itself to every bodily movement; its use will not, in most cases, enable nature to heal the hernia so that the need for wearing a truss or support of any kind will be obviated; its use will not eliminate the possibility of a strangulated hernia; the use of respondents' device, designated as Natural Uterine Supporter, does not constitute a competent and effective treatment for all uterine displacements, and will not relieve and cure all ailments and diseases caused by womb displacements. The use of this device might readily exaggerate many uterine or female sex difficulties, and no such device should be used unless it is determined by a competent physician that it will be beneficial and not likely injurious to the wearer.

PAR. 7. There are many reducible hernias which cannot be retained merely by wearing an appliance or truss; and neither respondents' device nor any other possible truss is the best appliance for use in all cases of reducible hernia; there are types of trusses superior to the Brooks Appliance for some hernias. Where a truss is properly fitted and where it succeeds in holding back the hernia, a small percentage of cases will heal to a point where the appliance may be laid aside. This does not mean, however, that the hernia has completely and permanently healed. Unusual activity or straining may cause the hernia to become active again. The mere fact that a person who has previously worn a truss reports that he no longer required the truss does not mean that he will not need it again in the future. Every person who has a hernia cannot expect through the use of a truss, either respondents' or others, to return to normal daily activities of manual labor or hard play. Even if a person so afflicted has a well-fitted truss, he must take reasonable precautions in order to avoid

further trouble from the hernia and possible strangulation of the part which enters the hernia sack.

PAR. 8. The use by the respondents of the foregoing false, deceptive, and misleading statements and advertisements with respect to their said devices, disseminated as aforesaid, has the capacity and tendency to mislead and deceive the purchasing public into the erroneous and mistaken belief that such statements and advertisements are true and, because of such erroneous and mistaken belief, into the purchase of respondents' said devices.

CONCLUSION

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

MODIFIED ORDER TO CEASE AND DESIST¹

This matter coming on to be considered by the Commission upon the request of the respondents, dated February 3, 1944, for modification of the order to cease and desist issued in this proceeding on January 27, 1944, and the Commission having duly considered said request and the record herein, and being now fully advised in the premises.

It is ordered, That the order to cease and desist issued in this proceeding on January 27, 1944, be, and the same hereby is, modified so as to read as follows:

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and a stipulation as to the facts entered into between the respondents 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 and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding; and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Brooks Appliance Company, a corporation; Harold C. Brooks and Craig W. Brooks, individually and as officers of Brooks Appliance Company; and Fogarty-Jordan-Phelps Company, a corporation,* and their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of the device designated as Brooks Rupture Appliance and as Brooks Automatic Air Cushion or the device designated as Natural Uterine Supporter, or any other device of substantially similar construction and performing substantially similar functions, whether sold under the same names or under any other names 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—

¹ Order published as of Feb. 7, 1944.

(a) That the device designated as Brooks Rupture Appliance and as Brooks Automatic Air Cushion constitutes a competent remedy or cure for hernia;

(b) That its use by all persons suffering from hernia will assure the cessation of all discomfort and worry occasioned by such ailment;

(c) That its use in all cases of hernia will enable the wearer to comfortably resume and fully enjoy the activities of a normal life, including hard work and strenuous play;

(d) That its use in every case of reducible hernia will hold the hernia securely and comfortably in place at all times;

(e) That said device adjusts itself to every bodily movement;

(f) That the use of said device can be depended upon in most cases to assist nature in healing hernia to the extent that the need of a truss or other support will be eliminated;

(g) That its use will eliminate the possibility of a strangulated hernia;

(h) That the air cushion attachment incorporated in said device is fully automatic and clings to any spot to which it is adjusted, and will not slip;

(i) That the use of the device designated as Natural Uterine Supporter constitutes a competent and effective treatment for uterine displacements, and will relieve or cure ailments or diseases caused by displacements of the womb.

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 the said devices, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondents shall, within 60 days after service upon them of this modified 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
 RODIN NOVELTY COMPANY

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

Docket 5082. Complaint, Nov. 17, 1943—Decision, Jan. 28, 1944

Where a corporation engaged in the competitive interstate sale and distribution of cigarette lighters, ash trays, knives, luggage, clocks, blankets, toys, leather goods, novelties and other merchandise, including various assortments of merchandise so packed and assembled with punch boards and push cards as to involve use of games of chance when sold to purchasers, a typical assortment being composed of 12 "House-Broke Pete" ash trays and a punch board containing 800 2¢ punches, for use in their sale and distribution under a plan by which chance punching of certain numbers entitled purchaser to an ash tray or package of cigarettes, value of which exceeded said amount, others receiving nothing for their money; while second similar assortment included 10 cigarette lighters and a punch board containing 600 punches at 5¢ each, with lucky purchasers receiving a lighter or a package of cigarettes—

Sold such assortments to retail dealers, clubs and other organizations in various states by whom they were directly or indirectly exposed and sold to the purchasing public in accordance with aforesaid sales plan, involving sale of chance to procure articles at much less than normal retail price thereof; and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products, contrary to an established public policy of the United States government and in competition with many who do not use chance sales methods or any other methods contrary to public policy;

With result that many persons were attracted by said sales methods and the element of chance involved therein and were thereby induced to buy and sell its merchandise in preference to that of aforesaid competitors, and with tendency and capacity unfairly to divert trade in commerce to it from them to the substantial injury of competition:

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

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

Mr. David Singer, of Sioux City, Ia., 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 Rodin Novelty Company, 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, Rodin Novelty Company, is a corporation, organized and doing business under and by virtue of the laws of the State

of Iowa, with its office and principal place of business located at 814 Pierce Street, Sioux City, Iowa. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of cigarette lighters, ash trays, knives, luggage, clocks, blankets, toys, leather goods, novelties and other merchandise to retail dealers, clubs and other organizations located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be transported from its place of business in the city of Sioux City, Iowa, to purchasers thereof at their respective points of location in the various States of the United States other than Iowa and in the District of Columbia. There is now and has been for more than one year last past a course of trade by respondent in said merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business, respondent is and has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of similar articles of merchandise 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 retail dealers, clubs and other organizations certain assortments of merchandise so packed and assembled as to involve the use of games of chance, gift enterprises or lottery schemes when sold and distributed to the purchasers thereof. Typical of said assortments are the ones hereinafter described for the purpose of showing the methods used by respondent, and are as follows:

One assortment includes 12 novelty ash trays designated "House-Broke Pete" and a punch board. The novelty ash trays are distributed to the purchasing public by means of a punch board in the following manner: The punchboard contains 800 punches, each concealing a number, said numbers running from 1 to 800, but these numbers are not arranged in numerical sequence. Sales of the punches are 2¢ each. The board bears a legend informing purchasers and prospective purchasers that a certain specified number entitles the purchaser thereof to receive one of the ash trays, and certain other specified numbers entitle the purchaser thereof to receive a package of cigarettes. The purchaser who does not qualify by obtaining one of the specified numbers receives nothing for his money. The ash trays and the packages of cigarettes are worth more than 2¢ each, and the purchaser who obtains a number calling for one of the ash trays or a pack of cigarettes receives the same for 2¢. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch containing the number separated from the board. The ash trays and cigarettes are thus distributed to the purchasers of punches from the board wholly by lot or chance.

Another of the assortments sold and distributed by respondent consists of 10 cigarette lighters and a punch board. The lighters are distributed to the purchasing public in the following manner: The punch board contains 600 punches, each concealing a number. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. Sales are 5¢ per punch, and the board bears a statement informing the purchasers and prospective purchasers that a certain specified number entitles the purchaser thereof

to receive one of the lighters, and certain other specified numbers entitle the purchaser thereof to receive a package of cigarettes. A customer who does not qualify by punching one of the specified numbers receives nothing for his money. The lighter and the packages of cigarettes are worth more than 5¢ each, and the purchaser whose punch reveals a number calling for the lighters or the pack of cigarettes receive the same for 5¢. The numbers are effectively concealed from the purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The lighters and cigarettes are thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondent furnishes and has furnished various punch boards and push cards and merchandise assortments for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise or lottery scheme. Such punch board and merchandise assortments are similar to the ones herein described and vary only in detail, and said push card assortments differ from the above-described assortments only in that the merchandise is different and is distributed by means of push cards instead of punch boards.

PAR. 3. Retail dealers and others who purchase respondent's ash trays, cigarette lighters and other merchandise directly or indirectly expose and sell same to the purchasing public in accordance with the sales plans aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth. The use by the respondent of said sales plan or methods in the sale of its merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice 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 by the methods or sales plans hereinabove set forth involves a game of chance or the sale of a chance to procure the articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms and corporations who sell and distribute merchandise in competition with respondent as above alleged do not use said methods or any method involving a game of chance, or the sale of a chance to win something by chance or by any other method which is contrary to public policy. Persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of its merchandise and by the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise of said competitors of respondent who do not use the same or equivalent methods.

The use of said methods by respondent because of said game of chance has a tendency and capacity to 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 methods, and as a result thereof substantial injury is being done and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in com-

merce 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 November 17, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Rodin Novelty Company, 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 that act. On December 21, 1943, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to the said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint and the answer thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Rodin Novelty Company, is a corporation, organized and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 814 Pierce Street, Sioux City, Iowa. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of cigarette lighters, ash trays, knives, luggage, clocks, blankets, toys, leather goods, novelties and other merchandise to retail dealers, clubs and other organizations located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be transported from its place of business in the city of Sioux City, Iowa, to purchasers thereof at their respective points of location in the various States of the United States other than Iowa and in the District of Columbia. There is now and has been for more than one year last past a course of trade by respondent in said merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business, respondent is and has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of similar articles of merchandise 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 retail dealers, clubs and other organizations certain assortments of merchandise so packed and assembled as to involve the use of games of chance, gift enterprises or lottery schemes when sold and distributed to the purchasers thereof. Typical of said assortments are the ones hereinafter described for the purpose of showing the methods used by respondent, and are as follows:

One assortment includes 12 novelty ash trays designated "House-Broke Pete" and a punch board. The novelty ash trays are distributed to the purchasing public by means of a punch board in the following manner:

The punch board contains 800 punches, each concealing a number, said numbers running from 1 to 800, but these numbers are not arranged in numerical sequence. Sales of the punches are 2¢ each. The board bears a legend informing purchasers and prospective purchasers that a certain specified number entitles the purchaser thereof to receive one of the ash trays, and certain other specified numbers entitle the purchaser thereof to receive a package of cigarettes. The purchaser who does not qualify by obtaining one of the specified numbers receives nothing for his money. The ash trays and the packages of cigarettes are worth more than 2¢ each, and the purchaser who obtains a number calling for one of the ash trays or a pack of cigarettes receives the same for 2¢. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch containing the number separated from the board. The ash trays and cigarettes are thus distributed to the purchasers of punches from the board wholly by lot or chance.

Another of the assortments sold and distributed by respondent consists of 10 cigarette lighters and a punchboard. The lighters are distributed to the purchasing public in the following manner: The punch board contains 600 punches, each concealing a number. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. Sales are 5¢ per punch, and the board bears a statement informing the purchasers and prospective purchasers that a certain specified number entitles the purchaser thereof to receive one of the lighters, and certain other specified numbers entitle the purchaser thereof to receive a package of cigarettes. A customer who does not qualify by punching one of the specified numbers receives nothing for his money. The lighter and the packages of cigarettes are worth more than 5¢ each, and the purchaser whose punch reveals a number calling for the lighter or the pack of cigarettes receives the same for 5¢. The numbers are effectively concealed from the purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The lighters and cigarettes are thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondent furnishes and has furnished various punch boards and push cards and merchandise assortments for use in the sale and distribution of its merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such punch board and merchandise assortments are similar to the ones herein described and vary only in detail, and said push card assortments differ from the above-described assortments only in that the merchandise is different and is distributed by means of push cards instead of punch boards.

PAR. 3. Retail dealers and others who purchase respondent's ash trays, cigarette lighters, and other merchandise directly or indirectly expose and sell same to the purchasing public in accordance with the sales plans aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth. The use by the respondent of said sales plans or methods in the sale of its merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice 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 by the methods or sales plans hereinabove set forth involves a game of chance or the sale of a chance to procure the articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with respondent as above found do not use said methods or any method involving a game of chance or the sale of a chance to win something by chance, or by any other method which is contrary to public policy. Persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of its merchandise and by the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise of said competitors of respondent who do not use the same or equivalent methods.

The use of said methods by respondent because of said game of chance has a tendency and capacity to 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 methods, and as a result thereof, substantial injury is being done and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The 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 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 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 its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Rodin Novelty Company, 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 respondent's merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others punchboards, push or pull cards, or other lottery devices, either with assortments of merchandise or separately, which are to be used or may be used in the sale or distribution of respondent's merchandise to the public.

2. Selling or 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 respondent, may be made 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.

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
HARRY FISCHER AND JOSEPH FISCHER, TRADING AS
HARRY FISCHER & COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND THE WOOL PRODUCTS LABELING ACT OF 1939, APPROVED OCT. 14, 1940

Docket 5073. Complaint, Nov. 1, 1943—Decision, Jan. 31, 1944

Where two partners engaged in the manufacture and interstate sale and distribution of men's topcoats, overcoats and other articles of clothing from woolen fabrics which were purchased by them from manufacturers in other states and had affixed thereto a stamp, tag, label or other means of identification purporting to show the information required by the Wool Products Labeling Act of 1939;

In connection with certain coats which were made for introduction into commerce, and were wool products within the intent and meaning of said Act in that they were composed in whole or in part of wool, reprocessed wool, or reused wool as defined therein—

Made use of conflicting labels in violation of said Act and the rules and regulations thereunder in that a cardboard tag attached to the left sleeve of the coats bore the words "Made of All Wool," while the cloth label sewed to the inner lining near the collar and bearing a picture of a camel and alpaca read "of Camel Hair and Wool," and thereby misbranded said coats in violation of said Act in that the cloth label did not show the percentage of the total fiber weight of wool, reprocessed wool, reused wool, non-wool fiber and aggregate thereof, including filler or adulterating matter as there required; and proper identification of the manufacturer or seller;

With capacity and tendency to confuse and deceive the purchasing public as to the fiber content of said coats and with effect of so doing, in violation of said Act:

Held, That such acts, practices and methods 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 Harry Fischer and Joseph Fischer, individually and as copartners, trading and doing business as Harry Fischer & Company, hereinafter referred to as respondents, have violated the provisions of 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. The respondents, Harry Fischer and Joseph Fischer, are copartners, trading and doing business as Harry Fischer and Company, and have their principal office and place of business at 315 North 12th Street, Philadelphia, Pa. Respondents are now and for more than one year last past have been engaged in manufacturing and selling men's topcoats and overcoats and other articles of clothing.

Complaint

Respondents cause, and for more than one year last past have caused, said coats and other articles of clothing, when sold by them, to be transported from their place of business in the State of Pennsylvania to various purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondents purchase the woolen fabrics from which their said coats and other articles of clothing are made from the manufacturers thereof whose places of business are located in States other than the State of Pennsylvania and cause said fabrics to be shipped from said manufacturers' places of business to respondents' factory in Philadelphia, Pa., at which place said fabrics are converted into men's coats and other articles of clothing. Said fabrics have affixed thereto by the manufacturers thereof, or by some person authorized under the provisions of the Wool Products Labeling Act and the rules and regulations promulgated thereunder, a stamp, tag, label or other means of identification purporting to show (a) the percentage of the total fiber weight of the wool product exclusive of ornamentation not exceeding five percentum 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 five percentum 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 the manufacturer's registered identification number and the name of a subsequent seller or reseller of the product 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 the 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 products where said wool products contained a fiber other than wool.

PAR. 3. Among the coats and other articles of clothing manufactured, sold and distributed by respondents in commerce as aforesaid, and also among the coats and other articles of clothing manufactured for introduction in commerce, as commerce is defined in the Wool Products Labeling Act of 1939, 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 such coats 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 and among the coats manufactured for introduction into said commerce are men's coats which bear conflicting labels. Among and typical of the conflicting labels used by respondents as aforesaid are the following:

Manufactured for
(Name of Reseller)
Made of All Wool
Mfg. 1541

2700

40

Short

Nassau

Findings

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The above label is a cardboard tag which is attached to the left sleeve of the coats.

A cloth label sewed to the inner lining near the collar of said coats reads as follows:

Burleigh — Special
(Picture of a
camel and an
alpaca)
C A R A V A N
of
Camel Hair and Wool

The use on the same coat of the cardboard label, which states that said coats are composed of all wool, and the cloth label, which states that said coats are composed of camel's hair and wool has the capacity and tendency to confuse and deceive and does confuse and deceive the purchasing public as to the fiber content of said coats and is a violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

The aforementioned coats which bear the conflicting labels set out above are misbranded in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated under such act in that the cloth label does not show (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding five percentum 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 five percentum 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 the manufacturer's registered identification number and the name of a subsequent seller or reseller of the product as provided for in the rules and regulations promulgated under said act, or the name of one or more persons subject to Section 3 of the said act with respect to such wool product; (d) the percentages, in words and figures, plainly legible, by weight of wool contents of said wool product where such wool product contained a fiber other than wool.

PAR. 4. The aforesaid acts, practices and methods of respondents, as herein alleged, are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder and 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 1st day of November, 1943, issued and subsequently served its complaint in this proceeding upon respondents, Harry Fischer and Joseph Fischer, individually and as copartners, trading and doing business as Harry Fischer & Company, charging them with the use of unfair and

deceptive acts and practices in commerce in violation of the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939. Respondents submitted an answer to the aforesaid complaint, 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 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 respondents' answer thereto, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Harry Fischer and Joseph Fischer, are copartners, trading and doing business as Harry Fischer & Company, and have their principal office and place of business at 315 North 12th Street, Philadelphia, Pa. Respondents are now and for more than one year last past have been engaged in manufacturing and selling men's topcoats and overcoats and other articles of clothing.

Respondents cause, and for more than one year last past have caused, said coats and other articles of clothing, when sold by them, to be transported from their place of business in the State of Pennsylvania to various purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondents purchase the woolen fabrics from which their said coats and other articles of clothing are made from the manufacturers thereof whose places of business are located in States other than the State of Pennsylvania and cause said fabrics to be shipped from said manufacturers' places of business to respondents' factory in Philadelphia, Pa., at which place said fabrics are converted into men's coats and other articles of clothing. Said fabrics have affixed thereto by the manufacturers thereof, or by some person authorized under the provisions of the Wool Products Labeling Act and the rules and regulations promulgated thereunder, a stamp, tag, label or other means of identification purporting to show (a) the percentage of the total fiber weight of the wool product exclusive of ornamentation not exceeding five percentum 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 five percentum 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 the manufacturer's registered identification number and the name of a subsequent seller or reseller of the product 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 the 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 products where said wool products contained a fiber other than wool.

PAR. 3. Among the coats and other articles of clothing manufactured, sold and distributed by respondents in commerce as aforesaid, and among the coats and other articles of clothing manufactured for introduction into commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, 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 such products are 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 and among the products manufactured for introduction into said commerce are men's coats which bear conflicting labels. Among and typical of the conflicting labels used by respondents as aforesaid are the following:

	Manufactured for	
	(Name of Reseller)	
	Made of All Wool	
	Mfgr. 1541	
2700	40	Short
	Nassau	

The above label is a cardboard tag which is attached to the left sleeve of the coats.

A cloth label sewed to the inner lining near the collar of said coats reads as follows:

Burleigh — Special
 (Picture of a
 camel and an alpaca)
 C A R A V A N
 of
 Camel Hair and Wool

The use on the same coats of the cardboard label, which states that said coats are composed of all wool, and the cloth label, which states that said coats are composed of camel's hair and wool, has the capacity and tendency to confuse and deceive, and does confuse and deceive, the purchasing public as to the fiber content of said coats and is a violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

The aforementioned coats which bear the conflicting labels set out above are misbranded in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated under such act in that the cloth label does not show (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding five percentum 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 five percentum 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 the manufacturer's registered identification number and the name of a subsequent seller or reseller of the product as provided for in the rules and regulations

promulgated under said act, or the name of one or more persons subject to Section 3 of the said act with respect to such wool product; (d) the percentages, in words and figures, plainly legible, by weight of wool contents of said wool product where such wool product contained a fiber other than wool.

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.

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, Harry Fischer and Joseph Fischer, individually and trading as Harry Fischer & Company, or trading under any other name, and 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 coats and other articles of 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 each of 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 product, exclusive of ornamentation not exceeding five percentum 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 five percentum or more, and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such product of any non-fibrous loading, filling, or adulterating matter.

(c) The name of the manufacturer of such product; or the manufacturer's registered identification number and the name of a seller of such product; or the name of one or more persons introducing such 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, however, That when such product is composed in whole or in part of any of the specialty fibers named in Section 2(b) of the Wool Products Labeling Act of 1939, the name of any specialty fiber present

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may be used in place of the word "wool" on the stamp, tag, label or other means of identification affixed to such product, in identifying the percentage of the product composed of the specialty fiber named; and provided, further, that when the name of a specialty fiber is used, such fiber shall not be described by any other name on said label or any other stamp, tag, label or other means of identification attached to or affixed to such product.

Provided, further, 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.

Complaint

IN THE MATTER OF

JUDSON L. THOMSON MANUFACTURING COMPANY

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

Docket 4111. Complaint, Apr. 25, 1940—Decision, Feb. 9, 1944

Where a corporation which was long engaged in the manufacture and interstate sale and distribution of tubular and bifurcated rivets to the industrial field exclusively, and in the manufacture and lease of automatic rivet-setting machines to manufacturers, in competition with others so engaged, and, but for the restrictive leases below set forth, with concerns engaged in interstate sale and distribution of such rivets suitable for use with said machines; was one of a group of eight manufacturers in the United States engaged in the manufacture and sale of such rivets, and manufacture, sale and lease of such machines—prices of which range from \$150 to \$1,000 and more, with the more popular machines selling for around \$300; and was one of two of said manufacturers, which, as original occupants of the field, inaugurated the practice of making restrictive leases, later adopted by the others;

Leased its said machines for more than forty years, upon the condition that they should be used only for setting rivets made by it, at yearly rentals which ranged from \$15 to \$25 for ordinary types, were not sufficient, without the sale of the rivets, to warrant the leasing,—in connection with which it made no additional charge for servicing, or, with one exception, for part replacements—and were rebated in event of lessee's using, at prices about ten per cent higher than those of corresponding rivets sold to non-lessees, specified number thereof;

With the result that through said excluding condition it precluded other concerns from selling to its lessees, rivets suitable for use in such machines, and excluded from the tubular and bifurcated rivet market numerous potential purchasers of such articles from its competitors, and competition in aforesaid market was restricted and contracted in direct proportion to the extent to which it was successful in so leasing its machines;

Effect of which, materially increased by similar practices of the other seven manufacturers hereinbefore referred to, might be to substantially lessen competition in sale in commerce of aforesaid articles:

Held, That through use of acts and practices described, said corporation had violated and was violating Section 3 of the Clayton Act.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Lynn C. Paulson and *Mr. George W. Williams* for the Commission.
Hutchins & Wheeler, of Boston, Mass., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that Judson L. Thomson Manufacturing Company, a corporation, hereinafter referred to as respondent, has violated the provisions of Section 3 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and commonly known as the Clayton Act, hereby issues this its complaint against said respondent and states its charges in respect thereto as follows, to wit:

PARAGRAPH 1. Respondent, Judson L. Thomson Manufacturing Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, having its principal office and place of business at Waltham, Mass.

Respondent is now, and for many years last past has been, engaged in the business of manufacturing rivet-setting machines and of leasing and licensing the use of said rivet-setting machines, and of manufacturing and selling tubular and bifurcated rivets. Rivet-setting machines are used to set tubular and bifurcated rivets and tubular and bifurcated rivets are used in the manufacture of many articles of commerce.

In connection with its aforesaid business, respondent has leased and licensed, and still leases and licenses, its rivet-setting machines, and has sold, and still sells, its tubular and bifurcated rivets to individuals, firms, partnerships and corporations located in the several States of the United States and the District of Columbia, and has caused, and still causes said machines and the rivets, when leased, licensed or sold, to be transported from its principal place of business in Massachusetts to the licensees, lessees and vendees thereof located at various points in the several States of the United States and in the District of Columbia, and said respondent now is, and has been for more than three years last past, constantly engaged in commerce in said products between and among the several States of the United States, the territories thereof and in the District of Columbia.

In the course and conduct of its business, said respondent is, and has been for the past several years, in competition with firms, partnerships, corporations and individuals engaged in the manufacture, leasing and licensing of rivet-setting machines and in the manufacture and sale of tubular and bifurcated rivets in commerce between and among the various States of the United States, the territories thereof, and in the District of Columbia.

There are in the United States, and have been during the time respondent has been in business, other corporations, firms, partnerships and individuals who have been and are engaged in the sale of tubular and bifurcated rivets in commerce among and between the several States, which tubular and bifurcated rivets are suitable for and may be used in and with respondent's rivet-setting machines; and with whom, but for the restrictive condition of respondent's contracts of license and lease, as hereinafter set forth, respondent would have been and would now be in active, substantial competition in the sale of tubular and bifurcated rivets.

Said respondent is now, and for more than four years last past has been one of the largest manufacturers and distributors, licensors and lessors of rivet-setting machines in the United States, and now manufactures and distributes approximately 40 per cent of the rivet-setting machines and approximately 30 per cent of the tubular and bifurcated rivets entering into interstate commerce in the said United States.

PAR. 2. The respondent in the course and conduct of its said business hereinabove described in paragraph 1, has leased and licensed and is now leasing and licensing its said rivet-setting machines for use in the several States and territories of the United States and in the District of Columbia on and with the condition, agreement or understanding that the lessees or licensees thereof will not use the said machine for setting any other tubular and bifurcated rivets than those manufactured by the respondent, or sold under its authority, and on the further condition,

agreement or understanding that the lessees or licensees will allow the said respondent or its agents to inspect the said machines at all reasonable times.

PAR. 3. The effect of the said provisions in said license and lease agreements or understandings set forth in paragraph 2 hereof, may be to substantially lessen competition or tend to create a monopoly in respondent in tubular and bifurcated rivets in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 4. The aforesaid acts, practices and methods of respondent constitute a violation of the provisions of Section 3 of the hereinabove-mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of that certain Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, the Federal Trade Commission on April 25, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Judson L. Thomson Manufacturing Company, a corporation, charging it with the violation of the provisions of Section 3 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 on said complaint, answer 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, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Judson L. Thomson Manufacturing Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, having its principal office and place of business at Waltham, Mass. Respondent is now, and for many years last past has been, engaged in the business of manufacturing and selling tubular and bifurcated rivets and also in the manufacture of automatic rivet-setting machines, which the respondent leases to various manufacturers of commercial articles for use in setting such rivets.

PAR. 2. In the course and conduct of its business, the respondent causes its automatic rivet-setting machines when leased, and its tubular and bifurcated rivets when sold, to be transported from its principal place of business in the State of Massachusetts to the purchasers and lessees of such products located in various other States of the United States. Re-

spondent 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. In the course and conduct of its business, said respondent is, and for several years last past has been, in competition with firms, partnerships, corporations, and individuals engaged in the manufacture and sale in commerce among and between the various States of the United States, of tubular and bifurcated rivets and in the manufacture and leasing of automatic rivet-setting machines for use in setting such rivets.

There are in the United States other corporations, individuals, firms, and partnerships who have been, and are, engaged in the sale in commerce among and between the various States of the United States of tubular and bifurcated rivets suitable for use in, and with, respondent's rivet-setting machines and with whom, but for the restrictive conditions of respondent's contracts of lease as hereinafter set forth, respondent would have been and would now be in active, substantial competition in the sale of tubular and bifurcated rivets.

PAR. 4. Tubular rivets are rivets which have the end of the shank of the rivet away from the head drilled or punched out so that a portion of this end of the shank forms a tube. When the rivet is set, the metal in this tubular part of the shank is caused to spread or flow so as to form a clinch. Bifurcated rivets have a v-shaped slot cut in the shank at the end away from the head and are set by causing the prongs on each side of this slot to be spread in opposite directions.

Tubular and bifurcated rivets are sold to two classes of customers — first, to manufacturers in the industrial field who use them for the purpose of assembling their products or as component parts of their products, and second, to the carton or jobbing trade, which includes the sale of rivets through mail-order houses and hardware jobbers and others for replacement and repair purposes. Rivets used in the industrial field by manufacturers are generally set in automatic-feed setting machines. Rivets sold to the carton or jobbing trade are as a rule not used in automatic-feed machines but, instead, are used in small hand-feed machines and some in special brake-lining machines.

Automatic rivet-setting machines all operate on the same general principles. The essential parts of such machines are the automatic feeding mechanism, the plunger or driving stem, the pocket, and the anvil. The rivets are poured into a hopper at the top of the machine and assorted mechanically so that they slide down a track. At the end of the track there is a cut off in the feeding mechanism, which releases one rivet at a time from the track and delivers it to the pocket. The pocket holds the rivet while it is being driven by the driving stem, which comes down on top of the rivet from above and pushes the rivet through the material to be riveted and against the anvil. The operation of the driving stem against the anvil spreads the prongs of bifurcated rivets or, in the case of the tubular rivets, causes the metal sides of the tube on the end of the shank to flow against the materials and clinch the rivet. A split or bifurcated rivet punches its way through the material to be riveted, and the rivet is clinched on a fixed anvil. The tubular rivet is clinched on a disappearing-point anvil.

PAR. 5. There are eight companies in the United States, including the respondent, engaged in the business of selling tubular and bifurcated rivets and in supplying automatic rivet-setting machines for the setting

of such rivets. All of said companies were, at the time of the filing of the complaint herein or prior thereto, engaged in the practice of leasing automatic rivet-setting machines on the condition and understanding that the lessee shall not use said leased machinery for setting any other rivets than those made and sold by the lessor.

From about 1889, when the use of tubular and bifurcated rivets for industrial purposes began, until the year 1914, the respondent and Tubular Rivet & Stud Company (respondent in Commission's proceeding under Docket 4113) were the only companies engaged in the business of selling tubular and bifurcated rivets and supplying automatic rivet-setting machines for setting such rivets. The practice of the Tubular Rivet & Stud Company, like that of the respondent, was to lease its automatic rivet-setting machines and not to sell such machines. The respondent has outstanding on lease approximately 8,000 automatic rivet-setting machines, and the Tubular Rivet & Stud Company has approximately 7,412 machines on lease. The total volume of business of the above eight companies in tubular and bifurcated rivets for the year 1939 was \$5,180,304.75. Of this amount \$1,243,927.86, or about 25 percent, was done by the respondent, and \$1,331,550.98, or about 25 percent, by the Tubular Rivet & Stud Company.

The Penn Rivet Corporation (respondent in Commission's proceeding under Docket 4563) entered the industrial field and began the manufacture of bifurcated rivets and automatic rivet-setting machines about the year 1914 and subsequently included tubular rivets. This company both sold and leased its rivet-setting machines. During the period from 1932 to 1936 it made no new leases but resumed this practice in 1936, and now has approximately 500 machines outstanding on lease. While the evidence is not complete as to number of machines sold by this company, it appears that it has sold in excess of 2,000 machines during the time that it has been in business. The gross sales of tubular and bifurcated rivets by the Penn Rivet Corporation amounted to \$307,000 in 1939.

The Edwin B. Stimpson Company (respondent in Commission's proceeding under Docket 4560) began the manufacture and sale of tubular and bifurcated rivets about the year 1920, and about two years thereafter began supplying automatic rivet-setting machines. This company both sold and leased its rivet-setting machines. It has about 2,000 machines now outstanding on lease, and during the time that it has been in business has sold approximately 300 machines. The gross sales of tubular and bifurcated rivets of this company for the year 1939 amounted to \$286,500.

In 1920 the Chicago Rivet and Machine Company (respondents in Commission's proceeding under Docket 4562) began the manufacture and sale of tubular and bifurcated rivets but did not supply automatic rivet-setting machines until sometime between the years 1925 and 1928. Since that time it has supplied customers with automatic rivet-setting machines by lease, outright purchase, and on a lease-sale arrangement. The Chicago Rivet and Machine Company had 800 to 1,000 rivet-setting machines outstanding on lease. During the time that this company has been engaged in distributing automatic rivet-setting machines, it has sold in excess of 3,000 machines. Its gross sales of tubular and bifurcated rivets for 1939 amounted to \$1,011,527, or about 20 percent of the total business done by the eight companies supplying rivet-setting machines.

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During the period from 1927 to 1930, the Milford River & Machine Company, Milford, Mass. (respondent in Commission's proceeding under Docket 4110); National Rivet & Manufacturing Company, Waupun, Wis. (respondent in Commission's proceeding under Docket 4561); and Shelton Tack Company, Shelton, Conn. (respondent in Commission's proceeding under Docket 4564), began the manufacture and sale of tubular and bifurcated rivets and supplying automatic rivet-setting machines. All three of these companies both lease and sell automatic rivet-setting machines. The machines of these companies outstanding on lease are as follows:

Milford Rivet & Machine Company	269 machines
National Rivet & Manufacturing Company	96 machines
Shelton Tack Company	45 machines

The number of automatic rivet-setting machines sold by these companies during the time they have been in business is as follows:

Milford River & Machine Company	254 machines
National Rivet & Manufacturing Company	207 machines
Shelton Tack Company	146 machines

The gross sales of these companies of tubular and bifurcated rivets for the year 1939 were as follows:

Milford Rivet & Machine Company	\$396,574
National Rivet & Manufacturing Company	390,000
Shelton Tack Company	213,225

These three companies, together with the Penn Rivet Corporation and Edwin B. Stimpson Company, do approximately 30 percent of the total business done by the eight companies supplying rivet-setting machines.

When automatic rivet-setting machines are sold, the prices range from \$150 to \$1,000 and sometimes more, depending upon the nature and extent of special construction. The ordinary or more popular machine sells for around \$300. When such machines are placed with customers on a lease basis, the yearly rental is usually upon a more or less nominal basis and is not sufficient to show a profit. Rivets sold to lessees for use in leased machines cost approximately 10 percent more than corresponding rivets sold on the open market or sold to persons who do not lease machines.

PAR. 6. The respondent confines its sales of tubular and bifurcated rivets to the industrial field and makes no effort to sell, nor does it sell, to the so-called carton or jobbing trade. For the purpose of inducing the purchase of its tubular and bifurcated rivets, the respondent supplies automatic rivet-setting machines for use in setting such rivets. The respondent does not sell such rivet-setting machines to its customers but, instead, has, for more than forty years, followed the practice of leasing such machines on a yearly rental basis of from \$15 to \$25 a year for ordinary types of machines. These rentals are rebated to the lessee if the lessee uses a quantity of rivets stated in the lease. The respondent makes no additional charge for servicing machines held by customers on lease and replaces parts without charge, with the exception of disappearing-point anvils, which wear out rapidly in use and for which a charge is made to the customer. The prices charged by the respondent are approximately 10 percent higher than the prices of corresponding rivets on the open market.

The form of lease which has been used during the past several years by the respondent and which is substantially the same as those forms previously used by it, provides that the leased rivet-setting machines shall at all times remain and be the sole and exclusive property of the respondent, with no right of property therein by the lessee other than the right of use of the machines by the lessee or by operatives in his direct employ and only in the factory occupied by him at the time of the execution of the lease. It is further provided that the leased machinery shall not be transferred, delivered, or sublet to any other person or corporation and the agreement for lease cannot be assigned by the lessee, either by his own act or by operation of law. It is provided in said lease that the respondent and its agents and employees shall at all times have free access to the leased machinery for the purpose of inspecting it or watching its use and operation or of altering, repairing, improving, or adding to it or determining the nature or extent of its use, and that the lessee shall afford all reasonable facilities therefor. It is further provided in said agreement, among other things, that the agreement may be terminated at any time by either party upon ten days' notice in writing.

In addition to the above provisions of said lease, respondent's leases contain the following provision: "The licensee shall not use or allow said leased machinery to be used for setting any other rivets than those made and sold by the company."

PAR. 7. The revenue received by respondent from the leasing of its rivet-setting machines is of minor importance as compared with the revenue received from the sale of its tubular and bifurcated rivets. The primary purpose of leasing the equipment is to enable respondent to sell tubular and bifurcated rivets in or with the equipment, as is evident from the provisions of the agreement rebating rental paid when a specified number of rivets is used by the lessee. The amount of rental charged by the respondent is not sufficient to warrant leasing its rivet-setting machines in the absence of the sale of rivets.

PAR. 8. There is on the market an ample supply of tubular and bifurcated rivets for use in or with respondent's rivet-setting machines which is for sale and which can be supplied for sale by concerns which sell or lease rivet-setting machines and by concerns which do not sell or lease such machines. These concerns are prepared to sell tubular and bifurcated rivets to lessees of respondent's rivet-setting machines but are precluded from making such sales by reason of the restrictive conditions in respondent's lease contract. While the respondent manufactures rivets of many various sizes and shapes, many of which are specially designed, such rivets can be duplicated and supplied by any competent rivet manufacturer.

PAR. 9. Among the concerns which do not supply rivet-setting machines in connection with the sale of tubular and bifurcated rivets are Atlas Tack Company, New Jersey Rivet Company, Townsend Company, J. W. Coombs Mfg. Co., and Manufacturers Belt Hook Co.

The gross sales of these companies of tubular and bifurcated rivets for the year 1939 were as follows:

Atlas Tack Company	\$ 24,994
New Jersey Rivet Company	40,000
Townsend Company	300,000
J. W. Coombs Mfg. Co.	39,000
Manufacturers Belt Hook Co.	72,000

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The Atlas Tack Company sells its rivets to both the hardware and jobbing trade and to industrial users. Its sales, however, have been more or less limited to the hardware and jobbing trade, as it has not had much success in the industrial field. The New Jersey Rivet Company sells practically all of its rivets for use in automatic rivet-setting machines but has had difficulty in making sales where leased machines are present. The Townsend Company sells to both the hardware and jobbing trade and to industrial users. A representative of this company testified that the use of leased machines by manufacturers curtails outlets and narrows the market for its rivets. The J. W. Coombs Mfg. Co. sells to both industrial manufacturers and to the hardware and jobbing trade. About 80 percent of the rivets sold by this company are sold to one customer to whom it originally supplied 12 rivet-setting machines. The Manufacturers Belt Hook Company began the sale of tubular and bifurcated rivets in 1910 but did not become interested in the industrial business until 1927 or 1928. It now sells both to hardware and jobbing trade and to industrial users who own their rivet-setting machines.

While the business of all these companies has increased during the past several years, there is no evidence whether such increase was due to a greater demand by the hardware and jobbing trade or by industrial users. However, the testimony of representatives of these various companies, clearly indicated that the outlets for their tubular and bifurcated rivets were curtailed, and competition therein restrained, by the practice of leasing rivet-setting machines in the manner hereinabove described.

PAR. 10. The Commission finds that the practice of respondent in requiring that the lessees of its rivet-setting machines use in or with such machines no tubular or bifurcated rivets other than those supplied by the respondent, results in the exclusion from the market of numerous parties who in the absence of such restrictions, would be prospective and potential purchasers of tubular and bifurcated rivets from respondent's competitors. Competition in the tubular- and bifurcated-rivet market is restricted and contracted in direct proportion to the extent to which respondent is successful in leasing its rivet-setting machines under agreements containing such restrictive conditions.

PAR. 11. The Commission further finds that the effect of such restrictive conditions under the circumstances set forth herein has been, is, and may be to substantially lessen competition in the sale of tubular and bifurcated rivets in commerce between and among the several States of the United States and in the District of Columbia. Such effect is materially increased by reason of the fact that it forms a part of the cumulative effect of the practices of the other companies described in paragraph 5 hereof upon competition in commerce among and between various States of the United States.

CONCLUSION

Through the use of the acts and practices described herein, the respondent has violated, and is now violating, Section 3 of the Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton 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, 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 respondent has violated the provisions of that certain Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, commonly known as the Clayton Act.

It is ordered, That the respondent, Judson L. Thomson Manufacturing Company, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the leasing, sale, or making any contract for the sale of respondent's automatic rivet-setting machines in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Leasing, selling, or making any contract for the sale of, respondent's automatic rivet-setting machines on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use in or with such machines any rivets other than those acquired from respondent or from some source authorized by respondent.

2. Enforcing or continuing in operation or effect, any condition, agreement, or understanding in or in connection with any existing lease or sale contract, which condition, agreement, or understanding is to the effect that the lessee or purchaser of respondent's automatic rivet-setting machines shall not use in or with such machines rivets other than those acquired from respondent or from some source authorized by it.

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

IN THE MATTER OF
TUBULAR RIVET & STUD COMPANY

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

Docket 4113. Complaint, Apr. 26, 1940—Decision, Feb. 9, 1944

Where a corporation which was long engaged in the manufacture and interstate sale and distribution of tubular and bifurcated rivets to the industrial field exclusively, and in the manufacture, and lease of automatic rivet-setting machines to manufacturers, in competition with others so engaged, and, but for the restrictive leases below set forth, with concerns engaged in interstate sale and distribution of such rivets suitable for use with its said machines; was one of a group of eight manufacturers in the United States engaged in the manufacture and sale of such rivets, and manufacture, sale and lease of such machines—prices of which range from \$150 to \$1,000 and more, with the more popular machines selling for around \$300; and was one of two of said manufacturers, which, as original occupants of the field, inaugurated the practice of making such restrictive leases, later adopted by the others;

Leased its said machines exclusively for more than forty years, upon the condition that they should be used only for setting rivets made by it, or sold under its authority, at yearly rentals which were not sufficient, without the sale of the rivets, to warrant the leasing,—in connection with which it made no additional charge for servicing, or, with one exception, for part replacements—and were rebated in the event of lessee's using, at prices about ten per cent higher than those of corresponding rivets sold on the open market, number of its rivets specified therein;

With the result that through said excluding condition it precluded other concerns from selling to its lessees, rivets suitable for use in such machines, and excluded from the tubular and bifurcated rivet market numerous potential purchasers of such articles from its competitors, and competition in aforesaid market was restricted and contracted in direct proportion to the extent to which it was successful in so leasing its machines:

Effect of which, materially increased by similar practices of the other seven manufacturers hereinbefore referred to, might be to substantially lessen competition in sale in commerce of aforesaid articles:

Held, That through use of acts and practices described, said corporation had violated and was violating Section 3 of the Clayton Act.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Lynn C. Paulson and *Mr. George W. Williams* for the Commission.
Phipps, Durgin & Cook, of Boston, Mass., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the Tubular Rivet & Stud Company, a corporation, hereinafter referred to as respondent, has violated the provisions of Section 3 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and commonly known as the Clayton Act, hereby issues this its complaint against said respondent and states its charges in respect thereto as follows, to wit:

PARAGRAPH 1. Respondent, Tubular Rivet & Stud Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, having its principal office and place of business at 87 Lincoln Street, Boston, Mass.

Respondent is now, and for many years last past has been engaged in the business of manufacturing rivet-setting machines and of leasing and licensing the use of said rivet-setting machines, and of manufacturing and selling tubular and bifurcated rivets. Rivet-setting machines are used to set tubular and bifurcated rivets and tubular and bifurcated rivets are used in the manufacture of many articles of commerce.

In connection with its aforesaid business, respondent has leased and licensed, and still leases and licenses, its rivet-setting machines, and has sold, and still sells, its tubular and bifurcated rivets to individuals, firms, partnerships and corporations located in the several States of the United States and the District of Columbia, and has caused, and still causes said machines and rivets, when leased, licensed or sold, to be transported from its principal place of business in Massachusetts to the licensees, lessees and vendees thereof located at various points in the several States of the United States and in the District of Columbia, and said respondent now is, and has been for more than three years last past, constantly engaged in commerce in said products between and among the several States of the United States, the territories thereof and in the District of Columbia.

In the course and conduct of its business, said respondent is, and has been for the past several years, in competition with firms, partnerships, corporations and individuals engaged in the manufacture, leasing and licensing of rivet-setting machines and in the manufacture and sale of tubular and bifurcated rivets in commerce between and among the various States of the United States, the territories thereof, and in the District of Columbia.

There are in the United States, and have been during the time respondent has been in business, other corporations, firms, partnerships and individuals who have been and are engaged in the sale of tubular and bifurcated rivets in commerce among and between the several States, which tubular and bifurcated rivets are suitable for and may be used in and with respondent's rivet-setting machines; and with whom, but for the restrictive condition of respondent's contracts of license and lease, as hereinafter set forth, respondent would have been and would now be in active, substantial competition in the sale of tubular and bifurcated rivets.

Said respondent is now, and for more than four years last past has been, one of the largest manufacturers and distributors, licensors and lessors of rivet-setting machines in the United States, and now manufactures and distributes approximately 35 percent of the rivet-setting machines and approximately 25 percent of the tubular and bifurcated rivets entering into interstate commerce in the said United States.

PAR. 2. The respondent in the course and conduct of its said business hereinabove described in paragraph 1, has leased and licensed and is now leasing and licensing its said rivet-setting machines for use in the several States and territories of the United States and in the District of Columbia on and with the condition, agreement or understanding that the lessees or licensees thereof will not use the said machine for setting any other tubular and bifurcated rivets than those manufactured by the respondent or sold under its authority, and on the further condition,

agreement or understanding that the lessees or licensees will allow the said respondent of its agents to inspect the said machines at all reasonable times.

PAR. 3. The effect of the said provisions in said license and lease agreements or understandings set forth in paragraph 2 hereof, may be to substantially lessen competition or tend to create a monopoly in respondent in tubular and bifurcated rivets in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 4. The aforesaid acts, practices and methods of respondent constitute a violation of the provisions of Section 3 of the hereinabove-mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of that certain Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, the Federal Trade Commission on April 26, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Tubular Rivet & Stud Company, a corporation, charging it with the violation of the provisions of Section 3 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, including testimony and other evidence taken in Commission's proceeding under Docket 4111 (Judson L. Thomson Manufacturing Company),¹ which by stipulation upon the record was made a part of the record in this proceeding, 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 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, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Tubular Rivet & Stud Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, having its principal office and place of business at Wollaston, Mass. Respondent is now, and for many years last past has been, engaged in the business of manufacturing and selling tubular and bifurcated rivets and also in the manufacture of automatic rivet-setting machines, which respondent leases to various manufacturers of commercial articles for use in setting such rivets.

PAR. 2. In the course and conduct of its business, the respondent causes its automatic rivet-setting machines when leased, and its tubular and bifurcated rivets when sold, to be transported from its principal place of

¹ See *ante*, p. 135.

business in the State of Massachusetts to the purchasers and lessees of such products 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. In the course and conduct of its business, said respondent is, and for several years last past has been, in competition with firms, partnerships, corporations, and individuals engaged in the manufacture and sale in commerce among and between the various States of the United States, of tubular and bifurcated rivets, and in the manufacture and leasing of automatic rivet-setting machines for use in setting such rivets.

There are in the United States other corporations, individuals, firms, and partnerships who have been, and are, engaged in the sale in commerce among and between the various States of the United States of tubular and bifurcated rivets suitable for use in, and with, respondent's rivet-setting machines and with whom, but for the restrictive conditions of respondent's contracts of lease as hereinafter set forth, respondent would have been and would now be in active, substantial competition in the sale of tubular and bifurcated rivets.

PAR. 4. Tubular rivets are rivets which have the end of the shank of the rivet away from the head drilled or punched out so that a portion of this end of the shank forms a tube. When the rivet is set, the metal in this tubular part of the shank is caused to spread or flow so as to form a clinch. Bifurcated rivets have a v-shaped slot cut in the shank at the end away from the head and are set by causing the prongs on each side of this slot to be spread in opposite directions.

Tubular and bifurcated rivets are sold to two classes of customers—first, to manufacturers in the industrial field, who use them for the purpose of assembling their products or as component parts of their products, and second, to the carton or jobbing trade, which includes the sale of rivets through mail-order houses and hardware jobbers and others for replacement and repair purposes. Rivets used in the industrial field by manufacturers are generally set in automatic-feed setting machines. Rivets sold to the carton or jobbing trade are as a rule not used in automatic-feed machines but, instead, are used in small hand-feed machines and some in special brake-lining machines.

Automatic rivet-setting machines all operate on the same general principles. The essential parts of such machines are the automatic feeding mechanism, the plunger or driving stem, the pocket, and the anvil. The rivets are poured into a hopper at the top of the machine and assorted mechanically so that they slide down a track. At the end of the track there is a cutoff in the feeding mechanism, which releases one rivet at a time from the track and delivers it to the pocket. The pocket holds the rivet while it is being driven by the driving stem, which comes down on top of the rivet from above and pushes the rivet through the material to be riveted and against the anvil. The operation of the driving stem against the anvil spreads the prongs of bifurcated rivets or, in the case of the tubular rivets, causes the metal sides of the tube on the end of the shank to flow against the materials and clinch the rivet. A split or bifurcated rivet punches its way through the material to be riveted, and the rivet is clinched on a fixed anvil. The tubular rivet is clinched on a disappearing-point anvil.

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PAR. 5. There are eight companies in the United States, including the respondent, engaged in the business of selling tubular and bifurcated rivets and in supplying automatic rivet-setting machines for the setting of such rivets. All of said companies were, at the time of the filing of the complaint herein or prior thereto, engaged in the practice of leasing automatic rivet-setting machines on the condition and understanding that the lessee shall not use said leased machinery for setting any other rivets than those made and sold by the lessor.

From about 1889, when the use of tubular and bifurcated rivets for industrial purposes began, until the year 1914, the respondent and Judson L. Thomson Manufacturing Company (respondent in Commission's proceeding under Docket 4111) were the only companies engaged in the business of selling tubular and bifurcated rivets and supplying automatic rivet-setting machines for setting such rivets. The practice of the Judson L. Thomson Manufacturing Company, like that of the respondent, was to lease its automatic rivet-setting machines and not to sell such machines. The respondent has outstanding on lease approximately 7,412 automatic rivet-setting machines, and the Judson L. Thomson Manufacturing Company has approximately 8,000 machines on lease. The total volume of business of the above eight companies in tubular and bifurcated rivets for the year 1939 was \$5,180,304.75. Of this amount \$1,243,927.86, or about 25 percent, was done by the Judson L. Thomson Manufacturing Company and \$1,331,550.98, or about 25 percent, by the respondent.

The Penn Rivet Corporation (respondent in Commission's proceeding under Docket 4563) entered the industrial field and began the manufacture of bifurcated rivets and automatic rivet-setting machines about the year 1914 and subsequently included tubular rivets. This company both sold and leased its rivet-setting machines. During the period from 1932 to 1936 it made no new leases but resumed this practice in 1936, and now has approximately 500 machines outstanding on lease. While the evidence is not complete as to number of machines sold by this company, it appears that it has sold in excess of 2,000 machines during the time that it has been in business. The gross sale of tubular and bifurcated rivets by the Penn Rivet Corporation amounted to \$307,000 in 1939.

The Edwin B. Stimpson Company (respondent in Commission's proceeding under Docket 4560) began the manufacture and sale of tubular and bifurcated rivets about the year 1920, and about two years thereafter began supplying automatic rivet-setting machines. This company both sold and leased its rivet-setting machines. It has about 2,000 machines now outstanding on lease, and during the time that it has been in business has sold approximately 300 machines. The gross sales of tubular and bifurcated rivets of this company for the year 1939 amounted to \$286,500.

In 1920 the Chicago Rivet and Machine Company (respondent in Commission's proceeding under Docket 4562) began the manufacture and sale of tubular and bifurcated rivets but did not supply automatic rivet-setting machines until sometime between the years 1925 and 1928. Since that time it has supplied customers with automatic rivet-setting machines by lease, outright purchase, and on a lease-sale arrangement. The Chicago Rivet and Machine Company had 800 to 1,000 rivet-setting machines outstanding on lease. During the time that this company has been engaged in distributing automatic rivet-setting machines, it has sold in excess of 3,000 machines. Its gross sales of tubular and bifurcated

Findings

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These three companies, together with the Penn Rivet Corporation and Edwin B. Stimpson Company, do approximately 30 percent of the total business done by the eight companies supplying rivet-setting machines.

When automatic rivet-setting machines are sold, the prices range from \$150 to \$1,000 and sometimes more, depending upon the nature and extent of special construction. The ordinary or more popular machine sells for around \$300. When such machines are placed with customers on a lease basis, the yearly rental is usually upon a more or less nominal basis and is not sufficient to show a profit. Rivets sold to lessees for use in leased machines cost approximately 10 percent more than corresponding rivets sold on the open market or sold to persons who do not lease machines.

PAR. 6. The respondent confines its sales of tubular and bifurcated rivets to the industrial field and makes no effort to sell, nor does it sell, to the so-called carton or jobbing trade. For the purpose of inducing the purchase of its tubular and bifurcated rivets, the respondent supplies automatic rivet-setting machines for use in setting such rivets. The respondent does not sell such rivet-setting machines to its customers but, instead, has, for more than forty years, followed the practice of leasing such machines on a yearly rental basis, which rental was rebated to the lessee if the lessee used a quantity of rivets stated in the lease. The respondent makes no additional charge for servicing machines held by customers on lease and replaces parts without charge, with the exception of disappearing-point anvils, which wear out rapidly in use and for which a charge is made to the customer. The prices charged by the respondent

are approximately 10 percent higher than the prices of corresponding rivets on the open market.

The form of lease which has been used during the past several years by the respondent and which is substantially the same as those forms previously used by it, provides that the leased rivet-setting machines shall be used only for setting rivets manufactured by the respondent or sold under its authority and that the lessee will allow respondent or its agents to inspect the machines at all reasonable times.

PAR. 7. The revenue received by respondent from the leasing of its rivet-setting machines is of minor importance as compared with the revenue received from the sale of its tubular and bifurcated rivets. The primary purpose of leasing the equipment is to enable respondent to sell tubular and bifurcated rivets in or with the equipment, as is evident from the provisions of the agreement rebating rental paid when a specified number of rivets is used by the lessee. The amount of rental charged by the respondent is not sufficient to warrant leasing its rivet-setting machines in the absence of the sale of rivets.

PAR. 8. There is on the market an ample supply of tubular and bifurcated rivets for use in or with respondent's rivet-setting machines which is for sale and which can be supplied for sale by concerns which sell or lease rivet-setting machines and by concerns which do not sell or lease such machines. These concerns are prepared to sell tubular and bifurcated rivets to lessees of respondent's rivet-setting machines but are precluded from making such sales by reason of the restrictive conditions in respondent's lease contract. While the respondent manufactures rivets of many various sizes and shapes, many of which are specially designed, such rivets can be duplicated and supplied by any competent rivet manufacturer.

PAR. 9. Among the concerns which do not supply rivet-setting machines in connection with the sale of tubular and bifurcated rivets are Atlas Tack Company, New Jersey Rivet Company, Townsend Company, J. W. Coombs Mfg. Co., and Manufacturers Belt Hook Co.

The gross sales of these companies of tubular and bifurcated rivets for the year 1939 were as follows:

Atlas Tack Company	\$24,994
New Jersey Rivet Company	40,000
Townsend Company	300,000
J. W. Coombs Mfg. Co.	39,000
Manufacturers Belt Hook Co.	72,000

The Atlas Tack Company sells its rivets to both the hardware and jobbing trade and to industrial users. Its sales, however, have been more or less limited to the hardware and jobbing trade, as it has not had much success in the industrial field. The New Jersey Rivet Company sells practically all of its rivets for use in automatic rivet-setting machines but has had difficulty in making sales where leased machines are present. The Townsend Company sells to both the hardware and jobbing trade and to industrial users. A representative of this company testified that the use of leased machines by manufacturers curtails outlets and narrows the market for its rivets. The J. W. Coombs Mfg. Co. sells to both industrial manufacturers and to the hardware and jobbing trade. About 80 percent of the rivets sold by this company are sold to one customer to whom it originally supplied 12 rivet-setting machines. The Manu-

facturers Belt Hook Co. began the sale of tubular and bifurcated rivets in 1910 but did not become interested in the industrial business until 1927 or 1928. It now sells both to hardware and jobbing trade and to industrial users. Sales are made mostly to industrial users who own their rivet-setting machines.

While the business of all these companies has increased during the past several years, there is no evidence whether such increase was due to a greater demand by the hardware and jobbing trade or by industrial users. However, the testimony of representatives of these various companies clearly indicates that the outlets for their tubular and bifurcated rivets were curtailed, and competition therein restrained, by the practice of leasing rivet-setting machines in the manner hereinabove described.

PAR. 10. The Commission finds that the practice of respondent in requiring that the lessees of its rivet-setting machines use in or with such machines no tubular or bifurcated rivets other than those manufactured by the respondent or sold under its authority results in the exclusion from the market of numerous parties who, in the absence of such restrictions, would be prospective and potential purchasers of tubular and bifurcated rivets from respondent's competitors. Competition in the tubular- and bifurcated-rivet market is restricted and contracted in direct proportion to the extent to which respondent is successful in leasing its rivet-setting machines under agreements containing such restrictive conditions.

PAR. 11. The Commission further finds that the effect of such restrictive conditions under the circumstances set forth herein has been, is, and may be to substantially lessen competition in the sale of tubular and bifurcated rivets in commerce between and among the several States of the United States and in the District of Columbia. Such effect is materially increased by reason of the fact that it forms a part of the cumulative effect of the practices of the other companies described in paragraph 5 hereof upon competition in commerce among and between various States of the United States.

CONCLUSION

Through the use of the acts and practices described herein, the respondent has violated, and is now violating, Section 3 of the Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton 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, 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 respondent has violated the provisions of that certain Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act.

It is ordered, That the respondent, Tubular Rivet & Stud Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device in connection with the leasing, sale, or making any contract for the sale of respondent's automatic rivet-setting machines in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Leasing, selling, or making any contract for the sale of, respondent's automatic rivet-setting machines on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use in or with such machines any rivets other than those acquired from respondent or from some source authorized by respondent.

2. Enforcing or continuing in operation or effect, any condition, agreement, or understanding in or in connection with any existing lease or sale contract, which condition, agreement, or understanding is to the effect that the lessee or purchaser of respondent's automatic rivet-setting machines shall not use in or with such machines rivets other than those acquired from respondent or from some source authorized by it.

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

Complaint

IN THE MATTER OF
PENN RIVET CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914*Docket 4563. Complaint, Aug. 11, 1941—Decision, Feb. 9, 1944*

Where a corporation which was engaged in the manufacture and interstate sale and distribution of tubular and bifurcated rivets to industrial manufacturers, and in the manufacture, and the sale and lease of automatic rivet-setting machines to manufacturers, in competition with others so engaged, and, but for the restrictive leases below set forth, with concerns engaged in interstate sale and distribution of such rivets suitable for use with its said machines; was one of a group of eight manufacturers in the United States engaged in the manufacture and sale of such rivets, and manufacture, sale and lease of such machines—prices of which range from \$150 to \$1,000 and more, with the ordinary or more popular machines selling for around \$300; and was one of six of said manufacturers, which followed the other two original occupants of the field in the making of such restrictive leases;

Leased its machines upon the condition that they should be used only for setting rivets made by it, for amounts which were not sufficient, without the sale of the rivets, to warrant the leasing; in some cases at flat rentals and in others upon a basis whereby the rental charges were rebated if the lessee used quantity of its rivets stated in the lease, at prices about ten per cent higher than those to non-leasing purchasers, and if quantity used was unsatisfactory, removed the machines;

With the result that through said excluding condition it precluded other concerns from selling to its lessees rivets suitable for use in such machines, and excluded from the tubular and bifurcated rivet market numerous potential purchasers of such articles from its competitors, and competition in aforesaid market was restricted and contracted in direct proportion to the extent to which it was successful in so leasing its machines:

Effect of which, materially increased by similar practices of the other seven manufacturers hereinbefore referred to, might be to substantially lessen competition in sale in commerce of aforesaid articles:

Held, That through use of acts and practices described, said corporation had violated and was violating Section 3 of the Clayton Act.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Lynn C. Paulson and *Mr. George W. Williams* for the Commission
Larkin, Rathbone & Perry, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that Penn Rivet Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of Section 3 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and commonly known as the Clayton Act, hereby issues this its complaint against said respondent and states its charges in respect thereto as follows, to wit:

PARAGRAPH 1. Respondent, Penn Rivet Corporation, is a corporation, organized, existing and doing business under the laws of the State of

Delaware, having its office and principal place of business at 254 Huntingdon Street, Philadelphia, Pa.

Respondent is now, and for many years last past has been, engaged in the business of manufacturing and selling tubular and bifurcated rivets. In connection with its aforesaid business, respondent manufactures rivet setting machines which it leases or sells or permits the use of by way of a license. Such rivet setting machines are used to set tubular and bifurcated rivets. Tubular and bifurcated rivets are used in the manufacture of many articles of commerce, principally as a device for fastening two or more parts or things together.

PAR. 2. In the course and conduct of its aforesaid business, respondent has leased, licensed or sold and is now leasing, licensing and selling its rivet setting machines, and has sold and still sells its tubular and bifurcated rivets to individuals, partnerships and corporations, many of whom are located in States of the United States other than the State of Pennsylvania, and in the District of Columbia, and has caused and still causes such machines and rivets, when leased, licensed or sold, to be transported from its principal place of business in Pennsylvania to the licensees, lessees and vendees thereof located in various places in the several States of the United States and in the District of Columbia as aforesaid.— Said respondent now is, and has been for many years last past, continuously engaged in commerce in said products between and among the several States of the United States, the territories thereof, and in the District of Columbia.

PAR. 3. In the course and conduct of its business in commerce as aforesaid, said respondent is, and has been for many years last past, in competition with individuals, partnerships and corporations engaged both in the manufacture, leasing, licensing and vending of rivet setting machines and in the manufacture and sale of tubular and bifurcated rivets, and with other individuals, partnerships and corporations, who have been and are engaged in the manufacture and sale of tubular and bifurcated rivets, most, if not all, of which competitors manufacture and sell rivets suitable for use in and with respondent's rivet setting machines, with whom, but for the restrictive condition of respondent's contracts of license, lease and sale, as hereinafter more particularly set forth, respondent would have been and would now be in more active and substantial competition.

PAR. 4. Respondent in the course and conduct of its aforesaid business in commerce during all of the time herein referred to and continuing up to the present time has leased, licensed and sold, or contracted to sell, rivet setting machines for use in the several States and territories of the United States and in the District of Columbia, or fixed a price charged therefor or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee, licensee or vendee thereof will not use the said machines or machine for setting any other tubular or bifurcated rivets than those manufactured by the respondent or sold under its authority.

PAR. 5. The effect of leasing, licensing or selling, or contracting to sell rivet-setting machines by respondent on the aforesaid condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in a line of commerce, to wit: The sale and distribution of tubular and bifurcated rivets among and between the several States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts, practices and methods of respondent constitute a violation of the provisions of Section 3 of the hereinabove mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of that certain Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, the Federal Trade Commission on August 11, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Penn Rivet Corporation, a corporation, charging it with the violation of the provisions of Section 3 of said act.

Subsequent thereto, on September 20, 1941, the respondent filed its answer, in which it admitted that it had at certain times prior to April 1, 1940, entered into certain agreements of lease of certain rivet-setting machines, containing a clause stating that the lessee would use only rivets manufactured by respondent in the machines subject to said agreements.

Thereafter, on November 24, 1941, a stipulation was signed and executed by counsel for the respondent and W. T. Kelley, Chief Counsel for the Federal Trade Commission, and on November 26, 1941, said stipulation was approved, accepted, and filed by the Commission. By the terms of this stipulation, it was stipulated and agreed: that this proceeding shall be heard and considered together with the proceeding before the Commission against Judson L. Thomson Manufacturing Company, Docket 4111,¹ and if an order of dismissal or to cease and desist be issued in the Thomson case that a similar order be entered in this case; that respondent's contracts of lease may be taken to have a like effect on competition as the contracts of lease used by Judson L. Thomson Manufacturing Company; that if an order to cease and desist should be entered herein the Commission may also find any other relevant facts and draw any other relevant inferences from the facts on record in the Thomson case; that in the event of any petition for review being filed in the Thomson case this respondent shall be considered as joining and having the benefit of such review; and that respondent shall be entitled at its option to file briefs in all matters submitted for decision on the Thomson case and present oral argument either before the Commission or any court which may review said case, but that failure to file brief or present oral argument shall not be construed as a default of the respondent.

Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer thereto, stipulation and the record in the proceeding against Judson L. Thomson Manufacturing Company (Docket 4111), including briefs in support of said Thomson complaint and in opposition thereto (respondent not having filed briefs or requested 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.

¹ See *ante*, p. 135.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Penn Rivet Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its office and principal place of business at 254 Huntingdon Street, Philadelphia, Pa. Respondent is now, and for many years last past has been, engaged in the business of manufacturing and selling tubular and bifurcated rivets and also in the manufacture of automatic rivet-setting machines, which the respondent leases and sells to various manufacturers of commercial articles for use in setting such rivets.

PAR. 2. In the course and conduct of its business, the respondent causes its automatic rivet-setting machines when leased or sold, and its tubular and bifurcated rivets when sold, to be transported from its principal place of business in the State of Pennsylvania to the purchasers and lessees of such products 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. In the course and conduct of its business, said respondent is, and for several years last past has been, in competition with firms, partnerships, corporations, and individuals engaged in the manufacture and sale in commerce among and between the various States of the United States, of tubular and bifurcated rivets and in the manufacture, sale, and leasing of automatic rivet-setting machines for use in setting such rivets.

There are in the United States other corporations, individuals, firms, and partnerships who have been, and are, engaged in the sale in commerce among and between the various States of the United States of tubular and bifurcated rivets suitable for use in, and with, respondent's rivet-setting machines and with whom, but for the restrictive conditions of respondent's contracts of lease as hereinafter set forth, respondent would have been and would now be in active, substantial competition in the sale of tubular and bifurcated rivets.

PAR. 4. Tubular rivets are rivets which have the end of the shank of the rivet away from the head drilled or punched out so that a portion of this end of the shank forms a tube. When the rivet is set, the metal in this tubular part of the shank is caused to spread or flow so as to form a clinch. Bifurcated rivets have a v-shaped slot cut in the shank at the end away from the head and are set by causing the prongs on each side of this slot to be spread in opposite directions.

Tubular and bifurcated rivets are sold to two classes of customers—first, to manufacturers in the industrial field who use them for the purpose of assembling their products or as component parts of their products, and second, to the carton or jobbing trade, which includes the sale of rivets through mail-order houses and hardware jobbers and others for replacement and repair purposes. Rivets used in the industrial field by manufacturers are generally set in automatic-feed setting machines. Rivets sold to the carton or jobbing trade are as a rule not used in automatic-feed machines but, instead, are used in small hand-feed machines and some in special brake-lining machines.

Automatic rivet-setting machines all operate on the same general principles. The essential parts of such machines are the automatic feeding

mechanism, the plunger or driving stem, the pocket, and the anvil. The rivets are poured into a hopper at the top of the machine and assorted mechanically so that they slide down a track. At the end of the track there is a cutoff in the feeding mechanism, which releases one rivet at a time from the track and delivers it to the pocket. The pocket holds the rivet while it is being driven by the driving stem, which comes down on top of the rivet from above and pushes the rivet through the material to be riveted and against the anvil. The operation of the driving stem against the anvil spreads the prongs of bifurcated rivets or, in the case of the tubular rivets, causes the metal sides of the tube on the end of the shank to flow against the materials and clinch the rivet. A split or bifurcated rivet punches its way through the material to be riveted, and the rivet is clinched on a fixed anvil. The tubular rivet is clinched on a disappearing-point anvil.

PAR. 5. There are eight companies in the United States, including the respondent, engaged in the business of selling tubular and bifurcated rivets and in supplying automatic rivet-setting machines for the setting of such rivets. All of said companies were, at the time of the filing of the complaint herein or prior thereto, engaged in the practice of leasing automatic rivet-setting machines on the condition and understanding that the lessee shall not use said leased machinery for setting any other rivets than those made and sold by the lessor.

From about 1889, when the use of tubular and bifurcated rivets for industrial purposes began, until the year 1914, the Judson L. Thomson Manufacturing Company (respondent in Commission's proceeding under Docket 4111) and Tubular Rivet & Stud Company (respondent in Commission's proceeding under Docket 4113) were the only companies engaged in the business of selling tubular and bifurcated rivets and supplying automatic rivet-setting machines for setting such rivets. The practice of these companies was to lease their automatic rivet-setting machines and not to sell such machines. The Judson L. Thomson Manufacturing Company has outstanding on lease approximately 8,000 automatic rivet-setting machines, and the Tubular Rivet & Stud Company has approximately 7,412 machines on lease. The total volume of business of the above eight companies in tubular and bifurcated rivets for the year 1939 was \$5,180,304.75. Of this amount \$1,243,927.86, or about 25 percent, was done by the Judson L. Thomson Manufacturing Company, and \$1,331,550.98, or about 25 percent, by the Tubular Rivet & Stud Company.

The respondent, Penn Rivet Corporation, entered the industrial field and began the manufacture of bifurcated rivets and automatic rivet-setting machines about the year 1914 and subsequently included tubular rivets. Respondent both sells and leases its rivet-setting machines. During the period from 1932 to 1936 it made no new leases but resumed this practice in 1936, and now has approximately 500 machines outstanding on lease. While the evidence is not complete as to number of machines sold by respondent, it appears that it has sold in excess of 2,000 machines during the time that it has been in business. The gross sales of tubular and bifurcated rivets by the respondent amounted to \$307,000 in 1939.

The Edwin B. Stimpson Company (respondent in Commission's proceeding under Docket 4560) began the manufacture and sale of tubular and bifurcated rivets about the year 1920, and about two years thereafter began supplying automatic rivet-setting machines. This company

both sold and leased its rivet-setting machines. It has about 2,000 machines now outstanding on lease, and during the time that it has been in business has sold approximately 300 machines. The gross sales of tubular and bifurcated rivets of this company for the year 1939 amounted to \$286,500.

In 1920 the Chicago Rivet and Machine Company (respondent in Commission's proceeding under Docket 4562) began the manufacture and sale of tubular and bifurcated rivets but did not supply automatic rivet-setting machines until sometime between the years 1925 and 1928. Since that time it has supplied customers with automatic rivet-setting machines by lease, outright purchase, and on a lease-sale arrangement. The Chicago Rivet and Machine Company had 800 to 1,000 rivet-setting machines outstanding on lease. During the time that this company has been engaged in distributing automatic rivet-setting machines, it has sold in excess of 3,000 machines. Its gross sales of tubular and bifurcated rivets for 1939 amounted to \$1,011,527, or about 20 percent of the total business done by the eight companies supplying rivet-setting machines.

During the period from 1927 to 1930, the Milford Rivet & Machine Company, Milford, Mass. (respondent in Commission's proceeding under Docket 4110); National Rivet & Manufacturing Company, Waupun, Wis. (respondent in Commission's proceeding under Docket 4561); and Shelton Tack Company, Shelton, Conn. (respondent in Commission's proceeding under Docket 4564), began the manufacture and sale of tubular and bifurcated rivets and supplying automatic rivet-setting machines. All three of these companies both lease and sell automatic rivet-setting machines. The machines of these companies outstanding on lease are as follows:

Milford Rivet & Machine Company	269 machines
National Rivet & Manufacturing Company	96 machines
Shelton Tack Company	45 machines

The number of automatic rivet-setting machines sold by these companies during the time they have been in business is as follows:

Milford Rivet & Machine Company	254 machines
National Rivet & Manufacturing Company	207 machines
Shelton Tack Company	146 machines

The gross sales of these companies of tubular and bifurcated rivets for the year 1939 were as follows:

Milford Rivet & Machine Company	\$396,574
National Rivet & Manufacturing Company	390,000
Shelton Tack Company	213,225

These three companies, together with the respondent and Edwin B. Stimpson Company, do approximately 30 percent of the total business done by the eight companies supplying rivet-setting machines.

When automatic rivet-setting machines are sold, the prices range from \$150 to \$1,000 and sometimes more, depending upon the nature and extent of special construction. The ordinary or more popular machine sells for around \$300. When such machines are placed with customers on a lease basis, the yearly rental is usually upon a more or less nominal basis and is not sufficient to show a profit. Rivets sold to lessees for use in leased machines cost approximately 10 percent more than correspond-

ing rivets sold on the open market or sold to persons who do not lease machines.

PAR. 6. The respondent sells its tubular and bifurcated rivets to industrial manufacturers. For the purpose of inducing the purchase of its tubular and bifurcated rivets, the respondent supplies automatic rivet-setting machines for use in setting such rivets. In some cases the respondent supplies such rivet-setting machines upon a flat rental basis and in others upon a rental basis whereby the rental charges are rebated to the lessee if the lessee uses a quantity of rivets stated in the lease. When machines were placed on a flat rental, respondent would remove these machines and discontinue the lease if the lessee did not purchase an amount of rivets considered by respondent to be sufficient. The prices charged by the respondent for rivets used in leased machines are approximately 10 percent higher than the prices of corresponding rivets sold to purchasers who do not lease machines.

At various times prior to April 1, 1940, the respondent entered into agreements of lease of its rivet-setting machines which contained a provision that the lessee would use only rivets manufactured by the respondent in the machines so leased.

PAR. 7. The revenue received by respondent from the leasing of its rivet-setting machines is of minor importance as compared with the revenue received from the sale of its tubular and bifurcated rivets. The primary purpose of leasing the equipment is to enable respondent to sell tubular and bifurcated rivets in or with the equipment, as is evident from the provisions of the agreement rebating rental paid when a specified number of rivets is used by the lessee. The amount of rental charged by the respondent is not sufficient to warrant leasing its rivet-setting machines in the absence of the sale of rivets.

PAR. 8. There is on the market an ample supply of tubular and bifurcated rivets for use in or with respondent's rivet-setting machines which is for sale and which can be supplied for sale by concerns which sell or lease rivet-setting machines and by concerns which do not sell or lease such machines. These concerns are prepared to sell tubular and bifurcated rivets to lessees of respondent's rivet-setting machines but are precluded from making such sales by reason of the restrictive conditions in respondent's lease contract. While the respondent manufactures rivets of many various sizes and shapes, many of which are specially designed, such rivets can be duplicated and supplied by any competent rivet manufacturer.

PAR. 9. Among the concerns which do not supply rivet-setting machines in connection with the sale of tubular and bifurcated rivets are Atlas Tack Company, New Jersey Rivet Company, Townsend Company, J. W. Coombs Mfg. Co., and Manufacturers Belt Hook Co.

The gross sales of these companies of tubular and bifurcated rivets for the year 1939 were as follows:

Atlas Tack Company	\$ 24,994
New Jersey Rivet Company	40,000
Townsend Company	300,000
J. W. Coombs Mfg. Co.	39,000
Manufacturers Belt Hook Co.	72,000

The Atlas Tack Company sells its rivets to both the hardware and jobbing trade and to industrial users. Its sales, however, have been more

or less limited to the hardware and jobbing trade, as it has not had much success in the industrial field. The New Jersey Rivet Company sells practically all of its rivets for use in automatic rivet-setting machines but has had difficulty in making sales where leased machines are present. The Townsend Company sells to both the hardware and jobbing trade and to industrial users. A representative of this company testified that the use of leased machines by manufacturers curtails outlets and narrows the market for its rivets. The J. W. Coombs Mfg. Co. sells to both industrial manufacturers and to the hardware and jobbing trade. About 80 percent of the rivets sold by this company are sold to one customer to whom it originally supplied 12 rivet-setting machines. The Manufacturers Belt Hook Company began the sale of tubular and bifurcated rivets in 1910 but did not become interested in the industrial business until 1927 or 1928. It now sells both to hardware and jobbing trade and to industrial users. Sales are made mostly to industrial users who own their rivet-setting machines.

While the business of all these companies has increased during the past several years, there is no evidence whether such increase was due to a greater demand by the hardware and jobbing trade or by industrial users. However, the testimony of representatives of these various companies clearly indicates that the outlets for their tubular and bifurcated rivets were curtailed, and competition therein restrained, by the practice of leasing rivet-setting machines in the manner hereinabove described.

PAR. 10. The Commission finds that the practice of respondent in requiring that the lessees of its rivet-setting machines use in or with such machines no tubular or bifurcated rivets other than those supplied by the respondent, results in the exclusion from the market of numerous parties who, in the absence of such restrictions, would be prospective and potential purchasers of tubular and bifurcated rivets from respondent's competitors. Competition in the tubular and bifurcated rivet market is restricted and contracted in direct proportion to the extent to which respondent is successful in leasing its rivet-setting machines under agreements containing such restrictive conditions.

PAR. 11. The Commission further finds that the effect of such restrictive conditions under the circumstances set forth herein may be to substantially lessen competition in the sale of tubular and bifurcated rivets in commerce between and among the several States of the United States and in the District of Columbia. Such effect is materially increased by reason of the fact that it forms a part of the cumulative effect of the practices of the other companies described in paragraph 5 hereof upon competition in commerce among and between various States of the United States.

CONCLUSION.

Through the use of the acts and practices described herein, the respondent has violated, and is now violating, Section 3 of the Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton 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, stipulation entered into between counsel for the respondent and W. T. Kelley, Chief Counsel for the Commission, and the record in the proceeding of the Commission against Judson L. Thomson Manufacturing Company (Docket 4111); and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of that certain Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act:

It is ordered, That the respondent, Penn Rivet Corporation, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the leasing, sale, or making any contract for the sale of respondent's automatic rivet-setting machines in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Leasing, selling, or making any contract for the sale of, respondent's automatic rivet-setting machines on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use in or with such machines any rivets other than those acquired from respondent or from some source authorized by respondent.

2. Enforcing or continuing in operation or effect, any condition, agreement, or understanding in or in connection with any existing lease or sale contract, which condition, agreement, or understanding is to the effect that the lessee or purchaser of respondent's automatic rivet-setting machines shall not use in or with such machines rivets other than those acquired from respondent or from some source authorized by it.

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

Complaint

38 F. T. C.

IN THE MATTER OF
EDWIN B. STIMPSON COMPANY

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

Docket 4560. Complaint, Aug. 11, 1941—Decision, Feb. 9, 1944

Where a corporation which was engaged in the manufacture and interstate sale and distribution of tubular and bifurcated rivets to industrial manufacturers, and in the manufacture, and outright sale, conditional sale, and lease of automatic rivet setting machines to manufacturers, in competition with others so engaged, and, but for the restrictive leases below set forth, with concerns engaged in interstate sale and distribution of such rivets suitable for use with its said machines; was one of a group of eight manufacturers in the United States engaged in the manufacture and sale of such rivets, and manufacture, sale and lease of such machines—prices of which range from \$150 to \$1,000 and more, with the ordinary or more popular machines selling for around \$300; and was one of six of said manufacturers, which followed the other two original occupants of the field in the making of such restrictive leases;

Leased its said machines upon the condition that they should be used only for setting rivets made by it or sold under its authority, on a yearly rental basis of \$10, which was not sufficient to warrant the leasing—in connection with which it made no additional charge for servicing—without the sale of the rivets, prices of which, when thus sold, were about ten per cent higher than those of corresponding rivets sold on the open market or to non-lessees;

With the result that through said excluding condition it precluded other concerns from selling to its lessees, rivets suitable for use in such machines, and excluded from the tubular and bifurcated rivet market numerous potential purchasers of such articles from its competitors, and competition in aforesaid market was restricted and contracted in direct proportion to the extent to which it was successful in so leasing its machines;

Effect of which, materially increased by similar practices of the other seven manufacturers hereinbefore referred to, might be to substantially lessen competition in sale in commerce of aforesaid articles:

Held, That through use of acts and practices described, said corporation had violated and was violating Section 3 of the Clayton Act.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Lynn C. Paulson and *Mr. George W. Williams* for the Commission.
Tibbetts, Lewis, Lazo & Welch, of New York City, for respondents.

COMPLAINT

The Federal Trade Commission having reason to believe that Edwin B. Stimpson Company, a corporation, hereinafter referred to as respondent, has violated the provisions of Section 3 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and commonly known as the Clayton Act, hereby issues this its complaint against said respondent and states its charges in respect thereto as follows, to wit:

PARAGRAPH 1. Respondent, Edwin B. Stimpson Company, is a corporation, organized, existing and doing business under the laws of the State of New York, having its office and principal place of business at 70 Franklin Avenue, Brooklyn, N. Y.

Respondent is now, and for many years last past has been, engaged in the business of manufacturing and selling tubular and bifurcated rivets. In connection with its aforesaid business, respondent manufactures rivet setting machines which it leases or sells or permits the use of by way of a license. Such rivet-setting machines are used to set tubular and bifurcated rivets. Tubular and bifurcated rivets are used in the manufacture of many articles of commerce, principally as a device for fastening two or more parts or things together.

PAR. 2. In the course and conduct of its aforesaid business, respondent has leased, licensed or sold and is now leasing, licensing and selling its rivet-setting machines, and has sold and still sells its tubular and bifurcated rivets to individuals, partnerships and corporations, many of whom are located in States of the United States other than the State of New York, and in the District of Columbia, and has caused and still causes such machines and rivets, when leased, licensed or sold, to be transported from its principal place of business in New York to the licensees, lessees and vendees thereof located in various places in the several States of the United States and in the District of Columbia as aforesaid. Said respondent now is, and has been for many years last past, continuously engaged in commerce in said products between and among the several States of the United States; the territories thereof, and in the District of Columbia.

PAR. 3. In the course and conduct of its business in commerce as aforesaid, said respondent is, and has been for many years last past, in competition with individuals, partnerships and corporations engaged both in the manufacture, leasing, licensing and vending of rivet-setting machines and in the manufacture, and sale of tubular and bifurcated rivets, and with other individuals, partnerships and corporations, who have been and are engaged in the manufacture and sale of tubular and bifurcated rivets, most, if not all, of which competitors manufacture and sell rivets suitable for use in and with respondent's rivet-setting machines, with whom, but for the restrictive condition of respondent's contracts of license, lease and sale as hereinafter more particularly set forth, respondent would have been and would now be in more active and substantial competition.

PAR. 4. Respondent in the course and conduct of its aforesaid business in commerce during all of the time herein referred to and continuing up to the present time has leased, licensed and sold, or contracted to sell, rivet-setting machines for use in the several States and territories of the United States and in the District of Columbia, or fixed a price charged therefor or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee, licensee or vendee thereof will not use the said machines or machine for setting any other tubular or bifurcated rivets than those manufactured by the respondent or sold under its authority.

PAR. 5. The effect of leasing, licensing or selling, or contracting to sell rivet-setting machines by respondent on the aforesaid condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in a line of commerce, to wit: The sale and

distribution of tubular and bifurcated rivets among and between the several States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts, practices and methods of respondent constitute a violation of the provisions of Section 3 of the hereinabove mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of that certain Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, the Federal Trade Commission on August 11, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Edwin B. Stimpson Company, a corporation, charging it with the violation of the provisions of Section 3 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, including testimony and other evidence taken in Commission's proceeding under Docket 4111 (Judson L. Thomson Manufacturing Company),¹ which by stipulation upon the record were made a part of the record in this proceeding, 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 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, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Edwin B. Stimpson Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business at 70 Franklin Avenue, Brooklyn, N. Y. Respondent is now, and for many years last past has been, engaged in the business of manufacturing and selling tubular and bifurcated rivets and also in the manufacture of automatic rivet-setting machines, which the respondent leases and sells to various manufacturers of commercial articles for use in setting such rivets.

PAR. 2. In the course and conduct of its business, the respondent causes its automatic rivet-setting machines when leased or sold, and its tubular and bifurcated rivets when sold, to be transported from its principal place of business in the State of New York to the purchasers and lessees of such products 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.

¹ See *ante*, p. 135.

PAR. 3. In the course and conduct of its business, said respondent is, and for several years last past has been, in competition with firms, partnerships, corporations, and individuals engaged in the manufacture and sale in commerce among and between the various States of the United States, of tubular and bifurcated rivets, and in the manufacture, sale, and leasing of automatic rivet-setting machines for use in setting such rivets.

There are in the United States other corporations, individuals, firms, and partnerships who have been, and are, engaged in the sale in commerce among and between the various States of the United States of tubular and bifurcated rivets suitable for use in, and with respondent's rivet-setting machines and with whom, but for the restrictive conditions of respondent's contracts of lease as hereinafter set forth, respondent would have been, and would now be, in active, substantial competition in the sale of tubular and bifurcated rivets.

PAR. 4. Tubular rivets are rivets which have the end of the shank of the rivet away from the head drilled or punched out so that a portion of this end of the shank forms a tube. When the rivet is set, the metal in this tubular part of the shank is caused to spread or flow so as to form a clinch. Bifurcated rivets have a v-shaped slot cut in the shank at the end away from the head and are set by causing the prongs on each side of this slot to be spread in opposite directions.

Tubular and bifurcated rivets are sold to two classes of customers—first, to manufacturers in the industrial field, who use them for the purpose of assembling their products or as component parts of their products, and second, to the carton or jobbing trade, which includes the sale of rivets through mail-order houses and hardware jobbers and others for replacement and repair purposes. Rivets used in the industrial field by manufacturers are generally set in automatic-feed setting machines. Rivets sold to the carton or jobbing trade are as a rule not used in automatic-feed machines but, instead, are used in small hand-feed machines and some in special brake-lining machines.

Automatic rivet-setting machines all operate on the same general principles. The essential parts of such machines are the automatic feeding mechanism, the plunger or driving stem, the pocket, and the anvil. The rivets are poured into a hopper at the top of the machine and assorted mechanically so that they slide down a track. At the end of the track there is a cutoff in the feeding mechanism which releases one rivet at a time from the track and delivers it to the pocket. The pocket holds the rivet while it is being driven by the driving stem, which comes down on top of the rivet from above and pushes the rivet through the material to be riveted and against the anvil. The operation of the driving stem against the anvil spreads the prongs of bifurcated rivets or, in the case of the tubular rivets, causes the metal sides of the tube on the end of the shank to flow against the materials and clinch the rivet. A split or bifurcated rivet punches its way through the material to be riveted, and the rivet is clinched on a fixed anvil. The tubular rivet is clinched on a disappearing-point anvil.

PAR. 5. There are eight companies in the United States, including the respondent, engaged in the business of selling tubular and bifurcated rivets and in supplying automatic rivet-setting machines for the setting of such rivets. All of said companies were, at the time of the filing of the complaint herein or prior thereto, engaged in the practice of leasing

automatic rivet-setting machines on the condition and understanding that the lessee shall not use said leased machinery for setting any other rivets than those made and sold by the lessor.

From about 1889, when the use of tubular and bifurcated rivets for industrial purposes began, until the year 1914, the Judson L. Thomson Manufacturing Company (respondent in Commission's proceeding under Docket 4111) and Tubular Rivet & Stud Company (respondent in Commission's proceeding under Docket 4113) were the only companies engaged in the business of selling tubular and bifurcated rivets and supplying automatic rivet-setting machines for setting such rivets. The practice of these companies was to lease their automatic rivet-setting machines and not to sell such machines. The Judson L. Thomson Manufacturing Company has outstanding on lease approximately 8,000 automatic rivet-setting machines, and the Tubular Rivet & Stud Company has approximately 7,412 machines on lease. The total volume of business of the above eight companies in tubular and bifurcated rivets for the year 1939 was \$5,180,304.75. Of this amount \$1,243,927.86, or about 25 percent, was done by the Judson L. Thomson Manufacturing Company and \$1,331,550.98, or about 25 percent, by the Tubular Rivet & Stud Company.

The Penn Rivet Corporation (respondent in Commission's proceeding under Docket 4563) entered the industrial field and began the manufacture of bifurcated rivets and automatic rivet-setting machines about the year 1914 and subsequently included tubular rivets. This company both sold and leased its rivet-setting machines. During the period from 1932 to 1936 it made no new leases but resumed this practice in 1936, and now has approximately 500 machines outstanding on lease. While the evidence is not complete as to number of machines sold by this company, it appears that it has sold in excess of 2,000 machines during the time that it has been in business. The gross sales of tubular and bifurcated rivets by the Penn Rivet Corporation amounted to \$307,000 in 1939.

The respondent, Edwin B. Stimpson Company, began the manufacture and sale of tubular and bifurcated rivets about the year 1920, and about two years thereafter began supplying automatic rivet-setting machines. Respondent both sold and leased its rivet-setting machines. It has about 2,000 machines now outstanding on lease, and during the time that it has been in business has sold approximately 300 machines. The gross sales of tubular and bifurcated rivets of respondent for the year 1939 amounted to \$286,500.

In 1920 the Chicago Rivet and Machine Company (respondent in Commission's proceeding under Docket 4562) began the manufacture and sale of tubular and bifurcated rivets but did not supply automatic rivet-setting machines until sometime between the years 1925 and 1928. Since that time it has supplied customers with automatic rivet-setting machines by lease, outright purchase, and on a lease-sale arrangement. The Chicago Rivet and Machine Company had 800 to 1,000 rivet-setting machines outstanding on lease. During the time that this company has been engaged in distributing automatic rivet-setting machines, it has sold in excess of 3,000 machines. Its gross sales of tubular and bifurcated rivets for 1939 amounted to \$1,011,527, or about 20 percent of the total business done by the eight companies supplying rivet-setting machines.

During the period from 1927 to 1930, the Milford Rivet & Machine Company, Milford, Mass. (respondent in Commission's proceeding under

Docket 4110); National Rivet & Manufacturing Company, Waupun, Wis. (respondent in Commission's proceeding under Docket 4561); and Shelton Tack Company, Shelton, Conn. (respondent in Commission's proceeding under Docket 4564), began the manufacture and sale of tubular and bifurcated rivets and supplying automatic rivet-setting machines. All three of these companies both lease and sell automatic rivet-setting machines. The machines of these companies outstanding on lease are as follows:

Milford Rivet & Machine Company	269 machines
National Rivet & Manufacturing Company	96 machines
Shelton Tack Company	45 machines

The number of automatic rivet-setting machines sold by these companies during the time they have been in business is as follows:

Milford Rivet & Machine Company	254 machines
National Rivet & Manufacturing Company	207 machines
Shelton Tack Company	146 machines

The gross sales of these companies of tubular and bifurcated rivets for the year 1939 were as follows:

Milford Rivet & Machine Company	\$396,574
National Rivet & Manufacturing Company	390,000
Shelton Tack Company	213,225

These three companies, together with the Penn Rivet Corporation and respondent, Edwin B. Stimpson Company, do approximately 30 percent of the total business done by the eight companies supplying rivet-setting machines.

When automatic rivet-setting machines are sold, the prices range from \$150 to \$1,000 and sometimes more, depending upon the nature and extent of special construction. The ordinary or more popular machine sells for around \$300. When such machines are placed with customers on a lease basis, the yearly rental is usually upon a more or less nominal basis and is not sufficient to show a profit. Rivets sold to lessees for use in leased machines cost approximately 10 percent more than corresponding rivets sold on the open market or sold to persons who do not lease machines.

PAR. 6. The respondent sells its tubular and bifurcated rivets to industrial manufacturers. For the purpose of inducing the purchase of its tubular and bifurcated rivets, the respondent in 1922 began supplying automatic rivet-setting machines for use in setting such rivets. Since that time the respondent has supplied automatic rivet-setting machines to its customers on outright sale, conditional-sale contracts, and by lease.

When automatic rivet-setting machines were supplied to customers on a lease basis, respondent followed the practice of leasing such machines on a yearly rental basis of \$10. Respondent makes no additional charge for servicing machines held by customers on lease, with the exception of replacement parts.

The form lease used by the respondent provides that the leased machine shall be used only for setting rivets manufactured or supplied by respondent or sold under its authority and that the lessee shall allow the lessor or its agents to inspect the machine at all reasonable times. Such lease further provides that it may be terminated by either party at their option by giving five days' notice in writing.

PAR. 7. The revenue received by respondent from the leasing of its rivet-setting machines is of minor importance as compared with the revenue received from the sale of its tubular and bifurcated rivets. The primary purpose of leasing the equipment is to enable respondent to sell tubular and bifurcated rivets in or with the equipment. The amount of rental charged by the respondent is not sufficient to warrant leasing its rivet-setting machines in the absence of the sale of rivets.

PAR. 8. There is on the market an ample supply of tubular and bifurcated rivets for use in or with respondent's rivet-setting machines which is for sale and which can be supplied for sale by concerns which sell or lease rivet-setting machines and by concerns which do not sell or lease such machines. These concerns are prepared to sell tubular and bifurcated rivets to lessees of respondent's rivet-setting machines but are precluded from making such sale by reason of the restrictive conditions in respondent's lease contract. While the respondent manufactures rivets of many various sizes and shapes, many of which are specially designed, such rivets can be duplicated and supplied by any competent rivet manufacturer.

PAR. 9. Among the concerns which do not supply rivet-setting machines in connection with the sale of tubular and bifurcated rivets are Atlas Tack Company, New Jersey Rivet Company, Townsend Company, J. W. Coombs Mfg. Co., and Manufacturers Belt Hook Co.

The gross sales of these companies of tubular and bifurcated rivets for the year 1939 were as follows:

Atlas Tack Company	\$ 24,994
New Jersey Rivet Company	40,000
Townsend Company	300,000
J. W. Coombs Mfg. Co.	39,000
Manufacturers Belt Hook Co.	72,000

The Atlas Tack Company sells its rivets to both the hardware and jobbing trade and to industrial users. Its sales, however, have been more or less limited to the hardware and jobbing trade, as it has not had much success in the industrial field. The New Jersey Rivet Company sells practically all of its rivets for use in automatic rivet-setting machines but has had difficulty in making sales where leased machines are present. The Townsend Company sells to both the hardware and jobbing trade and to industrial users. A representative of this company testified that the use of leased machines by manufacturers curtails outlets and narrows the market for its rivets. The J. W. Coombs Mfg. Co. sells to both industrial manufacturers and to the hardware and jobbing trade. About 80 percent of the rivets sold by this company are sold to one customer to whom it originally supplied 12 rivet-setting machines. The Manufacturers Belt Hook Company began the sale of tubular and bifurcated rivets in 1910 but did not become interested in the industrial business until 1927 or 1928. It now sells both to hardware and jobbing trade and to industrial users. Sales are made mostly to industrial users who own their rivet-setting machines.

While the business of all these companies has increased during the past several years, there is no evidence whether such increase was due to a greater demand by the hardware and jobbing trade or by industrial users. However, the testimony of representatives of these various com-

panies clearly indicates that the outlets for their tubular and bifurcated rivets were curtailed, and competition therein restrained, by the practice of leasing rivet-setting machines in the manner hereinabove described.

PAR. 10. The Commission finds that the practice of respondent in requiring that the lessees of its rivet-setting machines use in or with such machines no tubular or bifurcated rivets other than those supplied by the respondent, results in the exclusion from the market of numerous parties who, in the absence of such restrictions, would be prospective and potential purchasers of tubular and bifurcated rivets from respondent's competitors. Competition in the tubular- and bifurcated-rivet market is restricted and contracted in direct proportion to the extent to which respondent is successful in leasing its rivet-setting machines under agreements containing such restrictive conditions.

PAR. 11. The Commission further finds that the effect of such restrictive conditions under the circumstances set forth herein may be to substantially lessen competition in the sale of tubular and bifurcated rivets in commerce between and among the several States of the United States and in the District of Columbia. Such effect is materially increased by reason of the fact that it forms a part of the cumulative effect of the practices of the other companies described in paragraph 5 hereof upon competition in commerce among and between various States of the United States.

CONCLUSION

Through the use of the acts and practices described herein, the respondent has violated, and is now violating, Section 3 of the Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton 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, 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 respondent has violated the provisions of that certain Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, commonly known as the Clayton Act.

It is ordered, That the respondent, Edwin B. Stimpson Company, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the leasing, sale, or making any contract for the sale of respondent's automatic rivet-setting machines in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Leasing, selling, or making any contract for the sale of, respondent's automatic rivet-setting machines on the condition, agreement, or under-

Order

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standing that the lessee or purchaser thereof shall not use in or with such machines any rivets other than those acquired from respondent or from some source authorized by respondent.

2. Enforcing or continuing in operation or effect, any condition, agreement, or understanding in or in connection with any existing lease or sale contract, which condition, agreement, or understanding is to the effect that the lessee or purchaser of respondent's automatic rivet-setting machines shall not use in or with such machines rivets other than those acquired from respondent or from some source authorized by it.

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

Complaint

IN THE MATTER OF

CHICAGO RIVET & MACHINE COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914*Docket 4562. Complaint, Aug. 11, 1941—Decision, Feb. 9, 1944.*

Where a corporation which was engaged in the manufacture and interstate sale and distribution of tubular and bifurcated rivets, and in the manufacture, and outright sale, lease-sale, and lease of automatic rivet-setting machines to manufacturers, in competition with others so engaged, and, but for the restrictive leases below set forth, with concerns engaged in interstate sale and distribution of such rivets suitable for use with its said machines; was one of a group of eight manufacturers in the United States engaged in the manufacture and sale of such rivets, and manufacture, sale and lease of such machines—prices of which range from \$150 to \$1,000, and more, with the ordinary or more popular machines selling for around \$300; and was one of six of said manufacturers, which followed the other two original occupants of the field in the making of such restrictive leases;

Leased its said machines upon the condition that they should be used only for setting rivets made by it, for yearly rentals, which were not sufficient, without the sale of rivets, to warrant the leasing;—in connection with which it made no additional charge for servicing, or, with certain exceptions, for part replacements—and which were rebated in the event of lessee's using number of its rivets specified therein, prices of which were about ten per cent higher than those of corresponding rivets sold to non-lessees;

With the result that through said excluding condition it precluded other concerns from selling to its lessees, rivets suitable for use in such machines, and excluded from the tubular and bifurcated rivet market numerous potential purchasers of such articles from its competitors, and competition in aforesaid market was restricted and contracted in direct proportion to the extent to which it was successful in so leasing its machines;

Effect of which, materially increased by similar practices of the other seven manufacturers hereinbefore referred to, might be to substantially lessen competition in sale in commerce of aforesaid articles:

Held, That through use of acts and practices described, said corporation had violated and was violating Section 3 of the Clayton Act.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Lynn C. Paulson and *Mr. George W. Williams* for the Commission.

Winston, Strawn & Shaw, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that Chicago Rivet and Machine Company, a corporation, hereinafter referred to as respondent, has violated the provisions of Section 3 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and commonly known as the Clayton Act, hereby issues this its complaint against said respondent and states its charges in respect thereto as follows, to wit:

PARAGRAPH 1. Respondent, Chicago Rivet and Machine Company, is a corporation, organized, existing and doing business under the laws of the State of Illinois, having its office and principal place of business at 1830 South 54th Avenue, Cicero, Ill.

Respondent is now, and for many years last past has been, engaged in the business of manufacturing and selling tubular and bifurcated rivets. In connection with its aforesaid business, respondent manufactures rivet setting machines which it leases or sells or permits the use of by way of a license. Such rivet setting machines are used to set tubular and bifurcated rivets. Tubular and bifurcated rivets are used in the manufacture of many articles of commerce, principally as a device for fastening two or more parts or things together.

PAR. 2. In the course and conduct of its aforesaid business, respondent has leased, licensed or sold and is now leasing, licensing and selling its rivet setting machines, and has sold and still sells its tubular and bifurcated rivets to individuals, partnerships and corporations, many of whom are located in States of the United States other than the State of Illinois, and in the District of Columbia, and has caused and still causes such machines and rivets, when leased, licensed or sold, to be transported from its principal place of business in Illinois to the licensees, lessees and vendees thereof located in various places in the several States of the United States and in the District of Columbia as aforesaid. Said respondent now is, and has been for many years last past, continuously engaged in commerce in said products between and among the several States of the United States, the territories thereof, and in the District of Columbia.

PAR. 3. In the course and conduct of its business in commerce as aforesaid, said respondent is, and has been for many years last past, in competition with individuals, partnerships and corporations engaged both in the manufacture, leasing, licensing and vending of rivet setting machines and in the manufacture and sale of tubular and bifurcated rivets, and with other individuals, partnerships and corporations who have been and are engaged in the manufacture and sale of tubular and bifurcated rivets most, if not all, of which competitors manufacture and sell rivets suitable for use in and with respondent's rivet-setting machines, with whom, but for the restrictive condition of respondent's contracts of license, lease and sale, as hereinafter more particularly set forth, respondent would have been and would now be in more active and substantial competition.

Said respondent has done for more than three years last past and now does more than 15 percent of the total business done in commerce between and among the several States of the United States, the territories thereof, and the District of Columbia, in the manufacture and sale of rivets and in the manufacture, sale, lease and license of rivet-setting machines.

PAR. 4. Respondent in the course and conduct of its aforesaid business during all of the time herein referred to and continuing up to the present time has leased, licensed and sold, or contracted to sell, rivet setting machines for use in the several States and territories of the United States and in the District of Columbia, or fixed a price charged therefor or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee, licensee or vendee thereof will not use the said machines or machine for setting any other tubular or bifurcated

rivets than those manufactured by the respondent or sold under its authority.

PAR. 5. The effect of leasing, licensing or selling or contracting to sell rivet-setting machines by respondent on the aforesaid condition, agreement or understanding, may be to substantially lessen competition or tend to create a monopoly in a line of commerce, to wit: The sale and distribution of tubular and bifurcated rivets among and between the several States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts, practices and methods of respondent constitute a violation of the provisions of Section 3 of the hereinabove-mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of that certain Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, the Federal Trade Commission on August 11, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Chicago Rivet and Machine Company, a corporation, charging it with the violation of the provisions of Section 3 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, including testimony and other evidence taken in Commission's proceeding under Docket 4111 (Judson L. Thomson Manufacturing Company),¹ which by stipulation upon the record was made a part of the record in this proceeding, 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 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, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Chicago Rivet and Machine Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business at 9600 W. Jackson Blvd., Bellwood, Ill. Respondent is now, and for many years last past has been, engaged in the business of manufacturing and selling tubular and bifurcated rivets and also in the manufacture of automatic rivet-setting machines, which the respondent leases and sells to various manufacturers of commercial articles for use in setting such rivets.

PAR. 2. In the course and conduct of its business, the respondent causes its automatic rivet-setting machines when leased or sold, and its tubular

¹ See ante, p. 135.

and bifurcated rivets when sold, to be transported from its principal place of business in the State of Illinois to the purchasers and lessees of such products 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. In the course and conduct of its business, said respondent is, and for several years last past has been, in competition with firms, partnerships, corporations, and individuals engaged in the manufacture and sale in commerce among and between the various States of the United States, of tubular and bifurcated rivets, and in the manufacture, sale, and leasing of automatic rivet-setting machines for use in setting such rivets.

There are in the United States other corporations, individuals, firms, and partnerships who have been, and are, engaged in the sale in commerce among and between the various States of the United States of tubular and bifurcated rivets suitable for use in, and with, respondent's rivet-setting machines and with whom, but for the restrictive conditions of respondent's contracts of lease as hereinafter set forth, respondent would have been, and would now be, in active, substantial competition in the sale of tubular and bifurcated rivets.

PAR. 4. Tubular rivets are rivets which have the end of the shank of the rivet away from the head drilled or punched out so that a portion of this end of the shank forms a tube. When the rivet is set, the metal in this tubular part of the shank is caused to spread or flow so as to form a clinch. Bifurcated rivets have a v-shaped slot cut in the shank at the end away from the head and are set by causing the prongs on each side of this slot to be spread in opposite directions.

Tubular and bifurcated rivets are sold to two classes of customers—first, to manufacturers in the industrial field who use them for the purpose of assembling their products or as component parts of their products, and second, to the carton or jobbing trade, which includes the sale of rivets through mail-order houses and hardware jobbers and others for replacement and repair purposes. Rivets used in the industrial field by manufacturers are generally set in automatic-feed setting machines. Rivets sold to the carton or jobbing trade are as a rule not used in automatic-feed machines but, instead, are used in small hand-feed machines and some in special brake-lining machines.

Automatic rivet-setting machines all operate on the same general principles. The essential parts of such machines are the automatic feeding mechanism, the plunger or driving stem, the pocket, and the anvil. The rivets are poured into a hopper at the top of the machine and assorted mechanically so that they slide down a track. At the end of the track there is a cutoff in the feeding mechanism which releases one rivet at a time from the track and delivers it to the pocket. The pocket holds the rivet while it is being driven by the driving stem, which comes down on top of the rivet from above and pushes the rivet through the material to be riveted and against the anvil. The operation of the driving stem against the anvil spreads the prongs of bifurcated rivets or, in the case of the tubular rivets, causes the metal sides of the tube on the end of the shank to flow against the materials and clinch the rivet. A split or bifurcated rivet punches its way through the material to be riveted, and

the rivet is clinched on a fixed anvil. The tubular rivet is clinched on a disappearing-point anvil.

PAR. 5. There are eight companies in the United States, including the respondent, engaged in the business of selling tubular and bifurcated rivets and in supplying automatic rivet-setting machines for the setting of such rivets. All of said companies were, at the time of the filing of the complaint herein or prior thereto, engaged in the practice of leasing automatic rivet-setting machines on the condition and understanding that the lessee shall not use said leased machinery for setting any other rivets than those made and sold by the lessor.

From about 1889, when the use of tubular and bifurcated rivets for industrial purposes began, until the year 1914, the Judson L. Thomson Manufacturing Company (respondent in Commission's proceeding under Docket 4111) and Tubular Rivet & Stud Company (respondent in Commission's proceeding under Docket 4113) were the only companies engaged in the business of selling tubular and bifurcated rivets and supplying automatic rivet-setting machines for setting such rivets. The practice of these companies was to lease their automatic rivet-setting machines and not to sell such machines. The Judson L. Thomson Manufacturing Company has outstanding on lease approximately 8,000 automatic rivet-setting machines, and the Tubular Rivet & Stud Company has approximately 7,412 machines on lease. The total volume of business of the above eight companies in tubular and bifurcated rivets for the year 1939 was \$5,180,304.75. Of this amount \$1,243,927.86, or about 25 percent, was done by the Judson L. Thomson Manufacturing Company and \$1,331,550.98, or about 25 percent, by the Tubular Rivet & Stud Company.

The Penn Rivet Corporation (respondent in Commission's proceeding under Docket 4563) entered the industrial field and began the manufacture of bifurcated rivets and automatic rivet-setting machines about the year 1914 and subsequently included tubular rivets. This company both sold and leased its rivet-setting machines. During the period from 1932 to 1936 it made no new leases but resumed this practice in 1936, and now has approximately 500 machines outstanding on lease. While the evidence is not complete as to number of machines sold by this company, it appears that it has sold in excess of 2,000 machines during the time it has been in business. The gross sales of tubular and bifurcated rivets by the Penn Rivet Corporation amounted to \$307,000 in 1939.

The Edwin B. Stimpson Company (respondent in Commission's proceeding under Docket 4560) began the manufacture and sale of tubular and bifurcated rivets about the year 1920, and about two years thereafter began supplying automatic rivet-setting machines. This company both sold and leased its rivet-setting machines. It has about 2,000 machines now outstanding on lease, and during the time that it has been in business has sold approximately 300 machines. The gross sales of tubular and bifurcated rivets of this company for the year 1939 amounted to \$286,500.

In 1920 the respondent, Chicago Rivet and Machine Company, began the manufacture and sale of tubular and bifurcated rivets but did not supply automatic rivet-setting machines until sometime between the years 1925 and 1928. Since that time it has supplied customers with automatic rivet-setting machines by lease, outright purchase, and on a lease-sale arrangement. As of October 1, 1941, respondent had 1,201

rivet-setting machines outstanding on lease. During the time that respondent has been engaged in distributing automatic rivet-setting machines, it has sold 3,708 machines. Its gross sales of tubular and bifurcated rivets for 1939 amounted to \$1,011,527, or about 20 percent of the total business done by the eight companies supplying rivet-setting machines.

During the period from 1927 to 1930, the Milford Rivet & Machine Company, Milford, Mass. (respondent in Commission's proceeding under Docket 4110); National Rivet & Manufacturing Company, Waupun, Wis. (respondent in Commission's proceeding under Docket 4561); and Shelton Tack Company, Shelton, Conn. (respondent in Commission's proceeding under Docket 4564), began the manufacture and sale of tubular and bifurcated rivets and supplying automatic rivet-setting machines. All three of these companies both lease and sell automatic rivet-setting machines. The machines of these companies outstanding on lease are as follows:

Milford Rivet & Machine Company	269 machines
National Rivet & Manufacturing Company	96 machines
Shelton Tack Company	45 machines

The number of automatic rivet-setting machines sold by these companies during the time they have been in business is as follows:

Milford Rivet & Machine Company	254 machines
National Rivet & Manufacturing Company	207 machines
Shelton Tack Company	146 machines

The gross sales of these companies of tubular and bifurcated rivets for the year 1939 were as follows:

Milford Rivet & Machine Company	\$396,574
National Rivet & Manufacturing Company	390,000
Shelton Tack Company	213,225

These three companies, together with the Penn Rivet Corporation and Edwin B. Stimpson Company, do approximately 30 percent of the total business done by the eight companies supplying rivet-setting machines.

When automatic rivet-setting machines are sold, the prices range from \$150 to \$1,000 and sometimes more, depending upon the nature and extent of special construction. The ordinary or more popular machine sells for around \$300. When such machines are placed with customers on a lease basis, the yearly rental is usually upon a more or less nominal basis and is not sufficient to show a profit. Rivets sold to lessees for use in leased machines cost approximately 10 percent more than corresponding rivets sold on the open market or sold to persons who do not lease machines.

PAR. 6. The respondent sells its tubular and bifurcated rivets to both industrial manufacturers and to the carton and jobbing trade. Rivets sold for use in automatic rivet-setting machines amount to approximately 75 percent of its sales. For the purpose of increasing the purchase of its tubular and bifurcated rivets, the respondent in 1925 began supplying automatic rivet-setting machines for use in setting such rivets. Since that time the respondent has followed three methods of supplying automatic rivet-setting machines to customers, these being by outright sale, by a lease-sale agreement, and by lease.

When automatic rivet-setting machines were supplied to customers on a lease basis, respondent followed the practice of leasing such machines on a yearly rental basis, which rental was rebated to the lessee if the lessee used a quantity of rivets stated in the lease. The respondent makes no additional charge for servicing machines held by customers on lease and replaces parts without charge, with the exception of jaws, drivers, and anvils. The prices charged by the respondent for rivets used in leased machines are approximately 10 percent higher than the prices of corresponding rivets sold to purchasers who do not lease machines.

The form of lease which was used by the respondent prior to July 1, 1940, provides that the lessee shall not use the leased machine for inserting and setting rivets except rivets manufactured and sold by the lessor. This restrictive clause was discontinued in leases taken after July 1, 1940. All leases were subject to cancellation by either party upon ten days' notice in writing.

PAR. 7. The revenue received by respondent from the leasing of its rivet-setting machines is of minor importance as compared with the revenue received from the sale of its tubular and bifurcated rivets. The primary purpose of leasing the equipment is to enable respondent to sell tubular and bifurcated rivets in or with the equipment, as is evident from the provisions of the agreement rebating rental paid when a specified number of rivets is used by the lessee. The amount of rental charged by the respondent is not sufficient to warrant leasing its rivet-setting machines in the absence of the sale of rivets.

PAR. 8. There is on the market an ample supply of tubular and bifurcated rivets for use in or with respondent's rivet-setting machines which is for sale and which can be supplied for sale by concerns which sell or lease rivet-setting machines and by concerns which do not sell or lease such machines. These concerns are prepared to sell tubular and bifurcated rivets to lessees of respondent's rivet-setting machines but are precluded from making such sales by reason of the restrictive conditions in respondent's lease contract. While the respondent manufactures rivets of many various sizes and shapes, many of which are specially designed, such rivets can be duplicated and supplied by any competent rivet manufacturer.

PAR. 9. Among the concerns which do not supply rivet-setting machines in connection with the sale of tubular and bifurcated rivets are Atlas Tack Company, New Jersey Rivet Company, Townsend Company, J. W. Coombs Mfg. Co., and Manufacturers Belt Hook Co.

The gross sales of these companies of tubular and bifurcated rivets for the year 1939 were as follows:

Atlas Tack Company	\$ 24,994
New Jersey Rivet Company	40,000
Townsend Company	300,000
J. W. Coombs Mfg. Co.	39,000
Manufacturers Belt Hook Co.	72,000

The Atlas Tack Company sells its rivets to both the hardware and jobbing trade and to industrial users. Its sales, however, have been more or less limited to the hardware and jobbing trade, as it has not had much success in the industrial field. The New Jersey Rivet Company sells practically all of its rivets for use in automatic rivet-setting machines

but has had difficulty in making sales where leased machines are present. The Townsend Company sells to both the hardware and jobbing trade and to industrial users. A representative of this company testified that the use of leased machines by manufacturers curtails outlets and narrows the market for its rivets. The J. W. Coombs Mfg. Co. sells to both industrial manufacturers and to the hardware and jobbing trade. About 80 percent of the rivets sold by this company are sold to one customer to whom it originally supplied 12 rivet-setting machines. The Manufacturers Belt Hook Company began the sale of tubular and bifurcated rivets in 1910 but did not become interested in the industrial business until 1927 or 1928. It now sells both to hardware and jobbing trade and to industrial users. Sales are made mostly to industrial users who own their rivet-setting machines.

While the business of all these companies has increased during the past several years, there is no evidence whether such increase was due to a greater demand by the hardware and jobbing trade or by industrial users. However, the testimony of representatives of these various companies clearly indicates that the outlets for their tubular and bifurcated rivets were curtailed, and competition therein restrained, by the practice of leasing rivet-setting machines in the manner hereinabove described.

PAR. 10. The Commission finds that the practice of respondent in requiring that the lessees of its rivet-setting machines use in or with such machines no tubular or bifurcated rivets other than those supplied by the respondent, results in the exclusion from the market of numerous parties who, in the absence of such restrictions, would be prospective and potential purchasers of tubular and bifurcated rivets from respondent's competitors. Competition in the tubular- and bifurcated-rivet market is restricted and contracted in direct proportion to the extent to which respondent is successful in leasing its rivet-setting machines under agreements containing such restrictive conditions.

PAR. 11. The Commission further finds that the effect of such restrictive conditions under the circumstances set forth herein may be to substantially lessen competition in the sale of tubular and bifurcated rivets in commerce between and among the several States of the United States and in the District of Columbia. Such effect is materially increased by reason of the fact that it forms a part of the cumulative effect of the practices of the other companies described in paragraph 5 hereof upon competition in commerce among and between various States of the United States.

CONCLUSION

Through the use of the acts and practices described herein, the respondent has violated, and is now violating Section 3 of the Act of Congress of the United States entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton 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 allega-

tions 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 respondent has violated the provisions of that certain Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act.

It is ordered, That the respondent, Chicago Rivet and Machine Company, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the leasing, sale, or making any contract for the sale of respondent's automatic rivet-setting machines in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Leasing, selling, or making any contract for the sale of, respondent's automatic rivet-setting machines on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use in or with such machines any rivets other than those acquired from respondent or from some source authorized by respondent.

2. Enforcing or continuing in operation or effect, any condition, agreement, or understanding in or in connection with any existing lease or sale contract, which condition, agreement, or understanding is to the effect that the lessee or purchaser of respondent's automatic rivet-setting machines shall not use in or with such machines rivets other than those acquired from respondent or from some source authorized by it.

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

IN THE MATTER OF
MILFORD RIVET & MACHINE COMPANY

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

Docket 4110. Complaint, Apr. 25, 1940—Decision, Feb. 9, 1944

Where a corporation which was engaged in the manufacture and interstate sale and distribution of tubular and bifurcated rivets to the jobbing trade and industrial field, and in the manufacture, and outright sale, conditional sale, and lease of automatic rivet setting machines to manufacturers, in competition with others so engaged, and, but for the restrictive leases below set forth, with concerns engaged in interstate sale and distribution of such rivets suitable for use with its said machines; was one of a group of eight manufacturers in the United States engaged in the manufacture and sale of such rivets, and manufacture, sale, and lease of such machines—prices of which range from \$150 to \$1,000 and more, with the ordinary or more popular machines selling for around \$300; and was one of six of said manufacturers, which followed the other two original occupants of the field in the making of such restrictive leases;

Leased its said machines upon the condition that they should be used only for setting rivets made by it or sold under its authority, at yearly rentals which were not sufficient, without the sale of rivets, to warrant the leasing—in connection with which it made no additional charge for servicing—and which were rebated in the event of lessee's using number of its rivets specified therein, prices of which were about ten per cent higher than those of corresponding rivets sold to non-lessees;

With the result that through said excluding condition it precluded other concerns from selling to its lessees rivets suitable for use in such machines, and excluded from the tubular and bifurcated rivet market numerous potential purchasers of such articles from its competitors, and competition in aforesaid market was restricted and contracted in direct proportion to the extent to which it was successful in so leasing its machines;

Effect of which, materially increased by similar practices of the other seven manufacturers hereinbefore referred to, might be to substantially lessen competition in sale in commerce of aforesaid articles:

Held, That through use of acts and practices described, said corporation had violated and was violating Section 3 of the Clayton Act.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Lynn C. Paulson and *Mr. George W. Williams* for the Commission.
Marsh, Day & Calhoun, of Bridgeport, Conn., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Milford Rivet & Machine Company, a corporation, hereinafter referred to as respondent, has violated the provisions of Section 3 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and commonly known as the Clayton Act, hereby issues this its complaint against said respondent and states its charges in respect thereto as follows, to-wit:

PARAGRAPH 1. Respondent, Milford Rivet & Machine Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Connecticut, having its principal office and place of business at Milford, Conn.

Respondent is now, and for many years last past has been engaged in the business of manufacturing rivet-setting machines and of leasing and licensing the use of said rivet-setting machines, and of manufacturing and selling tubular and bifurcated rivets. Rivet-setting machines are used to set tubular and bifurcated rivets and tubular and bifurcated rivets are used in the manufacture of many articles of commerce.

In connection with its aforesaid business, respondent has leased and licensed, and still leases and licenses, its rivet-setting machines, and has sold, and still sells, its tubular and bifurcated rivets to individuals, firms, partnerships and corporations located in the several States of the United States and the District of Columbia, and has caused, and still causes, said machines and rivets, when leased, licensed or sold, to be transported from its principal place of business in Connecticut to the licensees, lessees and vendees thereof located at various points in the several States of the United States and in the District of Columbia, and said respondent now is, and has been for more than three years last past, constantly engaged in commerce in said products between and among the several States of the United States, the territories thereof and in the District of Columbia.

In the course and conduct of its business, said respondent is, and has been for several years, in competition with firms, partnerships, corporations, and individuals engaged in the manufacture, leasing and licensing of rivet-setting machines and in the manufacture and sale of tubular and bifurcated rivets in commerce between and among the various States of the United States, the territories thereof, and in the District of Columbia.

There are in the United States, and have been during the time respondent has been in business, other corporations, firms, partnerships and individuals who have been and are engaged in the sale of tubular and bifurcated rivets in commerce among and between the several States, which tubular and bifurcated rivets are suitable for and may be used in and with respondent's rivet-setting machines; and with whom, but for the restrictive condition of respondent's contracts of license and lease, as hereinafter set forth, respondent would have been and would now be in active, substantial competition in the sale of tubular and bifurcated rivets.

Said respondent is now, and for more than four years last past has been, a large manufacturer and distributor, licensor and lessor of rivet-setting machines, and now occupies an important position in the rivet-setting industry.

PAR. 2. The respondent in the course and conduct of its said business hereinabove described in paragraph 1, has leased and licensed and is now leasing and licensing its said rivet-setting machines for use in the several States and territories of the United States and in the District of Columbia on and with the condition, agreement or understanding that the lessees or licensees thereof shall use the respondent's rivet-setting machines only for setting rivets manufactured by the respondent or sold under its authority, and on the further condition, agreement or understanding that the lessees or licensees thereof will allow the respondents

or its agents to inspect the said machines at any time during the usual business hours.

PAR. 3. The effect of the said provisions in said license and lease agreements or understandings set forth in paragraph 2 hereof, may be to substantially lessen competition or tend to create a monopoly in respondent tubular and bifurcated rivets in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 4. The aforesaid acts, practices and methods of respondent constitute a violation of the provisions of Section 3 of the hereinabove-mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of that certain Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, the Federal Trade Commission on April 25, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Milford Rivet & Machine Company, a corporation, charging it with the violation of the provisions of Section 3 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, including testimony and other evidence taken in Commission's proceeding under Docket 4111 (Judson L. Thomson Manufacturing Company),¹ which by stipulation upon the record were made a part of the record in this proceeding, 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 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, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Milford Rivet & Machine Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, having its principal office and place of business at Milford, Conn. Respondent is now, and for many years last past has been, engaged in the business of manufacturing and selling tubular and bifurcated rivets and also in the manufacture of automatic rivet-setting machines, which the respondent leases and sells to various manufacturers of commercial articles for use in setting such rivets.

PAR. 2. In the course and conduct of its business, the respondent causes its automatic rivet-setting machines when leased or sold, and its tubular and bifurcated rivets when sold, to be transported from its prin-

¹ See *ante*, p. 135.

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principal place of business in the State of Connecticut to the purchasers and lessees of such products 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. In the course and conduct of its business, said respondent is, and for several years last past has been, in competition with firms, partnerships, corporations, and individuals engaged in the manufacture and sale in commerce among and between the various States of the United States, of tubular and bifurcated rivets, and in the manufacture, sale, and leasing of automatic rivet-setting machines for use in setting such rivets.

There are in the United States other corporations, individuals, firms, and partnerships who have been, and are, engaged in the sale in commerce among and between the various States of the United States of tubular and bifurcated rivets suitable for use in, and with, respondent's rivet-setting machines and with whom, but for the restrictive conditions of respondent's contracts of lease as hereinafter set forth, respondent would have been, and would now be, in active, substantial competition in the sale of tubular and bifurcated rivets.

PAR. 4. Tubular rivets are rivets which have the end of the shank of the rivet away from the head drilled or punched out so that a portion of this end of the shank forms a tube. When the rivet is set, the metal in this tubular part of the shank is caused to spread or flow so as to form a clinch. Bifurcated rivets have a v-shaped slot cut in the shank at the end away from the head and are set by causing the prongs on each side of this slot to be spread in opposite directions.

Tubular and bifurcated rivets are sold to two classes of customers—first, to manufacturers in the industrial field, who use them for the purpose of assembling their products or as component parts of their products, and second, to the carton or jobbing trade, which includes the sale of rivets through mail-order houses and hardware jobbers and others for replacement and repair purposes. Rivets used in the industrial field by manufacturers are generally set in automatic-feed setting machines. Rivets sold to the carton or jobbing trade are as a rule not used in automatic-feed machines but, instead, are used in small hand-feed machines and some in special brake-lining machines.

Automatic rivet-setting machines all operate on the same general principles. The essential parts of such machines are the automatic feeding mechanism, the plunger or driving stem, the pocket, and the anvil. The rivets are poured into a hopper at the top of the machine and assorted mechanically so that they slide down a track. At the end of the track there is a cutoff in the feeding mechanism which releases one rivet at a time from the track and delivers it to the pocket. The pocket holds the rivet while it is being driven by the driving stem, which comes down on top of the rivet from above and pushes the rivet through the material to be riveted and against the anvil. The operation of the driving stem against the anvil spreads the prongs of bifurcated rivets or, in the case of the tubular rivets, causes the metal sides of the tube on the end of the shank to flow against the materials and clinch the rivet. A split or bifurcated rivet punches its way through the material to be riveted, and the rivet is clinched on a fixed anvil. The tubular rivet is clinched on a disappearing-point anvil.

PAR. 5. There are eight companies in the United States, including the respondent, engaged in the business of selling tubular and bifurcated rivets and in supplying automatic rivet-setting machines for the setting of such rivets. All of said companies were, at the time of the filing of the complaint herein or prior thereto, engaged in the practice of leasing automatic rivet-setting machines on the condition and understanding that the lessee shall not use said leased machinery for setting any other rivets than those made and sold by the lessor.

From about 1889, when the use of tubular and bifurcated rivets for industrial purposes began, until the year 1914, the Judson L. Thomson Manufacturing Company (respondent in Commission's proceeding under Docket 4111) and Tubular Rivet & Stud Company (respondent in Commission's proceeding under Docket 4113) were the only companies engaged in the business of selling tubular and bifurcated rivets and supplying automatic rivet-setting machines for setting such rivets. The practice of these companies was to lease their automatic rivet-setting machines and not to sell such machines. The Judson L. Thomson Manufacturing Company has outstanding on lease approximately 8,000 automatic rivet-setting machines, and the Tubular Rivet & Stud Company has approximately 7,412 machines on lease. The total volume of business of the above eight companies in tubular and bifurcated rivets for the year 1939 was \$5,180,304.75. Of this amount \$1,243,927.86, or about 25 percent, was done by the Judson L. Thomson Manufacturing Company, and \$1,331,550.98, or about 25 percent, by the Tubular Rivet & Stud Company.

The Penn Rivet Corporation (respondent in Commission's proceeding under Docket 4563) entered the industrial field and began the manufacture of bifurcated rivets and automatic rivet-setting machines about the year 1914 and subsequently included tubular rivets. This company both sold and leased its rivet-setting machines. During the period from 1932 to 1936 it made no new leases but resumed this practice in 1936, and now has approximately 500 machines outstanding on lease. While the evidence is not complete as to number of machines sold by this company, it appears that it has sold in excess of 2,000 machines during the time that it has been in business. The gross sales of tubular and bifurcated rivets by the Penn Rivet Corporation amounted to \$307,000 in 1939.

The Edwin B. Stimpson Company (respondent in Commission's proceeding under Docket 4560) began the manufacture and sale of tubular and bifurcated rivets about the year 1920, and about two years thereafter began supplying automatic rivet-setting machines. This company both sold and leased its rivet-setting machines. It has about 2,000 machines now outstanding on lease, and during the time that it has been in business has sold approximately 300 machines. The gross sales of tubular and bifurcated rivets of this company for the year 1939 amounted to \$286,500.

In 1920 the Chicago Rivet and Machine Company (respondent in Commission's proceeding under Docket 4562) began the manufacture and sale of tubular and bifurcated rivets but did not supply automatic rivet-setting machines until sometime between the years 1925 and 1928. Since that time it has supplied customers with automatic rivet-setting machines by lease, outright purchase, and on a lease-sale arrangement. The Chicago Rivet and Machine Company had 800 to 1,000 rivet-setting machines outstanding on lease. During the time that this company has been engaged in distributing automatic rivet-setting machines, it has

sold in excess of 3,000 machines. Its gross sales of tubular and bifurcated rivets for 1939 amounted to \$1,011,527, or about 20 percent of the total business done by the eight companies supplying rivet-setting machines.

During the period from 1927 to 1930, the respondent, Milford Rivet & Machine Company, Milford, Mass.; National Rivet & Manufacturing Company, Waupun, Wis. (respondent in Commission's proceeding under Docket 4561); and Shelton Tack Company, Shelton, Conn. (respondent in Commission's proceeding under Docket 4564), began the manufacture and sale of tubular and bifurcated rivets and supplying automatic rivet-setting machines. All three of these companies both lease and sell automatic rivet-setting machines. The machines of these companies outstanding on lease are as follows:

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When automatic rivet-setting machines are sold, the prices range from \$150 to \$1,000 and sometimes more, depending upon the nature and extent of special construction. The ordinary or more popular machine sells for around \$300. When such machines are placed with customers on a lease basis, the yearly rental is usually upon a more or less nominal basis and is not sufficient to show a profit. Rivets sold to lessees for use in leased machines cost approximately 10 percent more than corresponding rivets sold on the open market or sold to persons who do not lease machines.

PAR. 6. The respondent sells tubular and bifurcated rivets and also supplies automatic rivet-setting machines for use in setting such rivets. Respondent supplies such machines by outright sale, conditional-sales contracts, and by lease. At the time of the filing of the complaint the conditional-sale contract or the conditional bill of sale used by the respondent provided for an increase of 15 percent in the regular price of rivets, such increase to be applied to the purchase price of the machine. It was further provided in such contract that until such time as the machine is fully paid for, no rivets other than those manufactured by the respondent shall be used in it. Subsequent to the filing of the complaint the respondent discontinued the use of this conditional bill of sale and

adopted a straight conditional-sales contract providing for specific payments and containing no restrictive clause with reference to the use of rivets in the machine.

When automatic rivet-setting machines were supplied to customers on a lease basis, respondent followed the practice of leasing such machines on a yearly rental basis, which rental was waived or rebated to the lessee if the lessee used a quantity of rivets stated in the lease. The respondent makes a retooling charge when machines are supplied but services the machines without cost during the time that they are on lease. The prices charged by the respondent for rivets used in leased machines are approximately 10 percent higher than the prices of corresponding rivets sold to purchasers who do not lease machines.

The form of lease used by the respondent provides that the leased machine shall be used only for setting rivets manufactured by the respondent or sold under its authority and that lessee will allow the respondent or its agents to inspect the machine at any time during usual business hours. Respondent's leases are subject to termination by either party upon ten days' written notice.

PAR. 7. The revenue received by respondent from the leasing of its rivet-setting machines is of minor importance as compared with the revenue received from the sale of its tubular and bifurcated rivets. The primary purpose of leasing the equipment is to enable respondent to sell tubular and bifurcated rivets in or with the equipment, as is evident from the provisions of the agreement rebating rental paid when a specified number of rivets is used by the lessee. The amount of rental charged by the respondent is not sufficient to warrant leasing its rivet-setting machines in the absence of the sale of rivets.

PAR. 8. There is on the market an ample supply of tubular and bifurcated rivets for use in or with respondent's rivet-setting machines which is for sale and which can be supplied for sale by concerns which sell or lease rivet-setting machines and by concerns which do not sell or lease such machines. These concerns are prepared to sell tubular and bifurcated rivets to lessees of respondent's rivet-setting machines but are precluded from making such sales by reason of the restrictive conditions in respondent's lease contract. While the respondent manufactures rivets of many various sizes and shapes, many of which are specially designed, such rivets can be duplicated and supplied by any competent rivet manufacturer.

PAR. 9. Among the concerns which do not supply rivet-setting machines in connection with the sale of tubular and bifurcated rivets are Atlas Tack Company, New Jersey Rivet Company, Townsend Company, J. W. Coombs Mfg. Co., and Manufacturers Belt Hook Co.

The gross sales of these companies of tubular and bifurcated rivets for the year 1939 were as follows:

Atlas Tack Company	\$ 24,994
New Jersey Rivet Company	40,000
Townsend Company	300,000
J. W. Coombs Mfg. Co.	39,000
Manufacturers Belt Hook Co.	72,000

The Atlas Tack Company sells its rivets to both the hardware and jobbing trade and to industrial users. Its sales, however, have been more or less limited to the hardware and jobbing trade, as it has not had much success in the industrial field. The New Jersey Rivet Com-

pany sells practically all of its rivets for use in automatic rivet-setting machines but has had difficulty in making sales where leased machines are present. The Townsend Company sells to both the hardware and jobbing trade and to industrial users. A representative of this company testified that the use of leased machines by manufacturers curtails outlets and narrows the market for its rivets. The J. W. Coombs Mfg. Co. sells to both industrial manufacturers and to the hardware and jobbing trade. About 80 percent of the rivets sold by this company are sold to one customer to whom it originally supplied 12 rivet-setting machines. The Manufacturers Belt Hook Company began the sale of tubular and bifurcated rivets in 1910 but did not become interested in the industrial business until 1927 or 1928. It now sells both to hardware and jobbing trade and to industrial users. Sales are made mostly to industrial users who own their rivet-setting machines.

While the business of all these companies has increased during the past several years, there is no evidence whether such increase was due to a greater demand by the hardware and jobbing trade or by industrial users. However, the testimony of representatives of these various companies clearly indicates that the outlets for their tubular and bifurcated rivets were curtailed, and competition therein restrained, by the practice of leasing rivet-setting machines in the manner hereinabove described.

PAR. 10. The Commission finds that the practice of respondent in requiring that the lessees of its rivet-setting machines use in or with such machines no tubular or bifurcated rivets other than those supplied by the respondent, results in the exclusion from the market of numerous parties who, in the absence of such restrictions, would be prospective and potential purchasers of tubular and bifurcated rivets from respondent's competitors. Competition in the tubular- and bifurcated-rivet market is restricted and contracted in direct proportion to the extent to which respondent is successful in leasing its rivet-setting machines under agreements containing such restrictive conditions.

PAR. 11. The Commission further finds that the effect of such restrictive conditions under the circumstances set forth herein may be to substantially lessen competition in the sale of tubular and bifurcated rivets in commerce between and among the several States of the United States and in the District of Columbia. Such effect is materially increased by reason of the fact that it forms a part of the cumulative effect of the practices of the other companies described in paragraph 5 hereof upon competition in commerce among and between various States of the United States.

CONCLUSION

Through the use of the acts and practices described herein, the respondent has violated, and is now violating, Section 3 of the Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton 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, testi-

mony 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 respondent has violated the provisions of that certain Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act.

It is ordered, That the respondent, Milford Rivet & Machine Company, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the leasing, sale, or making any contract for the sale of respondent's automatic rivet-setting machines in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Leasing, selling, or making any contract for the sale of, respondent's automatic rivet-setting machines on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use in or with such machines any rivets other than those acquired from respondent or from some source authorized by respondent.

2. Enforcing or continuing in operation or effect, any condition, agreement, or understanding in or in connection with any existing lease or sale contract, which condition, agreement, or understanding is to the effect that the lessee or purchaser of respondent's automatic rivet-setting machines shall not use in or with such machines rivets other than those acquired from respondent or from some source authorized by it.

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

Complaint

IN THE MATTER OF
NATIONAL RIVET & MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914*Docket 4561. Complaint, Aug. 11, 1941—Decision, Feb. 9, 1944.*

Where a corporation which was engaged in the manufacture and interstate sale and distribution of tubular and bifurcated rivets, and in the manufacture, and outright sale, conditional sale, and lease of automatic rivet-setting machines to manufacturers, in competition with others so engaged, and, but for the restrictive leases below set forth, with concerns engaged in interstate sale and distribution of such rivets suitable for use with its said machines; was one of a group of eight manufacturers in the United States engaged in the manufacture and sale of such rivets, and manufacture, sale and lease of such machines—prices of which range from \$150 to \$1,000 and more, with the ordinary or more popular machines selling for around \$300; and was one of six of said manufacturers, which followed the other two original occupants of the field in the making of such restrictive leases;

Leased its said machines upon the condition that they should be used only for setting rivets made by it for yearly rentals which were not sufficient, without the sale of rivets, to warrant the leasing,—in connection with which it made no additional charge for servicing—and which were rebated in the event of lessee's using number of its rivets specified therein, prices of which were about ten per cent higher than those of corresponding rivets sold to non-lessees;

With the result that through said excluding condition it precluded other concerns from selling to its lessees rivets suitable for use in such machines, and excluded from the tubular and bifurcated rivet market numerous potential purchasers of such articles from its competitors, and competition in aforesaid market was restricted and contracted in direct proportion to the extent to which it was successful in so leasing its machines:

Effect of which, materially increased by similar practices of the other seven manufacturers hereinbefore referred to, might be to substantially lessen competition in sale in commerce of aforesaid articles:

Held, That through use of acts and practices described, said corporation had violated and was violating Section 3 of the Clayton Act.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Lynn C. Paulson and *Mr. George W. Williams* for the Commission.
Miller, Mack & Fairchild, of Milwaukee, Wis., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that National Rivet & Manufacturing Company, a corporation, hereinafter referred to as respondent, has violated the provisions of Section 3 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and commonly known as the Clayton Act, hereby issues this its complaint against said respondent and states its charges in respect thereto as follows, to-wit:

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PARAGRAPH 1. Respondent, National Rivet & Manufacturing Company, is a corporation, organized, existing and doing business under the laws of the State of Wisconsin, having its office and principal place of business at Waupun, Wis.

Respondent has been for several years last past and is now engaged in the business of manufacturing and selling tubular and bifurcated rivets. In connection with its aforesaid business, respondent leases and sells rivet-setting machines or permits the use thereof by way of a license. Respondent does not make or manufacture the rivet-setting machines which it leases, licenses or sells, but has them made for it under its specifications. Such rivet-setting machines are intended for use and are used in setting tubular and bifurcated rivets. Tubular and bifurcated rivets are commonly used in the manufacture of many articles of commerce, principally as a device for fastening two or more parts together.

PAR. 2. In the course and conduct of its aforesaid business, respondent has leased, licensed or sold and is now leasing, licensing and selling rivet-setting machines, and has sold and still sells its tubular and bifurcated rivets to individuals, partnerships and corporations, many of whom are located in States of the United States other than the State of Wisconsin, and in the District of Columbia, and has caused and still causes such machines and rivets, when leased, licensed or sold, to be transported from its principal place of business in Wisconsin to the licensees, lessees and vendees thereof at their various places of location in the several States of the United States and the District of Columbia. Said respondent has been for many years last past and now is continuously engaged in commerce in said products between and among the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business in commerce as aforesaid, said respondent is, and has been for many years last past, in competition with individuals, partnerships and corporations engaged both in the manufacture, leasing, licensing and vending of rivet-setting machines and in the manufacture and sale of tubular and bifurcated rivets, and with other individuals, partnerships and corporations, who have been and are engaged in the manufacture and sale of tubular and bifurcated rivets, most, if not all, of which competitors manufacture and sell rivets suitable for use in and with respondent's rivet-setting machines, with whom, but for the restrictive condition of respondent's contracts of license, lease and sale, as hereinafter more particularly set forth, respondent would have been and would now be in more active and substantial competition.

PAR. 4. Respondent, in the course and conduct of its aforesaid business in commerce during all of the time herein referred to and continuing up to the present time, has leased, licensed and sold, or contracted to sell, rivet-setting machines for use in the several States and territories of the United States and in the District of Columbia, or fixed a price charged therefor or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee, licensee or vendee thereof will not use the said machine or machines for setting any other tubular or bifurcated rivets than those manufactured by the respondent or sold under its authority.

PAR. 5. The effect of leasing, licensing or selling, or contracting to sell rivet-setting machines by respondent on the condition, agreement or understanding as aforesaid may be to substantially lessen competition

or to tend to create a monopoly in a line of commerce, to-wit: the sale and distribution of tubular and bifurcated rivets between the several States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts, practices and methods of respondent constitute a violation of the provisions of Section 3 of the hereinabove mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of that certain Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, the Federal Trade Commission on August 11, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, National Rivet & Manufacturing Company, a corporation, charging it with the violation of the provisions of Section 3 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, including testimony and other evidence taken in Commission's proceeding under Docket 4111 (Judson L. Thomson Manufacturing Company),¹ which by stipulation upon the record were made a part of the record in this proceeding, 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 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, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, National Rivet & Manufacturing Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, having its principal office and place of business at Waupun, Wis. Respondent is now, and for many years last past has been, engaged in the business of manufacturing and selling tubular and bifurcated rivets and also in the manufacture of automatic rivet-setting machines, which the respondent leases and sells to various manufacturers of commercial articles for use in setting such rivets.

PAR. 2. In the course and conduct of its business, the respondent causes its automatic rivet-setting machines when leased or sold, and its tubular and bifurcated rivets when sold, to be transported from its principal place of business in the State of Wisconsin to the purchasers and lessees of such products located in various other States of the United States. Respondent maintains, and at all times mentioned herein has main-

¹ See ante, p. 135.

tained, a course of trade in said products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its business, said respondent is, and for several years last past has been, in competition with firms, partnerships, corporations, and individuals engaged in the manufacture and sale in commerce among and between the various States of the United States, of tubular and bifurcated rivets, and in the manufacture, sale, and leasing of automatic rivet-setting machines for use in setting such rivets.

There are in the United States other corporations, individuals, firms, and partnerships who have been, and are, engaged in the sale in commerce among and between the various States of the United States of tubular and bifurcated rivets suitable for use in, and with, respondent's rivet-setting machines and with whom, but for the restrictive conditions of respondent's contracts of lease as hereinafter set forth, respondent would have been, and would now be, in active, substantial competition in the sale of tubular and bifurcated rivets.

PAR. 4. Tubular rivets are rivets which have the end of the shank of the rivet away from the head drilled or punched out so that a portion of this end of the shank forms a tube. When the rivet is set, the metal in this tubular part of the shank is caused to spread or flow so as to form a clinch. Bifurcated rivets have a v-shaped slot cut in the shank at the end away from the head and are set by causing the prongs on each side of this slot to be spread in opposite directions.

Tubular and bifurcated rivets are sold to two classes of customers—first, to manufacturers in the industrial field who use them for the purpose of assembling their products or as component parts of their products, and second, to the carton or jobbing trade, which includes the sale of rivets through mail-order houses and hardware jobbers and others for replacement and repair purposes. Rivets used in the industrial field by manufacturers are generally set in automatic-feed setting machines. Rivets sold to the carton or jobbing trade are as a rule not used in automatic-feed machines but, instead, are used in small hand-feed machines and some in special brake-lining machines.

Automatic rivet-setting machines all operate on the same general principles. The essential parts of such machines are the automatic feeding mechanism, the plunger or driving stem, the pocket, and the anvil. The rivets are poured into a hopper at the top of the machines and assorted mechanically so that they slide down a track. At the end of the track there is a cutoff in the feeding mechanism which releases one rivet at a time from the track and delivers it to the pocket. The pocket holds the rivet while it is being driven by the driving stem, which comes down on top of the rivet from above and pushes the rivet through the material to be riveted and against the anvil. The operation of the driving stem against the anvil spreads the prongs of bifurcated rivets or, in the case of the tubular rivets, causes the metal sides of the tube on the end of the shank to flow against the materials and clinch the rivet. A split or bifurcated rivet punches its way through the material to be riveted, and the rivet is clinched on a fixed anvil. The tubular rivet is clinched on a disappearing-point anvil.

PAR. 5. There are eight companies in the United States, including the respondent, engaged in the business of selling tubular and bifurcated rivets and in supplying automatic rivet-setting machines for the setting of such rivets. All of said companies were, at the time of the filing of the

complaint herein or prior thereto, engaged in the practice of leasing automatic rivet-setting machines on the condition and understanding that the lessee shall not use said, leased machinery for setting any other rivets than those made and sold by the lessor.

From about 1889, when the use of tubular and bifurcated rivets for industrial purposes began, until the year 1914, the Judson L. Thomson Manufacturing Company (respondent in Commission's proceeding under Docket 4111) and Tubular Rivet & Stud Company (respondent in Commission's proceeding under Docket 4113) were the only companies engaged in the business of selling tubular and bifurcated rivets and supplying automatic rivet-setting machines for setting such rivets. The practice of these companies was to lease their automatic rivet-setting machines and not to sell such machines. The Judson L. Thomson Manufacturing Company has outstanding on lease approximately 8,000 automatic rivet-setting machines, and the Tubular Rivet & Stud Company has approximately 7,412 machines on lease. The total volume of business of the above eight companies in tubular and bifurcated rivets for the year 1939 was \$5,180,304.75. Of this amount \$1,243,927.86, or about 25 percent, was done by the Judson L. Thomson Manufacturing Company, and \$1,331,550.98, or about 25 percent, by the Tubular Rivet & Stud Company.

The Penn Rivet Corporation (respondent in Commission's proceeding under Docket 4563) entered the industrial field and began the manufacture of bifurcated rivets and automatic rivet-setting machines about the year 1914 and subsequently included tubular rivets. This company both sold and leased its rivet-setting machines. During the period from 1932 to 1936 it made no new leases but resumed this practice in 1936, and now has approximately 500 machines outstanding on lease. While the evidence is not complete as to number of machines sold by this company, it appears that it has sold in excess of 2,000 machines during the time that it has been in business. The gross sales of tubular and bifurcated rivets by the Penn Rivet Corporation amounted to \$307,000 in 1939.

The Edwin B. Stimpson Company (respondent in Commission's proceeding under Docket 4560) began the manufacture and sale of tubular and bifurcated rivets about the year 1920, and about two years thereafter began supplying automatic rivet-setting machines. This company both sold and leased its rivet-setting machines. It has about 2,000 machines now outstanding on lease, and during the time that it has been in business has sold approximately 300 machines. The gross sales of tubular and bifurcated rivets of this company for the year 1939 amounted to \$286,500.

In 1920 the Chicago Rivet and Machine Company (respondent in Commission's proceeding under Docket 4562) began the manufacture and sale of tubular and bifurcated rivets but did not supply automatic rivet-setting machines until sometime between the years 1925 and 1928. Since that time it has supplied customers with automatic rivet-setting machines by lease, outright purchase, and on a lease-sale arrangement. The Chicago Rivet and Machine Company had 800 to 1,000 rivet-setting machines outstanding on lease. During the time that this company has been engaged in distributing automatic rivet-setting machines, it has sold in excess of 3,000 machines. Its gross sales of tubular and bifurcated rivets for 1939 amounted to \$1,011,527, or about 20 percent of the total business done by the eight companies supplying rivet-setting machines.

During the period from 1927 to 1930 the respondent, National Rivet & Manufacturing Company, Waupun, Wis.; Milford Rivet & Machine Company, Milford, Mass. (respondent in Commission's proceeding under Docket 4110); and Shelton Tack Company, Shelton, Conn. (respondent in Commission's proceeding under Docket 4564), began the manufacture and sale of tubular and bifurcated rivets and supplying automatic rivet-setting machines. All three of these companies both lease and sell automatic rivet-setting machines. The machines of these companies outstanding on lease are as follows:

National Rivet & Manufacturing Company	96 machines
Milford Rivet & Machine Company	269 machines
Shelton Tack Company	45 machines

The number of automatic rivet-setting machines sold by these companies during the time they have been in business is as follows:

National Rivet & Manufacturing Company	207 machines
Milford Rivet & Machine Company	254 machines
Shelton Tack Company	146 machines

The gross sales of these companies of tubular and bifurcated rivets for the year 1939 were as follows:

National Rivet & Manufacturing Company	\$390,000
Milford Rivet & Machine Company	396,574
Shelton Tack Company	213,225

These three companies, together with the Penn Rivet Corporation and Edwin B. Stimpson Company, do approximately 30 percent of the total business done by the eight companies supplying rivet-setting machines.

When automatic rivet-setting machines are sold, the prices range from \$150 to \$1,000 and sometimes more, depending upon the nature and extent of special construction. The ordinary or more popular machine sells for around \$300. When such machines are placed with customers on a lease basis, the yearly rental is usually upon a more or less nominal basis and is not sufficient to show a profit. Rivets sold to lessees for use in leased machines cost approximately 10 percent more than corresponding rivets sold on the open market or sold to persons who do not lease machines.

PAR. 6. The respondent sells tubular and bifurcated rivets and also supplies automatic rivet-setting machines for use in setting such rivets. Respondent supplies such machines by outright sale, conditional-sales contracts, and by lease. In the form contract used by the respondent when machines were sold on conditional sale, it was provided that the price of rivets would be increased by 10 percent, such increase to be credited against the purchase price of the machine. It was further provided in said contract that no rivets other than those made by the seller and sold by it to the buyer shall be used in said machine until the buyer has paid the purchase price.

When automatic rivet-setting machines were supplied to customers on lease basis, respondent followed the practice of leasing such machines on a yearly rental, which rental was rebated to the lessee if the lessee used a quantity of rivets stated in the lease. The respondent made no additional charge for servicing machines held by customers on lease. The prices charged by the respondent for rivets used in leased machines are approxi-

mately 10 percent higher than the prices of corresponding rivets sold to purchasers who do not lease machines.

The form of lease used by the respondent provides that the leased machine is to be used only for setting rivets manufactured by the respondent and that lessee will allow said respondent or its agents to inspect the machine at all times.

PAR. 7. The revenue received by respondent from the leasing of its rivet-setting machines is of minor importance as compared with the revenue received from the sale of its tubular and bifurcated rivets. The primary purpose of leasing the equipment is to enable respondent to sell tubular and bifurcated rivets in or with the equipment, as is evident from the provisions of the agreement rebating rental paid when a specified number of rivets is used by the lessee. The amount of rental charged by the respondent is not sufficient to warrant leasing its rivet-setting machines in the absence of the sale of rivets.

PAR. 8. There is on the market an ample supply of tubular and bifurcated rivets for use in or with respondent's rivet-setting machines which is for sale and which can be supplied for sale by concerns which sell or lease rivet-setting machines and by concerns which do not sell or lease such machines. These concerns are prepared to sell tubular and bifurcated rivets to lessees of respondent's rivet-setting machines but are precluded from making such sales by reason of the restrictive conditions in respondent's lease contract. While the respondent manufactures rivets of many various sizes and shapes, many of which are specially designed, such rivets can be duplicated and supplied by any competent rivet manufacturer.

PAR. 9. Among the concerns which do not supply rivet-setting machines in connection with the sale of tubular and bifurcated rivets are Atlas Tack Company, New Jersey Rivet Company, Townsend Company, J. W. Coombs Mfg. Co., and Manufacturers Belt Hook Co.

The gross sales of these companies of tubular and bifurcated rivets for the year 1939 were as follows:

Atlas Tack Company	\$ 24,994
New Jersey Rivet Company	40,000
Townsend Company	300,000
J. W. Coombs Mfg. Co.	39,000
Manufacturers Belt Hook Co.	72,000

The Atlas Tack Company sells its rivets to both the hardware and jobbing trade and to industrial users. Its sales, however, have been more or less limited to the hardware and jobbing trade, as it has not had much success in the industrial field. The New Jersey Rivet Company sells practically all of its rivets for use in automatic rivet-setting machines but has had difficulty in making sales where leased machines are present. The Townsend Company sells to both the hardware and jobbing trade and to industrial users. A representative of this company testified that the use of leased machines by manufacturers curtails outlets and narrows the market for its rivets. The J. W. Coombs Mfg. Co. sells to both industrial manufacturers and to the hardware and jobbing trade. About 80 percent of the rivets sold by this company are sold to one customer to whom it originally supplied 12 rivet-setting machines. The Manufacturers Belt Hook Company began the sale of tubular and bifurcated

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rivets in 1910 but did not become interested in the industrial business until 1927 or 1928. It now sells both to hardware and jobbing trade and to industrial users. Sales are made mostly to industrial users who own their rivet-setting machines.

While the business of all these companies has increased during the past several years, there is no evidence whether such increase was due to a greater demand by the hardware and jobbing trade or by industrial users. However, the testimony of representatives of these various companies clearly indicates that the outlets for their tubular and bifurcated rivets were curtailed, and competition therein restrained, by the practice of leasing rivet-setting machines in the manner hereinabove described.

PAR. 10. The Commission finds that the practice of respondent in requiring that the lessees of its rivet-setting machines use in or with such machines no tubular or bifurcated rivets other than those supplied by the respondent, results in the exclusion from the market of numerous parties who, in the absence of such restrictions, would be prospective and potential purchasers of tubular and bifurcated rivets from respondent's competitors. Competition in the tubular- and bifurcated-rivet market is restricted and contracted in direct proportion to the extent to which respondent is successful in leasing its rivet-setting machines under agreements containing such restrictive conditions.

PAR. 11. The Commission further finds that the effect of such restrictive conditions under the circumstances set forth herein may be to substantially lessen competition in the sale of tubular and bifurcated rivets in commerce between and among the several States of the United States and in the District of Columbia. Such effect is materially increased by reason of the fact that it forms a part of the cumulative effect of the practices of the other companies described in paragraph 5 hereof upon competition in commerce among and between various States of the United States.

CONCLUSION

Through the use of the acts and practices described herein, the respondent has violated, and is now violating, Section 3 of the Act of Congress of the United States entitled; "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton 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, 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 respondent has violated the provisions of that certain Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, commonly known as the Clayton Act.

It is ordered, That the respondent, National Rivet & Manufacturing Company, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the leasing, sale, or making any contract for the sale of respondent's automatic rivet-setting machines in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Leasing, selling, or making any contract for the sale of respondent's automatic rivet-setting machines on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use in or with such machines any rivets other than those acquired from respondent or from some source authorized by respondent.

2. Enforcing or continuing in operation or effect, any condition, agreement, or understanding in or in connection with any existing lease or sale contract, which condition, agreement, or understanding is to the effect that the lessee or purchaser of respondent's automatic rivet-setting machines shall not use in or with such machines rivets other than those acquired from respondent or from some source authorized by it.

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

IN THE MATTER OF
SHELTON TACK COMPANY

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

Docket 4564. Complaint, Aug. 11, 1941—Decision, Feb. 9, 1944

Where a corporation which was engaged in the manufacture and interstate sale and distribution of tubular and bifurcated rivets to industrial manufacturers and to the carton and jobbing trade, and in the manufacture, sale and lease of automatic rivet-setting machines to manufacturers, in competition with others so engaged, and, but for the restrictive leases below set forth, with concerns engaged in interstate sale and distribution of such rivets suitable for use with its said machines; was one of a group of eight manufacturers in the United States engaged in the manufacture and sale of such rivets, and manufacture, sale and lease of such machines—prices of which range from \$150 to \$1,000 and more, with the ordinary or more popular machines selling for around \$300; and was one of six of said manufacturers, which followed the other two original occupants of the field, in the making of such restrictive leases;

Leased its machines upon the condition that they should be used only for setting rivets made by it or sold under its authority, on a yearly rental basis, for amounts which were not sufficient, without the sale of the rivets, to warrant the leasing,—in connection with which it made no additional charges for servicing—and which were waived or rebated to the lessee if the lessee used quantity of its rivets stated in the lease at prices about ten per cent higher than those to non-leasing purchasers;

With the result that through said excluding condition it precluded other concerns from selling to its lessees rivets suitable for use in such machines, and excluded from the tubular and bifurcated rivet market numerous potential purchasers of such articles from its competitors, and competition in aforesaid market was restricted and contracted in direct proportion to the extent to which it was successful in so leasing its machines;

Effect of which, materially increased by similar practices of the other seven manufacturers hereinbefore referred to, might be to substantially lessen competition in sale in commerce of aforesaid articles:

Held, That through use of acts and practices described, said corporation had violated and was violating Section 3 of the Clayton Act.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Lynn C. Paulson and *Mr. George W. Williams* for the Commission.

Mr. William Ewin Bonn, of Baltimore, Md., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that Shelton Tack Company, a corporation, hereinafter referred to as respondent, has violated the provisions of Section 3 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and commonly known as the Clayton Act, hereby issues this its complaint against said respondent and states its charges in respect thereto as follows, to-wit:

PARAGRAPH 1. Respondent, Shelton Tack Company, is a corporation, organized, existing and doing business under the laws of the State of Connecticut, having its office and principal place of business at 1937 Canal Street, Shelton, Conn.

Respondent has been for many years last past and is now engaged in the business of manufacturing and selling tacks, nails and staples and tubular and bifurcated rivets. In connection with the manufacture and sale of tubular and bifurcated rivets, respondent trades under the name of Shelton Tubular Rivet Company. In connection with its aforesaid tubular and bifurcated rivet business, respondent leases or sells rivet-setting machines or permits the use of them by way of a license. Some of such machines are manufactured by respondent and others it purchases or acquires by other means. Such rivet-setting machines are intended for use and are used in setting tubular and bifurcated rivets. Tubular and bifurcated rivets are used in the manufacture of many articles of commerce, principally as a device for fastening two or more parts together.

PAR. 2. In the course and conduct of its aforesaid business, respondent has leased, licensed or sold and is now leasing, licensing and selling rivet-setting machines, and has sold and still sells its tubular and bifurcated rivets to individuals, partnerships and corporations, many of whom are located in States of the United States other than the State of Connecticut, and in the District of Columbia, and has caused, and still causes such machines and rivets, when leased, licensed or sold, to be transported from its principal place of business in Connecticut to the licensees, lessees and vendees thereof at their various places of location in the several States of the United States and the District of Columbia. Said respondent has been for many years last past and now is continually engaged in commerce in said products between and among the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business in commerce as aforesaid, said respondent is, and has been for many years last past in competition with individuals, partnerships and corporations engaged both in the manufacture, leasing, licensing and vending of rivet-setting machines and in the manufacture and sale of tubular and bifurcated rivets, and with other individuals, partnerships and corporations, who have been and are engaged in the manufacture and sale of tubular and bifurcated rivets, most, if not all, of which competitors manufacture and sell rivets suitable for use in and with respondent's rivet-setting machines, with whom, but for the restrictive condition of respondent's contracts of license, lease and sale, as hereinafter more particularly set forth, respondent would have been and would now be in more active and substantial competition.

PAR. 4. Respondent, in the course and conduct of its aforesaid business in commerce during all of the time herein referred to and continuing up to the present time, has leased, licensed and sold, or contracted to sell, rivet-setting machines for use in the several States and territories of the United States and in the District of Columbia, or fixed a price charged therefor or discount from or rebate upon such price, on the condition, agreement or understanding that the lessee, licensee or vendee thereof will not use the said machine or machines for setting any other tubular and bifurcated rivets than those manufactured by the respondent or sold under its authority.

PAR. 5. The effect of leasing, licensing or selling or contracting to sell, rivet-setting machines by respondent on the condition, agreement or understanding as aforesaid may be to substantially lessen competition or to tend to create a monopoly in a line of commerce, to wit: the sale and distribution of tubular or bifurcated rivets between the several States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts, practices and methods of respondent constitute a violation of the provisions of Section 3 of the hereinabove mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of that certain Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, the Federal Trade Commission on August 11, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Shelton Tack Company, a corporation, charging it with the violation of the provisions of Section 3 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, including testimony and other evidence taken in Commission's proceeding under Docket 4111 (Judson L. Thomson Manufacturing Company), which by stipulation upon the record were made a part of the record in this proceeding, 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 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, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Shelton Tack Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, having its principal office and place of business at 1937 Canal Street, Shelton, Conn. Respondent is now, and for many years last past has been, engaged in the business of manufacturing and selling tubular and bifurcated rivets and also in the manufacture of automatic rivet-setting machines, which the respondent leases and sells to various manufacturers of commercial articles for use in setting such rivets.

PAR. 2. In the course and conduct of its business, the respondent causes its automatic rivet-setting machines when leased or sold, and its tubular and bifurcated rivets when sold, to be transported from its principal place

of business in the State of Connecticut to the purchasers and lessees of such products 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. In the course and conduct of its business, said respondent is, and for several years last past has been, in competition with firms, partnerships, corporations, and individuals engaged in the manufacture and sale in commerce among and between the various States of the United States, of tubular and bifurcated rivets, and in the manufacture, sale, and leasing of automatic rivet-setting machines for use in setting such rivets.

There are in the United States other corporations, individuals, firms, and partnerships who have been, and are, engaged in the sale in commerce among and between the various States of the United States of tubular and bifurcated rivets suitable for use in, and with, respondent's rivet-setting machines and with whom, but for the restrictive conditions of respondent's contracts of lease as hereinafter set forth, respondent would have been, and would now be, in active, substantial competition in the sale of tubular and bifurcated rivets.

PAR. 4. Tubular rivets are rivets which have the end of the shank of the rivet away from the head drilled or punched out so that a portion of this end of the shank forms a tube. When the rivet is set, the metal in this tubular part of the shank is caused to spread or flow so as to form a clinch. Bifurcated rivets have a v-shaped slot cut in the shank at the end away from the head and are set by causing the prongs on each side of this slot to be spread in opposite directions.

Tubular and bifurcated rivets are sold to two classes of customers—first, to manufacturers in the industrial field who use them for the purpose of assembling their products or as component parts of their products, and second, to the carton or jobbing trade, which includes the sale of rivets through mail-order houses and hardware jobbers and others for replacement and repair purposes. Rivets used in the industrial field by manufacturers are generally set in automatic-feed setting machines. Rivets sold to the carton or jobbing trade are as a rule not used in automatic-feed machines but, instead, are used in small hand-feed machines and some in special brake-lining machines.

Automatic rivet-setting machines all operate on the same general principles. The essential parts of such machines are the automatic feeding mechanism, the plunger or driving stem, the pocket, and the anvil. The rivets are poured into a hopper at the top of the machine and assorted mechanically so that they slide down a track. At the end of the track there is a cutoff in the feeding mechanism which releases one rivet at a time from the track and delivers it to the pocket. The pocket holds the rivet while it is being driven by the driving stem, which comes down on top of the rivet from above and pushes the rivet through the material to be riveted and against the anvil. The operation of the driving stem against the anvil spreads the prongs of bifurcated rivets or, in the case of the tubular rivets, causes the metal sides of the tube on the end of the shank to flow against the materials and clinch the rivet. A split or bifurcated rivet punches its way through the material to be riveted, and the rivet is clinched on a fixed anvil. The tubular rivet is clinched on a disappearing-point anvil.

PAR. 5. There are eight companies in the United States, including the respondent, engaged in the business of selling tubular and bifurcated rivets and in supplying automatic rivet-setting machines for the setting of such rivets. All of said companies were, at the time of the filing of the complaint herein or prior thereto, engaged in the practice of leasing automatic rivet-setting machines on the condition and understanding that the lessee shall not use said leased machinery for setting any other rivets than those made and sold by the lessor.

From about 1889, when the use of tubular and bifurcated rivets for industrial purposes began, until the year 1914, the Judson L. Thomson Manufacturing Company (respondent in Commission's proceeding under Docket 4111) and Tubular Rivet & Stud Company (respondent in Commission's proceeding under Docket 4113) were the only companies engaged in the business of selling tubular and bifurcated rivets and supplying automatic rivet-setting machines for setting such rivets. The practice of these companies was to lease their automatic rivet-setting machines and not to sell such machines. The Judson L. Thomson Manufacturing Company has outstanding on lease approximately 8,000 automatic rivet-setting machines, and the Tubular Rivet & Stud Company has approximately 7,412 machines on lease. The total volume of business of the above eight companies in tubular and bifurcated rivets for the year 1939 was \$5,180,304.75. Of this amount \$1,243,927.86, or about 25 percent, was done by the Judson L. Thomson Manufacturing Company and \$1,331,550.98, or about 25 percent, by the Tubular Rivet & Stud Company.

The Penn Rivet Corporation (respondent in Commission's proceeding under Docket 4563) entered the industrial field and began the manufacture of bifurcated rivets and automatic rivet-setting machines about the year 1914 and subsequently included tubular rivets. This company both sold and leased its rivet-setting machines. During the period from 1932 to 1936 it made no new leases but resumed this practice in 1936, and now has approximately 500 machines outstanding on lease. While the evidence is not complete as to number of machines sold by this company, it appears that it has sold in excess of 2,000 machines during the time that it has been in business. The gross sales of tubular and bifurcated rivets by the Penn Rivet Corporation amounted to \$307,000 in 1939.

The Edwin B. Stimpson Company (respondent in Commission's proceeding under Docket 4560) began the manufacture and sale of tubular and bifurcated rivets about the year 1920, and about two years thereafter began supplying automatic rivet-setting machines. This company both sold and leased its rivet-setting machines. It has about 2,000 machines now outstanding on lease, and during the time that it has been in business has sold approximately 300 machines. The gross sales of tubular and bifurcated rivets of this company for the year 1939 amounted to \$286,500.

In 1920 the Chicago Rivet and Machine Company (respondent in Commission's proceeding under Docket 4562) began the manufacture and sale of tubular and bifurcated rivets but did not supply automatic rivet-setting machines until sometime between the years 1925 and 1928. Since that time it has supplied customers with automatic rivet-setting machines by lease, outright purchase, and on a lease-sale arrangement. The Chicago Rivet and Machine Company had 800 to 1,000 rivet-setting machines outstanding on lease. During the time that this company

has been engaged in distributing automatic rivet-setting machines, it has sold in excess of 3,000 machines. Its gross sales of tubular and bifurcated rivets for 1939 amounted to \$1,011,527, or about 20 percent of the total business done by the eight companies supplying rivet-setting machines.

During the period from 1927 to 1930 the respondent, Shelton Tack Company, Shelton, Conn.; Milford Rivet & Machine Company, Milford, Mass. (respondent in Commission's proceeding under Docket 4110); and National Rivet & Manufacturing Company, Waupun, Wis. (respondent in Commission's proceeding under Docket 4561), began the manufacture and sale of tubular and bifurcated rivets and supplying automatic rivet-setting machines. All three of these companies both lease and sell automatic rivet-setting machines. The machines of these companies outstanding on lease are as follows:

Shelton Tack Company	45 machines
Milford Rivet & Machine Company	269 machines
National Rivet & Manufacturing Company	96 machines

The number of automatic rivet-setting machines sold by these companies during the time they have been in business is as follows:

Shelton Tack Company	146 machines
Milford Rivet & Machine Company	254 machines
National Rivet & Manufacturing Company	207 machines

The gross sales of these companies of tubular and bifurcated rivets for the year 1939 were as follows:

Shelton Tack Company	\$213,225
Milford Rivet & Machine Company	396,574
National Rivet & Manufacturing Company	390,000

These three companies, together with the Penn Rivet Corporation and Edwin B. Stimpson Company, do approximately 30 percent of the total business done by the eight companies supplying rivet-setting machines.

When automatic rivet-setting machines are sold, the prices range from \$150 to \$1,000 and sometimes more, depending upon the nature and extent of special construction. The ordinary or more popular machine sells for around \$300. When such machines are placed with customers on a lease basis, the yearly rental is usually upon a more or less nominal basis and is not sufficient to show a profit. Rivets sold to lessees for use in leased machines cost approximately 10 percent more than corresponding rivets sold on the open market or sold to persons who do not lease machines.

PAR. 6. The respondent sells its tubular and bifurcated rivets to both industrial manufacturers and to the carton and jobbing trade. Rivets sold for use in automatic rivet-setting machines amount to approximately two-thirds of its sales. For the purpose of increasing the purchase of its tubular and bifurcated rivets, the respondent began supplying automatic rivet-setting machines for use in setting such rivets. Since that time the respondent has supplied automatic rivet-setting machines to customers both by sale and by lease agreement.

When automatic rivet-setting machines were supplied to customers on a lease basis, respondent followed the practice of leasing such machines on a yearly rental basis, which rental was waived or rebated to the lessee

if the lessee used a quantity of rivets stated in the lease. Respondent made no additional charge for servicing machines held by customers on lease.

The form of lease used by the respondent provides that the leased machine shall be used only for setting rivets manufactured by the respondent or sold under its authority and that the lessee will allow the respondent or its agents to inspect the machine at all reasonable times.

PAR. 7. The revenue received by respondent from the leasing of its rivet-setting machines is of minor importance as compared with the revenue received from the sale of its tubular and bifurcated rivets. The primary purpose of leasing the equipment is to enable respondent to sell tubular and bifurcated rivets in or with the equipment, as is evident from the provisions of the agreement rebating rental paid when a specified number of rivets is used by the lessee. The amount of rental charged by the respondent is not sufficient to warrant leasing its rivet-setting machines in the absence of the sale of rivets.

PAR. 8. There is on the market an ample supply of tubular and bifurcated rivets for use in or with respondent's rivet-setting machines which is for sale and which can be supplied for sale by concerns which sell or lease rivet-setting machines and by concerns which do not sell or lease such machines. These concerns are prepared to sell tubular and bifurcated rivets to lessees of respondent's rivet-setting machines but are precluded from making such sales by reason of the restrictive conditions in respondent's lease contract. While the respondent manufactures rivets of many various sizes and shapes, many of which are specially designed, such rivets can be duplicated and supplied by any competent rivet manufacturer.

PAR. 9. Among the concerns which do not supply rivet-setting machines in connection with the sale of tubular and bifurcated rivets are Atlas Tack Company, New Jersey Rivet Company, Townsend Company, J. W. Coombs Mfg. Co., and Manufacturers Belt Hook Co.

The gross sales of these companies of tubular and bifurcated rivets for the year 1939 were as follows:

Atlas Tack Company	\$ 24,994
New Jersey Rivet Company	40,000
Townsend Company	300,000
J. W. Coombs Mfg. Co.	39,000
Manufacturers Belt Hook Co.	72,000

The Atlas Tack Company sells its rivets to both the hardware and jobbing trade and to industrial users. Its sales, however, have been more or less limited to the hardware and jobbing trade, as it has not had much success in the industrial field. The New Jersey Rivet Company sells practically all of its rivets for use in automatic rivet-setting machines but has had difficulty in making sales where leased machines are present. The Townsend Company sells to both the hardware and jobbing trade and to industrial users. A representative of this company testified that the use of leased machines by manufacturers curtails outlets and narrows the market for its rivets. The J. W. Coombs Mfg. Co. sells to both industrial manufacturers and to the hardware and jobbing trade. About 80 percent of the rivets sold by this company are sold to one customer to whom it originally supplied 12 rivet-setting machines. The Manufacturers Belt Hook Company began the sale of tubular and bifurcated

rivets in 1910 but did not become interested in the industrial business until 1927 or 1928. It now sells both to hardware and jobbing trade and to industrial users. Sales are made mostly to industrial users who own their rivet-setting machines.

While the business of all these companies has increased during the past several years, there is no evidence whether such increase was due to a greater demand by the hardware and jobbing trade or by industrial users. However, the testimony of representatives of these various companies clearly indicates that the outlets for their tubular and bifurcated rivets were curtailed, and competition therein restrained, by the practice of leasing rivet-setting machines in the manner hereinabove described.

PAR. 10. The Commission finds that the practice of respondent in requiring that the lessees of its rivet-setting machines use in or with such machines no tubular or bifurcated rivets other than those supplied by the respondent, results in the exclusion from the market of numerous parties who, in the absence of such restrictions, would be prospective and potential purchasers of tubular and bifurcated rivets from respondent's competitors. Competition in the tubular- and bifurcated-rivet market is restricted and contracted in direct proportion to the extent to which respondent is successful in leasing its rivet-setting machines under agreements containing such restrictive conditions.

PAR. 11. The Commission further finds that the effect of such restrictive conditions under the circumstances set forth herein may be to substantially lessen competition in the sale of tubular and bifurcated rivets in commerce between and among the several States of the United States and in the District of Columbia. Such effect is materially increased by reason of the fact that it forms a part of the cumulative effect of the practices of the other companies described in paragraph 5 hereof upon competition in commerce among and between various States of the United States.

CONCLUSION

Through the use of the acts and practices described herein, the respondent has violated, and is now violating, Section 3 of the Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton 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, 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 respondent has violated the provisions of that certain Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act.

Order

38 F. T. C.

It is ordered, That the respondent, Shelton Tack Company, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the leasing, sale, or making any contract for the sale of respondent's automatic rivet-setting machines in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Leasing, selling, or making any contract for the sale of, respondent's automatic rivet-setting machines on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use in or with such machines any rivets other than those acquired from respondent or from some source authorized by respondent.

2. Enforcing or continuing in operation or effect, any condition, agreement, or understanding in or in connection with any existing lease or sale contract, which condition, agreement, or understanding is to the effect that the lessee or purchaser of respondent's automatic rivet-setting machines shall not use in or with such machines rivets other than those acquired from respondent or from some source authorized by it.

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

Complaint

IN THE MATTER OF

SAMUEL MICKELBERG TRADING AS EXHIBIT 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 4024. Complaint, Feb. 7, 1940—Decision, Feb. 23, 1944

Where an individual engaged in competitive interstate sale and distribution of radios and other merchandise together with push cards and other devices designed for use by retailers in resale thereof to the public by means of a game of chance, gift enterprise or lottery scheme, and also of assortments so packed and assembled as to involve the use of such games of chance by ultimate purchasers—typical combination consisting of a radio and a 3,000 hole punch board equipped with ten red and five gold seal pull tabs, on which ten lucky punches received choice of the red tabs, entitling particular purchaser, as case might be, to \$5, \$1, 50¢, or choice of the gold tabs and prize of \$10, \$5, \$2.50 or the radio, while purchaser of the last punch became entitled to all of the remaining seals, others receiving nothing further for the 5 cents charged—

Sold such combinations and assortments to wholesalers, jobbers and retailers by whom, as direct or indirect purchasers, they were exposed and sold to the public in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of merchandise in accordance with such plan, involving sale of a chance to procure one of the articles involved at much less than its normal retail price, contrary to an established public policy of the United States government and in violation of the criminal laws, and in competition with many who refrain from use of any such method;

With the result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that of aforesaid competitors, whereby trade was unfairly diverted to him 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, Mr. W. W. Sheppard and Mr. Andrew B. Duvall*, trial examiners.

Mr. L. P. Allen, Jr., Mr. J. V. Mishou and Mr. J. W. Brookfield, Jr. for the Commission.

Mr. James Russell Murphy, of Washington, D. C., and *Mr. Gordon L. Bazelon*, 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 Samuel Mickelberg, an individual, trading as Exhibit Sales Company, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the

public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Samuel Mickelberg, is an individual, trading as Exhibit Sales Company, with his office and principal place of business located at 423 Market Street, Philadelphia, Pa. Respondent is now and has been for more than one year last past engaged in the sale and distribution of radios and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise when sold to be transported from his aforesaid place of business in Philadelphia, Pennsylvania, to purchasers thereof, at their respective points of location, in the various States of the United States other than Pennsylvania, and in the District of Columbia. There is now and has been for more than one year last past a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business respondent is and has been in competition with other individuals, and with partnerships and corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

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

This assortment consists of a radio, together with a device commonly called a punch board. The said radio is distributed to the consuming public by means of said punch board in the following manner: The sales are 5¢ each and when a punch is made from the board a number is disclosed. The numbers begin with one and continue to the number of punches there are on the board but the numbers are not arranged in numerical sequence. The said board contains 3,000 punches, 10 red seal pull tabs, and 5 gold seal pull tabs. The board bears the statement or statements informing prospective purchasers that certain specific numbers when punched from the said board entitle the purchasers thereof to a choice of the red seal pull tabs. The red seal tabs conceal slips of paper on each of which is printed a statement informing the purchaser that he is the winner of \$5, \$1, 50¢, or that he has a choice of the gold seal pull tabs. The gold seal pull tabs, in turn, conceal slips of paper on each of which is printed a statement informing the purchaser thereof that he is the winner of \$10, \$5, \$2.50 or the said radio. The last punch on the board entitles the purchaser thereof to all of the seals remaining thereon. A purchaser who does not qualify by obtaining one of the winning numbers receives nothing for his money other than the privilege of punching a number from the board. The said numbers within the punches and said statements within the pull tabs are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch, or pull tab has been separated from the board. The retail value of said radio is greatly in excess of the designated price of said punches. The radio is thus distributed to the purchasers of punches from said board wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of merchandise along with punch boards involving a lot or chance feature but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said merchandise, 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 of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said method, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms and corporations who sell or distribute merchandise in competition with respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia, to respondent from his said competitors who do not use the same or an equivalent method. As a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 7, 1940, issued and subsequently served its complaint in this proceeding on the respondent, Samuel Mickelberg, an individual, trading as Exhibit Sales Company, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer 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, testimony and other evidence, report of Trial Examiners Andrew B. Duvall and John W. Addison 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 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, Samuel Mickelberg, is an individual, trading as Exhibit Sales Company, with his office and principal place of business located at 423 Market Street, Philadelphia, Pa. Respondent is now, and for several years last past has been, engaged in the sale and distribution of radios and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said merchandise, when sold, to be transported 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 at all times mentioned herein has maintained, a course of trade in such merchandise in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of his said business, respondent is, and has been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar merchandise in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his said business, respondent sells, and has sold, to wholesale dealers, jobbers, and retail dealers, radios and other articles of merchandise, together with punchboards and other devices which are designed for use by retail dealers in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme. In some instances the respondent has sold certain assortments of merchandise so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the ultimate purchasers thereof. Typical of the methods used by the respondent is the following:

One of respondent's combinations consists of a radio and a device commonly called a punchboard. The said radio is distributed to the purchasing public by means of said punchboard in the following manner: The sales are 5 cents each, and when a punch is made from the board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The said board contains 3,000 punches, 10 red seal pull tabs, and 5 gold seal pull tabs. The board bears the statement or statements informing prospective purchasers that certain specific numbers, when purchased from the said board, entitle the purchasers thereof to a choice of the red seal pull tabs. The red seal tabs conceal slips of paper, on each of which is printed a statement informing the purchaser that he is the winner of \$5, \$1, 50 cents, or that he has a choice of the gold

seal pull tabs. The gold seal pull tabs, in turn, conceal slips of paper, on each of which is printed a statement informing the purchaser thereof that he is the winner of \$10, \$5, \$2.50, or the said radio. The last purchase on the board entitles the purchaser thereof to all of the seals remaining thereon. A purchaser who does not qualify by obtaining one of the winning numbers receives nothing for his money other than the privilege of punching a number from the board. The said numbers within the punches and said statements within the pull tabs are effectively concealed from the purchasers and prospective purchasers until a punch or sale has been made and the particular punch or pull tab has been separated from the board. The radio is thus distributed to the purchasers of the punches from said board wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of merchandise along with punchboards involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 4. Retail dealers who purchase respondent's said merchandise directly or indirectly, expose and sell the same to the 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 of his merchandise in accordance with the sales plan hereinabove set forth. The use by the respondent of said method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said method, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 5. 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 one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations that sell or distribute merchandise in competition with respondent are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of said respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does unfairly divert trade in commerce between and among the various States of the United States to respondent from his said competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair 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 taken before trial examiners of the Commission theretofore duly designated by it in support of the allegations of the said complaint and in opposition thereto, report of Trial Examiners Andrew B. Duvall and John W. Addison 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 respondent, Samuel Mickelberg, an individual trading as Exhibit Sales Company, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Samuel Mickelberg, an individual, trading as Exhibit Sales Company or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of radios and other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying or placing in the hands of others, punchboards 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.
2. Shipping, mailing, or transporting to wholesale dealers, jobbers, or retail dealers, punchboards or other devices which are to be used or may be used in the sale and 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.

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

Syllabus

IN THE MATTER OF
NATIONAL BISCUIT COMPANY

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
BY SEC. 1 OF AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5013. Complaint, July 20, 1943—Decision, Feb. 23, 1944

Where the largest producer and distributor of packaged bakery products in the United States, baking products in some 46 plants in 25 states and the District of Columbia, operating 252 branch sales offices and selling its products both direct and through such sales offices or agencies to corporate chain retail grocery stores, voluntary and cooperative chain retail grocery stores, independent grocery retailers, and independent wholesale grocery jobbers in substantial competition with other similar concerns;

In selling its said bakery products to its customers—many of whom were competitively engaged with each other and with customers of its competitors in the resale of such products—subject to (1) a regular trade discount of 5% from invoice price plus a cash discount of 1% for payment within a specified time; and (2) an additional so-called “headquarters quantity discount” schedule under which it granted two series of graduated discounts, governed, respectively, by the customer’s total purchases per month, and his average monthly purchases per retail store: under the former schedule granting an additional discount of (a) 1% to those making monthly purchases of \$750 to \$5,000, (b) 2% on purchases from \$5,000 to \$10,000, (c) 3% on those from \$10,000 to \$150,000, and (d) 3½% on purchases of \$150,000 a month or more; and, under the second series, granting additional discounts in aforesaid brackets pursuant to which customers in (a) bracket received ½% additional if their individual store purchases averaged from \$15 to \$25 a month, 1% on such purchases from \$25 to \$35, and 1½% on purchases of \$35 or over; in (b) received ½% additional if their individual monthly store purchases averaged from \$25 to \$35, and 1% additional for average purchases of \$35 or more; in (c) received ½% additional on such purchases between \$30 and \$40 a month, 1% between \$40 and \$50, and 1½% on \$50 or over; and in (d) received ½% additional on such purchases of from \$30 to \$40, and 1% on those of \$40 and above—

Discriminated in price by selling its said products to some of its customers at higher prices than it sold products of like grade and quality to their competitors, through use of aforesaid “headquarters discount schedule,” under which it made lower prices to some customers based upon the total quantity sold to all of their separate outlets, although separate delivery was made to the several branches, when such total amounted to certain required minima during a single month, without regard to the volume delivered to the respective branches or outlets;

Effect of which discrimination had been or might be substantially to lessen competition in the line of commerce concerned, and to injure, destroy or prevent competition between purchasers receiving the benefit of said discriminatory prices and those to whom they were denied, and also to tend to create a monopoly in those purchasers receiving the benefit of said discriminatory prices in the trade areas where they and their disfavored competitors were engaged in business:

Held, That under facts and circumstances set forth, corporation in question had discriminated in price in the sale of its bakery packaged food products between different purchasers in violation of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Complaint

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Mr. John T. Haslett for the Commission.

Mr. John W. Davis, Mr. Edwin Foster Blair and *Mr. George H. Coppers*, of New York City, 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 been and is now violating the provisions of subsection (a) 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, National Biscuit Company, 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 449 West 14th Street, New York, N. Y.

PAR. 2. Respondent corporation is now, and has been since June 19, 1936, engaged in the business of processing, manufacturing, offering for sale, selling and distributing bakery packaged food products in all parts of the United States. Among the products manufactured and sold by the respondent in the various States of the United States are biscuits, crackers, and cakes. The respondent manufactures and sells approximately 500 different varieties of such bakery packaged food products. Respondent by volume of sales is the largest producer and distributor of bakery packaged food products in the United States. The production of the respondent's products is carried on in 46 plants owned and operated by it, located in 25 States of the United States and in the District of Columbia.

Respondent maintains and operates 252 branch sales offices or agencies for the distribution of its products and ships its products from one or more of its plants to such sales offices or agencies, from which they are distributed as hereinafter stated. Some of said sales offices or agencies 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 sales office or agency.

In the various trade areas respondent distributes its products from its plants or sales offices or agencies, or both, by trucks owned by respondent and operated by employed driver-salesmen. The respondent employs approximately 300 such driver-salesmen who make sales and truck deliveries to the respondent's various customers. Such driver-salesmen operate the respondent's trucks from the various plants or sales offices or agencies over certain specified routes, some of which cross State lines. Each driver-salesman is employed to solicit business and to 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 driver-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. Respondent sells its products direct and through such sales offices or agencies to corporate chain retail grocery stores, voluntary and cooperative chain retail grocery stores and voluntary and cooperative wholesale chains, independent retailers, and wholesale grocery jobbers.

The respondent causes such bakery products, when sold by it to its various customers, to be transported from its various places of business located in the various States of the United States and in the District of Columbia to such customers. Some such customers are located in States other than the State where the respondent's products are manufactured or stored, and in such cases, the respondent causes such products to be shipped from its sales office or agency or plant located in such State across State lines to such customers. Others of respondent's customers are located in the States in which respondent has its places of business.

Respondent's business is one which is managed, controlled and directed from its principal office in New York, N. Y., and which is operated with the objective of marketing its products through the channels of commerce in all parts of the United States to retailers who sell to the consuming public.

There is and has been at all times mentioned a continuous course of trade and commerce in said products between respondent's producing plants or sales offices or agencies and the purchasers of such products, some of which are located in States other than the State in which the respondent's producing plants or sales offices or agencies are located, as aforesaid. Respondent is engaged in interstate commerce and the transactions involved in the practices charged in this complaint as being unlawful are transactions in the course of such commerce.

PAR. 3. 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 and partnerships engaged in the business of processing, manufacturing, offering for sale, selling and distributing bakery packaged food products in the United States.

Many of respondent's customers are competitively engaged with each other and with the customers of the respondent's competitors in the resale of bakery packaged food products within the trading areas in which the respondent's said customers, respectively, offer for sale and sell the said products purchased from the respondent.

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 said products by selling them to some of its customers at higher prices than it sells products of like grade and quality to other customers who are competitively engaged in the resale of said products within the United States with customers receiving the lower prices.

The respondent grants and allows to all of its customers a regular trade discount of 5% to be deducted from the invoice price and a cash discount of 1% if the invoice is paid within a specified time. The price discriminations herein alleged and those hereinafter set forth are in the form of discriminatory additions to the regular trade discount of 5% and the cash discount of 1%.

PAR. 5. The respondent has discriminated in price by the use of a so-called headquarters quantity discount schedule, whereby it has sold to some customers at higher prices than it has sold goods of like grade and quality to other customers who are in competition with them in the resale of said products within the United States. The so-called "headquarters discount" schedule includes two series of graduated discounts, one of which is governed by the customer's total purchase per month, and the other by the customer's average monthly purchase per retail store. The

"headquarters discount" schedule used by respondent is more particularly described as follows:

(a) Respondent grants to some of its "chain store" customers who are engaged in the resale of bakery packaged food products of like grade and quality in competition with other of respondent's customers who do not receive it, a 1% "headquarters discount" on purchases of \$750 or more but less than \$5,000 per month, regardless of the average monthly purchases of the individual retail food stores owned, controlled or affiliated with the "chain store" customers receiving such discount.

An additional $\frac{1}{2}$ of 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average individual store purchase of the respondent's products of \$15 per month but less than \$25.

An additional 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average individual store purchase of the respondent's products of \$25 per month but less than \$35.

An additional $1\frac{1}{2}$ % discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average individual store purchase of the respondent's products of \$35 per month or over.

To customers whose aggregate monthly purchases amount to less than \$750 per month of the respondent's various commodities, the respondent does not and has not granted or allowed any discount whatsoever to such customers.

(b) The respondent grants and allows to some of its "chain store" customers who are engaged in the resale of bakery packaged food products of like grade and quality in competition with other of respondent's customers who do not receive it, a 2% "headquarters discount" on purchases of \$5,000 or more but less than \$10,000 per month, regardless of the average monthly purchases of the individual retail grocery stores owned, controlled or affiliated with such "chain store" customers receiving the discount.

An additional $\frac{1}{2}$ of 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an individual average purchase of the respondent's products of \$25 per month, but less than \$35.

An additional 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average individual purchase of the respondent's products of \$35 or more per month.

(c) The respondent grants and allows to some of its "chain store" customers who are engaged in the resale of bakery packaged food products of like grade and quality in competition with other of respondent's customers who do not receive it, a 3% "headquarters discount" on purchases of \$10,000 or more but less than \$150,000 per month, regardless of the average monthly purchases of the individual retail grocery stores owned, controlled or affiliated with such "chain store" customers receiving the discount.

An additional $\frac{1}{2}$ of 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$30 but less than \$40 per month.

An additional 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$40 but less than \$50 per month.

An additional 1½% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$50 or over per month.

(d) The respondent grants and allows to some of its "chain store" customers who are engaged in the resale of bakery packaged food products of like grade and quality in competition with other of respondent's customers who do not receive it, a 3½% "headquarters discount" on purchases of \$150,000 or more per month, regardless of the average monthly purchases of the individual retail grocery stores owned, controlled or affiliated with such "chain store" customers receiving the discount.

An additional ½ of 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$30 but less than \$40 per month.

An additional 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$40 per month or over.

PAR. 6. In addition to the discriminations effected by the aforementioned "headquarters discounts" respondent discriminates in price between different purchasers of its products who are in competition with each other by making lower prices on bakery packaged food products to some customers based upon the total quantity or volume sold and delivered to all of the separate branches or outlets of the said customers, although separate delivery is made to the several branches or outlets of such customers if and when such total quantity or volume amounts to certain required minima during a single month, without regard to the quantity or volume delivered to the respective branches or outlets of such customers.

PAR. 7. The effect of the discrimination in price generally alleged in paragraph 4 hereof, and of the discriminations specifically set forth in paragraphs 5 and 6 hereof, has been or may be substantially to lessen competition in the line of commerce in which the purchasers receiving and those denied the benefits of such discriminatory prices are engaged, and to injure, destroy or prevent competition between purchasers receiving the benefit of said discriminatory prices and those to whom they are denied. The effect also has been or may be to tend to create a monopoly in those purchasers receiving the benefit of said discriminatory prices in said line of commerce in the various localities or trade areas in the United States where said favored customers and their disfavored competitors are engaged in business.

Such discriminations in price by respondent between different purchasers of commodities of like grade and quality in interstate commerce, in the manner and form aforesaid, are in violation of the provisions of Subsection 2 (a) of Section 1 of 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" approved October 15, 1914 (the Clayton Act), as amended by Section 1 of an Act 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" approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission on July 20, 1943, issued and subsequently served its complaint in this proceeding upon the party respondent named in the caption hereof, charging respondent with violating the provisions of subsection (a) of Section 2 of said Act as amended.

After the issuance of said complaint a stipulation was entered into between W. T. Kelley, Chief Counsel for the Commission, and the respondent, subject to the approval of the Commission, containing a statement of certain facts taken as the facts for the purpose of this proceeding and authorizing the Commission to proceed upon such statement and 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 and the filing of briefs.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the stipulation of facts, and the Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act has been violated by the respondent, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, National Biscuit Company, 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 449 West 14th Street, New York, N. Y.

PAR. 2. Respondent corporation is now and has been since June 19, 1936, engaged in the business of processing, manufacturing, offering for sale, selling and distributing bakery packaged food products in all parts of the United States. Among the products manufactured and sold by the respondent in the various States of the United States are biscuits, crackers and cakes. The respondent manufactures and sells approximately 500 different varieties of such bakery packaged food products. Respondent, by volume of sales, is the largest producer and distributor of bakery packaged food products in the United States. The production of respondent's products is carried on in some forty-six plants owned and operated by it located in twenty-five States of the United States and in the District of Columbia.

Respondent maintains and operates 252 branch sales offices or agencies for the distribution of its products and ships its products from one or more of its plants to such sales offices or agencies, from which they are distributed as hereinafter stated. Some of said sales offices or agencies 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 sales office or agency.

In the various trading areas in which the respondent operates, it sells and distributes its products from its plants or sales offices or agencies or both by the use of company employed salesmen and deliverymen. The respondent employs approximately 2500 salesmen to take orders for and sell respondent's biscuits, crackers and cake products, as a result of which, deliverymen who operate the delivery trucks of the respondent call upon and make delivery to the respondent's various customers. Respondent sells its products direct and through such sales offices or agencies to corporate chain retail grocery stores, voluntary and cooperative chain retail grocery stores and voluntary and cooperative wholesale chain stores, independent grocery retailers and independent wholesale grocery jobbers.

The respondent causes such bakery products, when sold by it to its various customers, to be transported from its various places of business located in the various States of the United States and in the District of Columbia to such customers. Some such customers are located in States other than the State where the respondent's products are manufactured or stored, and in such cases the respondent causes such products to be shipped from its sales office or agency, or plant located in such State, across State lines to such customers. Others of respondent's customers are located in the States in which respondent has its place of business.

Respondent's business is managed, controlled and directed from its principal office in New York City and is operated with the objective of marketing its products through the channels of commerce in all parts of the United States to retailers who sell to the consuming public.

There is and has been at all times mentioned a continuous course of trade and commerce in said products between respondent's producing plants or sales office or agencies and the purchasers of such products, some of which are located in the States other than the State in which the respondent's producing plants or sales offices or agencies are located, as aforesaid. Respondent is engaged in interstate commerce and the transactions involved and the practices charged by the Commission's complaint, issued under date of July 20, 1943, as being unlawful, are transactions and practices in the course of such commerce.

PAR. 3. 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 and partnerships engaged in the business of processing, manufacturing, offering for sale, selling and distributing bakery packaged food products in the United States.

Many of respondent's customers are competitively engaged with each other and with the customers of the respondent's competitors in the resale of bakery packaged food products within the trading areas in which the respondent's said customers, respectively, offer for sale and sell the said products purchased from the respondent.

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 said products by selling them to some of its customers at higher prices than it sells products of like grade and quality to other customers who are competitively engaged in the resale of said products within the United States with customers receiving the lower prices.

The respondent grants and allows to all of its customers a regular trade discount of 5% to be deducted from the invoice price and a cash discount of 1% if the invoice is paid within a specified time.

The price discriminations herein referred to are in the form of discriminatory additions to the nondiscriminatory regular trade discount of 5% and the nondiscriminatory cash discount of 1%.

The price discriminations herein referred to are effected by the use of a so-called "headquarters quantity discount" schedule. The so-called "headquarters discount" schedule includes two series of graduated discounts, one of which is governed by the customer's total purchases per month, and the other by the customer's average monthly purchases per retail store. The "headquarters quantity discount" schedule used by respondent is more particularly described as follows:

(a) Respondent grants a 1% "headquarters quantity discount" to its customers who purchase \$750 or more, but less than \$5,000 per month, on purchases of bakery packaged food products, regardless of the average monthly purchases of the individual retail food stores owned, controlled or affiliated with the customers receiving such discount. Such customers are engaged in the resale of bakery packaged food products of like grade and quality in competition with other of the respondent's customers who do not receive such discount.

An additional $\frac{1}{2}$ of 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average individual store purchase of the respondent's products of \$15 per month but less than \$25.

An additional 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average individual store purchase of the respondent's products of \$25 per month but less than \$35.

An additional $1\frac{1}{2}$ % discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average individual store purchase of the respondent's products of \$35 per month or over.

To customers whose aggregate monthly purchases amount to less than \$750 per month of the respondent's various commodities, the respondent does not and has not granted or allowed any headquarters quantity discount whatsoever.

(b) Respondent grants a 2% "headquarters quantity discount" to its customers who purchase \$5,000 or more but less than \$10,000 per month on purchases of bakery packaged food products, regardless of the average monthly purchases of the individual retail food stores owned, controlled or affiliated with the customers receiving such discount. Such customers are engaged in the resale of bakery packaged food products of like grade and quality in competition with other of the respondent's customers who do not receive such discount.

An additional $\frac{1}{2}$ of 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an individual average purchase of the respondent's products of \$25 per month, but less than \$35.

An additional 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average individual purchase of the respondent's products of \$35 or more per month.

(c) Respondent grants a 3% "headquarters quantity discount" to its customers who purchase \$10,000 or more but less than \$150,000 per month on purchases of bakery packaged food products, regardless of the average monthly purchases of the individual retail food stores owned, controlled or affiliated with the customers receiving such discount. Such customers are engaged in the resale of bakery packaged food products of like grade and quality in competition with other of the respondent's customers who do not receive such discount.

An additional $\frac{1}{2}$ of 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$30 but less than \$40 per month.

An additional 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$40 but less than \$50 per month.

An additional $1\frac{1}{2}$ % discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$50 or over per month.

(d) Respondent grants a $3\frac{1}{2}$ % "headquarters quantity discount" to its customers who purchase \$150,000 or more per month on purchases of bakery packaged food products, regardless of the average monthly purchases of the individual retail food stores owned, controlled or affiliated with the customers receiving such discount. Such customers are engaged in the resale of bakery packaged food products of like grade and quality in competition with other of the respondent's customers who do not receive such discount.

An additional $\frac{1}{2}$ of 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$30 but less than \$40 per month.

An additional 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$40 per month or over.

By the use of the aforesaid "headquarters discount schedule," respondent discriminates in price between different purchasers of its products who are in competition with each other by making lower prices on bakery packaged food products to some customers based upon the total quantity or volume sold and delivered to all of the separate branches or outlets of the said customers, although separate delivery is made to the several branches or outlets of such customers if and when such total quantity or volume amounts to certain required minima during a single month, without regard to the quantity or volume delivered to the respective branches or outlets of such customers.

PAR. 5. The effect of the discrimination in price set forth in paragraph 4 hereof has been or may be substantially to lessen competition in the line of commerce in which the purchasers receiving and those denied the benefits of such discriminatory prices are engaged, and to injure, destroy or prevent competition between purchasers receiving the benefit of said discriminatory prices and those to whom they are denied. The effect also has been or may be to tend to create a monopoly in those purchasers

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receiving the benefit of said discriminatory prices in said line of commerce in the various localities or trade areas in the United States where said favored customers and their disfavored competitors are engaged in business.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings as to the facts, the Commission concludes that the respondent National Biscuit Company had discriminated in prices in the sale of its bakery packaged food products between different purchasers in violation of subsection (a) 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 and the stipulation as to the facts entered into between the respondent herein and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without the presentation of argument 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 subsection (a) of Section 2 of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," the Clayton Act, as amended by the Robinson-Patman Act.

It is ordered, That the respondent, National Biscuit Company, a corporation, and its officers, directors, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of bakery packaged food products in interstate commerce for use or resale, do forthwith cease and desist:

1. From selling such commodities of like grade and quality to competing purchasers at uniform prices and thereafter granting varying discounts therefrom in the manner and under the circumstances found in paragraph 4 of the aforesaid findings as to the facts.

2. From continuing or resuming the discriminations in price referred to and described in paragraph 4 of the aforesaid findings as to the facts.

3. From otherwise discriminating in price between purchasers of bakery packaged food products of like grade and quality, in any manner or degree substantially similar to the manner and degree of the discriminations referred to in paragraph 4 of the aforesaid findings as to the facts; or in any other manner resulting in price discriminations substantially equal in amount to the aforesaid discriminations, except as permitted by Section 2 of the Clayton Act as amended.

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

BEN KALISH

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

Docket 4974. Complaint, May 29, 1943—Decision, Mar. 2, 1944

Where an individual engaged in the manufacture and interstate sale and distribution of furs and fur garments; in advertisements on letterheads and invoices and in other ways—

- (a) Represented, through use of words "Black Kid Caracul" that certain of his said products were made from lamb peltries of the Karakul breed of sheep and characterized by open type curl, when in fact they were made from kid peltries; and
- (b) Represented through use of such words and phrases as "Silak Seal," "Silak Beaver," "Beaver," "Mendoza Beaver," and "Beaver Coney" that certain furs and fur garments manufactured from rabbit skins were made from seal and beaver peltries;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of inducing it because of such mistaken belief, to purchase his said products:

Held, That such acts, practices and methods, 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. Miles J. Furnas*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. Reuben B. Shemitz, 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 Ben Kalish, 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, Ben Kalish, is an individual, engaged in manufacturing and selling furs and fur garments. His principal office and place of business are at 330 Seventh Avenue, New York, N. Y.

Respondent causes and has caused said furs and fur garments, when sold by him, to be transported from his place of business in the State of New York to various purchasers thereof at their respective points of location in the 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 furs and fur garments in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business respondent advertised certain of his furs and fur garments by means of letterheads, invoices and in various other ways, as "Black Kid Caracul" and "Caracul"

cul." Such words and phrases constituted a representation that the furs and fur garments so advertised were made from the peltries of a species of lamb belonging to the Karakul breed of sheep, which peltries are characterized by an open type curl. In truth and in fact, said furs and fur garments were not manufactured from such peltries but were manufactured from kid peltries.

PAR. 3. Respondent also advertised certain of its furs and fur garments, distributed as aforesaid, by means of invoices, letterheads and various other ways, as "Silak Seal," "Silak Beaver," "Beaver," "Mendoza Beaver," and "Beaver Coney." Such words and phrases constituted a representation that the furs and fur garments so advertised were made from seal and beaver peltries, respectively. In truth and in fact, said furs and fur garments were not made of seal or beaver peltries but were manufactured from rabbit skins.

PAR. 4. There is a demand on the part of a substantial portion of the purchasing public for furs and fur garments made of seal peltries and beaver peltries and also for furs and fur garments made of karakul peltries.

PAR. 5. The use by the respondent of the foregoing false, deceptive and misleading representations with respect to his furs and fur garments, 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 respondent's said furs and fur garments.

PAR. 6. 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 May 29, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Ben Kalish, an individual, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the issuance of the complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw his answer and to substitute therefor an answer admitting all of the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was dictated into the record by respondent's attorney at a hearing in this proceeding. Thereafter, the 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, Ben Kalish, is an individual, engaged in manufacturing and selling furs and fur garments. His principal office and place of business are at 330 Seventh Avenue, New York, N. Y.

Respondent causes and has caused said furs and fur garments, when sold by him, to be transported from his place of business in the State of New York to various purchasers thereof at their respective points of location in the 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 furs and fur garments in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business respondent advertised certain of his furs and fur garments by means of letterheads, invoices and in various other ways, as "Black Kid Caracul" and "Caracul." Such words and phrases constituted a representation that the furs and fur garments so advertised were made from the peltries of the species of lamb belonging to the Karakul breed of sheep, which peltries are characterized by an open type curl. In truth and in fact, said furs and fur garments were not manufactured from such peltries but were manufactured from kid peltries.

PAR. 3. Respondent also advertised certain of his furs and fur garments, distributed as aforesaid, by means of invoices, letterheads and various other ways, as "Silak Seal," "Silak Beaver," "Beaver," "Mendoza Beaver," and "Beaver Coney." Such words and phrases constituted a representation that the furs and fur garments so advertised were made from seal and beaver peltries, respectively. In truth and in fact, said furs and fur garments were not made of seal or beaver peltries but were manufactured from rabbit skins.

PAR. 4. There is a demand on the part of a substantial portion of the purchasing public for furs and fur garments made of seal peltries and of beaver peltries and also for furs and fur garments made of Karakul peltries.

PAR. 5. The use by the respondent of the foregoing false, deceptive and misleading representations with respect to his furs and fur garments, 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 respondent's said furs and fur garments.

CONCLUSION

The acts, practices, and methods 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

38 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in the complaint and states that he waives all intervening procedure and further hearing as to said facts, 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, Ben Kalish, an individual, 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 furs and fur garments in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Caracul" or any simulation thereof, either alone or in conjunction with any other word or words, to designate or describe furs or fur garments made from kidskin or from the peltries of any animals other than lambs or sheep of the Karakul breed.

2. Designating or describing the peltries of which furs or fur garments are made in any way other than by the use of the correct name of the peltries as the last word of the description; and where a fur or fur garment is made of peltries which have been dyed, the correct name of the peltries shall be immediately preceded, in letters of at least equal conspicuousness, by the word "dyed"; and in the case of peltries which have been dyed to simulate other peltries, the word "dyed" may be compounded with the name of the peltries simulated, as, for example, "Seal-Dyed Rabbit" or "Beaver-Dyed Rabbit."

3. Misrepresenting in any manner or by any means the peltries of which furs or fur garments are made.

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

H. D. SHIPP COMPANY, INC. ET AL.

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

Docket 4986. Complaint, June 25, 1943—Decision, Mar. 14, 1944

Where a corporation and its president, who controlled its sales policy and advertising program, engaged in the interstate sale and distribution of its "Sneaker" drinking glass; in advertisements in newspapers, periodicals, circulars and other media—

Falsely represented that their said product was a tasteless glass, the use of which would camouflage and eliminate obnoxious tastes of liquids administered therefrom, through such statements as "WONDERFUL NEW INVENTION MEETS DEMANDS OF MILLIONS NOW AT LAST! Science gives us a brand new discovery that enables everyone to easily and enjoyably drink ill-tasting medicines, oils, etc." and "will camouflage the flavor of oils, medicines or liquors by the formation of a liquid capsule, as the distasteful fluid is completely surrounded by your favorite drink";

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations were true, as a result whereof it purchased their said product:

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

Mr. R. P. Bellinger for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that H. D. Shipp Company, Inc., a corporation, and H. D. Shipp, individually, and as President of H. D. Shipp Company, Inc., hereinafter referred to as respondents, have violated the provisions of the said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, H. D. Shipp Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Indiana with its principal place of business located at 12 South Capitol Avenue, Indianapolis, Ind. Respondent, H. D. Shipp, is an individual, and is President of the corporate respondent above named and as such dominates and controls the sales policy and advertising program thereof, including the acts and practices hereinafter complained of. His business address is the same as that of the corporate respondent above shown.

PAR. 2. Respondents are now and for several years last past have been engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of a drinking glass designated as "Sneaker," designed to camouflage or eliminate the objectionable tastes of liquids drunk therefrom.

Respondents cause the said product when sold to be transported from their aforesaid place of business in the State of Indiana to purchasers thereof located 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 said product 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 aforesaid business respondents have falsely represented that their said product is a tasteless glass, the use of which will camouflage and eliminate obnoxious tastes of liquids administered therefrom, such false representations being made through the use of statements and advertisements appearing in magazines, newspapers, periodicals, circulars, leaflets and other mediums sent through the United States mails and having general circulations. Among and typical of the said false, misleading and deceptive statements and representations are the following:

WONDERFUL NEW INVENTION
MEETS DEMANDS OF MILLIONS

NOW AT LAST! science gives us a brand new discovery that enables everyone to easily and enjoyably drink ill-tasting medicines, oils, etc. It actually camouflages and makes distasteful fluids taste like a favorite beverage.

"SNEAKER"

the taste less glass

This article has been developed to answer the demand for a method of taking liquids internally which will eliminate obnoxious tastes.

It will camouflage the flavor of oils, medicines or liquors by the formation of a liquid capsule, as the distasteful fluid is completely surrounded by your favorite drink.

AGENTS WANTED TO SELL SNEAKERS, THE TASTE-less container. Takes oils, medicines, and liquors without a taste.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, respondents represent and have represented, directly and by implication, that their said product "Sneaker" is a tasteless glass, the use of which will eliminate the objectionable tastes of medicines, oils, liquors or other fluids; that it will camouflage the flavors of such liquids and render them enjoyable to drink; and that it will enable one to drink such distasteful fluids without experiencing any taste.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false and misleading. In truth and in fact respondents' said product "Sneaker" is not a tasteless glass. Its use will not eliminate the objectionable tastes of medicines, oils, liquors or other fluids; it will not camouflage the flavors of such liquids and render them enjoyable to drink; and it will not enable one to drink such distasteful fluids without experiencing any taste.

PAR. 6. The use by the respondents of the aforesaid false, deceptive and misleading statements and representations, as herein set forth, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and because of said erroneous and mistaken belief a substantial number of the

purchasing public has purchased and is purchasing respondents' said product.

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 June 25, 1943, issued and thereafter served its complaint in this proceeding upon respondents, H. D. Shipp Company, Inc., a corporation, and H. D. Shipp, individually, and as president of H. D. Shipp Company, Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On January 24, 1944, the respondents filed their answer in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, H. D. Shipp Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Indiana with its principal place of business located at 12 South Capitol Avenue, Indianapolis, Ind. Respondent, H. D. Shipp, is an individual, and is president of the corporate respondent above named and as such dominates and controls the sales policy and advertising program thereof, including the acts and practices hereinafter complained of. His business address is the same as that of the corporate respondent above shown.

PAR. 2. Respondents are now and for several years last past have been engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of a drinking glass designated as "Sneaker," designed to camouflage or eliminate the objectionable tastes of liquids drunk therefrom.

Respondents cause the said product when sold to be transported from their aforesaid place of business in the State of Indiana to purchasers thereof located 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 said product 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 aforesaid business respondents have falsely represented that their said product is a tasteless glass, the use of which will camouflage and eliminate obnoxious tastes of liquids administered therefrom, such false representations being made through the use of statements and advertisements appearing in maga-

zines, newspapers, periodicals, circulars, leaflets and other mediums sent through the United States mails and having general circulations. Among and typical of the said false, misleading and deceptive statements and representations are the following:

WONDERFUL NEW INVENTION
MEETS DEMANDS OF MILLIONS

NOW AT LAST! Science gives us a brand new discovery that enables everyone to easily and enjoyably drink ill-tasting medicines, oils, etc. It actually camouflages and makes distasteful fluids taste like a favorite beverage.

"SNEAKER"

the taste less glass

This article has been developed to answer the demand for a method of taking liquids internally which will eliminate obnoxious tastes.

It will camouflage the flavor of oils, medicines or liquors by the formation of a liquid capsule, as the distasteful fluid is completely surrounded by your favorite drink.

AGENTS WANTED TO SELL SNEAKERS, THE TASTE-less container. Takes oils, medicines, and liquors without a taste.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, respondents represent and have represented, directly and by implication, that their said product "Sneaker" is a tasteless glass, the use of which will eliminate the objectionable tastes of medicines, oils, liquors or other fluids; that it will camouflage the flavors of such liquids and render them enjoyable to drink; and that it will enable one to drink such distasteful fluids without experiencing any taste.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false and misleading. In truth and in fact respondents' said product "Sneaker" is not a tasteless glass. Its use will not eliminate the objectionable tastes of medicines, oils, liquors or other fluids; it will not camouflage the flavors of such liquids and render them enjoyable to drink; and it will not enable one to drink such distasteful fluids without experiencing any taste.

PAR. 6. The use by the respondents of the aforesaid false, deceptive and misleading statements and representations, as herein set forth, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and because of said erroneous and mistaken belief a substantial number of the purchasing public has purchased and is purchasing respondents' said product.

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 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.

It is ordered, That the respondents, H. D. Shipp Company, Inc., a corporation, its officers, and H. D. Shipp, individually, and as president of H. D. Shipp Company, Inc., and respondents' 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 respondents' drinking glass designated as "Sneaker," or any other product of similar design or construction, whether designated by the same name or by any other name, do forthwith cease and desist from:

1. Representing, through the use of the words "taste less" or through any other means, directly or by implication, that respondents' product is a tasteless glass, or that its use will eliminate the objectionable taste of medicines, oils, liquors or other fluids.

2. Representing, directly or by implication, that the use of said product will camouflage the flavor of distasteful liquids and render them enjoyable or pleasant to drink.

3. Representing, directly or by implication, that the use of said product will enable the user to drink distasteful liquids without experiencing any taste.

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

38 F. T. C.

IN THE MATTER OF

ROCKWELL WOOLEN COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE WOOL PRODUCTS LABELING ACT OF 1939, APPROVED OCT. 14, 1940, AND OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5121. Complaint, Jan. 26, 1944—Decision, Mar. 20, 1944

Where a corporation, engaged in the manufacture, sale and distribution in commerce of wool products as defined in the Wool Products Labeling Act of 1939, and subject to the provisions thereof—

Caused said products to be misbranded, within the intent and meaning of said Act and the Rules and Regulations promulgated thereunder, in that it failed to affix to certain yarns, a stamp, tag, label or other means of identification as provided by said Act, showing the percentage of the total fiber weight of wool, reprocessed wool, reused wool, and nonwool fiber, and filler or adulterating matter; and proper identification of the manufacturer or seller or reseller, etc. subject to the provisions of the Act:

Held, That such acts and practices were in violation of said Wool Products Labeling Act of 1939 and Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 Rockwell Woolen Company, a corporation, hereinafter referred to as respondent, has violated the provisions of 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. The respondent, Rockwell Woolen Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, and has its principal office and place of business located at Leominster, Mass.

PAR. 2. Respondent is engaged in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of wool products, as such products are defined in the Wool Products Labeling Act of 1939, in commerce, as "commerce" is defined in said act and in the Federal Trade Commission Act. Many of respondent's said products are composed in whole or in part of wool, reprocessed wool and reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondent has violated the provisions of said act and said rules and regulations in the introduction and manufacture for introduc-

tion into commerce and in the sale, transportation and distribution of said wool products in said commerce by causing said wool products to be misbranded within the intent and meaning of said act and the rules and regulations promulgated thereunder.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce and sold, transported and distributed in said commerce as aforesaid, were yarns used by purchasers for the manufacture of sweaters and other garments. Exemplifying respondent's practice of violating said act and the rules and regulations promulgated thereunder is its misbranding of the aforesaid yarns in violation of the provisions of said act and said rules and regulations by failing to affix to said yarns 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 the wool product, exclusive of ornamentation not exceeding five percentum 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 five percentum 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 percentages in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product 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.

PAR. 4. The aforesaid acts, practices and methods of the respondent as alleged were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, 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 26th day of January, 1944, issued and subsequently served its complaint in this proceeding upon respondent, Rockwell Woolen Company, a corporation, charging it 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 respondent filed 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. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Rockwell Woolen Company, is a corporation, organized, existing and doing business under and by virtue of

Order

38 F. T. C.

the laws of the State of Massachusetts, and has its principal office and place of business located at Leominster, Mass.

PAR. 2. Respondent is engaged in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of wool products, as such products are defined in the Wool Products Labeling Act of 1939, in commerce, as "commerce" is defined in said act and in the Federal Trade Commission Act. Many of respondent's said products are composed in whole or in part of wool, reprocessed wool and reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondent has violated the provisions of said act and said rules and regulations in the introduction and manufacture for introduction into commerce and in the sale, transportation and distribution of said wool products in said commerce by causing said wool products to be misbranded within the intent and meaning of said act and the rules and regulations promulgated thereunder.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce and sold, transported and distributed in said commerce as aforesaid, were yarns used by purchasers for the manufacture of sweaters and other garments. Exemplifying respondent's practice of violating said act and the rules and regulations promulgated thereunder is its misbranding of the aforesaid yarns in violation of the provisions of said act and said rules and regulations by failing to affix to said yarns 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 the wool product, exclusive of ornamentation not exceeding five percentum 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 five percentum 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 percentages in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product 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.

CONCLUSION

The aforesaid acts, practices and methods of the respondent as herein found were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

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

in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act and the provisions of the Wool Products Labeling Act of 1939.

It is ordered, That respondent, Rockwell Woolen Company, a corporation, its officers, 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 yarns or other "wool products" as such products are 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 securely to 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 five percentum 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 five percentum 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 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

C. F. LUSK TRADING AS C. F. LUSK COMPANY

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

Docket 4911. Complaint, Feb. 15, 1943—Decision, Mar. 27, 1944

Where an individual engaged in interstate sale and distribution, principally to automotive jobbers and dealers, of his "Lusco" or "Lusco Weld" product, for use in repairing cracks and leaks in automobile radiators and motors and other metal devices; in trade journals, catalogs, advertising circulars, pamphlets, labels, etc., directly or by implication—

Represented that use of his product on broken or cracked automobile radiators and motors and on boilers and other mechanical devices resulted in a fusion, union or welding of the broken or cracked parts such as would be accomplished by a welding process, by means of such statement, and particularly use of words "weld," "welding" and "weldium," as "Lusco Cleaning & Welding Compound (containing Weldium) Welds as it Flows . . . Actually Welds Shut Leaks Directly Into Combustion Chamber," "Lusco Cylinder-Boiler Weld a Permanent Repair for Cracked Cylinders," "Weldium—the amazing synthetic metallic ore that puts the 'Weld' in Lusco Weld";

The facts being that while the product in question—a cement or glue—might stop or plug holes or cracks in metal objects, it was incapable of bringing about a fusion, union or consolidation of metal parts such as is accomplished by a welding process; and the word "Weldium" was merely a coined word used by said individual along with the words "weld" and "welding" to further the misleading impression;

With tendency and capacity to mislead and deceive a substantial number of jobbers, dealers, and members of the purchasing public and to cause them to purchase his 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. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Jerome W. Moss, of Cleveland, 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 C. F. Lusk, an individual trading as C. F. Lusk Company, 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, C. F. Lusk, is an individual, trading and doing business as C. F. Lusk Company with his office and principal place of business located at 6523 Euclid Avenue, Cleveland, Ohio.

PAR. 2. The respondent is now and for more than two years last past has been engaged in the sale and distribution of a product called "Lusco" used to repair cracks and leaks in radiators and water-cooled motors and for other industrial repair purposes. Said product is sold by the respond-

ent in two forms, solid cubes and liquid. Respondent causes the said product when sold by him to be transported from his aforesaid place of business in the State of Ohio to purchasers 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 his aforesaid business and for the purpose of inducing the purchase of his product Lusco, the respondent has circulated and is now circulating among prospective purchasers throughout the United States by U. S. mails, advertisements in newspapers and trade journals, by means of advertising folders, pamphlets, circular letters, labels and other advertising material all of general circulation, many false statements and representations concerning his said product, Lusco, among and typical of such false statements and representations are the following:

Lusco CLEANING & WELDING
COMPOUND
(Containing WELDIUM)

Welds as it Flows—Cleans as it Goes
3 Complete Services with One Product

- 1 Repairs Radiator Leakage
- 2 Welds Cracked Blocks
- 3 Cleans The System

Actually Welds Shut Leaks Directly Into Combustion Chamber

S
U C
L O
CYLINDER-BOILER
W E L D

90 Day Guarantee On
Radiator Leaks and Cracked
Blocks Repair with Lusco
Welding Cubes Make quick,
easy permanent repairs
the profitable Lusco Way.

a Permanent Repair

r
o D
F E CYLINDERS
K
C HEADS-BLOCKS-VALVE PARTS
A
R
C BOILER SECTIONS

and for GENERAL
INDUSTRIAL PURPOSES

*W E L D I U M—the amazing synthetic metallic
ore that puts the “Weld” in LUSCO Weld.

EASY TO USE . UNCONDITIONALLY GUARANTEED , PERMANENT
WELD

PAR. 4. The word "weld" is generally understood in the metal industry as a localized union or consolidation of metals, and usually is employed to make a joint that is expected to have strength and withstand stress. Welds are made by a number of processes. Some metals may be heated to temperatures below their fusion temperatures, and the consolidation may be brought about by pressure (hammering). Welds may also be made by heating to or above the fusion temperature, plus the application of pressure, or by simple fusion of the metals at the surfaces to be joined, with or without the addition of fused metal from a filler rod but without the application of pressure.

PAR. 5. Through 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 his product when used on broken, cracked or damaged radiators, boilers and water-cooled motors and other machinery will cause union, consolidation, fusion, and welding together of the broken, cracked or damaged parts of said metal objects such as would be accomplished by a welding process, and that repairs made by same are permanent and enduring and continue in the same state or status as before said metal objects were broken, cracked, or damaged; that said product contains a metallic ore called Weldium.

PAR. 6. The foregoing claims, statements, and representations are grossly exaggerated, false and misleading. In truth and in fact said product does not produce a weld, as that term is understood in the metal industry, and its use with metal objects would not effect a state or condition of being or becoming welded, or cause the uniform consolidation or fusion of metals, or metal parts such as would be accomplished by a welding process, nor would any sealing which may be effected by said product when used on cracked metals, or metal parts, be permanent in that such seal would continue enduringly in the same state or status without fundamental or marked change, or would have the permanence of properly made metal repairs by regular and customary welding procedure.

Respondent's product may stop or plug holes or cracks in metals, but such a method of repair is not a welding procedure and repairs made with such non-metallic materials would not be permanent or equal to that made by regular welding processes. Said product does not contain metal or metallic substances, but is composed of linseed oil and organic materials and is similar to a liquid cement or glue.

PAR. 7. 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 advertisements are true, and do induce the public to purchase substantial quantities of respondent's products, as a result of such belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 15, 1943, issued and subsequently served its complaint in this proceeding upon the respondent,

C. F. Lusk, an individual, trading as C. F. Lusk Company, 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 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, C. F. Lusk, is an individual, trading and doing business as C. F. Lusk Company, with his office and principal place of business located at 6523 Euclid Avenue, Cleveland, Ohio. Respondent is now and for a number of years last past has been engaged in the sale and distribution of a product designated by him as "Lusco" and as "Lusco Weld" and intended for use in repairing cracks and leaks in automobile radiators and motors, and also in boilers and other metal devices. The product is sold by respondent principally to automotive jobbers and dealers.

PAR. 2. Respondent causes and has caused his product, 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 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 advertises his product by means of advertisements inserted in trade journals having general circulation among automotive jobbers and dealers, and also by means of catalogs, circulars, pamphlets, labels and other advertising material distributed among prospective purchasers. Among and typical of the statements and representations contained in respondent's advertising material are the following:

Lusco CLEANING & WELDING COMPOUND

(Containing WELDIUM)

Welds as it Flows—Cleans as it Goes

3 Complete Services with One Product

- 1 Repairs Radiator Leakage
- 2 Welds Cracked Blocks
- 3 Cleans The System

Actually Welds Shut Leaks Directly Into

Combustion Chamber

(Com. Ex. 7)

L U S C O
CYLINDER-BOILER
W E L D
a Permanent Repair
For CRACKED Cylinders
Heads-Blocks-Valve Parts
Boiler Sections
and for General
Industrial Purposes (Com. Ex. 10)

*WELDIUM—the amazing synthetic metallic ore that puts the “Weld” in LUSCO Weld.

EASY TO USE . UNCONDITIONALLY GUARANTEED . PERMANENT
WELD

(Com. Ex. 10)

PAR. 4. Through the use of these statements and representations and others of similar import, and particularly through the use of the words “weld,” “welding,” and “weldium” to designate and describe his product and the results accomplished through the use thereof, respondent represents, directly or by implication, that the use of his product on broken or cracked automobile radiators and motors, and on boilers and other mechanical devices, results in a fusion, union, or welding of the broken or cracked parts of such metal objects such as would be accomplished by a welding process.

PAR. 5. The term “weld,” as generally defined and as understood in the metal industry, means a localized union or consolidation of metals. A weld usually is employed to make a joint which is expected to have strength and transmit stress. Welds are made by a number of processes. Some metals may be heated to temperatures below their fusion temperatures and the consolidation brought about by pressure (hammering). Welds may also be made by heating the metals to or above the fusion temperature with accompanying application of pressure, or by simple fusion of the metals at the surfaces to be joined, with or without the addition of fused metal from a filler rod but without the application of pressure.

PAR. 6. Respondent's product, which is sold in both liquid and solid cube form, is in the nature of a cement or glue. While the product possesses merit in that it may serve to stop or plug holes or cracks in metal objects, it is not a welding material and the use of it does not constitute a welding operation. The product is incapable of bringing about a fusion, union, consolidation, or welding of metal parts such as is accomplished by a welding process. The word “weldium” has no reference to any ingredient in the product but is merely a coined word used by respondent, along with the words “weld” and “welding,” to further the impression that the use of the product results in the welding of metals to which it is applied.

PAR. 7. The Commission therefore finds that the representations used by respondent in connection with his product, as set forth above, including the words “weld,” “welding,” and “weldium,” are erroneous and misleading.

PAR. 8. The use by respondent of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a

substantial number of jobbers, dealers, and members of the purchasing public with respect to the nature of respondent's product and the results which may be effected through the use thereof, and the tendency and capacity to cause such persons to purchase substantial quantities of 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 (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, C. F. Lusk, individually, and trading as C. F. Lusk Company, 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 product designated "Lusco" and "Lusco Weld," or any other product of a substantially similar nature, under whatever name sold, do forthwith cease and desist from:

1. Using the word "weld," "welding," or "weldium," or any other word of similar import, to designate or describe respondent's product or the results accomplished through the use of such product.

2. Representing, directly or by implication, that the use of respondent's product will result in the fusion, union, consolidation, or welding of metal parts, or that the results accomplished through the use of respondent's product are such as are accomplished through a welding process.

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

IN THE MATTER OF
GULF OIL CORPORATION

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

Docket 4581. Complaint, Aug. 29, 1941—Decision, Apr. 4, 1944

Where a corporation engaged in interstate sale and distribution of its "Gulf Livestock Spray"; in advertisements thereof in magazines, newspapers, circulars and other advertising media, directly or by implication—

Represented that its said insecticide afforded complete protection to livestock from all insects, and that use thereof would cause milk production to increase and cows to be healthy;

The facts being that while product in question would usually kill insects on the stock at time of application, it would not afford complete protection as a repellent of others; its effectiveness depended upon a number of factors, including frequency and thoroughness of application, nature and extent of insect infestation, weather conditions, etc.; and while of indirect benefit in cases of decreased milk production or unhealthy cows, it was incapable of increasing milk production or causing cows to be healthy;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby cause it to purchase substantial quantities of such product:

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. Duval*, trial examiner.

Mr. John M. Russell for the Commission.

Mr. R. J. Connor, *Mr. J. S. Atkinson* and *Mr. Alex F. Smith*, of Shreveport, La., and *Mr. John E. Green, Jr.*, of Houston, Tex., 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 Gulf Oil Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Gulf Oil Corporation, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, having its office and principal place of business in the Gulf Building, Pittsburgh, Pa.

PAR. 2. Respondent is now and has been for more than two years last past engaged in the business of manufacturing, selling and distributing two insecticide products designated Gulf Livestock Spray and Gulf-spray. Respondent causes its said products, when sold, to be transported from its 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 and in the District of Columbia.

Complaint

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its 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 its said business in connection with the sale of its said insecticide products, in said commerce, and as an inducement for the purchase thereof by members of the purchasing public, respondent has caused and is now causing advertisements to be made in radio continuities and to be printed in road maps, magazines, newspapers, circulars, and in other publications and advertising literature distributed to the purchasing public throughout the various States of the United States which contain many false and misleading statements and representations respecting the nature and effectiveness of its said products. Among and typical of the statements and representations so made and used with regard to the product Gulf Livestock Spray are the following:

- * * * a light spraying of it gives a cow complete protection.
- "It's 'higher kill' protects our cows for a longer period than any other spray."
- * * * provides long-lasting insect repelling protection.
- * * * gets rid of these pests.

Will not taint milk.

Changes to Gulf Livestock Spray . . . give you 175 lbs. more milk a day!

It will assure you of healthy, contented cows.

* * * will not burn or blister the hides of animals on which it is used.

* * * its neutral oil base is non-irritating.

Mr. Hamilton, it's so pure you can gargle it!

Among and typical of the statements and representations so made and used with regard to the product Gulspray are the following:

Gulspray is the quickest, surest insecticide I know * * *.

It requires less Gulspray to do a thorough insect killing job because it is more effective.

It's sure death to flies, mosquitoes, even garden pests.

The *surer* insect killer.

Gulspray will put an absolute end to every insect it touches * * *.

Use Gulspray Insect Killer to banish moths, flies, mosquitoes and other household insects from your home.

If you want freedom from insect pests get some Gulspray * * *.

It quickly rids your home of fleas, mosquitoes, moths, roaches and ants.

Our Gulspray—though fatal to all insects is absolutely harmless to humans * * *.

Mr. Hamilton, it is so pure you can gargle with it.

Gulspray * * * never taints food * * *.

Gulspray contains up to 40% more Pyrethrum, which makes it just that much more effective as an insect killer.

* * * and it won't harm plants!

PAR. 4. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent represents directly or indirectly to consumers and prospective consumers that its product Gulf Livestock Spray affords complete protection to livestock from all insects; that its effects continue for a longer period of time than any other insecticide; that its effects are permanent or lasting; that its use will completely eliminate all insects; that it will not taint milk; that its use will directly cause milk production to increase; that its

use will cause cows to be healthy; that it will not burn, blister or irritate the hides of animals; that it is harmless to humans and animals; and that its killing and repellent powers are more effective than those in any other insecticide.

Through the use of the aforesaid statement and representations and other similar thereto not herein set out, respondent represents directly and by implication that less Gulspray is required for effectiveness than any other insecticide; by the use of such words and expressions as "sure death," "surer," and "put an absolute end to," that Gulspray is 100% effective in killing all insects; by the use of such words as "banish," "ridding," "freedom," and "ride," that its effectiveness is complete and permanent; that it will not taint any food; that it contains 40% more Pyrethrum than any other insecticide; that the percentage of Pyrethrum in it in excess of that contained in other insecticides makes it that percent more effective than such other insecticides; that it will not harm plants; and that it is harmless to humans under any conditions.

PAR. 5. The statements and representations used and disseminated by the respondent in the manner above described are false, misleading and deceptive. In truth and in fact the use of the product Gulf Livestock Spray is not effective in protecting livestock from all types of insects; it is not effective for a longer period of time than all other insecticides; its effectiveness is not permanent or lasting; its use will not eliminate all insects; it will taint milk with which it comes in contact; its use will not cause an increase in milk production; its use will not cause cows to be healthy; it is not harmless to animals but will burn, blister or irritate the hides of animals if their skins are sprayed heavily therewith; nor is it harmless to humans if taken internally.

The product Gulspray's killing or repellent power is not more effective than all other insecticides. When used in equal quantities, Gulspray is not as effective as many other insecticides. Its effectiveness is not complete or permanent; it is not effective against all insects; it will taint food with which it comes in contact; it does not contain 40% more Pyrethrum than all other insecticides; the effectiveness of insecticides does not vary directly with the percentage of Pyrethrum contained in them; and the use of Gulspray will harm some plants.

The true facts are that the repellent value of said products is limited to that of a temporary repellent against some insects. Gulf Livestock Spray cannot be depended upon as a repellent of certain important flies which attack and annoy cattle. Gulspray cannot be relied upon to kill all garden insects. If applied in droplets or under high driving pressure it will harm some plants. Neither of said products will cause an increase in milk production but if a decrease in milk production is due to annoyances caused by lice, fleas, stable or horn flies, the use of Gulf Livestock Spray may be of value in preventing the continuance of such a decrease. Gulspray, to have any effect on insects must come in contact with them.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements and representations 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 all of such statements and representations are true, and induces a substantial portion of the public, because of such erroneous and mistaken belief, to purchase respondent's said products Gulf Livestock Spray and Gulspray.

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 August 29, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Gulf Oil 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 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, Gulf Oil Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located in the Gulf Building, Pittsburgh, Pa. Respondent is now and for a number of years last past has been engaged in the business of manufacturing, selling, and distributing a product designated by it as "Gulf Livestock Spray," an insecticide designed for use on livestock.

PAR. 2. Respondent causes and has caused its product, when sold, to be transported from its place of business in the State of Pennsylvania 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 its 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 business and for the purpose of inducing the purchase of its product, respondent advertises its product by means of advertisements inserted in magazines, newspapers, circulars and other advertising media, all of which are distributed among the purchasing public generally throughout the United States. Among and typical of the statements and representations appearing in such advertisements are the following:

C. W. Wilkinson has a fine herd of 280 Jerseys on his dairy farm at Trussville, Ala. Mr. Wilkinson says: "Gulf Livestock Spray is a *lot cheaper* to use than other sprays. This is because a light spraying of it gives a cow complete protection."

Gulf Livestock Spray kills bloodsucking flies, lice, ticks—repels stable and horn flies. One spraying lasts all day (Comm. Ex. 4).

Conclusion

. 38 F. T. C.

Changes to GULF LIVESTOCK SPRAY—gets 175 lbs. more milk a day! Says C. E. Grimes of Fredericksburg, Pa., "I am very proud of my herd of 90 Holstein and Guernsey cows. They are first-class milk producers. My milk production used to average 2,300 lbs. a day during the summer months. Since I started using Gulf Livestock Spray it has averaged 2,475 lbs. The increased yield of milk more than pays for the cost of the spray. I recommend this spray as the best that money can buy" (Comm. Ex. 7 "d").

MR. HAMILTON DO YOU WANT "M-M"? . . . Sure you do, for "M-M" means More Milk which means More Money. GULF LIVESTOCK SPRAY will get you "M-M." It will assure you of healthy, contented cows AND HEALTHY COWS GIVE MORE MILK, hence . . . increased PROFITS (Comm. Ex. 7 "b").

PAR. 4. Through the use of these statements and representations and others of similar import, respondent has represented, directly or by implication, that its product affords complete protection to livestock from all insects, and that the use of the product will cause milk production to increase and cause cows to be healthy.

PAR. 5. While respondent's product when applied to livestock usually will kill such insects as may be present on the livestock at the time of the application, the product does not afford complete protection as a repellent of other insects which may later seek to attack the livestock. Generally speaking, the degree of effectiveness of the product as a repellent depends upon a number of factors, including the frequency and thoroughness of application, the nature and extent of the insect infestation, weather conditions, etc. As to some insects, the product affords measurable protection for a limited period of time, but as against certain other insects which frequently attack livestock it has little value as a repellent. The Commission therefore finds that while respondent's product possesses substantial merit, it is incapable of affording complete protection to livestock from insects, and that respondent's representations with respect to the effectiveness of the product are erroneous and misleading.

The Commission further finds from the evidence that the product is incapable of bringing about an increase in milk production or causing cows to be healthy. In those cases where there has been a decrease in milk production or where cows are unhealthy and such conditions are due to the presence of insects, the use of respondent's product may be of indirect benefit in affording a measure of protection against the insects. Respondent's advertisements, however, are not limited to such indirect benefit and are therefore erroneous and misleading.

PAR. 6. 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 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 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, Gulf Oil 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's product designated "Gulf Livestock Spray," 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:

1. Representing, directly or by implication, that respondent's product affords complete protection to livestock from insects.

2. Representing, directly or by implication, that the use of respondent's product will cause cows to be healthy or cause an increase in milk production; provided, however, that this order shall not be construed as prohibiting respondent from representing that in those cases where an unhealthy condition of cows or a decrease in milk production is due to the presence of insects, respondent's product may be of benefit in affording a measure of protection against such insects.

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
MACDOUGAL BROTHERS

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

Docket 4990. Complaint, June 30, 1943—Decision, Apr. 11, 1944

Where two partners, engaged in interstate sale and distribution of potatoes, which they grew in Steuben County, New York, and packaged in fifteen, fifty and hundred pound bags for sale to retail chain store purchasers and to jobbers or wholesalers who resold to retailers, by whom the smaller bags were generally sold without being opened and the larger ones frequently used for display for sale, and sale therefrom—

Sold said potatoes marked or branded "Steuben Maid Little Maine Potatoes Packed by MacDougal Brothers Avoca, New York"; notwithstanding fact potatoes in question, sold and distributed in competition with those actually produced in Maine and packaged in bags bearing marks or brands accurately indicating their origin, and in competition also with those produced in other States and not falsely marked as Maine potatoes, were not grown in the State of Maine—shippers of which generally use either the State's registered trade mark "STATE OF MAINE," as licensed to do, or brand and designate their product as "Maine potatoes," preferred by dealers and consumers in many States and usually selling for a higher price than those grown in New York and other Eastern States;

With effect of misleading and deceiving substantial numbers of dealers and the consuming public into the erroneous belief that such potatoes were grown in the State of Maine, and with capacity and tendency unfairly to divert trade from competitors who do not misrepresent the origin of their potatoes:

Held, That the aforesaid 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*, 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 Donald N. MacDougal and Dan A. MacDougal, individuals, doing business as MacDougal Brothers, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Donald N. MacDougal and Dan A. MacDougal, are individuals, trading as MacDougal Brothers with their offices and principal place of business located at Avoca in the State of New York. Respondents are now and have been for several years last past engaged in the advertising, sale and distribution of potatoes.

PAR. 2. In the course and conduct of said business, respondents grow, pack, sell and distribute potatoes represented by respondents to be "Little Maine Potatoes."

In the course and conduct of their said business, respondents have caused and now cause their said potatoes when sold to be shipped and transported from their place of business in the State of New York to dealers and purchasers located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said product between and among the various States of the United States and in the District of Columbia.

The respondents are now, and at all times mentioned herein have been, in substantial competition in commerce, between and among the several States of the United States and in the District of Columbia, with other corporations and with partnerships, firms and individuals engaged in growing, selling and distributing potatoes. There are among such competitors in said commerce many who do not in any manner misrepresent the source of origin or State where their said potatoes are grown, and do not make any false statements in connection with the sale and distribution of their said products.

PAR. 3. In the course and conduct of their business in said commerce, as aforesaid, respondents have made and are now making, and have caused and are now causing, the publication of false and misleading statements and representations concerning their said product through circulars, magazines, newspapers and other means, circulated among purchasers and prospective purchasers, and stamped or stenciled on the bags and other covering in which said potatoes are packed when shipped and distributed. Among and typical, but not exclusive, of the false statements and representations contained in the said advertisements, so used and disseminated as aforesaid, are the following:

U. S. No. 1
Steuben Maid
Little Maine Potatoes
packed by
MacDougal Brothers of
Avoca, New York

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto, not herein set out, which purport to be descriptive of the source and State of origin where said potatoes are grown and of the nature and characteristics of the product, respondents have represented, directly or by implication, that said potatoes were grown in the State of Maine and are of the quality and character of potatoes grown in said State.

Potatoes grown in the State of Maine are noted for their fine quality and characteristics and command a higher price, better market and more ready sale than potatoes grown in other eastern States of the United States. Dealers and the public have a preference for potatoes grown in the State of Maine, and buy such potatoes on account of their quality and characteristics in preference to potatoes grown in other eastern States of the United States.

PAR. 5. The aforesaid statements and representations made by respondents in the manner above described are false and misleading. In truth and in fact, respondents' said potatoes are not grown in the State

of Maine and are not of the grade or quality, and do not possess the characteristics of Maine potatoes and do not command the high price and ready market of Maine potatoes, but are potatoes grown in the State of New York, and sell for less than Maine potatoes.

PAR. 6. The use by respondents of the above-described false and misleading statements and representations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of dealers and the purchasing public into the erroneous belief that the said potatoes so offered for sale and sold by respondents are potatoes grown in the State of Maine, and dealers and the purchasing public have bought substantial quantities of said potatoes under such erroneous and mistaken belief.

PAR. 7. Among competitors of respondents doing business in commerce as aforesaid, there are many who do not misrepresent the source or State of origin and the quality, grade and characteristics of their potatoes sold and shipped in commerce in competition with respondents' said potatoes, and who do not offer for sale as Maine potatoes any potatoes not grown in the State of Maine. As a result of respondents' misrepresentation of the source of origin or State where their said potatoes are grown, trade has been diverted unfairly to respondents from their said competitors in commerce, and thereby injury has been done and is being done by respondents to competitors in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 30, 1943, issued and subsequently served its complaint in this proceeding upon Donald N. MacDougal and Dan A. MacDougal, copartners, trading as MacDougal Brothers, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of said act. After the issuance of said complaint (no answer having been filed thereto), testimony and other evidence in support of and in opposition to the allegations of the 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 regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence, report of the trial examiner, and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Donald N. MacDougal and Dan A. MacDougal, are copartners, trading as MacDougal Brothers, with their office and principal place of business at Avoca, N. Y. Respondents are engaged, and for several years last past have been engaged, in the sale and distribution of potatoes.

PAR. 2. In the course and conduct of their aforesaid business respondents cause potatoes, when sold, to be shipped and transported from their place of business in the State of New York to purchasers located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in potatoes in commerce between and among various States of the United States.

PAR. 3. Respondents grow potatoes in Steuben County, New York. They package the potatoes so grown in containers, including 15-pound, 50-pound, and 100-pound bags, which are marked or branded:

STEUBEN MAID
LITTLE MAINE
POTATOES

Packed by

MACDOUGAL BROTHERS

Avoca, New York

After being so packed; such potatoes are shipped and distributed by respondents in commerce as aforesaid. Some of said potatoes are purchased by retail chain stores, and some are purchased by jobbers or wholesalers who resell them to retail dealers. The retail chain stores and retail dealers in turn offer such potatoes for sale to members of the consuming public. The smaller packages of potatoes are generally sold to consumers without having been opened. In the case of the larger packages, the potatoes are frequently displayed for sale in and sold from such packages.

PAR. 4. Large sums of money have been spent advertising the merits and promoting the sale of potatoes grown in the State of Maine. The State of Maine owns a trade-mark which, under certain conditions, it licenses shippers to place on packages or containers of potatoes grown in Maine. This registered trade-mark is "STATE OF MAINE." Shippers of Maine potatoes who do not use the "STATE OF MAINE" trade-mark generally use a mark or brand designating such potatoes as Maine potatoes. Dealers and consumers in many other States are familiar with the characteristics of and have a preference for potatoes grown in the State of Maine. Maine potatoes also generally command a higher price than potatoes grown in New York and certain other Eastern States. The potatoes produced in Steuben County, New York, and packaged in bags bearing respondents' marks and brands as set out above are sold and distributed in competition with potatoes which are actually produced in the State of Maine and packaged in bags bearing marks or brands which accurately indicate their origin. Respondents' potatoes are also sold and distributed in competition with potatoes produced in States other than the State of Maine which are not falsely marked or branded as being Maine potatoes.

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PAR. 5. The use by respondents of the word "Maine" in the manner aforesaid has had, and has, the capacity and tendency to, and does, mislead and deceive substantial numbers of dealers and of the consuming public into the erroneous belief that potatoes so packaged and offered for sale were grown in the State of Maine, as well as the capacity and tendency unfairly to divert trade to respondents from competitors who do not misrepresent the origin of their potatoes.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, 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 brief in support of the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Donald N. MacDougal and Dan A. MacDougal, individuals, trading as MacDougal Brothers, or under any other name, jointly or severally, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of potatoes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner, through the use of the word "Maine" or otherwise, that potatoes not grown in the State of Maine are Maine potatoes.

2. Representing in any manner that potatoes were grown in a State or locality different from that in which they were actually grown.

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.

Complaint

IN THE MATTER OF
BISHOP & BABBIN, INC.

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

Docket 5000. Complaint, July 9, 1943—Decision, Apr. 11, 1944

Where a corporation, engaged in interstate sale and distribution of potatoes which it grew in Steuben County, New York, and packaged in fifteen, fifty and hundred pound bags for sale to retail chain store purchasers and to jobbers or wholesalers who resold to retailers, by whom such smaller packages were generally sold without being opened, and larger ones were frequently for display for sale and sale therefrom—

Sold said potatoes marked or branded "LITTLE MAINE farms B & B POTATOES Packed by BISHOP & BABBIN, INC., ATLANTA, N. Y.," with the word "farms" less prominently displayed, and in some instances printed or stenciled in a different color than "Little Maine"; notwithstanding fact potatoes in question, sold and distributed in competition with those actually produced in Maine and packaged in bags bearing marks brands accurately indicating their origin, and in competition also with those produced in other States and not falsely marked as Maine potatoes, were not grown in the State of Maine—shippers of which generally use either the State's registered trade mark "STATE OF MAINE," as licensed to do, or brand their product as Maine potatoes, preferred by dealers and consumers in many States and usually selling for a higher price than those grown in New York and other Eastern States;

With effect of misleading and deceiving substantial numbers of dealers and the consuming public into the erroneous belief that such potatoes were grown in the State of Maine, and with capacity and tendency unfairly to divert trade from competitors who do not misrepresent the origin of their potatoes:

Held, That the aforesaid acts and practices were all to the prejudice and injury of the public and competitors, and constituted unfair and deceptive acts and practices therein.

Before *Mr. John W. Addison*, 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 Bishop & Babbin, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the Federal Trade Commission 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, Bishop & Babbin, Inc., is a corporation, organized and existing under the laws of the State of Maine with its principal office and place of business located in the city of Atlanta, State of New York. Respondent is now and for several years last past has been engaged in the advertising, sale and distribution of potatoes.

Complaint

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PAR. 2. In the course and conduct of its said business respondent grows, packs, sells and distributes potatoes, represented by respondent to be "Little Maine Farms B and B Potatoes."

In the course and conduct of its said business respondent has caused and now causes its said potatoes when sold to be shipped and transported from its place of business in the State of New York to dealers and purchasers 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 between and among the various States of the United States and the District of Columbia.

The respondent is now and at all times mentioned herein has been in substantial competition in commerce between and among the several States of the United States and in the District of Columbia with other corporations and with certain partnerships, firms and individuals engaged in growing, selling and distributing potatoes. There are among such competitors in said commerce many who do not in any manner misrepresent the source of origin or State where their said potatoes are grown, and do not make any false statements in connection with the sale and distribution of their said products.

PAR. 3. In the course and conduct of its said business in said commerce, as aforesaid, respondent has made and is now making and has caused and is now causing the publication of false and misleading statements and representations concerning its said product through circulars, magazines, newspapers and other means circulated among purchasers and prospective purchasers and stamped or stenciled on the bags and other covering in which said potatoes are packed when shipped and distributed. Among and typical, but not exclusive, of the false statements and representations contained in the said advertisements, so used and disseminated as aforesaid, are the following:

LITTLE MAINE
FARMS

and B B POTATOES

U. S. Grade No. 1

Bagged by Bishop & Babbin, Inc.

LITTLE MAINE FARMS

ATLANTA, N. Y.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not herein set out, which purport to be descriptive of the source and state of origin where said potatoes are grown and of the nature and characteristics of the product, respondent has represented directly or by implication that said potatoes were grown in the State of Maine and are of the quality and character of potatoes grown in said State.

Potatoes grown in the State of Maine are noted for their characteristics and fine quality and command a higher price, better market and more ready sale than potatoes grown in other eastern States of the United States. Dealers and the public have a preference for potatoes grown in the State of Maine and buy such potatoes on account of their quality and characteristics in preference to potatoes grown in other eastern States of the United States.

PAR. 5. The aforesaid statements and representations made by respondent in the manner above described are false and misleading. In truth and in fact respondent's said potatoes are not grown in the State of Maine, and are not of the grade and quality and do not possess the characteristics of Maine potatoes and do not command the high price and ready market of Maine potatoes, but are potatoes grown in the State of New York, and sell for less than Maine potatoes.

PAR. 6. The use by respondent of the above described false and misleading statements and representations has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of dealers and the purchasing public into the erroneous belief that the said potatoes so offered for sale and sold by respondent are potatoes grown in the State of Maine and dealers and the purchasing public have bought substantial quantities of said potatoes under such erroneous and mistaken belief.

PAR. 7. Among competitors of respondent doing business in commerce as aforesaid there are many who do not misrepresent the source or State of origin and the quality, grade and characteristics of their potatoes sold and shipped in commerce, in competition with respondent's said potatoes and who do not offer for sale as Maine potatoes any potatoes not grown in the State of Maine. As a result of respondent's misrepresentation of the source or origin or State where his said potatoes are grown trade has been diverted unfairly to respondent from its said competitors in commerce and thereby injury has been done and is being done by respondent to competitors in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. 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 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 July 9, 1943, issued and subsequently served its complaint in this proceeding upon Bishop & Babbin, Inc., a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of said act. After the issuance of said complaint (no answer having been filed thereto), testimony and other evidence in support of and in opposition to the allegations of the 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 regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence, report of the trial examiner, and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Bishop & Babbin, Inc., is a corporation, organized and existing under the laws of the State of Maine, with its principal office and place of business at Atlanta, N. Y. Respondent is engaged, and for several years last past has been engaged, in the sale and distribution of potatoes.

PAR. 2. In the course and conduct of its aforesaid business respondent causes potatoes, when sold, to be shipped and transported from its place of business in the State of New York to purchasers located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in potatoes in commerce between and among various States of the United States.

PAR. 3. Respondent grows potatoes in Steuben County, New York, and also purchases potatoes grown by others in said county. It packages the potatoes so grown or purchased in containers, including 15-pound, 50-pound, and 100-pound bags, which are marked or branded:

LITTLE MAINE

farms

B & B

POTATOES

Packed by

BISHOP & BABBIN, INC.

ATLANTA, N. Y.

In some instances the word "farms" is printed or stenciled in a different color than the words "Little Maine," and in all instances it is less prominently displayed. On some bags, after the words "Bishop & Babbin, Inc." the words "Little Maine Farms" appear before the words "Atlanta, New York." Potatoes produced in Steuben County, New York, after being so packaged, are shipped and distributed by respondent in commerce as aforesaid. Some of said potatoes are purchased by retail chain stores, and some are purchased by jobbers or wholesalers who resell them to retail dealers. The retail chain stores and retail dealers in turn offer such potatoes for sale to members of the consuming public. The smaller packages of potatoes are generally sold to consumers without having been opened. In the case of the larger packages, the potatoes are frequently displayed for sale in and sold from such packages.

PAR. 4. Large sums of money have been spent in advertising the merits and promoting the sale of potatoes grown in the State of Maine. The State of Maine owns a trade mark which, under certain conditions, it licenses shippers to place on packages or containers of potatoes grown in Maine. This registered trade mark is "STATE OF MAINE."

Shippers of Maine potatoes who do not use the "STATE OF MAINE" trade mark generally use a mark or brand designating such potatoes as Maine potatoes. Dealers and consumers in many other States are familiar with the characteristics of and have a preference for potatoes grown in the State of Maine. Maine potatoes also generally command a higher price than potatoes grown in New York and certain other Eastern States.

The potatoes produced in Steuben County, New York, and packaged in bags bearing respondent's brands as set out above are sold and distributed by respondent in competition with potatoes which are actually

produced in the State of Maine and packaged in bags or containers bearing marks or brands which accurately indicate their origin. Respondent's potatoes are also sold and distributed in competition with potatoes produced in States other than the State of Maine which are not falsely marked or branded as being Maine potatoes.

PAR. 5. The use by respondent of the word "Maine" in the manner aforesaid has had, and has, the capacity and tendency to, and does, mislead and deceive substantial numbers of dealers and of the consuming public into the erroneous belief that potatoes so packaged and offered for sale were grown in the State of Maine, as well as the capacity and tendency unfairly to divert trade to respondents from competitors who do not misrepresent the origin of their potatoes.

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 on the complaint of the Commission, 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 brief in support of the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Bishop & Babbin, 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 potatoes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner, through the use of the word "Maine" or otherwise, that potatoes not grown in the State of Maine are Maine potatoes.

2. Representing in any manner that potatoes were grown in a State or locality different from that in which they were actually grown.

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

LEONARD BLOCK, MELVIN BLOCK AND BETTY ROBERTS,
TRADING AS GOLD MEDAL HAARLEM OIL COMPANY

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

Docket 4865. Complaint, Nov. 3, 1942—Decision, Apr. 13, 1944

Where three individuals engaged in the compounding and interstate sale and distribution of their "Gold Medal Haarlem Oil" and "Gold Medal Haarlem Oil Capsules"; by means of advertisements in newspapers and periodicals and by circulars, leaflets, pamphlets and other advertising literature, directly and by implication—

- (a) Represented that said preparation was a prompt, efficient, safe and harmless treatment for ailments and diseases of the kidneys and bladder, would flush excess waste matters from the former, would keep the blood free therefrom, and from poisons, and acid; was an effective treatment for weak kidneys and irritations of the bladder and would restore them to a healthy state of activity regardless of the underlying cause; and would provide relief from scanty, burning and smarting urine passage and clean out kidneys that had become clogged; and
- (b) Represented that scanty, burning and smarting urine passage, aches, pains, joint agony, sciatica, neuritis, neuralgia, lumbago, rheumatism, backache, nervousness, leg cramps, getting up nights, moist palms, puffy eyes, nagging pains, dizzy spells and swollen ankles might be symptomatic of ailments and diseased conditions of the kidneys or bladder which might be treated effectively by it;

The facts being that such preparation was an irritant diuretic which was not a remedy or cure for ailments and diseases of the kidneys or bladder irrespective of their cause, and had no therapeutic value in the treatment of diseased or injured kidneys; and conditions above described were not symptomatic of ailments treated successfully by its use; and

- (c) Failed to reveal facts material in the light of its said representations in that indiscriminate use of said irritant diuretic under prescribed or usual conditions by persons whose kidneys were injured or diseased might interfere with their proper functioning, and prolonged administration thereof might injure normal kidneys;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that said representations were true and that preparation in question was in all cases safe for use, and with the tendency and capacity to cause such portion of the public to purchase their preparation as a result thereof:

Held, That aforesaid 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. S. F. Rose for the Commission.

Breed, Abbott & Morgan, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Leonard Block, Melvin Block and Betty Roberts, trading as Gold Medal Haarlem Oil Company, 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, Leonard Block, Melvin Block, and Betty Roberts, are individuals, trading as Gold Medal Haarlem Oil Company, with their office and principal place of business located at 190 Baldwin Avenue, Jersey City, N. J.

PAR. 2. The respondents are now and have been for more than three years last past engaged in compounding, selling and distributing a certain medicinal preparation which is variously designated "Gold Medal Haarlem Oil," "Gold Medal Haarlem Oil Capsules" and "Gold Medal," recommended for use in the treatment of various kidney and bladder ailments and diseases. Respondents cause said medicinal preparation, when sold, to be transported from their aforesaid place of business in the State of New Jersey to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondents in the course and conduct of their business aforesaid, have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said medicinal preparation by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their 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 periodicals and by circulars, leaflets, pamphlets and other advertising literature, are the following:

When you can get for 35 cents a safe, efficient and harmless stimulant and diuretic that should flush from your kidneys the waste matter, poisons and acids that are now doing you harm, why continue to break your restful sleep by getting up through the night?

This tried and true medicine should make you feel better in a few days—it's an effective diuretic and kidney stimulant that relieves the pains caused by gouty phases of neuritis and rheumatic joint agony when irritated by excess uric acid.

Best of all, there's no long waiting for results with Gold Medal Haarlem Oil Capsules—promptly this effective diuretic and stimulant acts to soothe bladder irritation and put more healthy vigor into lazy kidneys * * *

STOP GETTING UP NIGHTS AND FEEL HEALTHIER.

Here's one good way to flush excess waste from the kidneys and relieve bladder irritation that often causes scanty, burning and smarting passage.

Splendid, safe and harmless diuretic and stimulant for weak kidneys and irritated bladder.

Genuine medicine for weak kidneys.

Put more healthy activity into kidneys and bladder.

Keep your blood more free and from waste matter, poisons and acid.

Be Healthier, Happier—Live Longer.

This harmless, tried and true medicine gives results—you should feel better in a few days, as this effective diuretic and kidney stimulant drives excess uric acid from the body which is often the aggravation of joint agony, sciatica and neuritis.

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This grand medicine has been helping people for 50 years—to relieve their aches and pains by helping conditions caused or aggravated by excess uric acid or other circulating poisons such as is so often the case with sciatica, neuralgia, lumbago and rheumatism.

Slow functioning kidneys may and often do cause persistent, stubborn and miserable backache.

So if you have such symptoms of kidney trouble as backache, nervousness, getting up two or three times during the night—scanty, burning or smarting passage—leg cramps—moist palms or puffy eyes get a 35-cent package of this grand and harmless diuretic at any modern drug store—it starts the first day on its errand of helpfulness.

Kidney Trouble

Stop Getting Up Nights. To harmlessly flush poisons and acid from kidneys and relieve irritation of bladder so that you can stop "getting up nights" get a 35-cent package of Gold Medal Haarlem Oil Capsules and take as directed. Other symptoms of kidney and bladder weaknesses may be scant, burning or smarting passage—backache—leg cramps—puffy eyes.

When kidneys are clogged they become weak—the bladder is irritated—often passage is scanty and smarts and burns—sleep is restless and nightly visits to the bathroom are frequent. The right safe, harmless and inexpensive way to stop this trouble and restore healthy action to the kidneys and bladder is to get a box of Gold Medal Haarlem Oil Capsules and take as directed—you won't be disappointed.

Live a healthier, happier, longer life.

Those trips to the bathroom in the middle of the night can't do you any good—can't make you feel any better or look any better—it's a cinch something must be wrong. When you have such sluggish kidney and bladder weakness, help flush out the kidneys of excessive acids and poisons.

This tried and true medicine should make you feel better in a few days.

When your kidneys are overtaxed and your bladder is irritated and passage scanty and often smarts and burns, you may need Gold Medal Haarlem Oil Capsules, a fine harmless stimulant and diuretic that starts to work at once . . .

MEN OVER FORTY WATCH YOUR KIDNEYS. Nagging Pains—Getting Up Nights—Backache May Be Danger Signals. * * * Keep your blood more free from waste matter, poisons and acid by putting more activity into kidneys and bladder and you should live a healthier, happier life. One efficient and harmless way to do this is to get from your druggist a 35 cent box of Gold Medal Haarlem Oil Capsules and take them as directed.

Kidney-Bladder sufferers Here's A Fine Medicine.

For instance, lazy kidneys may make you nervous if they cause you to lose sleep because of getting up frequently at night. Also may cause dizzy spells, backache, leg cramps or swollen ankles.

PAR. 4. Through the use of the statements and representations herein-above set forth, and other statements and representations similar thereto, not set forth herein, all of which purport to be descriptive of the therapeutic properties of respondents' said preparation, respondents represent, directly and by implication, that said preparation is a prompt, efficient, safe and harmless treatment for ailments and diseases of the kidneys and bladder; that it will flush excess waste matters from the kidneys, that its use will keep the blood free from waste matters, poisons, and acid; that it is an effective treatment for weak kidneys and irritations of the bladder and will restore kidneys and bladder to a healthy state of activity regardless of the underlying cause of such kidney and bladder trouble; that it will provide relief from scanty, burning and smarting urine passage and will clean out kidneys that have become clogged; that scanty, burn-

ing, and smarting urine passage, aches, pains, joint agony, sciatica, neuritis, neuralgia, lumbago, rheumatism, backache, nervousness, leg cramps, getting up nights, moist palms, puffy eyes, nagging pains, dizzy spells and swollen ankles are symptomatic of ailments and diseased conditions of the kidneys or bladder which may be treated effectively by the administration of said preparation; that the human kidneys are lazy, sluggish and slow-functioning organs of the body and require stimulation by the administration of a diuretic; and that said preparation is a remedy or cure for ailments and diseases of the human kidneys and bladder irrespective of the cause or the condition thereof.

PAR. 5. The aforesaid statements and representations of the respondents are grossly exaggerated, false and misleading. In truth and in fact, respondents' said preparation, designated as aforesaid, is not a prompt, efficient, safe and harmless treatment for ailments and diseases of the kidney or bladder. Its use will not flush excess waste matters from the kidneys nor keep the blood free from waste matters, poisons and acids. It is not an effective treatment for weak kidneys or irritations of the bladder nor will its use restore the kidneys and bladder to a state of healthy activity. It will not give relief from scanty, burning and smarting urine passage nor stimulate the functions of the kidneys or clean out kidneys that have become clogged. Conditions described as scanty, burning and smarting urine passage, aches, pains, joint agony, sciatica, neuritis, neuralgia, lumbago, rheumatism, backache, nervousness, leg cramps, getting up at nights, moist palms, puffy eyes, nagging pains, dizzy spells and swollen ankles are not treated effectively by Gold Medal Haarlem Oil, nor are such conditions symptomatic of ailments or diseased conditions which are treated successfully by the use of such preparation. The human kidneys are not lazy, sluggish, and slow-functioning organs of the body and, in the absence of disease or injury, function properly without aid or stimulation through the administration of a diuretic. Said preparation is not a remedy or cure for ailments and diseases of the human kidneys or bladder irrespective of the cause or the condition thereof. It has no therapeutic value in the treatment of diseased or injured kidneys.

PAR. 6. The respondents' advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may result in injury to health.

In truth and in fact, respondents' preparation is an irritant diuretic and its indiscriminate use, by persons whose kidneys are injured and diseased, may seriously interfere with their proper functioning, and prolonged administration may injure kidneys that are normal.

PAR. 7. The use by the respondents of the foregoing false and misleading statements and representations and others of similar nature, disseminated as aforesaid, has had, and now has, the tendency and capacity to and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondents' said preparation.

PAR. 8. 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 the third day of November 1942, issued and thereafter served its complaint in this proceeding upon said respondents, Leonard Block, Melvin Block and Betty Roberts, trading as Gold Medal Haarlem Oil Company, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On December 17, 1942, the respondents filed their answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and 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 without the presentation of argument or the filing of briefs. Respondents expressly waived the filing of the Trial Examiner's report upon the evidence.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Leonard Block, Melvin Block and Betty Roberts, were at all of the times mentioned in the complaint, individuals, trading as Gold Medal Haarlem Oil Company, with their office and principal place of business located at 190 Baldwin Avenue, Jersey City, N. J.

PAR. 2. The respondents are now and have been for more than three years last past engaged in compounding, selling and distributing a certain medicinal preparation which is variously designated "Gold Medal Haarlem Oil" and "Gold Medal Haarlem Oil Capsules." Respondents cause said medicinal preparation, when sold, to be transported from their aforesaid place of business in the State of New Jersey to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondents, in the course and conduct of their business aforesaid, have disseminated and are now disseminating, and have caused and are now causing the dissemination of advertisements concerning said

medicinal 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 respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning said medicinal preparation, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the 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 periodicals and by circulars, leaflets, pamphlets and other advertising literature, are the following:

When you can get for 35 cents a safe, efficient and harmless stimulant and diuretic that should flush from your kidneys the waste matter, poisons and acids that are now doing you harm, why continue to break your restful sleep by getting up through the night?

This tried and true medicine should make you feel better in a few days—it's an effective diuretic and kidney stimulant that relieves the pains caused by gouty phases of neuritis and rheumatic joint agony when irritated by excess uric acid.

Best of all, there's no long waiting for results with Gold Medal Haarlem Oil Capsules—promptly this effective diuretic and stimulant acts to soothe bladder irritation and put more healthy vigor into lazy kidneys * * *

STOP GETTING UP NIGHTS AND FEEL HEALTHIER.

Here's one good way to flush excess waste from the kidneys and relieve bladder irritation that often causes scanty, burning and smarting passage.

Splendid, safe and harmless diuretic and stimulant for weak kidneys and irritated bladder.

Genuine medicine for weak kidneys.

Put more healthy activity into kidneys and bladder.

Keep your blood more free from waste matter, poisons and acid.

Be Healthier, Happier—Live Longer.

This harmless, tried and true medicine gives results—you should feel better in a few days, as this effective diuretic and kidney stimulant drives excess uric acid from the body which is often the aggravation of joint agony, sciatica and neuritis.

This grand medicine has been helping people for 50 years—to relieve their aches and pains by helping conditions caused or aggravated by excess uric acid or other circulating poisons such as is so often the case with sciatica, neuralgia, lumbago and rheumatism.

Slow functioning kidneys may and often do cause persistent, stubborn and miserable backache.

So if you have symptoms of kidney trouble as backache, nervousness, getting up two or three times during the night—scanty, burning or smarting passage—leg cramps—moist palms or puffy eyes get a 35-cent package of this grand and harmless diuretic at any modern drug store—it starts the first day on its errand of helpfulness.

Kidney Trouble

Stop Getting Up Nights. To harmlessly flush poisons and acid from kidneys and relieve irritation of bladder so that you can stop "getting up nights" get a 35-cent package of Gold Medal Haarlem Oil Capsules and take as directed. Other symptoms of kidney and bladder weaknesses may be scant, burning or smarting passage—backache—leg cramps, puffy eyes.

When kidneys are clogged they become weak—the bladder is irritated—often passage is scanty and smarts and burns—sleep is restless and nightly visits to the bathroom are

frequent. The right safe, harmless and inexpensive way to stop this trouble and restore healthy action to the kidneys and bladder is to get a box of Gold Medal Haarlem Oil Capsules and take as directed—you won't be disappointed.

Live a healthier, happier, longer life.

Those trips to the bathroom in the middle of the night can't do you any good—can't make you feel any better or look any better—it's a cinch something must be wrong. When you have such sluggish kidney and bladder weakness, help flush out the kidneys of excessive acids and poisons.

This tried and true medicine should make you feel better in a few days.

When your kidneys are overtaxed and your bladder is irritated and passage scanty and often smarts and burns, you may need Gold Medal Haarlem Oil Capsules, a fine harmless stimulant and diuretic that starts to work at once . . .

MEN OVER FORTY WATCH YOUR KIDNEYS. Nagging Pains—Getting Up Nights—Backache May Be Danger Signals. * * * Keep your blood more free from waste matter, poisons and acid by putting more activity into kidneys and bladder and you should live a healthier, happier life. One efficient and harmless way to do this is to get from your druggist a 35 cent box of Gold Medal Haarlem Oil Capsules and take them as directed.

Kidney-Bladder sufferers Here's A Fine Medicine.

For instance, lazy kidneys may make you nervous if they cause you to lose sleep because of getting up frequently at night. Also may cause dizzy spells, backache, leg cramps or swollen ankles.

PAR. 4. Through the use of the statements and representations herein-above set forth, and other statements and representations similar thereto, not set forth herein, respondents represent, directly and by implication, that said preparation is a prompt, efficient, safe and harmless treatment for ailments and diseases of the kidneys and bladder; that it will flush excess waste matters from the kidneys; that its use will keep the blood free from excess waste matters, poisons, and acid; that it is an effective treatment for weak kidneys and irritations of the bladder and will restore kidneys and bladder to a healthy state of activity regardless of the underlying cause of such kidney and bladder trouble; that it will provide relief from scanty, burning and smarting urine passage and will clean out kidneys that have become clogged; and that scanty, burning and smarting urine passage, aches, pains, joint agony, sciatica, neuritis, neuralgia, lumbago, rheumatism, backache, nervousness, leg cramps, getting up nights, moist palms, puffy eyes, nagging pains, dizzy spells and swollen ankles may be symptomatic of ailments and diseased conditions of the kidneys or bladder which may be treated effectively by the administration of said preparation.

PAR. 5. Respondents' preparation, designated as aforesaid, is an irritant diuretic, and its indiscriminate use by persons whose kidneys are diseased may interfere with their proper functioning, and prolonged administration may injure kidneys that are normal. The use of said preparation as directed will not flush excess waste matters from the kidneys nor keep the blood free from waste matters, poisons and acids. It is not an effective treatment for weak kidneys or irritations of the bladder nor will its use restore the kidneys and bladder to a state of healthy activity. It will not give relief from scanty, burning and smarting urine passage nor stimulate the functions of the kidneys or clean out kidneys that have become clogged. Conditions described as scanty, burning and smarting urine passage, aches, pains, joint agony, sciatica, neuritis,

neuralgia, lumbago, rheumatism, backache, nervousness, leg cramps, getting up at nights, moist palms, puffy eyes, nagging pains, dizzy spells and swollen ankles are not treated effectively by Gold Medal Haarlem Oil, nor are such conditions symptomatic of ailments or diseased conditions which are treated successfully by the use of such preparation. Said preparation is not a remedy or cure for ailments and diseases of the human kidneys or bladder irrespective of the cause of the condition thereof. It has no therapeutic value in the treatment of diseased or injured kidneys.

PAR. 6. The Commission therefore finds that the representations made by respondents with respect to their preparation, as set forth herein, are erroneous and misleading and constitute false advertisements.

PAR. 7. Respondents' advertisements constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in such advertisements or under such conditions as are customary or usual may result in injury to health. Respondents' preparation is an irritant diuretic and its indiscriminate use by persons whose kidneys are injured or diseased may interfere with the proper functioning of the kidneys, and prolonged administration of the preparation may injure kidneys that are normal.

PAR. 8. The use by the respondents of these false advertisements has had and now has the tendency and capacity to and does mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations in such advertisements are true and that respondents' preparation is in all cases safe for use, and the tendency and capacity to cause such portion of the public to purchase respondents' preparation as a result of such erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, and a stipulation as to the facts entered into by the respondents herein and Richard P. Whiteley, Assistant Chief Counsel of the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion, that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Leonard Block, Melvin Block and Betty Roberts, individually, and trading as Gold Medal Haarlem Oil Company, or trading under any other name or names, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the medicinal preparation designated "Gold Medal Haarlem Oil Capsules,"

or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name or names, do forthwith cease and desist from:

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, or disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in such commerce of said medicinal preparation, which advertisement —

1. Represents, directly or through inference, that said preparation —

(a) Is safe or harmless;

(b) Will flush excess waste matters from the kidneys, or that it will keep the blood free from waste matters, poisons or acids;

(c) Is an effective and competent treatment for conditions described as weak kidneys or irritations of the bladder, or that its use will restore the kidneys or bladder to a state of healthy activity;

(d) Will give relief from scanty, burning or smarting urine, or that it will stimulate the functions of the kidneys, or clean out kidneys described as having become clogged;

(e) Is an effective treatment for conditions described as scanty, burning and smarting urine passage, aches, pains, joint agony, sciatica, neuritis, neuralgia, lumbago, rheumatism, backache, nervousness, leg cramps, getting up at nights, moist palms, puffy eyes, nagging pains, dizzy spells, or swollen ankles, or that such conditions are symptomatic of ailments or diseased conditions which are treated successfully by the use of said preparation.

(f) Is a remedy or cure for ailments or diseases of the human kidneys or that it has any therapeutic value in the treatment of diseased or injured kidneys.

2. Fails to reveal that the indiscriminate use of said preparation by persons whose kidneys are injured or diseased, may interfere with their proper functioning, and that prolonged administration may injure kidneys that are normal; 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 both, contain a warning to the above effect.

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

THE A. & N. TRADING CO., INC., TRADING AS A. & N.
 TRADING COMPANY, A & N TRADING COMPANY, INC.,
 AND SPORT CENTER

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
 OF THE FEDERAL TRADE COMMISSION ACT APPROVED SEPT. 26, 1914, AND
 THE WOOL PRODUCTS LABELING ACT OF 1939 APPROVED OCT. 14, 1940

Docket 4932. Complaint, Mar. 18, 1943—Decision, Apr. 17, 1944

Neither the intent of a respondent in violating the Wool Products Labeling Act of 1939, nor its knowledge that it was violating such act, are material to proceedings thereunder before the Commission, and in the instant case, in which the respondent made such allegations in its answer, the Commission is without knowledge in said respect and makes no findings with regard thereto.

Where a corporation, engaged in the operation of retail stores in Washington, D. C., and in the offer and sale to the general public therein, of clothing and other merchandise, including many articles subject to the Wool Products Labeling Act of 1939, such as shirts, sweaters, trousers, caps, underwear and blankets,—

Sold and distributed such articles in commerce, misbranded in violation of said act and the rules and regulations promulgated thereunder, in that when introduced therein they did not have on or affixed thereto a stamp, tag, label or other means of identification as thereby provided, showing the percentage of the total fiber weight, of wool, reprocessed wool, reused wool, non-wool fiber, and non-fibrous filling or adulterating matter, and proper identification of the manufacturer or reseller, etc., subject to provisions of act:

Held, That aforesaid acts, practices and methods of respondent, under the circumstances set forth, were in violations of the act and said Rules and Regulations, and were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Mr. DeWitt T. Puckett for the Commission.

Mr. Philip Goldstein, of Washington, D. C., for respondents.

COMPLAINT ¹

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 Army and Navy Trading Company, a corporation, trading as A & N Trading Company, A & N Trading Company, Inc., and Sport Center, hereinafter referred to as respondent, has violated the pro-

¹ By order dated Nov. 6, 1943 the complaint was amended, as respects respondent's corporate name, as follows:

This matter coming on to be heard by Federal Trade Commission upon the motion of counsel for the Commission to amend the complaint in this case by substituting the name "A & N Trading Company, Inc." for the name "Army and Navy Trading Company," and it appearing that respondent does not resist said motion, and the Commission having duly considered the said motion and the record herein and being now fully advised in the premises.

It is ordered that the complaint herein be, and the same hereby is, amended by substituting the name "A & N Trading Company, Inc." for the name "Army and Navy Trading Company."

visions 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. Respondent, Army and Navy Trading Company, a corporation, trading as A & N Trading Company, A- & N Trading Company, Inc., and Sport Center, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland and has its principal office and place of business at 8th and D Streets, N. W., Washington, D. C.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of operating retail stores in Washington, D. C., and is offering for sale and selling to the general public in the District of Columbia various articles of clothing and other merchandise. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in the District of Columbia.

PAR. 3. Among the articles sold by respondent 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 such articles which include shirts, sweaters, trousers, caps, underwear and blankets are composed in whole or in part of wool, reprocessed wool or reused wool as those terms are defined in said act.

Many of these said wool products sold and distributed by respondent in said commerce as aforesaid 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 the wool product, exclusive of ornamentation not exceeding 5 percentum 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 percentum 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. 4. 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, and the Wool Products Labeling Act of 1939, the Federal Trade Commission, on the 18th day of March, 1943, issued and subsequently served its complaint in this proceeding upon respondent, The A. & N. Trading Co., Inc., a corporation, trading as A. & N. Trading Company, A & N Trading Company, Inc., and Sport Center, charging it with the use of unfair and

deceptive acts and practices in commerce in violation of the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939. Subsequently the respondent filed its answer, and on November 17, 1943, 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. Thereafter a stipulation as to certain facts regarding the correct corporate name of the respondent was entered into by and between Richard P. Whiteley, Assistant Chief Counsel for the Commission, and counsel for the respondent, and made a part of the record herein.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The A. & N. Trading Co., Inc., a corporation, trading as A. & N. Trading Company, A & N Trading Company, Inc., and Sport Center, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland and has its principal office and place of business at 8th and D Streets, N. W., Washington, D. C.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of operating retail stores in Washington, D. C., and is offering for sale and selling to the general public in the District of Columbia various articles of clothing and other merchandise. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in the District of Columbia.

PAR. 3. The complaint in this proceeding alleged that the corporate name of the respondent was Army and Navy Trading Company. The respondent's answer alleged that the correct name of the respondent was A & N Trading Company, Inc., and on November 6, 1943, the Commission, by order duly entered herein, amended the complaint to correct the name of the respondent. A stipulation as to the facts with regard to the correct name of the respondent was entered into between counsel for the Commission and respondent and made a part of the records, and shows the correct name of respondent to be "The A. & N. Trading Co., Inc." and the Commission so finds.

PAR. 4. Among the articles sold by respondent 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 such articles, which include shirts, sweaters, trousers, caps, underwear and blankets, are composed in whole or in part of wool, reprocessed wool or reused wool as those terms are defined in said act.

Many of these said wool products sold and distributed by respondent in said commerce as aforesaid 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 into said

Order

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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 the wool product, exclusive of ornamentation not exceeding 5 percentum 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 percentum 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. 5. Respondent's answer contains a paragraph which states in substance that any violation of the Wool Products Labeling Act of 1939 was committed without any intent to do so or knowledge thereof by the respondent. Neither the intent of the respondent in violating the act nor its knowledge that it was violating the act are material to proceedings under the Wool Products Labeling Act of 1939 before the Commission, and the Commission is without knowledge in these respects and makes no finding with regard thereto.

The aforesaid acts, practices and methods of respondent as herein found were and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said amended 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 its conclusion that said respondent has 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 respondent, The A. & N. Trading Co., Inc., a corporation, trading as A. & N. Trading Company, A & N Trading Company, Inc., and Sport Center, or trading under any other name, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or offering for sale in commerce as "commerce" is defined in the aforesaid acts, do forthwith cease and desist from misbranding shirts, sweaters, trousers, caps, underwear and blankets, 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 five percentum 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 five percentum or more, and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool products of any non-fibrous 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 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
ALEXANDER AUERBACH, TRADING IN HIS OWN NAME
AND AS FRANK CORWIN, ETC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT APPROVED SEPT. 26, 1914, AND
THE WOOL PRODUCTS LABELING ACT OF 1939 APPROVED OCT. 14, 1940

Docket 5025. Complaint, Aug. 12, 1943—Decision, Apr. 18, 1944

Where an individual engaged under his own name and various trade names—subsequent to the dissolution of a corporation used by him for acts and practices below described—in the buying of woolen rags, clippings and other wool waste for shipment to reprocessing mills in other States and conversion into “shoddy,” and in the sale and distribution to his customers in various States either directly therefrom or after return to him—

- (a) Misbranded his said goods in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that they did not, when marketed in commerce, 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, non-wool fibers, and non-fibrous loading, filling or adulterating matter, and proper identification of the manufacturer or reseller, etc.;
- (b) Falsely represented orally, by telephone and telegraphic communications, through letters and otherwise, that his products were “wool” and that his said products could be labeled “wool” as defined by act in question, were “all wool” or “100% wool,” and that his stock generally could be labeled as “reprocessed wool” in accordance with such act, and thereby placed in the hands of customers the means whereby they, through wholesalers and retailers, might deceive members of the purchasing public into the mistaken belief that said “shoddy” products were all wool or all reprocessed wool, and as a consequence into purchase of substantial quantities thereof; and
- (c) Made use of fictitious names and shipped his said products thereunder to purchasers in various States, and thereby fraudulently concealed his real identity from purchasers who, having been previously deceived and defrauded by him under the name of his aforesaid dissolved corporation or in his own name, would not have made such purchases if his true identity had been known to them:

Held, That such acts, practices and methods 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. R. P. Bellinger for the Commission.

Mr. Samuel Shapiro, of New York City, for respondent.

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 Alexander Auerbach, an individual, trading in his own name, and as Frank Corwin, Frank Corwin Company, Frank Cohen, David Demerer and Hanover Wool Stock Company, hereinafter referred

to as the respondent, has 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. Respondent, Alexander Auerbach, is an individual, who trades in his own name and under the names of Frank Corwin, Frank Corwin Company, Frank Cohen, David Demerer and Hanover Wool Stock Company. Respondent's business address is 439 Broadway, Brooklyn, N. Y.

PAR. 2. In 1936, the respondent organized the Hanover Wool Products Corporation, a New York corporation, of which he was the president and as such controlled and directed its sales policies and other activities, particularly with respect to the acts and practices hereinafter mentioned and described. Acting in said capacity and on his own individual responsibility, under the cloak and guise of the said corporate name and entity, the respondent engaged in the fraudulent and unlawful acts and practices hereinafter mentioned and described until the Federal Trade Commission began, in 1942, an investigation of his said acts and practices, and in December 1942 he brought about the dissolution of said corporation.

The respondent is now and was during the said period from 1936 to 1942, as set forth above, and constantly since the dissolution of said corporation in December 1942, has been engaged in the business of buying woolen rags, clippings and other wool waste, baling and shipping the same from his said place of business in the State of New York to reprocessing mills in various States of the United States other than the State of New York for conversion and manufacture into a product known in the trade as wool shoddy by carding, carbonizing and garnetting, after which, under respondent's directions, it is sold, transported, or distributed directly to customers of respondent in States other than those States wherein said shipments originate and in the District of Columbia, or is returned to respondent, who offers for sale, sells, delivers for shipment, ships, transports or causes it to be transported from his said place of business in the State of New York to purchasers in States other than the State of New York and in the District of Columbia.

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

PAR. 3. The products which have been sold and distributed by respondent in commerce as aforesaid since July 15, 1941, are wool products within the intent and meaning of the Wool Products Labeling Act of 1939 in that said products are composed in whole or in part of wool, reprocessed wool or reused wool, as those terms are defined in the said act. Respondent's wool products are subject to the labeling provisions of said act and the rules and regulations thereunder. The said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that said wool products, when marketed 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 the wool product, exclusive of ornamentation

not exceeding 5 percentum 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 percentum 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. 4. In promoting the sale of many of his said products in commerce as aforesaid the respondent has falsely represented that his said products could be labeled "Wool" as defined by the Wool Products Labeling Act of 1939; that his said products are "All Wool" or "100% Wool"; that his stock generally can be labeled as reprocessed wool in accordance with the Wool Products Labeling Act of 1939; and by the use of other similar false representations, not specifically set out herein, has represented his said products as being "wool," all of which false statements and representations have been disseminated in commerce by oral means, by telephone and telegraphic communications, by letters sent through the United States mails and otherwise.

PAR. 5. In truth and in fact many of respondent's said products consist of reclaimed woolen rags or other waste, converted into shoddy; they cannot be labeled "Wool" as defined by the Wool Products Labeling Act of 1939; they are neither "All Wool" nor "100% Wool"; respondent's stock generally cannot be labeled as reprocessed wool in accordance with the Wool Products Labeling Act of 1939; and respondent's products are not "wool," as that term is accepted and understood by the consuming public.

PAR. 6. Through the use of the said acts and practices, as hereinabove alleged, the respondent places in the hands of his customers the means and instrumentalities whereby they, through wholesale and retail dealers, may mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said products are all wool or all reprocessed wool, when in fact they are neither, and because of said erroneous and mistaken belief to purchase substantial quantities of said products.

PAR. 7. The respondent has otherwise engaged in deceptive and misleading practices by adopting and using fictitious names in operating his said business and by causing his said products to be shipped in said fictitious names to purchasers in various States of the United States other than the States in which such shipments originate. In such manner and by said means the respondent has falsely and fraudulently concealed his real identity from purchasers to whom said products were transported and who were thus misled into the erroneous and mistaken belief that they were buying said products from dealers other than respondent and who, if the true identity of the seller of said goods had been known to them, would not have purchased the same because many of said buyers had been previously deceived and defrauded by respondent acting under the pretense and in the name of the said corporation, Hanover Wool Products Corporation, or in his own individual name.

PAR. 8. The aforesaid acts, practices and methods of respondent as herein alleged are all to the prejudice and injury of the public and con-

stitute 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 12, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Alexander Auerbach, an individual, trading in his own name, and as Frank Corwin, Frank Corwin Company, Frank Cohen, David Demerer, and Hanover Wool Stock Company, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act and the Wool Products Labeling Act of 1939. After the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw such answer and to substitute therefor an answer admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Alexander Auerbach, is an individual, who trades in his own name and under the names of Frank Corwin, Frank Corwin Company, Frank Cohen, David Demerer and Hanover Wool Stock Company. Respondent's business address is 439 Broadway, Brooklyn, N. Y.

PAR. 2. In 1936, the respondent organized the Hanover Wool Products Corporation, a New York corporation, of which he was the president and as such controlled and directed its sales policies and other activities, particularly with respect to the acts and practices hereinafter mentioned and described. Acting in said capacity and on his own individual responsibility, under the cloak and guise of the said corporate name and entity, the respondent engaged in the fraudulent and unlawful acts and practices hereinafter mentioned and described until the Federal Trade Commission began, in 1942, an investigation of his said acts and practices, and in December 1942 he brought about the dissolution of said corporation.

The respondent is now and was during the said period from 1936 to 1942, as set forth above, and constantly since the dissolution of said corporation in December 1942, has been engaged in the business of buying woolen rags, clippings and other wool waste, baling and shipping the same from his said place of business in the State of New York to re-processing mills in various States of the United States other than the State of New York for conversion and manufacture into a product known in the trade as "shoddy" by carding, carbonizing and garnetting, after which, under respondent's directions, it is sold, transported, or distributed directly to customers of respondent in States other than those States

wherein said shipments originate and in the District of Columbia, or is returned to respondent, who offers for sale, sells, delivers for shipment, ships, transports or causes it to be transported from his said place of business in the State of New York to purchasers in States other than the State of New York and in the District of Columbia.

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

PAR. 3. The products which have been sold and distributed by respondent in commerce as aforesaid since July 15, 1941, are wool products within the intent and meaning of the Wool Products Labeling Act of 1939 in that said products are composed in whole or in part of wool, reprocessed wool or reused wool, as those terms are defined in the said act. Respondent's wool products are subject to the labeling provisions of said act and the rules and regulations thereunder. The said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that said wool products, when marketed 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 the wool product, exclusive of ornamentation not exceeding 5 percentum 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 percentum 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. 4. In promoting the sale of many of his said products in commerce as aforesaid the respondent has falsely represented that his said products could be labeled "Wool" as defined by the Wool Products Labeling Act of 1939; that his said products are "All Wool" or "100% Wool"; that his stock generally can be labeled as reprocessed wool in accordance with the Wool Products Labeling Act of 1939; and by the use of other similar false representations, not specifically set out herein, has represented his said products as being "wool," all of which false statements and representations have been disseminated in commerce by oral means, by telephone and telegraphic communications, by letters sent through the United States mails and otherwise.

PAR. 5. In truth and in fact many of respondent's said products consist of reclaimed woolen rags or other waste, converted into shoddy; they cannot be labeled "Wool" as defined by the Wool Products Labeling Act of 1939; they are neither "All Wool" nor "100% Wool"; respondent's stock generally cannot be labeled as reprocessed wool in accordance with the Wool Products Labeling Act of 1939; and respondent's products are not "wool," as that term is accepted and understood by the consuming public.

PAR. 6. Through the use of the acts and practices as hereinabove set forth, the respondent places in the hands of his customers the means

and instrumentalities whereby they, through wholesale and retail dealers, may mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said products are all wool or all reprocessed wool, when in fact they are neither, and because of said erroneous and mistaken belief to purchase substantial quantities of said products.

PAR. 7. The respondent has otherwise engaged in deceptive and misleading practices by adopting and using fictitious names in operating his said business and by causing his said products to be shipped in said fictitious names to purchasers in various States of the United States other than the States in which such shipments originate. In such manner and by said means the respondent has falsely and fraudulently concealed his real identity from purchasers to whom said products were transported and who were thus misled into the erroneous and mistaken belief that they were buying said products from dealers other than respondent and who, if the true identity of the seller of said goods had been known to them, would not have purchased the same because many of said buyers had been previously deceived and defrauded by respondent acting under the pretense and in the name of the said corporation, Hanover Wool Products Corporation, or in his own individual name.

CONCLUSION

The acts, practices, and methods 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 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 and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in the complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as the facts and its conclusion that the respondent has 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 respondent, Alexander Auerbach, individually, and trading in his own name and as Frank Corwin, Frank Corwin Company, Frank Cohen, David Demerer, and Hanover Wool Stock Company, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of "shoddy" or other "wool products," as such products are defined in the Wool Products Labeling Act of 1939, or other textile fiber materials, do forthwith cease and desist from:

1. Representing to purchasers and prospective purchasers that wool products, as such products are defined in the Wool Products Labeling Act of 1939, not composed exclusively of "wool," as wool is defined in said Act, are "wool," "100% wool," or "all wool," or composed of "wool."

2. Representing to purchasers and prospective purchasers that wool products, as such products are defined in the Wool Products Labeling Act of 1939, may be labeled in accordance with the provisions of said act and the rules and regulations promulgated thereunder as "reprocessed wool," unless such products are composed exclusively of wool or reprocessed wool as those terms are defined in the said act; *provided, however*, That in the case of a product composed in part of "reprocessed wool," this order shall not be construed as prohibiting respondent from representing that such term may be used to designate such reprocessed wool content if the percentage of such content be stated.

3. Misrepresenting or concealing, through the use of fictitious names or otherwise, the identity of respondent or his business.

It is further ordered, That the respondent, Alexander Auerbach, individually, and trading in his own name and as Frank Corwin, Frank Corwin Company, Frank Cohen, David Demerer, and Hanover Wool Stock Company, or trading under any other name, and his 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 "shoddy" 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 each of 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 five percentum 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 five percentum or more, and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool product of any non-fibrous 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 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.

Order

IN THE MATTER OF

PHILIP R. PARK, INC. AND PHILIP R. PARK, HARRISON H.
HAVNER, JOHN S. HUNT AND PHILIP E. IVERSEN

MODIFIED CEASE AND DESIST ORDER

Docket 4504. Order, April 20, 1944

Modified order, pursuant to provisions of Sec. 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 April 27, 1943, 36 F.T.C. 541, and in which Circuit Court of Appeals for the Ninth Circuit, on January 6, 1944, in *Philip R. Park, Inc., et al. v. Federal Trade Commission*, issued its final decree modifying aforesaid order of the Commission in certain particulars, and affirming and enforcing the same as thus modified—

Requiring respondent, its officers, etc., in connection with offer, etc., of "ManAmar" or "Cattle ManAmar," or any other similar feeds or feed supplements, to cease and desist from disseminating, etc., any advertisements, etc., to induce, etc., purchase in commerce, etc., of respondents' products, which misrepresent therapeutic value of products in question as in order specified; or misrepresenting, in connection with offer, etc., in commerce, of said feeds or feed supplements, therapeutic value thereof for certain ailments or conditions, or comparative value or qualities or properties thereof, as in said order in detail set forth.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission, and it appearing that on April 27, 1943, the Commission made its findings as to the facts herein and concluded therefrom that the respondents had violated the provisions of the Federal Trade Commission Act, and issued and subsequently served its order to cease and desist upon the respondents; and it further appearing that respondents thereafter filed their petition to review and set aside the said order to cease and desist in the Circuit Court of Appeals for the Ninth Circuit; that thereafter by stipulation signed by counsel for the Commission and counsel for respondents dated December 24, 1943, it was agreed that subparagraph 5 of the second part of said order should be modified in certain respects as specifically set out in said stipulation and that the Court should enter its decree modifying said order to cease and desist in said particulars and affirming and enforcing said order as so modified; that on January 6, 1944, the said Circuit Court issued its decree modifying, affirming and enforcing the said order to cease and desist in conformity with said stipulation.

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 respondent, Philip R. Park, Inc., a corporation, its officers, representatives, agents, and employees, and respondents, Philip R. Park, John S. Hunt, Philip E. Iversen, and Harrison H. Havner, individually, and as officers and directors of Philip R. Park, Inc., a corporation, and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the

offering for sale, sale, or distribution of livestock feeds or feed supplements for cattle and other livestock known as "ManAmar" or "Cattle ManAmar," 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 respondents' product has any therapeutic value in the treatment of any germ or infectious disease of cattle or that its use is of any value in the prevention of any such disease or condition.

(b) That respondents' product has any therapeutic value or beneficial effect in the treatment of any breeding disorder of cattle or is of any value in preventing such disorder.

(c) That respondents' product has any therapeutic value or beneficial effect in the treatment of retained placenta or that its use will have any value in preventing such condition.

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 respondents' 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, Philip R. Park, Inc., a corporation, its officers, representatives, agents, and employees, and respondents, Philip R. Park, John S. Hunt, Philip E. Iversen, and Harrison H. Havner, individually, and as officers of Philip R. Park, Inc., a corporation, 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 livestock feeds or feed supplements for cattle and other livestock known as "ManAmar" or "Cattle ManAmar," or any other product of substantially similar composition or possessing substantially similar properties, 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:

1. That respondents' product will have any therapeutic value in the treatment of mastitis or that its use is of any value in the prevention of such condition.

2. That respondents' product has any therapeutic value in the treatment of any germ or infectious disease of cattle or that its use is of any value in the prevention of any such disease or condition.

3. That respondents' product has any therapeutic value or beneficial effect in the treatment of any breeding disorder of cattle or that its use is of any value in preventing such disorder.

4. That respondents' product has any therapeutic value in the treatment of retained placenta, infectious abortion, or Bang's disease, or that its use will have any beneficial effect upon such conditions or any value in preventing such conditions.

5. That respondents' product is a better supplement to feeds or constitutes a better feed for cattle than all other feeds or feed supplements on the market.

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6. That the use of respondents' product will eliminate the necessity of veterinary treatment.

It is further ordered, That the respondents shall, within 30 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
NATIONAL CREPE PAPER ASSOCIATION
OF AMERICA, ET AL.

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

Docket 4606. Complaint, Oct. 7, 1941—Decision, Apr. 22, 1944

Where a trade association, and eight corporations, members or former members thereof comprising all the manufacturers in the United States of crepe paper, and in competition with one another except insofar as such competition has been suppressed as below set forth;

(a) Continued in operation and effect, subsequent to the Supreme Court decision invalidating the National Industrial Recovery Act, agreements and understandings to restrain and suppress price competition in the sale of aforesaid products, originally inaugurated under said Act; and

Where aforesaid manufacturers, pursuant to and in furtherance of such conspiracy—

(b) Agreed to and did, from time to time, file their price lists showing current and future prices for their products, and agreed that information disclosed thereby should be disseminated among them by the Association, which was so done, and in the case of some, filed with the Association copies of invoices showing details of specific sales; and

Where said Association and manufacturers, in further pursuance of their agreements—

(c) Cooperatively established and maintained a "zoning plan," under which the United States was divided into geographical zones and uniform delivered prices were established for all purchasers located within a particular zone, with uniform price differentials among the several zones;

(d) Classified purchasers as jobbers, syndicates, etc., depending upon the quantity of paper they purchased, and established uniform prices and price differentials for each class of purchasers;

(e) Entered into and put into effect agreements governing various other matters affecting the prices of their products, including creping ratios, sizes, weights, and the sale of seconds or close-outs; and

Where, through use of such means and methods, aforesaid manufacturers—

(f) Cooperatively established and maintained uniform prices for their products whereby competition in price was substantially restrained and suppressed;

Tendency and capacity and effect of which agreements, etc., and acts and things done in furtherance thereof, were unduly and unlawfully to prevent price competition among manufacturers concerned in the sale of crepe paper in commerce, and to restrain trade in such products therein:

Held, That their said acts and practices, as above set forth, were all to the prejudice of the public and constituted unfair methods of competition in commerce.

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

Mr. Reuben J. Martin for the Commission.

Mr. Joseph J. Brown, of Philadelphia, Pa., for National Crepe Paper Ass'n of America, *George J. Lincoln, Jr.*, American Tissue Mills, *The Papyrus Co.*, *C. A. Reed Co.* and *The Tuttle Press Co.*, and along with—

Mr. Randolph Montgomery, of New York City, for *Charles T. Bainbridge's Sons*.

Knapp, Cushing, Hershberger & Stevenson, of Chicago, Ill., for *Fort Howard Paper Co.*

Mr. Robert J. Keating and Mr. W. H. Leahy, of Framingham, Mass., for Dennison Manufacturing Co.

Wolf, Block, Schorr & Solis-Cohen, of Philadelphia, Pa., for The Reymburn Manufacturing Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (38 Stat. 717; as amended 52 Stat. 111; 15 U. S. C. A. Sec. 41) 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 more particularly hereinafter described and referred to as respondents, have violated the provisions of Section 5 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, National Crepe Paper Association of America, hereinafter referred to as respondent Association, is an unincorporated trade association having its principal office and place of business located at 1532 Lincoln-Liberty Building, Philadelphia, Pa. The membership of respondent Association is composed of six corporations engaged in the manufacture and sale of bulk and packaged crepe paper.

The business and affairs of respondent Association are conducted under the active management and supervision of an executive secretary and manager.

Respondent, George J. Lincoln, Jr., is executive secretary and manager of respondent Association, with an office at 1532 Lincoln-Liberty Building, Philadelphia, Pa.

PAR. 2. Respondent, American Tissue Mills, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 12 Crescent Street, Holyoke, Mass.

Respondent, Charles T. Bainbridge's Sons, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 12-26 Cumberland Street, Brooklyn, N. Y.

Respondent, Fort Howard Paper Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at Green Bay, Wis.

Respondent, The Papyrus Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at Kenilworth, N. J.

Respondent, C. A. Reed Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Williamsport, Pa.

Respondent, The Tuttle Press Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at Appleton, Wis.

Respondent, Dennison Manufacturing Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the

State of Massachusetts, with its principal office and place of business located at Howard Street, Framingham, Mass.

Respondent, The Reyburn Manufacturing Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 32nd & Alleghany Avenue, Philadelphia, Pa.

Respondents, American Tissue Mills, Charles T. Bainbridge's Sons, Fort Howard Paper Company, The Papyrus Company, C. A. Reed Company and The Tuttle Press Company, are all respectively respondent-members of respondent Association. Said respondent-members, together with respondents, Dennison Manufacturing Company and The Reyburn Manufacturing Company, non-members of said respondent Association, will hereinafter be referred to as respondent manufacturers.

PAR. 3. In the course and conduct of their respective businesses respondent manufacturers sell and distribute bulk and packaged crepe paper to purchasers thereof located in various States of the United States, pursuant to which sales said commodities are shipped or transported to the purchasers thereof across State lines into States other than the State of origin of said shipments. Each of the respondent manufacturers, in the aforementioned manner, maintains a constant current of trade in commerce between and among different States of the United States.

PAR. 4. Respondent Association and respondent, George J. Lincoln, Jr., are not engaged in commerce, but have aided, abetted, furthered, cooperated with and were instrumentalities of, and parties to, some, or all, of the understandings, agreements, combinations and conspiracies hereinafter set out and actively cooperated and participated in the performance of some or all of the acts and practices done in pursuance thereto and in furtherance thereof.

PAR. 5. Respondent manufacturers, in the regular course and conduct of their respective businesses, have been in competition with each other in the sale of crepe paper in commerce between and among the several States of the United States and in the District of Columbia, except to the extent to which such competition has been restrained, lessened, injured and suppressed by the understandings, agreements, combinations and conspiracies hereinafter set forth.

PAR. 6. Respondent Association, respondent, George J. Lincoln, Jr. and respondent manufacturers have entered into and for more than three years last past have been and are now carrying out a conspiracy, combination, agreement and understanding for the purpose and with the effect of restricting, restraining, suppressing and eliminating price competition among respondent manufacturers in the sale of crepe paper in commerce as aforesaid.

PAR. 7. Pursuant to said conspiracy, combination, agreement and understanding, and in furtherance thereof, said respondents have done and performed, and still do and perform, among others, the following acts and things:

1. Fixed and maintained uniform delivered prices at which crepe paper is to be sold, and is sold, by respondent manufacturers;
2. Established and maintained geographical zones of identical delivered prices, zone boundaries, and price differentials between such zones;
3. Arbitrarily computed or averaged delivery costs and freight allowances within each delivered price zone from some common shipping point or points to all delivery points therein, in order to prevent differences in

delivery cost from the various plants of respondent manufacturers to their customers from creating any differences in delivered prices.

4. Respondent manufacturers have

(a) agreed to file and in practice have actually filed with respondent Association their lists of delivered prices for crepe paper;

(b) agreed that they would not change or deviate from such filed prices until new and different prices were so filed by them;

(c) agreed to file and in practice have actually filed with respondent Association invoices and other private price information of respondent manufacturers;

(d) agreed that respondent Association could, and it did, disseminate the price information so filed to all of respondent manufacturers;

5. Fixed and maintained uniform discounts and other terms and conditions for the sale of crepe paper by respondent manufacturers;

6. Adopted and maintained standard uniform colors, sizes and ratios in order to facilitate and maintain identity of prices;

7. Established and maintained uniform classification of customers for pricing purposes;

8. Used other means and methods designed to suppress and prevent price competition and to accomplish uniformity of delivered price on the part of respondent manufacturers in the sale of crepe paper in commerce, as hereinabove described.

PAR. 8. Each of the respondents herein acted in concert and cooperation with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said conspiracy, combination, agreement and understanding.

PAR. 9. As an incidental but necessary result of the collusive acts and practices set forth in Paragraphs Six, Seven and Eight, the respective respondent manufacturers deprived their nearby customers of the natural advantage which they would otherwise have in delivered prices by comparison with more distant customers. The respective respondent manufacturers thereby demanded, accepted and received different sums of money per unit of product from their respective customers and required their nearby customers to pay larger sums per unit than their more distant customers, after allowing for differences in cost of delivery. The aforesaid differences in treatment of their respective customers was for the purpose and with the effect of maintaining identity of delivered prices among respondent manufacturers.

PAR. 10. The conspiracy, combination, agreement and understanding, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove alleged, have had and do have the effect of unduly and unlawfully restricting, restraining, hindering and preventing price competition between and among respondent manufacturers in the sale of crepe paper in commerce within the intent and meaning of Section 4 of the Federal Trade Commission Act; of unduly and unlawfully restricting and restraining trade and commerce in said products in said commerce; of placing in respondent manufacturers the power to control and enhance prices; of unreasonably restraining such commerce in said products. The conspiracy, combination, agreement and understanding, and the things done thereunder and pursuant thereto and in furtherance thereof, as above alleged, 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 October 7, 1941, issued and subsequently served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of that act. After the filing by respondents of their answers to the complaint, 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, answers, 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. Respondent, National Crepe Paper Association of America, hereinafter frequently referred to as respondent Association or as the Association, is an unincorporated trade association with its principal office and place of business located at 1532 Lincoln-Liberty Building, Philadelphia, Pa. The present membership of the Association comprises six corporations engaged in the manufacture and sale of crepe paper.

Respondent, George J. Lincoln, Jr., is executive secretary and manager of respondent Association, with his office located at 1532 Lincoln-Liberty Building, Philadelphia, Pa. Respondent, Lincoln, is now and at all times mentioned herein has been in active charge of the Association's affairs and activities.

PAR. 2. Respondent, American Tissue Mills, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 12 Crescent Street, Holyoke, Mass.

Respondent, Charles T. Bainbridge's Sons, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 12-26 Cumberland Street, Brooklyn, N. Y.

Respondent, Fort Howard Paper Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at Green Bay, Wis.

Respondent, The Papyrus Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at Kenilworth, N. J.

Respondent, C. A. Reed Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Williamsport, Pa.

Respondent, The Tuttle Press Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at Appleton, Wis.

Respondent, Dennison Manufacturing Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 300 Howard Street, Framingham, Mass.

Respondent, The Reyburn Manufacturing Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 32d and Allegheny Avenue, Philadelphia, Pa.

The first six corporations named in this paragraph comprise the present membership of respondent Association. Respondents, Dennison Manufacturing Company and The Reyburn Manufacturing Company, were formerly members of the Association but resigned from membership in November, 1939. All of the corporations named in this paragraph are frequently referred to hereinafter as respondent manufacturers or as the members of the Association.

PAR. 3. All of the respondent manufacturers are engaged in the manufacture and sale of crepe paper. Each of such manufacturers causes its products, when sold, to be shipped or transported to purchasers located in various States of the United States other than the State of origin of such shipments. Each of such manufacturers maintains a constant course and current of trade in its products in commerce among and between the various States of the United States.

PAR. 4. The respondent manufacturers comprise all of the manufacturers of crepe paper in the United States. In the course and conduct of their respective businesses, such manufacturers are and have been in competition with one another in the sale and distribution of crepe paper in commerce among and between the various States of the United States, except insofar as such competition has been restrained, injured, and suppressed as a result of the acts and practices hereinafter set forth.

PAR. 5. Respondent Association was organized by the respondent manufacturers on July 19, 1933, at which time an executive committee was elected and a constitution adopted. A few days later the Executive Committee, at a meeting held on July 26, 1933, drafted a "Code of Fair Competition" (under the National Industrial Recovery Act) and certain preliminary steps were taken by the Committee toward submitting the Code to the entire membership of the Association. The minutes of this meeting of the Executive Committee contain, under the heading "Trade Agreement," the following:

In addition to drawing up a Code of Fair Competition, the Committee felt that it would be necessary also to draw up a Trade Agreement which would contain standard practices in reference to terms, datings, contracts, freight allowances, standards of lengths, widths, weights, etc., of Crepe Paper, crepe paper put-ups, bulk and package, also crepe paper accessories, selling prices, etc. . . . (Comm. Ex. 4B).

That agreements along the lines contemplated by the Executive Committee were entered into and put into effect by the Association membership is evident from the minutes of various meetings of the Association, beginning with a meeting held on August 17-18, 1933. Copies of the minutes of the meetings of the Association were sent by the Secretary to all of

the members. The minutes of the meeting held on August 17-18, 1933, after reciting that the members had agreed to abide by the NRA Code as to wages and hours, set forth various other agreements entered into by the members. Among the recitals in the minutes are the following:

Seconds and Close-outs

The selling of obsolete, damaged or rejected Crepe Paper as seconds shall be limited to a period of six months from the date of this code. During this period seconds shall be sold only to Converters. Each manufacturer will send a list to the Secretary by September 1st showing the quantity of seconds, close-outs and discontinued lines which they have on hand and wish to dispose of. A period of six months will be allowed to dispose of this merchandise and at the next meeting an attempt will be made to fix a selling price for the goods. When the six-months' period has expired, the Executive Committee and the whole Association will review and recommend a method of disposal.

Pricing

No manufacturer shall deduct the 2% discount from prices when quoting customers.

Length of Crepe Paper

The maximum length of a fold of crepe paper shall be ten feet, four inches. The additional four inches are given to allow for contraction in the paper.

Creping Ratios

The following creping ratios are considered standard by all manufacturers.

2½ to 1-150% Stretch	1¾ to 1-75% Stretch
2¼ to 1-125% Stretch	1½ to 1-50% Stretch
2 to 1-100% Stretch	1¼ to 1-25% Stretch

[The term "creping ratio" as used in the crepe paper industry denotes the relationship as to length between paper before and after it has been subjected to the creping process. For example, a creping ratio of "2½ to 1" means that two and one-half inches of paper have been used in making one inch of crepe paper. It is the creping ratio which determines the elasticity or "stretch" of crepe paper.]

Standards of Tissue

The basis weight of creping tissue shall not be more than 10.44 lbs. to a ream size 24" × 36" with 5% tolerance and for each one-half pound additional weight an up-charge of 30¢ per gross shall be made.

* * * * *

Each manufacturer must publish a price schedule with differentials between sales in various quantities, such schedules to be based on manufacturers' weighted costs of all materials at prevailing market price.

All sales made to a jobber, broker, display company, commission broker or manufacturer to be made at the price governing the quantity to be shipped, billed, and delivered at one time to one point of destination. Prices to be same as manufacturers' published price list (Comm. Ex. 6B-C).

The minutes of this same meeting (August 17-18, 1933) further recite that:

The next order of business was the approval and adoption of prices, zoning plan, etc., as given below.

Zoning

That we adopt a zoning plan as presented to each manufacturer, of three zones—Zone 1, Zone 2 and Zone 3, for bulk crepe paper, plan and fireproof, jumbo rolls, window sets, duplex crepe paper in rolls and sheets and special printed decorated crepe paper.

Also the adoption of a zoning plan for packaged crepe paper, streamers, shelf paper, decorated crepe paper, duplex crepe paper, which consists of two zones, Eastern and Western. The Eastern Zone takes in the same territory as Zones 1 and 2 with the exception of Texas, and the Western Zone is the same as Zone 3, but with the addition of Texas. This is shown on map.

Price Schedule for Bulk Crepe Paper

It was recommended and approved to continue with Class 1 as heretofore, the same list of companies, etc. The price list for Class 1 is now in your possession. Eliminate from price list the twenty-five gross minimum quantity of a color of 2 to 1 Crepe Paper.

It was recommended and approved to put display companies and jobbers in a separate class to be known as Class 3, and to have Class 2 for Consumers, Converters, Flower and Novelty Manufacturers and Schools. Eliminate from Class 2 price list the twenty-five gross minimum quantity of a color of 2 to 1 Crepe Paper. Class 2 price list is also in your possession.

Class 3 is composed of jobbers and display companies. (A Display Company is one that employs one or more window trimmers.) On 1¼ to 1 ratio, the \$4.70 gross price applies on quantities of 25 to 99 gross. Class 3 price list is also in your possession.

On all of the above price schedules which have been sent you, complete information relative to terms, packing, freight allowance, etc., has been given.

Packaged Goods—Price and Put-Ups

The schedule you now have for package crepe paper, crepe shelf paper, decorated crepe paper, duplex crepe paper and crepe paper ribbon plain and decorated, has been approved. Additional consideration is to be given at a later meeting to decorated streamers.

* * * * *

Effective Dates on Prices

It was recommended and approved that prices go into effect as follows—

For Bulk Crepe Paper, Duplex Sheets, Jumbo Rolls, Fireproof Crepe Paper, Window Sets and Special Decorated Crepe Paper, prices to be effective Tuesday, August 22, 1933.

For Package Crepe Paper, Decorated Crepe Paper, Crepe Shelf Paper, Duplex Crepe Paper, Crepe Paper Ribbon, and Decorated Streamers, prices to be effective for Jobbers, Wednesday, August 23rd, 1933. For Syndicates, Friday, September 1, 1933.

* * * * *

Price Lists

Each manufacturer is to publish a price list at once on all prices adopted and to send a copy of price list to Mr. Lincoln, Secretary, Lincoln-Liberty Building, Philadelphia, Pa. (Comm. Ex. 6D-F).

The minutes of a meeting held on October 19, 1933, contain among other recitals the following:

The Trade Practice recommended by the Executive Committee of selling Bulk Crepe Paper to Syndicate and Chain Grocery Stores on the Class Three 100 gross lot of \$5.70 for 2¼ to 1 ratio, and \$5.50 for 2¼ to 1 ratio, in any quantity, was confirmed (Comm. Ex. 7B).

The minutes of a meeting held on January 16, 1934, recite that:

The list as now constituted of Class 1 Buyers was discussed and, on motion duly made and seconded, the Premier-Pabst Corporation was added to the list. The list was then approved with this correction (Comm. Ex. 8B).

In the minutes of a meeting held on November 8, 1934, the following appears, under the heading "Crepe Paper Industry Price List":

The Executive Secretary was requested to have the Crepe Paper Industry price list re-edited and sent to the Industry, so that there would be no confusion as to the prices filed by the different members and in effect at this time (Comm. Ex. 11B).

PAR. 6. While the practices heretofore referred to had their origin during the period in which the National Industrial Recovery Act was in effect, the record affirmatively shows that the practices have by mutual agreement been continued by respondents since that time. The minutes of a meeting of the Association held on June 11, 1935, shortly after the decision of the United States Supreme Court invalidating the National Industrial Recovery Act, recite the following:

The Secretary addressed the meeting regarding the effect the recent Supreme Court decision eliminating the activities of the National Recovery Administration, would have on the Industry, and urged the cooperative effort be continued, as it was only through the medium of Association work, that the exchange of ideas and the working out of problems of the Industry could be accomplished. If the members of the Industry were desirous of continuing on a cooperative basis, it would be necessary that the Constitution and By-Laws as now written, be amended in certain respects, in order to eliminate those clauses having reference to Code activities.

A discussion was held on this subject, and it was suggested by Mr. Harney [a representative of respondent Dennison Manufacturing Company], that in redrafting the Constitution and By-Laws, the Secretary make the corrected instrument as simple and concise as possible.

The Chair then called for an expression from the members as to the advisability of the Industry continuing to operate under the same conditions as were in force prior to the elimination of NRA. A discussion was held, and it was moved by Mr. Crandall [a representative of respondent American Tissue Mills] that the Industry continue to operate on such basis. This motion was seconded and passed unanimously (Comm. Ex. 14A).

The minutes further recite that:

The Secretary addressed the meeting relative to the advisability of incorporating the Labor Provisions as provided for in the former Code in the Fair Trade Practices of the Industry. After discussion, it was decided that no definite decision should be made at this time, but that the Industry should await developments in Washington before formulating a definite policy.

All members present agreed that they would continue to operate under the same Labor Conditions and Fair Trade Practices, as were in effect prior to the elimination of NRA, at least until such time as a definite and specific policy had been adopted by the Administration (Comm. Ex. 14B).

Further evidence of the various agreements entered into by the respondents and of the continued operation of such agreements subsequent to the NRA period is found in the minutes of later meetings of the Association. Among the recitals found in these minutes are the following:

From the minutes of a meeting held on January 17, 1936:

Mr. Lincoln asked for a clarification as to what constituted the requirements of a buyer in order to come under the Class 1 classification. On motion duly made and passed, it was stated that Class 1 Buyers should qualify as follows:

The list would be reviewed January 1st and July 1st each year. Any National Advertiser having purchased at the rate of \$500.00 per month of Crepe Paper for the prior 6 months would be classified as a Class 1 buyer for the next 6 months. This Trade Practice would become effective beginning July 1, 1936 (Comm. Ex. 16B).

From the minutes of a meeting held on June 2-3, 1936:

... The meeting then discussed the question of adopting a new form of price structure which would eliminate Classes #1, #2 and #3, reduce the number of brackets, and in every respect simplify the old form. This new form was tentatively approved with the suggestion that it be brought before the meeting on the next day.

And on the next day (June 3):

The question of adopting a *new form* of price list which was tentatively approved on June 2nd, was brought before the meeting and a new form effective June 8, 1936, was unanimously adopted (Comm. Ex. 18A-B).

From the minutes of a meeting held on November 10, 1936:

The Executive Secretary then took up the subject of creping ratio. He said that it was his firm conviction that the situation had improved, but it was absolutely essential that efforts to correct the situation be continued. He emphasized the fact that excessive ratios have fully as bad an effect on the market as a violation of each manufacturer's own published price list, and the stability of the market would surely be wrecked if steps to correct the situation were not vigorously continued. Each manufacturer agreed to this statement and promised to take this matter up with his Production Department immediately and see that ratios received adequate and proper supervision (Comm. Ex. 20B).

From the minutes of a meeting held on January 21, 1937:

The Industry confirmed their action on the selling and publishing price on Bulk Crepe Paper in that the offering of Flooring Crepe Paper was discontinued and the only 1½ to 1 ratio paper that would be offered for sale would be the Package (Comm. Ex. 21).

From the minutes of a meeting held on June 23-24, 1937:

The question of cutting charges for crepe paper was discussed next, and the meeting adopted the following Trade Practice.

It was decided that it would be in order for them to use Jobbers prices with no excess for cutting when quoting on crepe paper cut to pieces (Comm. Ex. 23C).

From the minutes of a meeting held on May 17-18, 1938:

In order to facilitate the operation of the Secretary's office in respect to their having prompt and accurate information as to the current conditions in the market, the following two motions were made:

1. Each member to telephone or telegraph the Secretary's office simultaneously when he changed his published price list. This motion was carried unanimously.

2. Copies of orders and invoices to be furnished the Secretary's office promptly. This motion was passed with the exception of one manufacturer who said that at this time he was not in a position to send in this data. Another manufacturer not now furnishing this data agreed to send in the information on bulk crepe only (Comm. Ex. 28B).

From the minutes of a meeting held on May 2-3, 1939:

The next question to be discussed was the classification of crepe paper customers, which work is now being undertaken by the Statistical Bureau. The Statistical Bureau was directed to compile a list of A Buyers, whose purchases average over 100-gross a month over a six-months' period, and a list of B Buyers whose purchases average from 25-99 gross over a six-months' period (Comm. Ex. 31A).

PAR. 7. The Commission finds from the evidence heretofore referred to and the other evidence in the record that the respondents have entered into and put into operation and effect an agreement, understanding, combination, and conspiracy to restrain and suppress price competition in the sale of crepe paper. Pursuant to and in furtherance of such conspiracy, the respondent manufacturers agreed to file and have from time to time filed with respondent Association their price lists showing current and future prices for their products, and the information disclosed by such lists has by mutual agreement been disseminated among all of the respondent manufacturers by the Association. Copies of invoices showing the details of specific sales have also been filed with the Association by some of the respondent manufacturers.

In further pursuance of their agreement, the respondents have cooperatively established and maintained a "zoning plan," under which the United States was divided into certain geographical zones with definite boundaries. Under this zone agreement, uniform delivered prices were established for all purchasers located within a particular zone, with uniform price differentials among the several zones.

Purchasers and prospective purchasers of crepe paper have by agreement among the respondents been divided into certain classes for pricing purposes, depending upon the quantity of paper purchased and upon whether they were regarded by the respondents as jobbers, syndicates, etc., with uniform prices and price differentials established for each class of purchasers.

As a further aid to the establishing and maintaining of uniform prices for their products, the respondent manufacturers have entered into and put into effect agreements governing various other matters affecting the prices of their products, including creping ratios, sizes, weights, and the sale of seconds or close-outs.

Through the use of these means and methods the respondent manufacturers have cooperatively established and maintained uniform prices for their products. Not only is this evident from the minutes of the meetings of the Association but the record is replete with correspondence between the Association and its members, and among a number of the members themselves, showing the existence of price agreements. The conclusion is inescapable that as a result of these agreements competition among the respondent manufacturers was substantially restrained and suppressed insofar as prices were concerned.

PAR. 8. Each of the respondents has acted in concert and cooperation with one or more of the other respondents in doing and carrying out the

acts and practices herein set forth in furtherance of such agreement, understanding, combination, and conspiracy.

PAR. 9. The tendency, capacity, and effect of the agreement, understanding, combination, and conspiracy entered into by the respondents, and of the acts and things done pursuant thereto and in furtherance thereof, as set forth herein, have been and are unduly and unlawfully to restrict, restrain, suppress, and prevent price competition among the respondent manufacturers in the sale of crepe paper in commerce among and between the various States of the United States, and unduly and unlawfully to restrict and restrain trade in such products in commerce as aforesaid.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers 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 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, National Crepe Paper Association of America, an unincorporated association, George J. Lincoln, Jr., as Secretary and Manager of said Association, American Tissue Mills, Charles T. Bainbridge's Sons, Fort Howard Paper Company, The Papyrus Company, C. A. Reed Company, The Tuttle Press Company, Dennison Manufacturing Company, and The Reyburn Manufacturing Company, corporations, and respondents' officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of crepe paper 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 to this proceeding, to do or perform any of the following acts or things:

1. Establishing or maintaining uniform prices for crepe paper, or in any manner agreeing upon, fixing, or maintaining any prices at which crepe paper is to be sold.
2. Establishing or maintaining delivered price zones or price differentials between or among such zones.
3. Establishing or maintaining classifications of customers or prospective customers for pricing purposes.
4. Adopting or maintaining uniform standards governing creping ratios, sizes, or weights of crepe paper, or the sale of seconds or close-outs,

with the purpose or effect of establishing or maintaining, or assisting in the establishing or maintaining of, uniform prices for crepe paper.

5. Filing with respondent National Crepe Paper Association of America or respondent George J. Lincoln, Jr., or with any other agency or person, copies of invoices, or price lists showing current or future prices for crepe paper.

6. Engaging in any act or practice substantially similar to those set out in this order with the purpose or effect of establishing or maintaining uniform prices for crepe paper.

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 CHEMICAL COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4956. Complaint, Apr. 29, 1943—Decision, Apr. 25, 1944*

Where a corporation engaged in the manufacture and interstate sale of its "Flexo" so-called anti-freeze solution, to jobbers, garages and service stations for resale to the purchasing public; through representations in advertising folders, pamphlets, display posters and other advertising material, directly or by implication—

- (a) Represented that its said "Flexo" furnished protection to the cooling systems of automobile and other types of combustion engines against freezing and other damaging effects; and protected the entire cooling system against corrosion, rust, and deterioration; that use thereof would prevent rust or other damage to the hose connections, radiator and other metal and rubber parts of the cooling system and finish of automobiles; and that it would not evaporate or clog passages in the cooling system; and
- (b) Represented that it was safe and dependable for use as recommended and had proved itself to be a superior permanent-type anti-freeze—

The facts being that product in question, composed of a calcium chloride base, was not a superior type of anti-freeze solution nor a safe, dependable product for use as recommended, but on the contrary, it would bring about corrosion on most metals, including iron, steel, bronze, solder, copper, brass, and aluminum; had caused rust, corrosion, clogged passages, and other serious damage to the engines, radiators, ignition wires, spark plugs, and hose connections and to the exterior finish of automobiles; and had resulted in leakage in the cooling systems of automotive engines; and use thereof, due to calcium chloride content, would give rise to persistent ignition troubles if any of the solution came in contact with spark plugs or ignition wires;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such false statements and advertisements were true, and with tendency and capacity to induce it to purchase substantial quantities of product in question as a result thereof:

Held, That such acts and practices as above 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. George B. Tidwell, *Mr. Frank W. Brandon* and *Mr. Abe Fitterman* of Atlanta, Ga., 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 Chemical Company, 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:

Complaint

38 F. T. C.

PARAGRAPH 1. Respondent, American Chemical Company, is a corporation, organized and existing under and by virtue of the laws of the State of Georgia with its office and principal place of business located at 229 Bradberry Street, S. W., Atlanta, Ga.

PAR. 2. The respondent is now and for more than one year last past has been engaged in the manufacture, sale and distribution of a so-called antifreeze solution designated "Flexo" 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 Georgia 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 "Flexo" 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 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:

- Flexo Does Not Corrode;
- Flexo Prevents Rust;
- Flexo Does Not Injure Hose;
- Flexo is Safe;
- A Permanent Anti-Freeze;
- Flexo Will Not Boil Away;
- Flexo Protects Against Engine Overheating;

Flexo is a new improved permanent type anti-freeze scientists made to a special formula, which was developed after several years laboratory tests. It is a higher boiling, non-evaporating, non-inflammable, anti-freeze preparation and contains special ingredients to protect against the rust and corrosion caused by water. Flexo Anti-Freeze mixes perfectly with water, flows freely, transfers heat efficiently and will not damage car finish. Flexo Anti-Freeze is guaranteed not to contain alcohol or glycerine.;

GUARANTEE

American Chemical Company guarantees that—"Flexo" brand anti-freeze, if used according to printed directions, in normal water cooling systems that are leak-tight and in proper working order will protect the cooling system against freezing and clogging from rust formation for a full winter; will not boil away, will not damage car finish, or the metal or rubber parts of 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 "Flexo" 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 prevent rust or other damage to the hose connections, radiator and other metal and rubber parts of the cooling system and finish of automobiles; 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 "Flexo" 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. On the contrary 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 29, 1943, issued and subsequently served its complaint in this proceeding on the respondent, American Chemical Company, 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 brief filed in support of the complaint (no brief having been filed by the 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. Respondent, American Chemical Company, is a corporation, organized and existing under and by virtue of the laws of the

State of Georgia, with its office and principal place of business located at 229 Bradberry Street, S. W., Atlanta, Ga.

PAR. 2. The respondent is now and for more than one year last past has been engaged in the manufacture, sale, and distribution of a so-called antifreeze solution designated "Flexo," 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 Georgia 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 "Flexo" 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 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:

- Flexo Does Not Corrode;
- Flexo Prevents Rust;
- Flexo Does Not Injure Hose;
- Flexo is Safe;
- A Permanent Anti-Freeze;
- Flexo Will Not Boil Away;
- Flexo Protects Against Engine Overheating;

Flexo is a new improved permanent type anti-freeze scientists made to a special formula, which was developed after several years laboratory tests. It is a high boiling, non-evaporating, non-inflammable, anti-freeze preparation and contains special ingredients to protect against the rust and corrosion caused by water. Flexo Anti-Freeze mixes perfectly with water, flows freely, transfers heat efficiently and will not damage car finish. Flexo Anti-Freeze is guaranteed not to contain alcohol or glycerine.;

GUARANTEE

American Chemical Company guarantees that—"Flexo" brand anti-freeze, if used according to printed directions, in normal water cooling systems that are leak-tight and in proper working order will protect the cooling system against freezing and clogging from rust formation for a full winter; will not boil away, will not damage car finish, or the metal or rubber parts of 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 "Flexo" 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 prevent rust or other damage to the hose connections, radiator and other metal and rubber parts of the cooling

system and finish of automobiles; 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 "Flexo" is composed of a calcium chloride base and is not a superior type of antifreeze solution and is not a safe and dependable product for use as recommended. It does not protect the cooling system of engines against corrosion, rust, or other deterioration. In fact, the use of said product 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, and hose connections and to the exterior finish of automobiles; and results in leakage in the cooling systems of automotive engines. The use of respondent's radiator solution containing calcium chloride will give rise to persistent ignition troubles 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, causing short circuits.

PAR. 6. The use by the respondent of the foregoing false and misleading statements and representations disseminated as aforesaid has a 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 a tendency and capacity to induce the public to purchase substantial quantities of respondent's product as the result of such erroneous 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, answer of the 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 brief in support of the complaint (no brief having been filed by the 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, American Chemical Company, 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 its product designated "Flexo" or any other product of substantially similar composition, 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:

Order

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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, iron, or other metals, or injure the rubber parts of the cooling systems of automobile engines.

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

D. E. HAMIEL TRADING AS ALL-WINTER ANTI-FREEZE
COMPANY

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

Docket 5016. Complaint, July 22, 1943—Decision, Apr. 25, 1944

Where an individual, engaged in interstate sale and distribution of a so-called anti-freeze solution which he designated as "All-Winter Anti-Freeze" and "Chem-A-Cool"—

(a) Represented through use of term "Anti-Freeze" to designate his said product, and through statements in radio continuities, advertising folders, pamphlets, and other media, that his said product was an effective anti-freeze solution, which afforded protection to automotive cooling systems or engines against freezing, rust and corrosion, and was safe and dependable;

The facts being that, essentially a solution of calcium chloride, it was capable of causing and did cause serious damage to the cooling systems of automobiles and was neither dependable nor safe; and

(b) Failed to disclose in his said advertisements, damaging effects likely to result from use thereof in that such use might cause serious corrosion of parts of the cooling system and motor; stoppage of water passages, particularly in the radiator, with resultant overheating; and short circuit in the ignition system, necessitating replacement thereof;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature, effectiveness, and safety of his said product, and thereby cause it to purchase substantial quantities thereof:

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. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Phil S. Bradford, of Columbus, 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 D. E. Hamiel, an individual, trading as All-Winter Anti-Freeze Company, hereinafter referred to as respondent, has violated the provisions of said act; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, D. E. Hamiel, is an individual, trading as All-Winter Anti-Freeze Company, with his office and place of business located at 329-333 East Long Street, Columbus, Ohio.

PAR. 2. The respondent is now and for more than four years last past has been engaged in the manufacture, sale and distribution of a so-called anti-freeze solution designated "All-Winter Anti-Freeze," recommended

for use in the cooling system of automobiles and for other internal combustion type engines. Said product is sold by the respondent to wholesale automotive supply houses for resale to retailers and the consuming public. Respondent causes his said product, when sold, to be transported from his said place of business in the State of Ohio to purchasers thereof located in various other States of the United States other than the State of Ohio 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 his aforesaid business, and for the purpose of inducing the purchase of his said product All-Winter Anti-Freeze, the respondent has circulated and is now circulating, among prospective purchasers throughout the United States, false advertisements concerning his said product by means of the United States mails and by means of advertising folders, pamphlets and other advertising material. Among and typical of such false statements and representations, circulated as aforesaid, are the following:

**ALL-WINTER PERMANENT ANTI-FREEZE
THREE WAY CONTROL**

Freezing Control
Corrosion Control
Seeping Control

**GUARDS AGAINST FROZEN RADIATORS,
CRACKED BLOCKS
RUST AND CORROSION**

One filling of All-Winter Anti-Freeze will protect the cooling system from freezing for an entire winter. In addition to containing rust and corrosion inhibitors, it will not attack rubber hose or gaskets.

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 said product, All-Winter Anti-Freeze is a high quality "anti-freeze" solution which furnishes protection to the cooling systems of automobile and other type internal combustion engines against freezing, water seepage and corrosion, and prevents other damaging effects; that it is safe and dependable for use as recommended; that it will protect the entire cooling systems of automobiles against frozen radiators, cracked blocks, rust and corrosion; that its use will not cause rust or other damage to the hose connections, gaskets, and other parts of an automobile 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 All-Winter Anti-Freeze is not a high quality "anti-freeze" solution as it is composed of a calcium chloride base and is inferior to anti-freeze solutions containing glycerine or alcohol bases. Said product will not prevent seepage and corrosion. It is not safe and dependable for use as recommended and is not a superior type of anti-freeze. It does not protect the cooling system of engines against corrosion, rust or other deterioration. Use of said product causes and has caused rust, corrosion,

clogged passages, and other serious damage to engines, radiators, ignition wires, spark plugs, hose connections, and to the exterior finish of automobiles. Said product evaporates and will clog passages in the cooling system.

For many years there has 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 "anti-freeze" 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 "anti-freeze," 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.

Respondent's representation that his said product is an "anti-freeze" leads the public to believe that said product is 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, from rust, corrosion, clogging, or other deleterious or damaging effects. Respondent's failure to inform the general public of the deleterious and damaging effects which result or may result from the use of his said product as an "anti-freeze" is misleading and deceptive.

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 products as a 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 July 22, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, D. E. Hamiel, an individual trading as All-Winter Anti-Freeze Company, 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 respondent. Thereafter, 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. Subsequently, the proceeding

regularly 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, D. E. Hamiel, is an individual, who formerly traded under the name All-Winter Anti-Freeze Company, with his office and place of business located at 329-333 East Long Street, Columbus, Ohio. For a year or more immediately preceding December 15, 1942, respondent was engaged in the sale of a so-called anti-freeze solution designated by him as "All-Winter Anti-Freeze" and as "Chem-A-Cool," recommended for use in the cooling system of automobiles. The sale of the product was discontinued by respondent on December 15, 1942.

PAR. 2. Respondent caused his product, 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 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 disseminated various advertisements among prospective purchasers throughout the United States, such advertisements being disseminated by means of the United States mail, by radio continuities, and by advertising folders, pamphlets and other media. Among and typical of the statements and representations appearing in such advertisements were the following:

ALL-WINTER PERMANENT ANTI-FREEZE
THREE WAY CONTROL
Freezing Control
Corrosion Control
Seeping Control
GUARDS AGAINST FROZEN RADIATORS
CRACKED BLOCKS
RUST AND CORROSION

One filling of All-Winter Anti-Freeze will protect the cooling system from freezing for an entire winter. In addition to containing rust and corrosion inhibitors, it will not attack rubber hose or gaskets.

PAR. 4. Through the use of these statements and representations and others of a similar nature, respondent represented, directly or by implication, that his product was an effective "anti-freeze" solution which was capable of affording protection to automobile cooling systems and engines against freezing, and that the product was dependable and safe for use.

PAR. 5. Respondent's product was essentially a solution of calcium chloride. Engine tests conducted by the National Bureau of Standards establish that such preparations have highly injurious effects on compo-

nent parts of the cooling and ignition systems of automotive engines. Calcium chloride solutions cause serious corrosion of the water pump and radiator, and particularly of any aluminum parts such as cylinder heads. The solutions cause partial or complete stoppage of water passages, especially in the radiator, with resultant overheating. Having a great tendency to "creep," the solutions may leak into the engine cylinders, and in that event they cause serious damage to many engine parts. Because of the fact that rapid erosion of the water pump impeller shaft results from the use of such solutions, the solutions are soon sprayed over the outside of the engine. Calcium chloride solutions, being good conductors of electricity, may short circuit the ignition system and necessitate the replacement thereof. The record discloses a number of actual instances in which respondent's product not only proved ineffective as an anti-freeze but also caused serious damage to automotive engines and cooling systems.

The Commission therefore finds that the representations made by respondent with respect to his product, as set forth in paragraphs three and four hereof, were erroneous and misleading. The product was not an effective anti-freeze solution and was incapable of affording protection to automobile cooling systems or engines against freezing. Nor was the product dependable or safe for use. On the contrary, as set forth above, it was capable of causing and did in fact cause serious damage to the cooling system and engine of automobiles in which it was used.

For a number of years there have been on the market certain preparations known as "anti-freeze" preparations designed for use in the cooling system of automobiles as a protection against freezing. These preparations have proved effective and dependable for that purpose and their use does not result in damage to the cooling system or engine of the automobile. When a product is advertised as an "anti-freeze," the public associates it with these long-used, dependable products and believes that it is effective and safe for use. The Commission therefore finds that respondent's use of the term "Anti-Freeze" to designate and describe his product was misleading and, further, that respondent's advertisements with respect to his product were misleading and deceptive in that they failed to disclose the damaging effects which would result or were likely to result from the use of respondent's product.

PAR. 6. The acts and practices of the respondent, including the failure of respondent to disclose the injurious effects which would result or were likely to result from the use of his product, had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature, value, effectiveness, and safety of respondent's 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 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 (no answer having been filed by 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, D. E. Hamiel, individually, and trading as All-Winter Anti-Freeze Company, 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 product designated "All-Winter Anti-Freeze" and "Chem-A-Cool," or any other product of substantially similar composition, do forthwith cease and desist from:

1. Using the term "Anti-Freeze," or any other term of similar import, to designate, describe, or refer to respondent's product; or otherwise representing, directly or by implication, that respondent's product is an effective anti-freeze solution.
2. Representing, directly or by implication, that respondent's product affords protection to automotive cooling systems or engines against freezing.
3. Representing, directly or by implication, that respondent's product is dependable or safe for use.
4. Advertising, offering for sale, or selling respondent's product without clearly and conspicuously disclosing that the use of said product in an automotive vehicle may cause serious corrosion of parts of the cooling system and motor; stoppage of water passages, particularly in the radiator, with resultant overheating; and a short circuit in the ignition system, necessitating the replacement thereof.

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

Complaint

IN THE MATTER OF

GENERAL BAKING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY ACT OF JUNE 19, 1936

Docket 5115. Complaint, Jan. 11, 1944—Decision, Apr. 25, 1944

Where a corporation engaged in the manufacture and interstate sale and distribution of bread, pastries and allied products, including its Bond Bread, in various sections, in substantial competition with others similarly engaged, and selling to customers competitively engaged with one another in the sale of such products to consumers and to others for resale thereto—

Contracted to pay and paid to some 35 preferred customers in various cities and elsewhere sums of money varying from 50 cents a week to \$525 a month as compensation for advertising services and facilities, on the understanding they would advertise the products concerned in newspapers and by handbills, bulletins and otherwise; without making such advertising allowances available on proportionally equal terms to other customers who competed therewith in distribution of its said products:

Held, That by making such contracts for payment, and payments of varying sums for advertising services and facilities to said favored customers, without making same available on proportionally equal terms to others who competed therewith in distribution of its bakery products, it violated and was violating provisions of subsection (d) of Section 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Simpson, Thacher & Bartlett, of New York City, 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 has since June 19, 1936, violated and is now violating the provisions of subsection (d) of 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. The respondent, General Baking Company, 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 420 Lexington Avenue, New York, N. Y.

PAR. 2. Respondent corporation is now and has been since June 19, 1936, engaged in the business of processing and manufacturing, offering for sale, selling, and distributing bread, pastries, and allied products, including its bakery bread which it distributes in various sections of the United States under the name of "Bond Bread." Respondent sells and distributes said products in commerce between and among the various States of the United States and the District of Columbia, and preliminary to or as a result of such sales, causes said products to be shipped and transported from the place of origin of the shipment to the purchasers thereof who are located in States of the United States other than the State of

origin of the shipment. There is and has been at all times herein mentioned a continuous current of trade and commerce in said products across State lines between respondent's factories and the purchasers of said products. Said products are 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, individuals, partnerships, and firms engaged in the business of manufacturing, selling, and distributing bread, pastry, and allied products in commerce between and among the various States of the United States and the District of Columbia.

PAR. 4. Respondent corporation in the course and conduct of its business and in the course of such commerce is now and has been subsequent to June 19, 1936, engaged in manufacturing and processing bakery products for distribution and sale and in selling such products to customers who are competitively engaged with each other in the handling, offering for sale, and sale of such bakery products to consumers and to others for resale to consumers. The respondent corporation has contracted to pay and has paid to a limited number of its customers (hereinafter called preferred customers) located in Washington, D. C.; Philadelphia, Pa.; Norfolk, Va.; Louisville, Ky.; Indianapolis, Ind.; Columbus, Ohio, and elsewhere varying sums of money in consideration of and as compensation for advertising services and facilities contracted to be furnished and furnished by said preferred customers in connection with the handling, offering for sale and sale of said products. The respondent has approximately thirty-five of such preferred customers to whom it grants and allows such advertising allowances which vary in amounts from a minimum of fifty cents a week to a maximum of five hundred and twenty five dollars per month. The respondent has made and makes such payments as compensation for advertising services and facilities with the understanding and agreement that the preferred customers will advertise respondent's products in newspapers and by handbills and bulletins and otherwise. The respondent has not made such payments of advertising allowances available on proportionally equal terms to other customers who compete with said preferred customers in the distribution of its products.

PAR. 5. Such acts of respondent since June 19, 1936, in interstate commerce in the manner and form aforesaid of paying and contracting to pay such preferred customers for services and facilities furnished by and through them in connection with the handling, offering for sale and sale of respondent's products without making such payments available on proportionally equal terms to all other competing customers is in violation of the provisions of Section 2 (d) of the Clayton Act as amended by the Robinson-Patman Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Sec. 13), the Federal Trade Commission on January 11, 1944, issued and thereafter served its complaint in this proceeding upon the party respondent named in the caption hereof, charging said respondent

with violating the provisions of subsection (d) of Section 2 of said Act, as amended.

After the issuance of said complaint on January 11, 1944, the respondent filed its answer on March 11, 1944, in which answer respondent stated that the answer was filed for the purpose of this proceeding only, but admitted all material allegations of fact set forth in said complaint although denying that such acts as were alleged in the complaint constituted a violation of subsection (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act. The respondent in its answer also waived hearings, trial examiner's report, the filing of briefs, oral argument and other intervening procedure. Thereafter, this proceeding came on for final hearing before the Commission on said complaint and answer, 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. The respondent, General Baking Company, 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 420 Lexington Avenue, New York, N. Y.

PAR. 2. Respondent corporation is now and has been since June 19, 1936, engaged in the business of processing and manufacturing, offering for sale, selling, and distributing bread, pastries, and allied products, including its bakery bread which it distributes in various sections of the United States under the name of "Bond Bread." Respondent sells and distributes said products in commerce between and among the various States of the United States and the District of Columbia, and preliminary to or as a result of such sales causes said products to be shipped and transported from the place of origin of the shipment to the purchasers thereof who are located in States of the United States other than the State of origin of the shipment. There is and has been at all times herein mentioned a continuous current of trade and commerce in said products across State lines between respondent's factories and the purchasers of said products. Said products are 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, individuals, partnerships, and firms engaged in the business of manufacturing, selling, and distributing bread, pastry, and allied products in commerce between and among the various States of the United States and the District of Columbia.

PAR. 4. Respondent corporation in the course and conduct of its business and in the course of such commerce is now and has been subsequent to June 19, 1936, engaged in manufacturing and processing bakery products for distribution and sale and in selling such products to customers who are competitively engaged with each other in the handling, offering for sale, and sale of such bakery products to consumers and to others for resale to consumers. The respondent corporation has contracted to pay and has paid to a limited number of its customers (hereinafter called preferred customers) located in Washington, D. C.; Philadelphia, Pa.; Norfolk, Va.; Louisville, Ky.; Indianapolis, Ind.; Columbus, Ohio, and else-

where varying sums of money in consideration of and as compensation for advertising services and facilities contracted to be furnished and furnished by said preferred customers in connection with the handling, offering for sale and sale of said products. The respondent has approximately thirty-five of such preferred customers to whom it grants and allows such advertising allowances which vary in amounts from a minimum of fifty cents a week to a maximum of five hundred and twenty-five dollars per month. The respondent has made and makes such payments as compensation for advertising services and facilities with the understanding and agreement that the preferred customers will advertise respondent's products in newspapers and by handbills and bulletins and otherwise. The respondent has not made such payments of advertising allowances available on proportionally equal terms to other customers who compete with said preferred customers in the distribution of its products.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings of fact, the Commission concludes that the respondent, General Baking Company, a corporation, since June 19, 1936, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act as amended, by contracting for the payment and by the payment of varying sums of money to favored interstate customers in consideration of and as compensation for advertising services and facilities contracted to be furnished and furnished by said favored customers in connection with the handling, offering for sale and sale of respondent's bakery bread and other bakery products, without making such payments for advertising services and facilities available on proportionally equal terms to other customers who compete with the favored customers in the distribution of respondent's bakery bread and other bakery products.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the respondent's answer, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated and is violating the provisions of subsection (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

It is ordered, That the respondent, General Baking Company, a corporation, and its officers, representatives, agents, and employees, in connection with the distribution and sale in commerce, as "commerce" is defined in the Clayton Act, of "Bond Bread" or any other brand, type, or grade of bakery bread or other bakery products, do forthwith cease and desist from:

Paying, giving, allowing, or contracting to pay, give, or allow anything of value to or for the benefit of some of its customers for advertising services furnished by such customers without making such payments or allowances available to all competing customers on proportionally equal terms.

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

WASHINGTON INSTITUTE AND ARTHUR F. JOHNSTONE
AND JORENE JOHNSTONE

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

Docket 4890. Complaint, Jan. 20, 1943—Decision, Apr. 26, 1944

Where a corporation engaged in interstate sale and distribution of correspondence courses of study for various civil service positions; in advertising circulars or cards with business reply cards attached, which it distributed among prospective students, and in which, listing many of said positions, it made such statements as "COMPARE YOUR JOB WITH CIVIL SERVICE! 68,578 CIVIL SERVICE POSITIONS FILLED LAST YEAR! Many opportunities for men and women who are seeking employment with a future and good pay. Excellent working conditions, security, vacations, sick leave and pensions. EXAMINATIONS ARE NOW BEING POSTED. VACANCIES CONSTANTLY OCCUR. If you meet the requirements you are eligible for examinations. NO OBLIGATION," etc.—

- (a) Falsely represented, directly or by implication, that during the period in question there were large numbers of positions available at all times in various branches of the Government, that examinations were being held frequently, and that the positions listed were at that time available and that examinations were then being held therefor; facts being that until the national emergency brought on by the war, the names of eligibles on the register of the United States Civil Service Commission greatly exceeded the number of positions open; examinations were not held frequently, but in the case of numerous positions only at intervals of several years; for such positions as city mail carrier, post office clerk, and railway mail carrier, only persons within the particular post office district were eligible for the examination; at time concerned appointment could not ordinarily be expected shortly after passing the examination, but usually only after several months, and in many cases a year or more; statement "68,578 Civil Service positions filled last year" was misleading in that many of said positions were filled from a register of eligibles, and by transfer, reinstatement, and promotion; only a small proportion of Government positions open would be available in Seattle or Washington State and surrounding territory, selections of eligibles from nationally announced examinations being dependent upon appointments as apportioned between the states; and the figures did not, as implied, apply to positions listed, but covered all appointments to all positions in the civil service during period in question, including many in connection with which it had never offered any course; and
- (b) Falsely represented or implied, through the use of the word "Institute" in its trade name and in its advertising literature, that it conducted an institution of higher learning devoted to academic or scientific research or to instructions in philosophy, arts, sciences, or other learned subjects; and that its school had a staff of competent and experienced educators and the facilities and resources required to carry on such work;

With tendency and capacity to mislead and deceive a substantial portion of the public with respect to its said courses and the opportunities for Government appointment, and thereby cause such public to purchase the same:

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

38 F. T. C.

Before *Mr. James A. Purcell* and *Mr. Henry M. White*, trial examiners.
Mr. William L. Pencke for the Commission.
Mr. William H. Rois, of Seattle, Wash., 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 Washington Institute, a corporation, Arthur F. Johnstone and JoRene Johnstone, individually, and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Washington Institute, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Washington with its principal office and place of business at 1230 Vance Building in the city of Seattle and State of Washington. Arthur F. Johnstone, is President, and JoRene Johnstone, is Secretary, of said corporation with their principal office and place of business at 1230 Vance Building, Seattle, Wash. Respondent, Arthur F. Johnstone, is the principal stockholder of said corporation and is responsible for the policies and business methods of said corporation.

PAR. 2. Respondent, Washington Institute, is now and has been for more than two years last past, engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction intended for preparing students thereof for examinations for certain Civil Service positions under the United States Government, which said courses are pursued by correspondence through the medium of the United States mail. Respondent, Washington Institute, in the course and conduct of said business, during the time aforesaid, caused and does now cause its said course of study and instruction to be transported from its said place of business in the State of Washington to, into and through States of the United States other than Washington to the purchasers thereof in such other States.

PAR. 3. In the sale of said courses of study and instruction respondents make use of printed advertising matter mailed or distributed to prospective students in several States of the United States in and by which various misleading representations were and are made in regard to said course or matters and things connected therewith. Among such misleading representations are those which represent or imply that vacancies are available in all of the positions specifically listed in respondent's advertisements and that examinations are being held for such positions.

Typical of such representations are the following:

Compare your job with Civil Service.

68,578 Civil Service positions filled last year. Vacancies constantly occur. If you meet the requirements you are eligible for examinations. Mail this card today and get the free information about the positions listed and many others.

Railroad Postal Clerk
 City Mail Carrier
 Post Office Clerk
 Rural (Motor Carrier)

Bookkeeper
 Auditor
 Forest and Field Clerk
 Typist

Complaint

Clerical Filing Local	Stenographer
Assistant Statistical Clerk	Storekeeper Gauger
Messenger	Jr. Inspector
Telephone Operator	Student Finger-print Classifier
Elevator Conductor	Apprentice
Watch-Guard-Laborer	Meteorology Observer
Immigration position	Office Machine Operators
Customs Patrol Inspector	Jr. Investigator
Customs Inspector	Social Security
Border Patrolman	Jr. Engineer (options)

PAR. 4. By means of statements and representations made by agents and representatives of respondents who call upon prospective students respondent, Washington Institute, represents to such prospective students that it has positions in the United States Government to offer which are under its control or which it can secure for students taking its course; that it is connected with the United States Government and is authorized by the United States Civil Service Commission to qualify applicants for Government position; that it has advance information with respect to the holding of Civil Service examinations or information concerning such examinations which is not readily available to prospective candidates for Civil Service examinations; that respondent's school is an official government training school and that such agents or representatives are connected with the government or the United States Civil Service Commission.

PAR. 5. In truth and in fact the respondents have no positions to offer and have no connection whatever with the Government of the United States or any branch thereof and therefore can not guarantee positions or appointments of persons who have passed examinations. Respondents do not have any information with respect to the places at or dates on which examinations will be held. A number of the positions listed and described in the respondents' advertising literature have either been abolished by the Civil Service Commission or no examinations have been announced therefor or will be announced for some time to come.

PAR. 6. The name, Washington Institute, under which the corporate business is conducted, is misleading in that it represents or implies to prospective students that respondents conduct an institution of learning with a staff of competent experienced and qualified educators and that said school is an extensive institution offering training and instruction in philosophy, arts, sciences and other learned subjects.

In truth and in fact respondents offer only one course of study and instruction in the lower level type of examinations for Civil Service positions which is substantially the same regardless of the Civil Service examination for which the respondents' students wish to prepare.

Respondent, Washington Institute, in the course and conduct of its said business does not offer training or instruction in philosophy, arts, sciences and other learned subjects. No basic or thorough or competent instruction is given in any subject of learning and said school is not an institution of learning in the accepted sense of that term. There is no faculty of learned persons engaged in teaching resident students. The method of instruction consists of the mailing of previously prepared sheets and the grading of papers by the employees of respondents. All of the material used in connection with said coaching service is purchased by respondents from a publisher specializing in the sale of Civil Service courses.

Among the purchasers of respondents' courses of study are those who believe that the name "Washington Institute" implies a school or agency operated or controlled by the government of the United States. In truth and in fact said name is the corporate name of a private business enterprise and having no connection with the Government of the United States or any branch or agency thereof.

PAR. 7. The representations of respondents, as aforesaid, have had and do have a tendency and capacity to confuse, mislead and deceive members of the public into the belief that such representations are true and to induce them to purchase respondents' courses of study and instruction and pursue the same on account thereof.

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 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 20, 1943, issued and subsequently served its complaint in this proceeding on the respondents, Washington Institute, a corporation, and Arthur F. Johnstone and JoRene Johnstone, individually, and as officers of Washington Institute, 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 brief filed in support of the complaint (no brief having been filed by the 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, Washington Institute, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington and had its principal office and place of business at 1230 Vance Building in the city of Seattle, State of Washington. Respondents, Arthur F. Johnstone and JoRene Johnstone, are individuals, residing at 2608 35th Street, Seattle, Wash., and were respectively president and secretary of said corporate respondent.

PAR. 2. Respondent, Washington Institute, for more than two years prior to about July 1942 was engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction intended for preparing students thereof for examinations for certain Civil Service positions under the United

States Government, which said courses were pursued by correspondence through the medium of the United States mail.

PAR. 3. In the course and conduct of its business, respondent, Washington Institute, a corporation, caused its courses of study when sold to be transported from its place of business in the State of Washington to purchasers thereof located in various other States of the United States. Said respondent has at all times mentioned herein maintained a course of trade in its course of study in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of its courses of study, said corporate respondent distributed among prospective students printed advertising matter in the form of circulars or cards with business reply card attached, which advertising matter contains numerous representations with respect to its courses of study and with respect to the number of positions in the United States Government which were available to persons enrolling in such courses of study and taking the Civil Service examinations. Among and typical of the representations which appeared in said respondent's advertising material distributed during the year 1941 are the following:

COMPARE YOUR JOB WITH CIVIL SERVICE!

68,578 CIVIL SERVICE POSITIONS

FILLED LAST YEAR!

Many opportunities for men and women who are seeking employment with a future and good pay. Excellent working conditions, security, vacations, sick leave and pensions. EXAMINATIONS ARE NOW BEING POSTED. VACANCIES CONSTANTLY OCCUR. If you meet the requirements you are eligible for examinations.

NO OBLIGATION

MAIL THIS CARD TODAY AND GET THE FREE INFORMATION ABOUT THE POSITIONS LISTED AND MANY OTHERS.

PARTIAL LIST U. S. CIVIL SERVICE POSITIONS

Railway Postal Clerk	* * *
City Mail Carrier	* * *
Post Office Clerk	* * *
Rural (motor) Carrier	* * *
Clerical-Filing . . . Local	* * *
Ass't. Statistical Clerk	* * *
Messenger	* * *
Telephone Operator	* * *
Elevator Conductor	* * *
Watch-Guard-Laborer	* * *
Immigration Positions	* * *
Customs Patrol Inspector	* * *
Customs Inspector	* * *
Border Patrolman	* * *
Ass't Lay (Meat) Insp.	* * *
Bookkeeper	* * *
Auditor	* * *
Forest & Field Clerk	* * *
Typist	* * *
Stenographer	* * *
Storekeeper-Gauger	* * *

Findings

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Jr. Inspector * * *
 Student Fingerprint Classifier * * *
 Apprentice * * *
 Meteorology Observer * * *
 Office Machine Operators * * *
 Jr. Investigator * * *
 Social Security * * *
 Junior Engineer (options) * * *

Washington Institute; Vance Bldg.,
 Seattle, Washington.

.....
 MAIL THIS CARD TODAY—NO STAMP REQUIRED

Gentlemen:

I am interested in securing Government employment. Please furnish me, without cost, information covering the requirements necessary to obtain a Civil Service position with the Government. * * *

PAR. 5. Through the use of these representations and others of a similar nature, said respondent represented directly or by implication that during the period in question there were large numbers of positions available at all times in various branches of the United States Government, that examinations were being held frequently, and that the specific positions listed were at that time available and that examinations were then being held for such positions.

PAR. 6. The Commission finds from the evidence that these representations were grossly exaggerated, misleading, and deceptive. During the period in question there were not large numbers of positions available in the United States Civil Service. In fact, until the period of national emergency brought on by the war, the supply of eligible persons available for Government employment and whose names appeared on the register of the United States Civil Service Commission greatly exceeded the number of positions open. Examinations were not held at frequent intervals. On the contrary, in the case of numerous positions several years frequently elapsed before new examinations were held. For example, in the case of railway postal clerks no open, competitive examinations were held during the period between 1935 and 1941. In the case of customs control inspectors, customs inspectors, and border patrolmen, the last examination was held in 1939 and for which positions the Civil Service Commission received about 275,000 applications, which caused this register to be available for some time. Forest and field clerk examinations are held infrequently — approximately every four or five years — because of the large number that qualify. Moreover, in the case of certain positions, such as city mail carrier, post office clerk, and railway mail carrier, only those persons are eligible for the examination who live within the district served by the particular post office where the position is open. This fact tends to reduce greatly the opportunity of applicants generally to obtain positions. During the years in question an appointment to a Civil Service position could not ordinarily be expected within a short time after the applicant had passed the examination. Usually several months, and in many cases a year or more, elapsed before an appointment could reasonably be expected.

The statement by the said respondent in its advertising that there were "68,578 Civil Service positions filled last year" was misleading in that it implied that there were available to applicants a similar number of positions for the current year. Many of such positions were filled by selection from a register of eligibles, by transfer within the service, by reinstatement, and by promotion. Only a small proportion of the available positions with the Government would be available in the city of Seattle or the State of Washington and surrounding territory. Selections of eligibles from a nationally announced examination are dependent upon the allowed quota of appointments as apportioned between States. Furthermore, such statement as to the number of Civil Service positions filled during the previous year implied that the appointments were to the positions listed in the advertisement. Actually, the figures covered all the appointments to all the positions in the Civil Service during the year in question and many of the appointments were to positions not listed in said respondent's advertising and in connection with which respondent has never offered any course of instruction.

PAR. 7. The Commission further finds that the said respondent represents or implies to prospective students and the public generally, through the use of the word "Institute" in its trade name and in its advertising literature, that it conducts an institution of higher learning devoted to academic or scientific research or to the giving of instructions in philosophy, arts, sciences, or other learned subjects; that its school has a staff of competent and experienced educators competent to conduct such research or to give such instruction; and that its school possesses the facilities and resources required to carry on such work. Said respondent's school does not in fact possess any of these qualifications and the use of the word "Institute" to designate and describe its school is therefore erroneous and misleading.

PAR. 8. The Commission finds, further, that the use by the said corporate respondent of the misleading and deceptive representations herein set forth has had the tendency and capacity to mislead and deceive a substantial portion of the public with respect to the nature and status of said respondent's business and with respect to said respondent's course of instruction and the opportunities for appointment to United States Government positions and has had the tendency and capacity to cause such members of the public to purchase respondent's courses of instruction as a result of the erroneous and mistaken beliefs engendered by such representation.

CONCLUSION

The acts and practices of the respondent, Washington Institute, a corporation, 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 answers of respondents, 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

Order

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evidence, and brief in support of the complaint (no brief having been filed by the respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent Washington Institute, a corporation, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Washington Institute, a corporation, and its officers, representatives, agents, and employees in connection with the offering for sale, sale, and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act of courses of study and instruction intended for preparing students thereof for examinations for Civil Service positions under the United States Government or any similar courses of study, do forthwith cease and desist from:

1. Using the word "Institute" or any abbreviation or simulation thereof as part of said respondent's trade name or as part of the name of respondent's school; or otherwise representing directly or by implication that respondent's school is an institute.

2. Representing directly or by implication that the number of positions available in the United States Civil Service or in any branch thereof is greater than is actually the fact.

3. Representing directly or by implication that examinations for positions in the United States Civil Service are held at more frequent intervals than is actually the fact or that appointments to positions are made within a shorter period of time after the examination than is actually the fact.

4. Representing directly or by implication that certain specified Civil Service positions are open and available to students of said respondent's courses when in fact such positions are not open and available or when such positions are such that students of respondent's courses cannot properly qualify.

5. Misrepresenting in any manner the possibilities or opportunities for employment in Civil Service positions of students of said respondent's courses of study.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to the individual respondents, Arthur F. Johnstone and JoRene Johnstone.

It is further ordered, That the respondent, Washington Institute 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

AMERICAN ASSOCIATION OF LAW BOOK PUBLISHERS,
ET AL.

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

Docket 4526. Complaint, June 30, 1941—Decision, Apr. 27, 1944¹

As respects contention of a respondent publisher that it was not a party to any of the agreements found to have been entered into with others joined in proceeding in question, and directed to bringing about and maintaining uniform practices in such matters as institutional and cash discounts, uniform prices, government bids, price policy in the matter of tradeins and overstock, and reciprocity in the bringing out of new works dealing with the same subject: Where it appeared, among other things, that while said publisher, an early member of the association through which the agreements were undertaken and carried out, had not been such a member for some 8 or 10 years preceding its dissolution, it had, nevertheless, cooperated with others, who were members, in the aforesaid various concerted and cooperative undertakings, excepting only the matter of cash discounts on its own publications, and had for years a controlling interest in another publisher which was and continued to be a member of the association and took an active interest in the affairs thereof and in the agreements and understandings above indicated, such contention was not tenable.

As respects the contention of a respondent publisher of law books that it was not a party to any of the agreements found to have been entered into with others joined in proceeding in question and directed to bringing about uniformity in such matters as institutional and cash discounts, price maintenance, government bids, price policies in the matter of tradeins and overstocks, since it did not sell any of its publications to or through the other members, nor sell any of their publications: Where it appeared that said publisher had been a member of the association, through which various concerted and cooperative undertakings were initiated or carried out, for many years since its organization, had taken an active interest in all of its activities, attended all meetings except the first, and that its president was active in various responsible capacities for said association and took an active and responsible part, among other things, in establishing the plan of uniform government discounts and bids, *held* such contention could not be sustained, and that said publisher, through its participation in the affairs of the association and that of its president in said affairs and in the agreements entered into among the members, participated therein and in the acts and practices concerned.

Where an association of law book publishers, formed at a time when price cutting was prevalent in the industry; and its members, which were engaged in the compilation, publication, sale and distribution of text books, treatises, legal reference books, official reports of court decisions, codes, etc., and included the largest publisher of law books in the United States, with a controlling interest in five other members, and two other publishers, which, also owned controlling interests in three other members, and, with a few exceptions, sold both their own publications and those of other members;

- Acting together, through exchange of views at meetings and otherwise, committees, and agreements, and in part under a code of fair competition, which, adopted by them under the NRA, and continued thereafter, was, however, never accepted—
- (a) Agreed that any house cutting prices should not be sold books, discontinued discounts to libraries, and agreed upon and adhered to, uniform cash discounts, and terms thereof;
 - (b) Agreed to and did establish and adhere to uniform discounts and identical bids to the Government;
 - (c) Took uniform action with reference to disposition of overstock books at reduced prices; made regulations as to the method of handling second-hand books published by the respective companies, and agreed to and did, in said matter follow plans designed, in most instances, to take second-hand books off the market, and particularly to prevent them, or new editions, getting into the hands of dealers in second-hand law books;
 - (d) Entered into and carried out agreements and understandings providing that each concern would observe and adhere to the selling price and conditions of sale fixed by the publisher of the particular publication concerned, and took measures, through notices to the trade and, in some instances, meetings with the salesmen of the other members, to bring about the accomplishment of said undertaking; and
 - (e) Attempted to and did promote adherence to said various agreements and undertakings through employing the association offices for said purpose, interchange of correspondence, personal and group contact, and systematic checking and policing of bids, sales transactions and activities of each and all through the association and otherwise;

Capacity, tendency and effect of which agreements, etc. and things done thereunder were to substantially reduce, lessen, hinder and restrain competition in the sale and distribution of law books and related legal publications between and among them and others, in commerce; maintain arbitrary discounts and terms and conditions of sale for their publications, substantially enhance the cost thereof to the purchasing public, make it more difficult for lawyers and other members of said public to acquire, obtain, and own law books and related legal publications; increase the cost of establishing and maintaining law libraries, and cost to the Government and other public agencies of establishing and maintaining such libraries; provide those having dominant positions in the industry with an effective means of control over those less favorably situated; and unduly and unlawfully restrict and restrain interstate trade and commerce in such publications:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and had a tendency to and did hinder, lessen, restrict, restrain, and eliminate competition in the sale and distribution of law books and related legal publications in commerce, and constituted unfair acts and practices and unfair methods of competition therein.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Lynn C. Paulson, *Mr. James H. Boyle* and *Mr. Karl E. Steinhauer* for the Commission.

Lundgren & Lincoln, of New York City, for *James R. Spillane*, *The American Law Book Co.*, *Burdette Smith Co.*, *Edward Thompson Co.*, *Vernon Law Book Co.*, *Washington Law Book Co.* and *West Publishing Co.*

Paxton & Seasongood, of Cincinnati, Ohio, for *Clifford W. Mueller*.

Mr. Neile F. Towner, of Albany, N. Y., for *Richard Reiner*.

Goodwin, Nixon, Hargrave, Middleton & Devans, of Rochester, N. Y., for *R. Walter White*.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for Baker, Voorhis and Co., Bancroft-Whitney Co., Bender-Moss Co., The Michie Co. and Thomas Law Book Co., and along with —

Paxton & Seasongood, of Cincinnati, Ohio, for The W. H. Anderson Co.;
Mr. Neile F. Towner, of Albany, N. Y., for Matthew Bender and Co., Inc. and Fallon Law Book Co.;

Walton, Bannister & Stitt, of New York City, for Clark Boardman Co., Ltd.;

Mr. Julius Birge, of Indianapolis, Ind., for Bobbs-Merrill Co.;

Mr. Henry Ward Beer, of New York City, for John Byrne and Co.;

Garono, Jaeckle & Kelly, of Buffalo, N. Y., for Dennis and Co., Inc.;

Dorsey, Stubbs & Dorsey, of Atlanta, Ga., for The Harrison Co.;

Goodwin, Nixon, Hargrave, Middleton & Devans, of Rochester, N. Y., for The Lawyers Co-Operative Publishing Co.; and

Mr. Clifton P. Williamson, of New York City, for Williamson Law Book Co.

Saul, Ewing, Remick & Harrison, of Philadelphia Pa., for George T. Bisel.

Haussermann, Davison & Shattuck, of Boston, Mass., for Little, Brown and Co.

Sullivan & Cromwell, of New York City, for The Frank Shepard Co.

Colie & Waltzinger, of Newark, N. J., for Soney and Sage Co.

Isham, Lincoln & Beale, of Chicago, Ill., for Callaghan & 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 persons, partnerships and corporations named in the caption hereof, and hereinafter described 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, American Association of Law Book Publishers, hereinafter referred to as respondent association, is an unincorporated, voluntary, non-profit trade association organized to promote the mutual interests of its members. It was organized in 1923. The Association serves its members as an instrumentality or vehicle for joint and cooperative action among them. Its present membership consists of 26 of the respondents named herein, and from time to time has included other persons, partnerships and corporations engaged in the publication of law books and related legal products, some of whom are also named as respondents. Officers of respondent Association are: James R. Spillane, president; Clifford W. Mueller, vice president; Richard Reiner, treasurer; R. Walter White, secretary. Its headquarters now are, and throughout the greater part of its existence, have been in the offices of its secretary, R. Walter White, who is associated with respondent, The Lawyers Cooperative Publishing Company, Rochester, N. Y.

PAR. 2. Respondent, The American Law Book Company, is a New Jersey corporation, having its office and principal place of business at 272 Flatbush Avenue Extension, Brooklyn, N. Y.

Respondent, The W. H. Anderson Company, is an Ohio corporation, having its office and principal place of business at 524 Main Street, Cincinnati, Ohio.

Respondent, Baker, Voorhis & Company, is a New York corporation, having its office and principal place of business at 119 Fulton Street, New York City.

Respondent, Bancroft-Whitney Company, is a California corporation, having its office and principal place of business at 200-214 McAllister Street, San Francisco, Calif.

Respondent, Matthew Bender & Company, Inc., is a New York corporation, having its office and principal place of business at 109 State Street, Albany, N. Y.

Respondent, Bender-Moss Company, is a California corporation, having its office and principal place of business at 91 McAllister Street, San Francisco, Calif.

Respondent, George T. Bisel, is an individual, trading as George T. Bisel Company, having its office and principal place of business at 724 Sansom Street, Philadelphia, Pa.

Respondent, Clark Boardman Company, Ltd., is a New York corporation, having its office and principal place of business at 11 Park Place, New York City.

Respondent, The Bobbs-Merrill Company, is an Indiana corporation, having its office and principal place of business at 724 North Meridian Avenue, Indianapolis, Ind.

Respondent, John Byrne and Company, is a District of Columbia corporation, having its office and principal place of business at 1324 Eye Street, N. W., Washington, D. C.

Respondent, Dennis & Company, Inc., is a New York corporation, having its office and principal place of business at 269 Main Street, Buffalo, N. Y.

Respondent, The Harrison Company, is a Georgia corporation, having its office and principal place of business at 151 Spring Street, N. W., Atlanta, Ga.

Respondent, The Lawyers Co-operative Publishing Company, is a New York corporation, having its office and principal place of business at Rochester, N. Y.

Respondent, Little, Brown and Company, is a Massachusetts corporation, having its office and principal place of business at 34 Beacon Street, Boston, Mass.

Respondent, The Michie Company, is a Virginia corporation, having its office and principal place of business at Charlottesville, Va.

Respondent, National Law Book Company, is a Maryland corporation, having its office and principal place of business at 1110-13th Street, N. W., Washington, D. C.

Respondent, Public Utilities Reports, Inc., is a Delaware corporation, having its office and principal place of business at 1329 E Street, N. W., Washington, D. C.

Respondent, The Frank Shepard Company, is a New York corporation, having its office and principal place of business at 76-88 LaFayette Street, New York City.

Respondent, Burdette Smith Company, is an Illinois corporation, having its office and principal place of business at 111 West Washington Street, Chicago, Ill.

Respondent, Soney & Sage Company, is a New Jersey corporation, having its office and principal place of business at 71 Clinton Street, Newark, N. J.

Respondent, Thomas Law Book Company, is a Missouri corporation, having its office and principal place of business at 209 North Third Street, St. Louis, Mo.

Respondent, Edward Thompson Company, is a New York corporation, having its office and principal place of business at 141 Willoughby Street, Brooklyn, N. Y.

Respondent, Vernon Law Book Company, is a Missouri corporation, having its office and principal place of business at 915 Grand Avenue, Kansas City, Mo.

Respondent, Washington Law Book Company, is a Delaware corporation, having its office and principal place of business at 810-13th Street, N. W., Washington, D. C.

Respondent, West Publishing Company, is a Minnesota corporation, having its office and principal place of business at 50 West Kellogg Boulevard, St. Paul, Minn.

Respondent, Williamson Law Book Company, is a New York corporation, having its office and principal place of business at 51 State Street, Rochester, N. Y.

Respondent, Callaghan & Company, is an Illinois corporation, having its principal office and place of business at 401 East Ohio Street, Chicago, Ill.

Respondent, Fallon Law Book Company, is a New York corporation, having its office and principal place of business at 292 Broadway, New York, N. Y.

For convenience, the above-named respondents are hereafter referred to as respondents.

PAR. 3. Respondents are all of the persons, partnerships and corporations located in the United States, except some eight or ten, engaged in the business of compiling, publishing, selling and distributing law text books, treatises, legal reference works, official reports of court decisions in State and federal courts, codes, digests and annotations of codes and other legal publications and some of the leading distributors of such works. Among the publications published and distributed by the respondents are such works as the following: Williston on Contracts, Wigmore on Evidence, Corpus Juris, Corpus Juris Secundum, Ruling Case Law, American Jurisprudence, Sheppard's Citations, The American Digest System, the National Reporter System, and text and case books used by the leading law schools of the country.

With a few exceptions, each respondent sells its own publications and sells and distributes publications of other respondents. Exceptions to this general rule are that respondent, American Law Book Company, sells its publications Corpus Juris Secundum and its publication Corpus Juris exclusively itself; respondent, Lawyers Co-operative Publishing Company, and respondent, The West Publishing Company, sell their publications exclusively through their own sales forces. These three respondents, however, do sell and distribute books of other respondents.

PAR. 4. Each respondent, with the exception of respondent association, in the regular course and conduct of its or his business, sells and ships or causes to be sold and shipped law books and related legal publications to purchasers in States other than the States in which it or he

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is located, and at all times herein mentioned has carried on a constant current of Trade, in said law books and related legal publications, in commerce among and between the various States of the United States and in the District of Columbia.

Respondent association and its officers promote the mutual interests, of the respondents and aid them in the doing and carrying out of their individual and joint purposes and plans. As hereinbefore stated, respondent association serves as a vehicle or instrumentality for joint and cooperative activity by its members.

PAR. 5. For more than ten years last past and continuing to the present time, respondents have maintained a combination among and between themselves to suppress, hinder, lessen and restrain competition in the sale and distribution of law books and related legal publications in the course of their aforesaid commerce among the States. Pursuant to and in furtherance of the aforesaid combination, respondents have:

(a) Entered into and carried out agreements and understandings providing that in the sale and distribution of law books and related legal publications, each respondent, when selling or offering for sale any law book or related legal publication published by it or by any of the other respondents, will observe and adhere to the selling price fixed and established by the publisher of such books or publications and refrain from deviating in any manner therefrom; and have otherwise concertedly adhered to and maintained each other's announced prices;

(b) Entered into and carried out agreements making discounts to be offered, made and used by them on sales to the Federal Government and other public agencies uniform between and among them, and have entered into and carried out agreements and understandings to establish and fix other terms and conditions of sale on sales to the Federal Government and other public agencies and on sales to other classes of trade;

(c) Entered into and carried out agreements fixing and establishing discounts and schedules of discounts to be made, offered, and used by them in selling or offering to sell each other's publications to one another;

(d) Entered into and carried out understandings and agreements establishing and fixing the terms and conditions and rates of allowances to be made, used and applied on books and other publications received in trade in the course and conduct of their respective businesses; and have concertedly fixed and maintained prices, terms and conditions of sale governing the resale of books and publications taken in by them in trade.

(e) Entered into and carried out agreements and understandings that no one of them should accept certain books or sets of books in trade;

(f) Jointly and cooperatively attempted to and have promoted adherence to the agreements and understandings specified in the foregoing subsections of this paragraph by employing the association offices to that end, by the interchange of correspondence between them, by personal contact with one another individually and in groups, and by systematically observing, checking and policing the bids, sales, transactions and activities of each and all of them, through the association and otherwise.

(g) Entered into and carried out agreements and understandings that each of them would refuse to sell its or his publications to any one of them who failed to adhere to and observe the agreements and understandings set forth in subsections (a), (b), (c), (d), (e) and (f) hereof.

(h) Adopted and used in cooperation other methods and means to effectuate and further their common purpose and design to suppress,

hinder and lessen competition between them and between them and their competitors in the sale and distribution of law books and other related legal publications.

PAR. 6. The said combination, and the doing and performing of the acts and things, and the use of the methods as set forth in the preceding paragraphs hereof, tend to have, have had, and now have the effect of substantially reducing, lessening, hindering and restraining competition in the sale and distribution of law books and related legal publications between and among respondents and between and among respondents and other firms, partnerships, corporations, and individuals in the same or similar lines of business in interstate commerce in, among, and between the various States of the United States and the District of Columbia; of maintaining in existence arbitrary discounts and terms and conditions of sale for respondents' products; of substantially enhancing the cost of such publications and products to the purchasing public, and of making it more difficult for lawyers, judges, and other members of the purchasing public to acquire, obtain and own law books and related legal publications; of increasing the cost of establishing and maintaining law libraries; of curtailing the wide dissemination of legal information; of increasing the cost to the Federal Government and to other public agencies of establishing and maintaining law libraries; of making intelligent practice of the legal profession more difficult; of providing those having dominant positions in the industry with an effective means of control over those less favorably situated; and of unduly and unlawfully restricting and restraining interstate trade and commerce in law books and related legal publications between, among, and in the several States of the United States and the District of Columbia.

PAR. 7. 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 law books and related legal publications. The said acts and practices 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 June 30, 1941, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, 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, a stipulation as to the facts and a supplemental stipulation as to the facts were entered into between W. T. Kelley, Chief Counsel for the Federal Trade Commission, and the following corporate respondents: The W. H. Anderson Company; Baker, Voorhis and Company; Bancroft-Whitney Company; Matthew Bender and Company, Inc.; Bender-Moss Company; Clark Boardman Company, Ltd.; Bobbs-Merrill Company; John Byrne and Company; Dennis and Company, Inc.; The Harrison Company; The Lawyers Co-Operative Publishing Company; Little, Brown and Company; The Michie Com-

pany; National Law Book Company; Public Utilities Reports, Inc.; Soney and Sage Company; Thomas Law Book Company; Williamson Law Book Company; and Fallon Law Book Company, whereby it was stipulated and agreed that, subject to the approval of the Commission, the statement of facts contained in said stipulation and supplemental stipulation may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint and in opposition thereto, and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of further testimony, argument, filing of briefs, or other intervening procedure.

Thereafter, hearings were held in this matter, at which time testimony and other evidence were introduced in support of and in opposition to the allegations of the complaint as to the respondents, American Association of Law Book Publishers, an unincorporated association, and its officers. James R. Spillane, president, Clifford W. Mueller, vice president, Richard Reiner, treasurer, and R. Walter White, secretary; and The American Law Book Company; George T. Bisel, an individual, trading as George T. Bisel Company; The Frank Shepard Company; Burdette Smith Company; Edward Thompson Company; Vernon Law Book Company; Washington Law Book Company; West Publishing Company; and Callaghan & Company, 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 on said complaint, answers thereto, stipulation and supplemental stipulation as to the facts executed by certain of the respondents (such stipulations having been approved, accepted, and filed) 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. Respondent, American Association of Law Book Publishers, (hereinafter referred to as "respondent Association"), is an unincorporated, voluntary, nonprofit trade association, organized to promote the mutual interests of its members. The membership of this Association was composed of individuals, partnerships, and corporations engaged in the publication of law books and related legal publications. Respondent Association was dissolved by motion adopted by its members on September 5, 1940. During the time of its existence the headquarters of the respondent Association were in the offices of its secretary, R. Walter White, who was associated with respondent The Lawyers Co-Operative Publishing Company, Rochester, N. Y.

With the exception of the period from September 1924 to September 1927, respondent, R. Walter White, was at all times secretary of respondent Association until the date of its dissolution. The individual

respondents, James R. Spillane, Clifford W. Mueller, and Richard Reiner, were president, vice president, and treasurer, respectively, of respondent Association from September 1939, until dissolution of said Association on September 5, 1940.

PAR. 2. Respondent, The American Law Book Company, is a New Jersey corporation, having its office and principal place of business at 272 Flatbush Avenue Extension, Brooklyn, N. Y.

Respondent, The W. H. Anderson Company, is an Ohio corporation, having its office and principal place of business at 524 Main Street, Cincinnati, Ohio.

Respondent, Baker, Voorhis and Company, is a New York corporation, having its office and principal place of business at 119 Fulton Street, New York City.

Respondent, Bancroft-Whitney Company, is a California corporation, having its office and principal place of business at 200-214 McAllister Street, San Francisco, Calif.

Respondent, Matthew Bender and Company, Inc., is a New York corporation, having its office and principal place of business at 109 State Street, Albany, N. Y.

Respondent, Bender-Moss Company, is a California corporation, having its office and principal place of business at 91 McAllister Street, San Francisco, Calif.

Respondent, George T. Bisel, was an individual, trading as George T. Bisel Company, with his office and principal place of business at 724 Sansom Street, Philadelphia, Pa. Said respondent, George T. Bisel, died on March 28, 1941, and answer on behalf of his estate was filed in this proceeding by the Pennsylvania Company for Insurances on Lives and Granting Annuities and Raymond M. Remick, executors and trustees under the will of George T. Bisel, deceased.

Respondent, Clark Boardman Company, Ltd., is a New York corporation, having its office and principal place of business at 11 Park Place, New York City.

Respondent, Bobbs-Merrill Company, is an Indiana corporation, having its office and principal place of business at 724 North Meridian Avenue, Indianapolis, Ind.

Respondent, John Byrne and Company, is a District of Columbia corporation, having its office and principal place of business at 1324 Eye Street, N. W., Washington, D. C.

Respondent, Dennis and Company, Inc., is a New York corporation, having its office and principal place of business at 269 Main Street, Buffalo, N. Y.

Respondent, The Harrison Company, is a Georgia corporation, having its office and principal place of business at 151 Spring Street, N. W., Atlanta, Ga.

Respondent, The Lawyers Co-Operative Publishing Company, is a New York corporation, having its office and principal place of business at Rochester, N. Y.

Respondent, Little, Brown and Company, is a Massachusetts corporation, having its office and principal place of business at 43 Beacon Street, Boston, Mass.

Respondent, The Michie Company, is a Virginia corporation, having its office and principal place of business at Charlottesville, Va.

Respondent, National Law Book Company, is a Maryland corporation, having its office and principal place of business at 1110-13th Street, N. W., Washington, D. C.

Respondent, Public Utilities Reports, Inc., is a Delaware corporation, having its office and principal place of business at 1329 E Street, N.W., Washington, D. C.

Respondent, The Frank Shepard Company, is a New York corporation, having its office and principal place of business at 76-88 LaFayette Street, New York City.

Respondent, Burdette Smith Company, is an Illinois corporation, having its office and principal place of business at 111 West Washington Street, Chicago, Ill.

Respondent, Soney and Sage Company, is a New Jersey corporation, having its office and principal place of business at 71 Clinton Street, Newark, N. J.

Respondent, Thomas Law Book Company, is a Missouri corporation, having its office and principal place of business at 209 North Third Street, St. Louis, Mo.

Respondent, Edward Thompson Company, is a New York corporation, having its office and principal place of business at 141 Willoughby Street, Brooklyn, N. Y.

Respondent, Vernon Law Book Company, is a Missouri corporation, having its office and principal place of business at 915 Grand Avenue, Kansas City, Mo.

Respondent, Washington Law Book Company, is a Delaware corporation, having its office and principal place of business at 810 Thirteenth Street; N. W., Washington, D. C.

Respondent, West Publishing Company, is a Minnesota corporation, having its office and principal place of business at 50 West Kellogg Boulevard, St. Paul, Minn.

Respondent, Williamson Law Book Company, is a New York corporation, having its office and principal place of business at 51 State Street, Rochester, N. Y.

Respondent, Callaghan & Company, is an Illinois corporation, having its principal office and place of business at 401 East Ohio Street, Chicago, Ill.

Respondent, Fallon Law Book Company, is a New York corporation, having its office and principal place of business at 292 Broadway, New York, N. Y.

The above-named respondents are all publishers of law books and related legal publications and constituted the entire membership of respondent Association, except for the periods of time hereinafter described. For convenience, the above-named respondents are hereinafter referred to as "respondent members."

PAR. 3. As of October 1, 1924, the membership of respondent Association was composed of all of the respondent members hereinbefore named except George T. Bisel Company and Burdette Smith Company, which were accepted to membership in November 1924; The Michie Company and Fallon Law Book Company accepted in July 1925; Williamson Law Book Company, accepted February 18, 1926; Public Utilities Reports, Inc., accepted August 21, 1933; National Law Book Company accepted September 11, 1934; Dennis and Company, Inc., accepted September 20, 1935; and Washington Law Book Company accepted July 15, 1937.

Respondent Callaghan & Company resigned from respondent Association November 26, 1924, was reinstated September 13, 1926, and again resigned October 14, 1933. Respondent, Fallon Law Book Company, resigned from respondent Association November 8, 1938. There were several other publishers who were members of respondent Association for only a short period of time who either resigned or discontinued business. These latter publishers were not included as respondents in this proceeding.

PAR. 4. All of the respondent members are engaged in the business of compiling, publishing, selling, and distributing textbooks, treatises, legal reference books, official reports of court decisions in State and federal courts, codes, digests, annotations of codes, and other legal publications. With a few exceptions each respondent member sells its own publications and sells and distributes publications of the other respondent members. Exceptions to this general rule are that The American Law Book Company sells its publication *Corpus Juris* and its publication *Corpus Juris Secundum* exclusively itself. The Lawyers Co-Operative Publishing Company and West Publishing Company sell their publications exclusively through their own sales forces. These three respondents, however, do sell and distribute books of other respondents. The Frank Shepard Company publishes sets of citations for decisions of the United States Supreme Court, federal, district, and circuit courts, and various State courts with the exception of Mississippi and Nebraska, and does not sell publications of the other respondents or sell its publications through the other respondents.

The West Publishing Company is the largest publisher of law books in the United States and owns the controlling interest in the following respondents: Vernon Law Book Company, The American Law Book Company, Edward Thompson Company, Burdette Smith Company, and Washington Law Book Company, having purchased the majority of the stock of the Vernon Law Book Company in 1911, The American Law Book Company in 1930, Edward Thompson Company in 1935, and the Burdette Smith Company in 1935. The Washington Law Book Company was incorporated in 1935 as a subsidiary of respondent, West Publishing Company.

The Lawyers Co-Operative Publishing Company owns the majority stock interest in the following named respondents: Baker, Voorhis and Company, Bender-Moss Company, and Bancroft-Whitney Company.

Callaghan & Company, since 1934, has owned the controlling interest in the capital stock of John Byrne and Company.

PAR. 5. In the course and conduct of their respective businesses, respondent members cause their publications, when sold, 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 law books and related legal publications in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. In 1923 and prior thereto, price cutting was more or less prevalent in the law-book industry. On September 25, 1923, a meeting was held at the offices of The Lawyers Co-Operative Publishing Company in New York, N. Y., to consider the conditions in the industry.

At this meeting the following respondent members were present: Vernon Law Book Company, West Publishing Company, Thomas Law Book Company, Bobbs-Merrill Company, The W. H. Anderson Company, Edward Thompson Company, Baker, Voorhis and Company, Little, Brown and Company, Bancroft-Whitney Company, Bender-Moss Company, and The Lawyers Co-Operative Publishing Company. At this meeting a number of topics were discussed, among which were protection of a publisher against competition from work on a similar subject, the practice of trading for an old edition of a textbook when a new edition is announced, maintenance of list prices, discounts to the trade, basis of determining royalties, soliciting approval orders from attorneys, disposition of overstock of textbooks, and uniformity of size of advertising circulars.

At this meeting, motion was unanimously adopted that it was the consensus of opinion of the representatives present that the maximum discount to libraries from October 1, 1923, to January 1, 1925, be 10 percent. As there was a variance as to the cash discounts allowed by the various members present, further discussion was continued until the next meeting. A further motion was unanimously carried that any house cutting prices should not be sold books. Respondent Association was formed at this meeting, to be known as the "American Association of Law Book Publishers," which was to meet annually on the third Tuesday in September.

At the next meeting of the respondent Association, held September 30, 1924, discounts to libraries were discussed, and it was the consensus of opinion that libraries were entitled to a discount of not to exceed 10 percent. Cash discounts were discussed at this meeting but no decision arrived at.

The question of library discounts was further discussed at the meeting held in September 1929, and respondent members agreed to discontinue entirely the discount of 10 percent to libraries and public institutions. This is indicated by the fact that subsequent to said meeting West Publishing Company, Vernon Law Book Company, The W. H. Anderson Company, Little, Brown and Company, Matthew Bender and Company, Inc., Bobbs-Merrill Company, The Harrison Company, and John Byrne and Company issued notices to the trade that discounts to libraries had been discontinued except the cash discount of 6 percent allowed to all purchasers.

PAR. 7. At the next meeting of the respondent Association, held in September 1930, a general discussion was held as to the desirability of making the cash discounts uniform, which was referred to a committee. This committee reported that most houses were giving a cash discount on \$40 or more and that discounts varied from 5 percent to 8 percent for cash, and recommended that the respondent members work out a uniform maximum discount. Motion was carried that the report of the committee be sent to each respondent member for study during the coming year.

At the meeting of respondent Association held September 24 and 25, 1931, the committee appointed to investigate cash discounts reported that it thought it would be for the best interests of the general publishers to give a 6 percent discount for cash within 30 days from date of invoice on total purchase of \$40 or over and that maximum approval period on books be set at 10 days.

The following month The Lawyers Co-Operative Publishing Company wrote Callaghan & Company and Clark Boardman Company, Ltd., advising them as to its policy of cash discount, which conformed to the recommendations of the committee. During the same month, West Publishing Company sent a notice to the trade setting out a cash discount of 6 percent on amounts of \$40 or over, which likewise conformed with the recommendations of the committee.

This cash discount was adopted and followed by all of the respondent members from the time of the 1931 meeting until the early part of 1934, when the required amount of the order was reduced from \$40 to \$35, at the instance of respondent, The Frank Shepard Company, to conform with the usual amount received on sales of its Citators. This schedule of discounts as modified was followed by all the respondent members of the Association and is still in force and effect.

PAR. 8. The respondent members also entered into agreements among themselves and through the respondent Association to establish uniform discounts on bids to the United States Government and to make such bids identical. In this connection and for the purpose of assuring that identical bids be made, respondent members from time to time exchanged information relative to proposed bids to be made to the Federal Government.

In endeavoring to reach an agreement which would establish uniform discounts on bids and uniform bids to the United States Government, the respondent members encountered some difficulties, due to the fact that while they had agreed upon a cash discount of 6 percent payable in 30 days to purchasers generally, the Federal Government in most instances did not pay invoices within the 30-day period, and the question arose as to whether or not the cash discount should be refused the United States Government when payment of invoice was not made within 30 days. The West Publishing Company took the initiative on this on May 26, 1931, when it sent out a notice to the trade that it would quote the Department of Justice on Hughes Federal Practice a discount of 6 percent on \$40 or over, provided cash in full was paid within 30 days, stating:

This information is being sent to you because of the fact that you may wish to make your bid uniform with ours.

At the September 1933 meeting of respondent Association the cash discount to the Government and method of bidding were clarified and immediately thereafter, on November 3, 1933, The Lawyers Co-Operative Publishing Company wrote Dennis and Company, Inc., with copy to Matthew Bender and Company, Inc., stating:

At the annual convention of the Law Book Publishers held in Chicago, the question was raised concerning the technique to be observed in submitting bids for law books to the government.

* * *

It was agreed at the Convention that hereafter in submitting bids to the government, all books would be shown on the bidding list at list price. Then, in connection with the bid or at the bottom of each sheet, will appear the memorandum: "Any order amounting to \$40.00 or over is subject to 6% discount for cash."

We hope you will find it agreeable to join with the others in following this uniform technique in order that none may have any unfair advantage over the others.

PAR. 9. In 1933 the members of respondent Association had under consideration the formulation of a code under the National Industrial Recovery Act. They did not wish to join the general code for publishers but, instead, presented a code limited to the law book publishing industry. This code was never accepted during the existence of the National Industrial Recovery Act. During the time, however, that these negotiations were taking place a code committee appointed by the respondent members, from time to time made suggestions with reference to discounts and at first recommended reducing the cash discount from 6 percent to 5 percent. This, however, was never accepted by the respondent members, and in the code submitted on April 23, 1934, to the Deputy Administrator of the NRA, it was provided that quotations should be at net list price and that no trade discount should be extended to any dealer who did not comply with this condition, and that the cash discount should not exceed 6 percent, payable in 30 days, on amounts of \$35 or more.

On May 31, 1934, the respondent Association sent out a notice over the signature of John T. Bender, president, and R. Walter White, secretary, with reference to the provisions of the revised Law Book Code on cash discounts, showing 6 percent cash discount on purchases of \$35 or more, with the exception that the 30-day stipulation might be omitted on any bids to the United States Government.

The officers of respondent Association, following the issuance of the above notice, then insisted upon the wording of the provisions of the code being strictly followed in making bids to the United States Government. On June 18, 1934, R. Walter White, secretary of respondent Association, wrote John Byrne and Company, objecting to the dropping of the word "cash" and calling attention to the copy of letters sent out to members of the Association the latter part of May containing the statement:

"A cash discount of not more than 6% may be offered on purchases of \$35.00 or more (not \$40.00 as heretofore), and provided payment is made with order, or within 30 days from date of invoice.

"The only exception is that the thirty day stipulation may be omitted from any Bids to the United States Government."

On August 23, 1934, John T. Bender, president of respondent Association, wrote John Byrne and Company with reference to discrepancies in bids to the Government, stating:

As President of the Association, I have been requested to see that we, at the next Convention, take such action as will standardize the methods of bidding to the Government.

However, the respondent members did not standardize the method of bidding to the Government at the next meeting of respondent Association because they became concerned about the legality of this method of standardization, as is indicated by statement in letter of October 19, 1934, from Baker, Voorhis and Company to Bobbs-Merrill Company, as follows:

The problem of government bidding was intentionally kept off the program at the suggestion of our legal advisor. We do not have any code yet so we must still be careful that we do not run afoul of the Sherman Act.

Instead, standardization was accomplished by having the secretary of respondent Association discuss the matter of Government bids with the respondent members, and thereafter, on January 10, 1935, the respondent Association issued a notice to its members, reading as follows:

Your Code Committee, after carefully canvassing the situation, and in order to prevent uncertainty in the matter of Federal Government Bids, recommends that in bidding on Federal Government orders the retail selling price on Text-Books should be stated (do not figure and deduct any discount).

At the end of the Bid should appear the following:

"Any order amounting to \$35.00, and over, subject to a 6% discount."

Apparently this finally settled the method of bidding to the Government, since from that time, with the exception of minor individual variations, the method suggested was followed by all the respondent members.

PAR. 10. At the meeting held on September 19, 1935, the question came up as to whether the members of respondent Association should continue to operate under the code, since the National Industrial Recovery Act had been declared unconstitutional, and it was agreed that the members of the Association should continue the code.

On September 23, 1935, R. Walter White, secretary of respondent Association, in a letter to Fred O. Dennis of Dennis and Company, Inc., advising him that Dennis and Company had been accepted as a member of the Association, stated:

Enclosed you will find copy of the By-Laws of the Association, copy of the Code of Fair Competition (under which, by the way, we are still operating), also a copy of the writer's letter dated January 10th, regarding 6% discount on Bids to the Federal Government.

PAR. 11. The question of disposition of secondhand books and overstock of books came up from time to time among respondent members of the Association, with the particular view of keeping secondhand books off the market. During the year 1938 the respondent members became quite active in discussing means or methods which might be employed to dispose of overstock of books and secondhand books. This was probably induced by letter of Baker, Voorhis and Company dated February 2, 1938, signed by Geoffroy Billo, at that time president of respondent Association, to the respondent members, in which he suggested disposition of overstock books at reduced price after first giving the publisher notice and opportunity to make other disposition of the books, and requested an expression of opinion on this matter from the respondent members.

At the subsequent meeting of respondent Association in September 1938, an agreement among the members was reached with reference to the methods of disposing of Abbott's New York Digest, as is indicated by letter of Edward Thompson Company dated May 25, 1939, to West Publishing Company, stating:

As you may know, practically all of the law book houses in New York State are now offering Abbott's second hand, for a minimum of \$350.00.

This agreement, I understand, was entered into at the last Law Book Convention over the protest of Mr. Spillane.

The respondent members from time to time made regulations or conditions as to the method of handling secondhand books issued by their

respective companies, particularly when a new edition was placed on the market. The various respondent members agreed to, and did, follow such plan in the handling of secondhand books. These plans in most instances were designed to take secondhand books off the market and particularly to prevent either secondhand or new editions getting into the hands of dealers in secondhand law books.

PAR. 12. The respondent members from time to time since the organization of respondent Association have entered into mutual agreements and understandings relative to preventing the duplication of various textbooks, as is evidenced by interchange of correspondence between Bancroft-Whitney Company and Bobbs-Merrill Company. On November 14, 1939, Bancroft-Whitney Company wrote Bobbs-Merrill Company relative to the publication of Thompson on Real Property, in which it was stated:

Wouldn't it have been better for all should you have put the publication of Thompson ahead a year. We did that twice and I am sure we didn't lose anything by so avoiding conflicts with other books on the same subject.

One of the underlying purposes of the forming of the American Association of Law Book Publishers was to avoid the duplication of textbooks within too short periods, and to avoid conflicts occasioned by the publication of two or more works on the same subject at the same time, or within too short intervals.

Has all the work of our Association these years since 1923 in this regard been for naught? I should not like to think that. I do not think it.

to which Bobbs-Merrill Company replied, stating:

We had no intention of publishing Thompson on Real Property at this time and you will recall that we wrote to some of our friends in the trade when Jones on Real Property was announced and all of them, including yourself, suggested that we announce the book the first of 1940.

PAR. 13. The respondent members entered into and carried out agreements and understandings providing that in the sale and distribution of law books and related publications, each respondent, when selling or offering for sale any law book or related legal publication published by it or by any of the other respondents, would observe and adhere to the selling price and conditions of sale fixed and established by the publisher of such books or publications, and refrain from deviating in any manner therefrom. In order to accomplish this, a respondent, on issuing a new publication, sent out a prospectus or notice to the trade giving in detail the terms and conditions of sale, discounts, and other information pertaining to the sale of such publications. In sending out such notices or information relative to a new publication, the respondent as publisher specified the conditions, if any, under which old editions would be accepted in trade and the trade-in allowance to be made. In some instances the publisher was not content with sending out notices but, in addition, held meetings with the salesmen of other respondent members for the purpose of establishing rules of procedure in selling such publications. This was done by The Lawyers Co-Operative Publishing Company at the outset of the sale of its publication Standard Pennsylvania Practice.

PAR. 14. The respondent members jointly and cooperatively attempted to, and have, promoted adherence to the agreements and understandings hereinbefore described by employing the Association offices to that end,

by the interchange of correspondence between them, by personal contact with one another individually and in groups, and by systematically observing, checking, and policing the bids, sales, transactions, and activities of each and all of them through the Association and otherwise.

On March 3, 1931, Callaghan & Company wrote West Publishing Company, advising that Edwin Valentine Mitchell, Inc., of Hartford, Conn., was allowing a 10 to 15 percent discount to libraries, to which West replied that it had had no dealings with this party but would see that it was not given any discount that would enable it to sell West publications at a discount to libraries or other parties.

On April 20, 1932, The Lawyers Co-Operative Publishing Company wrote The W. H. Anderson Company relative to activities of the firm of Barnes and Noble, stating that it had discontinued selling any books to this firm and that if The W. H. Anderson Company continued to sell them at a discount The Lawyers Co-Operative Publishing Company, in the natural course of events, would probably have to eliminate Anderson's textbooks from its list. The W. H. Anderson Company, in reply, stated that it was withdrawing the 20 percent discount allowed Barnes and Noble and in the future would extend only a 6 percent discount for cash.

On April 27, 1932, Baker, Voorhis and Company sent a notice to the trade calling attention to the activities of J. J. Sanders, who had started in the law-book business by telling lawyers that he could undersell any dealer, and stated that the entire law-book business would be better off if this type of individual were not encouraged. The Lawyers Co-Operative Publishing Company replied to this notice, stating:

You may rest assured that we will not be of any assistance to this fellow.

In March or April 1934, John T. Bender, then president of the respondent Association, held a meeting at Chicago with C. C. Kryter of Bobbs-Merrill Company, Gosnell of The Lawyers Co-Operative Publishing Company, S. M. Banks of John Byrne and Company, and Evan Jones, who represented four of the concerns who had been bidding to the Government deducting the 6 percent discount from their bids, and it was agreed at this meeting that such method of bidding should be discontinued and that each should bid as heretofore, without actually making the deduction and reducing the price accordingly, with the right, however, to omit the 30-day stipulation on Government bids.

On June 25, 1934, The Lawyers Co-Operative Publishing Company wired The Harrison Company, calling attention to improper wording of bid to the Department of Justice, and on the same day The Harrison Company wired the Department of Justice changing the bid to conform with the request of The Lawyers Co-Operative Publishing Company.

In February 1936, in connection with application of Mason Publishing Company for membership in the Association, R. Walter White, as secretary of respondent Association, required the Mason Publishing Company to change its method of advertising as a prerequisite to admission.

In the early part of 1936 it came to the attention of R. Walter White, secretary of respondent Association, that Dennis and Company, Inc., and Soney and Sage Company were making improper bids to the Department of Justice, and R. Walter White suggested to W. G. Packard of The Frank Shepard Company, president of respondent Association, that he write a letter to these parties, and on May 8, 1936, W. G. Packard

wrote to both Dennis and Company, Inc., and Soney and Sage Company, stating in part:

As President of the Association I have been asked to direct this to your attention so that there will be no misunderstanding in submitting bids to the Federal Government during the present year.

Both of these respondents replied that they would make their bids strictly in accordance with the rules of respondent Association.

When any representative of a respondent member engaged in price-cutting activities or other violations of the rules of the respondent Association, such respondent member was immediately notified of such activities by one or more of the other respondent members, and was requested to take punitive action against such representative, which usually resulted in prompt corrective action.

PAR. 15. Respondent, Callaghan & Company, has contended in this proceeding that it was not a party to any of the agreements hereinbefore described. This respondent joined the Association in the year 1924; resigned therefrom on November 26, 1924; and was reinstated as a member of the Association September 13, 1926, remaining a member until October 14, 1933, at which time it again resigned. During the times that this respondent was a member of respondent Association and also during the time that it was not a member of said Association, this respondent cooperated with the other respondent members in carrying out the agreements heretofore described. The only matter in which this respondent did not agree with the remaining members was in limiting cash discount to sales of \$40 and later \$35 on sales of its own publications. As to publications of the other respondent members it maintained the 6 percent discount limited to said amounts. As an example of the cooperation with the other respondent members, on May 5, 1931, Callaghan & Company wrote John T. Bender, president of Matthew Bender and Company, Inc.:

Your position is right as usual and I sincerely hope that we can all get together for the purpose of arranging a uniform program.

and again on May 8, 1931, said respondent wrote said John T. Bender, stating:

I agree heartily with what you say on the discount proposition. It illustrates the importance of getting together and framing a program which will have the unanimous consent of all the members of the committee and all of the big text book houses.

J. C. Cahill, the representative of Callaghan & Company, was a member of the executive committee of respondent Association from September 28, 1928, to September 15, 1933. In 1930 he was appointed chairman of the committee to investigate the question of cash discounts and took an active interest in arriving at the cash-discount formula reported by the committee at the meeting of respondent Association in September 1931 and which was subsequently adopted by the respondent members.

In 1934 Callaghan & Company purchased the controlling interest in John Byrne and Company, one of the respondent members of the Association, and subsequent to that time said John Byrne and Company continued to take an active interest in the affairs of respondent Association and in the agreements and understandings entered into between and

among the various respondent members. In addition to the cooperation of said respondent, Callaghan & Company, by and through John Byrne and Company, there is further indication of the cooperation of this respondent after it had discontinued its membership in said Association. For example, on July 20, 1935, Callaghan & Company wrote Geoffroy Billo of Baker, Voorhis and Company, stating:

So far as the Association is concerned, even though we are not members, we want to cooperate with the trade and its policies as expressed by the Association, and we have done so, so far as I know, in all matters except a single one of allowing a cash discount on our own publications where the sale amounts to less than \$35.00.

On August 28, 1935, J. C. Cahill of Callaghan & Company wrote John T. Bender of respondent, Matthew Bender and Company, Inc., stating:

In the matter of a return to the Association, I question its advisability at this time. It is our aim to cooperate with the Association and its policies except in so far as we find those policies in conflict with what we believe our own best interest. Thus far the only conflict that I know of is on the matter of discounts on purchases of \$35.00 or more. This limitation obviously was imposed by the subscription book houses for their benefit. I honestly feel that we can cooperate more effectively outside the Association than within it although I greatly miss the social feature.

On September 9, 1937, J. C. Cahill of Callaghan & Company wrote Arthur Duhig of Little, Brown and Company, stating that Mr. Cudahy thought it better not to rejoin the respondent Association and mentioned the fact that the Federal Trade Commission was checking up on the Association, and further stated:

Under these circumstances don't you think it would be better if we were outside of the Association so that you could say that the practices followed by the Association were not the result of an agreement but were the result of common business practices in the trade, and then point to this Company which is not a member of the Association and yet adopts the same practices.

In view of the above, and also in view of other activities of the respondent, Callaghan & Company, as appears from the record and the participation of said respondent through the instrumentality of John Byrne and Company, the Commission finds that respondent, Callaghan & Company, entered into the various agreements with the other respondent members as herein found, and participated in all the acts and practices described herein.

PAR. 16. It is contended by respondent, The Frank Shepard Company, that since it does not sell any of its publications to or through the respondent members and does not sell any publications of the respondent members, it has not entered into or participated in any of the agreements charged in the complaint. This respondent has at all times been a member of the respondent Association since its organization and has taken an active interest in all of the activities of the Association and has attended all the meetings of the Association except the original meeting held on September 25, 1923. In addition, the president of said respondent, W. G. Packard, was a member of the executive committee from September 1931 to September 1933 and from September 1934 to September 1935. He served as vice president of respondent Association from September 1933 to September 1934 and was president of respondent Associ-

ation for the period from September 1935 to September 1936. In addition, said W. G. Packard acted as a member of the code committee of respondent Association, having been appointed to this committee on September 14, 1933.

As a member of the code committee said W. G. Packard was active in outlining and establishing the plan of discounts and bids to the Federal Government on the part of the Association and which were adopted and followed by the members of the Association, and in addition thereto, as president of the Association, took an active interest in bringing members of the Association who had departed from the rules and regulations of the Association with reference to making bids to the Federal Government back into line. In fact, the cash-discount formula was reduced from \$40 to \$35 at the instance of this respondent so that it might allow cash discount on its publication without violating the rules of respondent Association with reference to cash discounts.

The Commission finds that the respondent, The Frank Shepard Company, through its participation in the affairs of respondent Association, and through the participation of its president, W. G. Packard, in the affairs of the Association, and in the agreements entered into among the respondent members, did, itself, participate in the agreements and the acts and practices herein described.

PAR. 17. 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 capacity, tendency, and effect of substantially reducing, lessening, hindering, and restraining competition in the sale and distribution of law books and related legal publications between and among respondent members and between and among respondent members and other firms, partnerships, corporations, and individuals in the same or similar lines of business, in commerce among and between the various States of the United States and in the District of Columbia; of maintaining in existence arbitrary discounts and terms and conditions of sale for respondents' publications; of substantially enhancing the cost of such publications and products to the purchasing public, and of making it more difficult for lawyers and other members of the purchasing public to acquire, obtain, and own law books and related legal publications; of increasing the cost of establishing and maintaining law libraries; of increasing the cost to the Federal Government and to other public agencies of establishing and maintaining law libraries; of providing those having dominant positions in the industry with an effective means of control over those less favorably situated; and of unduly and unlawfully restricting and restraining interstate trade and commerce in law books and related legal publications between, among, and in the several States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice of the public and have a tendency to and have actually hindered, lessened, restricted, restrained, and eliminated competition in the sale and distribution of law books and related legal publications in commerce as "commerce" is defined in the Federal Trade Commission Act; have placed in respondents the power to control and

enhance prices; and constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission; the answers of the respondents; a stipulation as to the facts and a supplemental stipulation as to the facts entered into between W. T. Kelley, Chief Counsel for the Federal Trade Commission, and the following corporate respondents: The W. H. Anderson Company, Baker, Voorhis and Company, Bancroft-Whitney Company, Matthew Bender and Company, Inc., Bender-Moss Company, Clark Boardman Company, Ltd.; Bobbs-Merrill Company, John Byrne and Company, Dennis and Company, Inc., The Harrison Company, The Lawyers Co-Operative Publishing Company, Little, Brown and Company, The Michie Company, National Law Book Company, Public Utilities Reports, Inc., Soney and Sage Company, Thomas Law Book Company, Williamson Law Book Company, and Fallon Law Book Company, which stipulations provide, among other things, 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 further testimony, argument, filing of briefs, or other intervening procedure; and also upon testimony and other evidence taken in support of the allegations of said complaint and in opposition thereto as to the respondents, American Association of Law Book Publishers, an unincorporated association, and its officers James R. Spillane, president, Clifford W. Mueller, vice president, Richard Reiner, treasurer, and R. Walter White, secretary, and The American Law Book Company, George T. Bisel, an individual, trading as George T. Bisel Company, The Frank Shepard Company, Burdette Smith Company, Edward Thompson Company, Vernon Law Book Company, Washington Law Book Company, West Publishing Company, and Callaghan & Company, 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 and entered its findings as to the facts, conclusion, and order to cease and desist April 27, 1944, thereafter, upon request by counsel for certain of the respondents, the Commission reconsidered the order to cease and desist heretofore entered and being of the opinion that a modified order to cease and desist should be issued in said cause and 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, American Association of Law Book Publishers, an unincorporated association; The American Law Book Company, a corporation; The W. H. Anderson Company, a corporation; Baker, Voorhis and Company, a corporation; Bancroft-Whitney Company, a corporation; Matthew Bender and Company, Inc., a corporation; Bender-Moss Company, a corporation; Clark Boardman Company, Ltd., a corporation; Bobbs-Merrill Company, a corporation; John Byrne and Company, a corporation; Dennis and Company, Inc., a corporation;

The Harrison Company, a corporation; The Lawyers Co-Operative Publishing Company, a corporation; Little, Brown and Company, a corporation; The Michie Company, a corporation; National Law Book Company, a corporation; Public Utilities Reports, Inc., a corporation; The Frank Shepard Company, a corporation; Burdette Smith Company, a corporation; Soney and Sage Company, a corporation; Thomas Law Book Company, a corporation; Edward Thompson Company, a corporation; Vernon Law Book Company, a corporation; Washington Law Book Company, a corporation; West Publishing Company, a corporation; Williamson Law Book Company, a corporation; Callaghan & Company, a corporation; and Fallon Law Book Company, a corporation, and their respective officers, agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of law books and related legal publications 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 discounts, terms, or conditions of sale for law books and related legal publications or adhering to or promising to adhere to the discounts, terms, or conditions of sale so fixed.

2. Maintaining or adhering to the selling price, terms, and conditions of sale of law books and related publications fixed and established by the respondent who publishes such books.

3. Holding or participating in any meeting, discussion, or exchange of information among themselves or under the auspices of the respondent, American Association of Law Book Publishers, or any other medium or agency concerning proposed or future discounts, terms, or conditions of sale or concerning bids and price quotations in advance of the submission of such bids or price quotations to purchasing officials of the Federal Government or to awarding authorities of other governmental units or subdivisions or to any buyer of law books and related legal publications.

4. Arriving at the amount of any bid or the discount, terms, or conditions of sale to be submitted to purchasing officials of the Federal Government, to awarding authorities of other governmental units or subdivisions, or to any buyer of law books and related legal publications through agreement, understanding, or collusion with other bidders.

5. Establishing, fixing, or maintaining the rates of allowances to be made, used, and applied on books and other publications received in trade, or fixing and maintaining the prices, terms, or conditions of sale governing the resale of such law books and related legal publications taken in trade.

6. Jointly or cooperatively inducing or promoting adherence to, or attempting to induce or promote adherence to, agreements and understandings relative to the sale and distribution of law books and related legal publications by interchange of correspondence, by personal contact with one another individually or in groups, or by policing the bids or sales transactions of respondent members through the respondent Association or otherwise.

7. Employing or utilizing any of the actual practices specifically prohibited herein as a means or instrumentality of otherwise restricting, restraining, or eliminating competition in the sale and distribution of law books and related legal publications.

8. Employing or utilizing American Association of Law Book Publishers 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 nothing herein contained shall be construed as prohibiting a parent corporation from directing the prices or terms at which any of its subsidiary corporations shall sell any law book or related legal publication published by the parent corporation or by any of its subsidiaries when such prices or terms have been arrived at by the parent corporation acting separately and independently of any competitor of the parent corporation or of any of its subsidiary corporations.

It is further ordered, That nothing in this order is to be construed as prohibiting any of said corporate 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 the complaint herein be, and it hereby is, dismissed as to George T. Bisel, an individual, trading as George T. Bisel Company.

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

ACME ASBESTOS COVERING AND FLOORING COMPANY,
ET AL.

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

Docket 4613. Complaint, Dec. 27, 1941¹—Decision, Apr. 27, 1944

Where a number of corporations, engaged as manufacturers or as winders or converters of insulating materials and in interstate sale and distribution thereof, in competition with one another to the extent that competition had not been restrained as below set forth, and including the volume producers and more important members of the industry, which—characterized before the National Recovery Administration by a few practices in general use, such as zoning, customer classification, freight equalization, and the use of a standard price list—operated, during said period, under a code which provided for the filing of prices and adherence thereto until the filing of others, and under a code merchandising plan, which—continued after the Act's invalidation and until the adoption of the program below described—regulated in great detail for virtually the entire country, numerous trade practices such as classification of buyers and discounts, units of sale, use of standard list prices, standardization of contracts, freight allowances and zones, etc., and fitted into a detailed written document the prior practices before referred to, supplemented by numerous other provisions;

Acting in cooperation with an individual who had been secretary of a trade association of the industry prior to being made manager for the division concerned in the industry's code;

Combined and conspired to control and stabilize prices, terms and conditions of sale, and trade practices and conditions pertaining thereto, and to carry on and perfect the control over such matters accomplished under said N.R.A. code, through the establishment of a patent licensing and merchandising plan which was in general a reestablishment, with additions, of that created under N.R.A., substituting direct price fixing for price reporting, stopping some loopholes for competition which existed in the other, and providing more direct and effective means of enforcement, and under which the aforesaid individual (1) was given exclusive license under a patent of one of the members, for use in the manufacture of asbestos paper and insulating fabrics, along with the exclusive right to grant non-exclusive sub-licenses to others, and (2) proceeded to sub-license the various concerns herein involved, under uniform terms and conditions, as considered, evolved, changed and agreed upon by them from time to time, and under provisions which, among other things, provided for inspection of sub-licensee's books, prohibited the sub-licensees from selling at lower prices or upon more favorable terms or conditions of sale than specified by the licensor, and provided that liquidated damages of 50 per cent of the proper net selling price be paid to the licensor on any sales of licensed materials in violation of the licensor's schedule; and thereby—

- (1) Established and maintained uniform prices, discounts and terms and conditions in the sale of the insulating materials herein involved—including asbestos paper and rule board, wool felt and sponge felt paper, corrugated asbestos paper, pipe coverings, boiler jackets and sheets and blocks, and accessories usually sold therewith—

¹ Amended.

- including such matters as manner of handling price advances or decline, fixing of standard list prices, differentials for different weights of products, etc.;
- (2) Established and maintained uniform differentials in price applicable to designated differences in specifications of said materials or to differences in type or quantity of accessories sold therewith; customer classifications for use in determining prices, discounts, terms and conditions of sale; and specified prices to the various classes of producers in car lot and L.C.L. quantities; and fixed units of sale and standard sizes, etc.;
 - (3) Maintained a delivered price zone system through which, despite different costs of delivery, identical delivered prices were achieved on products concerned, designating particular locations for use as freight equalization points for pricing purposes; and established and maintained exclusive methods for quoting and pricing a particular material or groups of materials; outlining factory zones, dividing the country into geographical zones for pricing purposes, defining carload quantity, outlining the manner in which freight might be equalized, and providing the formula, etc.; and
 - (4) Established and maintained formulae for calculating unit prices, or total prices therefrom, supplying tables for calculating areas of certain products, and specifying method of figuring the prices thereon, etc.;

Capacity, tendency and effect of which combination and conspiracy, including inauguration and employment of said patent licensing and merchandising plan established as a part thereof and as a means of effectuating the same, and of said acts and practices performed in connection therewith was—

(1) To restrain and suppress competition in the sale and distribution of pipe covering and insulating materials, both patented and unpatented or licensed and unlicensed, among the several states, and to fix and maintain prices, terms and conditions of sale for such materials, and deprive purchasers thereof of benefits of competition in pricing;

(2) To collectively determine and establish classifications of customers for pricing purposes and fix and determine price differentials among such classifications, and create substantial uniformity in contracts of sale and the terms and conditions specified therein;

(3) To determine and maintain uniform delivered prices on certain insulating material, and uniform delivered costs to purchasers through said freight equalization plan and geographical zones employed for pricing purposes;

(4) To establish standard construction, size, and thickness specifications of products to facilitate price fixing thereon; and

(5) To promote and maintain otherwise their price fixing combination and conspiracy and obstruct, lessen and defeat any form of competition which threatened the maintenance and purposes thereof:

Held, That such combination and conspiracy, and said acts and practices performed pursuant thereto and under said conditions and circumstances, constituted unfair methods of competition in commerce.

Contentions—made in connection with the inauguration and putting into effect of a patent licensing and sub-licensing merchandising plan through licensing a certain individual under a patent owned by one of the concerns involved, with exclusive authority to sub-license concerns thereunder, as a means of fixing and stabilizing prices and terms and conditions of sale by members of the industry concerned—that various negotiations which preceded the granting of the exclusive license to said individual, represented no more than his efforts to ascertain whether it would be a profitable business venture for him to assume the obligations imposed by the license, and that negotiations concerning changes in the additions to the mer-

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chandising plans represented no more than the efforts of an intelligent business man, not himself engaged in the manufacture and sale of any of the licensed products, to inform himself of the conditions which existed in the manufacture and sale of such products, to the end that he might properly administer the licenses: *held*, in view of the facts and circumstances shown in the record, as above indicated, without merit.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Floyd O. Collins for the Commission.

Cadwalader, Wickersham & Taft, of New York City, for Acme Asbestos Covering and Flooring Co., Asbestos, Asphalt and Insulation Manufacturing Co., Atlantic Asbestos Corp., A. H. Bennett Co., The Philip Carey Manufacturing Co., The Clark Asbestos Co., Empire Asbestos Products, Inc., Johns-Manville Corp., L. A. Rubber & Asbestos Works, Inc., G. A. MacArthur Co., Pacific Asbestos & Supply Co., The Ruberoid Co., and Donald Tulloch, Jr., and along with—

Mr. John Loeffler, of Minneapolis, Minn., for W. S. Nott Co.

Pepper, Bodine, Stokes & Schoch, of Philadelphia, Pa., for Keasbey & Mattison Co.

Gabrielson & Wolfe, of New York City, for Norristown Magnesia and Asbestos Co. and Sall Mountain Co.

Mr. Richard D. Daniels, of Washington, D. C., and *Brobeck, Phleger & Harrison*, of San Francisco, Calif., for Plant Rubber & Asbestos Works.

Mr. David H. Caplow, of Chicago, Ill., for Standard Asbestos Manufacturing Co.

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and more particularly described and referred to hereinafter 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The words and terms set out in this paragraph shall have the following meanings, wherever used in this amended complaint:

"Licensed materials" means the following materials which the respondents classified in the sub-license agreements which the respondent Donald Tulloch, Jr., had with the other respondents, as forming part of United States Patent No. 1,972,500:

1. Low pressure (coarse corrugated) Aircell type asbestos pipe covering, sheets and/or blocks.
2. Low pressure (fine corrugated) Aircell type asbestos pipe covering, sheets and/or blocks.
3. Low pressure Laminated type asbestos pipe covering, sheets and/or blocks.
4. Woolfelt types pipe covering.
5. Anti-sweat type pipe covering.
6. Frost proof type pipe coverings.
7. High pressure Laminated type asbestos pipe covering, sheets, and/or blocks.
8. Corrugated asbestos paper.

9. Asbestos paper and rollboard. (Materials so designated include all paper whose chief constituent is asbestos fiber.)

10. Wool felt paper. (Materials so designated include all paper whose chief constituent is wool or rag fiber.)

11. Sponge felt paper. (Materials so designated include all paper whose chief constituent is asbestos and sponge fibers.)

"Non-licensed materials" includes such items as: solid brass, zinc, and lacquered bands, flexible range boiler jackets, and canvas covering.

"Toohey Patent" means United States Patent No. 1,972,500, issued on September 4, 1934, to respondent, Johns-Manville Corporation, as assignee of Edward A. Toohey and Earl K. Williams.

"Respondent corporations" means all of the respondents named in the caption hereof, except respondent, Donald Tulloch, Jr. The Philip Carey Company, the wholly owned subsidiary of respondent, The Philip Carey Manufacturing Company, is likewise referred to in this complaint as a "Respondent corporation," for the reason that the respondent, The Philip Carey Manufacturing Company, is legally responsible and liable for the acts and practices performed by the said The Philip Carey Company prior to its dissolution as hereinafter set forth.

PAR. 2. Respondent, Acme Asbestos Covering and Flooring Company, is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business being located at Fulton and Elizabeth Streets, Chicago, Ill.

Respondent, Asbestos Asphalt and Insulation Manufacturing Company, is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business being located at 2100 West Fullerton Avenue, Chicago, Ill. (It is the successor to the Illinois Philip Carey Company.)

Respondent, Atlantic Asbestos Corporation, is a corporation, organized and existing under the laws of the State of New York, with its office and principal place of business being located at 2128 Westchester Avenue, Bronx, N. Y. It was organized on January 1, 1939, when it succeeded to the business, assets, good will, etc. of J. Ozurovitch, Inc. On such succession it adopted, accepted, approved, and became a party to any and all of the agreements hereinafter set out which may have been entered into by its predecessor, J. Ozurovitch, Inc.

Respondent, A. H. Bennett Company, is a corporation, organized and existing under the laws of the State of Minnesota, with its office and principal place of business being located at 113 First Street, North, Minneapolis, Minn.

Respondent, The Philip Carey Manufacturing Company, is a corporation, organized on or about February 14, 1888, under the laws of the State of Ohio, and which has existed under the laws of said State since that date, with its office and principal place of business being located at Lockland, Ohio. One of its wholly owned subsidiaries was The Philip Carey Company, a corporation, organized on or about June 10, 1907, under the laws of the State of New Jersey, and existing under said laws until about June, 1941, when it was dissolved for tax purposes. G. D. Crabbs, R. S. King, C. A. Blinn, W. L. Steffens, and W. C. Ignatius, were chairman of the Board, president, vice president, vice president, and secretary-treasurer, respectively of both the respondent, The Philip Carey Manufacturing Company and The Philip Carey Company, at the time of the latter's dissolution. Also the office and principal place of business of both

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corporations always was during the existence of The Philip Carey Company, at the same location, Lockland, Ohio. When The Philip Carey Company was dissolved in about June, 1941, all of its assets were transferred to respondent, The Philip Carey Manufacturing Company, which respondent likewise assumed all of what it considered to be the lawful and valid contracts of its wholly owned subsidiary, The Philip Carey Company, including the sub-licensing agreement, hereinafter described, which then existed between the said The Philip Carey Company and respondent, Donald Tulloch, Jr., and said respondent, The Philip Carey Manufacturing Company, has continued, and is still continuing the operation under said sub-licensing agreement and the merchandising plan, hereinafter described, which is a part thereof or an adjunct thereto.

Respondent, The Clark Asbestos Company, is a corporation, organized and existing under the laws of the State of Ohio, with its office and principal place of business being located at 1893 East 55th Street, Cleveland, Ohio.

Respondent, Empire Asbestos Products, Inc., is a corporation, organized and existing under the laws of the State of New York, with its office and principal place of business being located at the Atlas Terminal, Glendale, Long Island, N. Y.

Respondent, Gillen-Cole Company, is a corporation, organized and existing under the laws of the State of Oregon, with its office and principal place of business being located at 714 S. W. Front Avenue, Portland, Oreg.

Respondent, Johns-Manville Corporation, is a corporation, organized and existing under the laws of the State of New York, with its office and principal place of business being located at 22 East 40th Street, New York, N. Y.

Respondent, Keasby & Mattison Company, is a corporation, organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business being located at Ambler, Pa.

Respondent, L. A. Rubber & Asbestos Works, Incorporated, is a corporation, organized and existing under the laws of the State of California, with its office and principal place of business being located at 124 East Third Street, Los Angeles, Calif.

Respondent, G. A. MacArthur Company, is a corporation, organized and existing under the laws of the State of Minnesota, with its office and principal place of business being located at 2387 Hampden Avenue, St. Paul, Minn. This corporation was organized in February, 1913, under the name of Twin City Pipe Covering Company, which corporation was changed to its present form in May, 1931.

Respondent, Norristown Magnesia and Asbestos Company, is a corporation, organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business being located at Norristown, Pa.

Respondent, W. S. Nott Company, is a corporation, organized and existing under the laws of the State of Minnesota, with its office and principal place of business being located at Second Avenue, North, and Third Street, Minneapolis, Minn.

Respondent, Pacific Asbestos & Supply Company, is a corporation, organized and existing under the laws of the State of Oregon, with its office and principal place of business being located at S. W. Front and Clay Streets, Portland, Oreg.

Respondent, Plant Rubber & Asbestos Works, is a corporation, organized and existing under the laws of the State of California, with its office and principal place of business being located at 537 Brannan Street, San Francisco, Calif.

Respondent, The Ruberoid Co., is a corporation, organized and existing under the laws of the State of New Jersey, with its office and principal place of business being located at 500 Fifth Avenue, New York, N. Y.

Respondent, Sall Mountain Company, is a corporation, organized and existing under the laws of the State of Delaware, with its office and principal place of business being located at 70 Pine Street, New York, N. Y.

Respondent, Standard Asbestos Manufacturing Company, is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business being located at 820-22 West Lake Street, Chicago, Ill.

Respondent, Donald Tulloch, Jr., is an individual, having his principal office and place of business on the 16th Floor of the Inquirer Building, Philadelphia, Pa.

PAR. 3. Respondent corporations manufacture and sell approximately from 80 percent to 90 percent of the low pressure asbestos pipe covering manufactured and sold in the United States, with respondents, Johns-Manville Corporation and The Philip Carey Manufacturing Company, and its wholly owned subsidiary, The Philip Carey Company, up to the time of the dissolution of the said The Philip Carey Company, about June, 1941, manufacturing and selling approximately 50 percent of same. Both licensed and non-licensed materials are embodied, involved, and employed in the manufacture, use, and sale of such covering.

Some of respondent corporations manufacture some or all of their licensed and non-licensed materials and convert same into low-pressure asbestos pipe covering, while the other respondent corporations, which are known in the trade as "winders," purchase some or all of said materials from those respondent corporations which manufacture same, and then convert them into such covering.

To the extent that the respondent corporations act collusively and collectively in the pricing and sale of such covering and materials, they are in a position to dominate and control the prices at which same must be purchased by the purchasers and users thereof throughout the United States.

PAR. 4. In the course and conduct of their respective businesses, each of respondent corporations sells and distributes licensed and non-licensed materials and the asbestos covering, which are manufactured or converted by it, to the purchasers thereof located in the various States of the United States and in the District of Columbia, and in connection with such sales, transports or causes to be transported said products to such purchasers located in the various States of the United States other than the State of origin of said shipments and in the District of Columbia. The said respondent corporations have maintained, and still do maintain, a regular current of trade in such products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. Respondent, Donald Tulloch, Jr., (referred to herein as "respondent Tulloch") aided, abetted, furthered, cooperated with, and was an instrumentality of, and a party to, the understanding, agreement, combination, and conspiracy hereinafter set out, and actively partici-

Complaint

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pated in the performance of some, if not all, of the acts and things herein-after set out, which were done for the purpose of making said agreement, understanding, combination, and conspiracy, effective, and of requiring compliance therewith by respondent corporations.

PAR. 6. Each of respondent corporations has been, during the various times herein set forth, and some of them still are, in competition with one or more of the other respondent corporations in making and seeking to make sales in commerce between and among the various States of the United States and in the District of Columbia, of some or all of the licensed and non-licensed materials, and also of the low-pressure pipe covering embodying some or all of such materials except in so far as such competition has been hindered, lessened, restricted, or forestalled by the understanding, agreement, combination, and conspiracy and the methods, policies, and practices done in pursuance thereto and in furtherance thereof, as hereinafter set forth.

PAR. 7. During the year 1931, application was made for respondent, Johns-Manville Corporation, for the Toohey patent which contained claims embodying the licensed materials and for an air-cell asbestos which, by the insertion of a wax "sizer," would make the asbestos covering both water repellent and moisture-proof. Such asbestos is used primarily for low pressure pipe covering. This patent was granted on September 4, 1934, and as part of, and an incident to, the agreement, understanding, combination, and conspiracy hereinafter set forth, respondent, Johns-Manville Corporation, did, on September 11, 1935, grant to respondent Tulloch an exclusive license to make, use, and sell, and exclusive right to issue non-exclusive licenses to others to use and sell the materials and products covered by the Toohey patent.

PAR. 8. Prior to and during the year 1934, respondents, Tulloch, Johns-Manville Corporation, The Philip Carey Company, a wholly owned subsidiary of the respondent, The Philip Carey Manufacturing Company, Norristown Magnesia and Asbestos Company, together with some of the other respondent corporations, entered into an unlawful agreement, understanding, combination, and conspiracy for the purpose, intent, and with the effect of substantially restricting, suppressing and eliminating actual and potential competition in price and otherwise in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of both licensed and non-licensed materials and also of the low-pressure asbestos covering embodying some or all of such materials. Thereafter, during the years 1935 and 1936, those respondent corporations which originally did not enter into said agreement, understanding, combination, and conspiracy, did, from time to time, adopt, join in, and become parties to same, and all of the respondents named in the caption hereof did, after they entered into, joined in or became parties to said agreement, understanding, combination, and conspiracy, by concerted action and in cooperation with one another, carry out, enforce, and maintain same and did perform some, or all of the acts and practices done in furtherance of said agreement, understanding, combination, and conspiracy, and in pursuance thereto, as herein alleged; although respondent, The Philip Carey Manufacturing Company, for the reasons hereinbefore set forth, is legally liable and responsible for the acts and practices of its wholly owned subsidiary, The Philip Carey Company, for the acts and practices of said subsidiary which were performed as a part of and in pursuance to, said agreement, under-

standing, combination and conspiracy, the said respondent, The Philip Carey Manufacturing Company, also acting individually, did in about June, 1941 adopt, join in, and become a party to same; and respondents, Tulloch, Johns-Manville Corporation, and The Philip Carey Manufacturing Company, are still carrying on, enforcing, and maintaining said agreement, understanding, combination, and conspiracy, and are performing many, if not all, of the methods, policies, and practices done in furtherance thereof and in pursuance thereto, as herein alleged.

PAR. 9. Pursuant to, in furtherance of, and to effectuate, the said agreement, understanding, combination and conspiracy, respondent corporations and respondent, Tulloch, cooperatively and concertedly, formulated, adopted, performed, and put into effect, among others, the following collusive methods of competition, policies, and trade practices:

1. Fixing and maintaining the prices at which, and the conditions under which, both licensed and non-licensed materials are offered for sale, and sold by respondent corporations to the various purchasers and users thereof.

2. Requiring and adopting a uniform method of computing and fixing the prices at which said licensed and non-licensed materials are offered for sale, and sold by respondent corporations to the various purchasers and users thereof, through the use by respondent corporations of a so-called "Manual of Unit Prices for Pipe Covering and Insulating Blocks," and by other means and methods.

3. Adopting and using uniform definitions of various classes of purchasers of said materials, so that respondent corporations all classify their respective customers in the same manner for pricing purposes.

4. Fixing, establishing, and maintaining fixed differentials in prices between different classes of customers.

5. Adopting and maintaining, by respondent corporations, uniform contracts for the sale of said materials by respondent corporations.

6. Adopting and maintaining by respondent corporations a system of selling said materials at delivered prices only, which system is designed to prevent, and does prevent, the differences in the cost of freight delivery from the respective places of business of respondent corporations to those of purchasers of such materials, from creating any advantage or disadvantage in price to said purchasers without regard from which of respondent corporations such purchasers may desire to purchase said materials. Such system of identical delivered prices is predicated upon the use by respondent corporations of so-called basing points, whereby the delivered prices on said materials shipped from the widely separated places of business of respondent corporations are calculated as though shipments were made from a single point or points having a common freight rate or common delivery cost to any given destination.

7. Adopting and maintaining a plan whereby the United States is divided into certain price zones, so that the purchasers from all the respondent corporations within a designated price zone or area, regardless of the varying costs of delivery from the places of business of respondent corporations to the places of business of such purchasers, are quoted and charged the same delivered prices on said materials sold by respondent corporations.

8. Simultaneously shifting particular localities or States from one delivered price zone in the United States to another such zone.

9. Establishing standards for the size and thickness of said materials and also of low-pressure asbestos covering embodying some or all of said materials, and fixing differentials in price between said materials or coverings of different sizes or thickness.

10. Discussing and adopting, before the granting of the Toohey patent on September 4, 1934, at meetings attended by respondent corporations, including the wholly owned subsidiary of respondent, The Philip Carey Manufacturing Company, The Philip Carey Company and respondent, Tulloch, a merchandising plan to be used, and which was used, by respondent corporations for the sale by them of both licensed and non-licensed materials and also of low-pressure pipe covering embodying some or all of such materials, under which merchandising plan said respondents specifically agreed, among other things, upon

(a) The classification of buyers from respondent corporations of said materials and covering, in order to determine the discounts and prices which customers of said corporations, so classified, were to receive.

(b) The zoning of the various States of the United States for pricing purposes, in order to nullify and neutralize differences in freight rates on said materials and coverings.

(c) The terms and conditions of sale which respondent corporations should, and did follow in the sale of said materials and of said covering.

(d) The imposition of rigid control of the prices respondent corporations charge their purchasers for said materials and said coverings under threat of the imposition of penalties against respondent corporations for any digressions therefrom.

(e) The arrangement for the appointment by each respondent corporation of a limited number of distributional accounts which were to be given, and were given, certain stated special discounts.

(f) The filing of price lists of said materials and covering, by respondent corporations, with respondent Tulloch, which price lists contained the delivered prices for and within the various price zones.

This merchandising plan was adopted during the period the National Industrial Recovery Act was in effect by respondent corporations, including The Philip Carey Company, the wholly owned subsidiary of respondent, The Philip Carey Manufacturing Company, but it never was approved by the Administrator of the National Recovery Administration.

11. Discussing and agreeing upon, in meetings, by correspondence and by other means and methods, a proposed form of licensing agreement between respondent, Johns-Manville Corporation, and respondent, Tulloch, regarding the use and sale of the licensed materials and products covered by the Toohey patent, a form of sub-license agreement between respondent, Tulloch, and respondent corporations regarding the same subjects and a schedule of prices, terms, and conditions of sale of licensed materials by respondent corporations under such sub-license agreement.

12. Entering into and carrying out said licensing agreement between respondent, Johns-Manville Corporation, and respondent, Tulloch, and also entering into and carrying out such non-exclusive sublicense agreements between respondent, Tulloch, and respondent corporations, including both respondent, The Philip Carey Manufacturing Company, and its wholly owned subsidiary, The Philip Carey Company, under the terms of which sub-license agreements respondent corporations are required to sell the licensed materials according to the schedule of prices,

terms, and conditions of sale which are fixed by agreement among said respondents.

13. Adopting by respondent corporations, as an integral part of said sub-license agreements which said respondent corporations had with respondent, Tulloch, a merchandising plan substantially identical with the plan hereinbefore set out in subparagraph (10) of this paragraph, with respondent, Tulloch, managing and supervising the operation and enforcement of same and also imposing penalties upon respondent corporations for failure to sell either the licensed or non-licensed materials at the delivered prices provided for in said plan.

14. Discussing and agreeing in advance, as to the changes and amendments to be made to sub-license agreements which respondent, Tulloch, had with respondent corporations for the sale by said corporations of both licensed and non-licensed materials, before respondent, Tulloch, actually announced such changes and amendments.

15. Agreeing upon the inclusion of non-licensed materials to be covered by said merchandising plan and thereby fixing the prices, terms, and conditions of sale of said materials.

PAR. 10. As an incident to, and a necessary result of, respondent corporations' agreement to use, and their use of, the basing point system of delivered prices, delivered prices were made identical within certain zones or areas defined by respondent corporations through agreements and understandings among said respondent corporations, notwithstanding differences in the actual freight from their respective places of business to various destinations within the same zone or area. As a further incident and necessary result, respondent corporations have habitually and systematically demanded, charged, accepted and received within the same delivered price zones and in other such zones, larger sums per unit of product from their customers located near their respective places of business than from their other customers located at greater distances within the same zones and in other such zones, and have thereby forced their nearby customers to pay more to respondent corporations for the licensed and non-licensed materials and the low-pressure pipe covering embodying such materials, in order that the more distant customers within the same area might pay less, thus depriving the nearby customers of any price advantage, which otherwise they would have by reason of their proximity to the places of production.

PAR. 11. Each of respondent corporations has acted, and some still act, in concert and cooperation with one or more of the other respondent corporations, by means of, and through, respondent, Tulloch, or by, and through, other means and methods, in doing and performing the methods, policies, practices, and agreements, hereinbefore set forth.

PAR. 12. The methods, policies, practices, and agreements of respondents, as herein alleged, are all to the prejudice of actual and potential competitors of respondent corporations and of the public; have a dangerous tendency to, and have actually hindered and prevented competition in commerce, between and among the various States of the United States and in the District of Columbia in the sale of both licensed and non-licensed material and of low-pressure pipe covering embodying some or all of such materials; have unreasonably restrained such commerce in said products; have a dangerous tendency to create in respondent corporations a monopoly in the sale and distribution of such products, 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 October 10, 1941, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption thereof; and thereafter, on December 27, 1941, issued and subsequently served its amended complaint in this proceeding upon the respondents named in the caption thereof, charging them with unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act. After the issuance of said amended 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 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 amended complaint, the answers filed 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 by opposing 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. (a) Respondent, Acme Asbestos Covering and Flooring Company (hereinafter sometimes referred to as Acme Asbestos), is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business located at Fulton and Elizabeth Streets, Chicago, Ill. It is a winder or converter of insulating materials, and on or about October 15, 1935, became a sublicensee of respondent, Tulloch, under United States Patent No. 1972500, hereinafter frequently referred to as the Toohey patent.

(b) Respondent, Asbestos, Asphalt and Insulation Manufacturing Company (hereinafter sometimes referred to as Asbestos Asphalt), successor to the Illinois Philip Carey Company, is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business located at 2100 West Fullerton Avenue, Chicago, Ill. It is a winder or converter of insulating materials, and on or about October 24, 1935, became a sublicensee of respondent Tulloch under the Toohey patent.

(c) Respondent, Atlantic Asbestos Corporation (hereinafter sometimes referred to as Atlantic Asbestos), is a corporation, organized and existing under the laws of the State of New York, with its office and principal place of business located at 2128 Westchester Avenue, Bronx, N. Y. It was organized on January 1, 1939, and was the successor by change of name to J. Ozurovich, Inc. It is a manufacturer of insulating materials, and on or about January 31, 1936, became a sublicensee of respondent, Tulloch, under the Toohey patent.

(d) Respondent, A. H. Bennett Company (hereinafter sometimes referred to as Bennett), is a corporation, organized and existing under the laws of the State of Minnesota, with its office and principal place of business located at 113 First Street North, Minneapolis, Minn. It is a winder or converter of insulating materials, and on or about March 13, 1936, became a sublicensee of respondent, Tulloch, under the Toohey patent.

(e) Respondent, The Philip Carey Manufacturing Company (hereinafter sometimes referred to as Carey), is a corporation, organized and existing under the laws of the State of Ohio, with its office and principal place of business located at Lockland, Ohio. It is a manufacturer of insulating materials, and on or about October 12, 1935, it became a sublicensee of respondent, Tulloch, under the Toohey patent. The Philip Carey Company, a New Jersey corporation, was a wholly owned subsidiary of and had common officers with Carey, and was engaged in the sale and distribution of products manufactured by Carey. It was dissolved by its parent in June 1941 for tax reasons and its parent corporation took over its business, its assets, and its obligations. Because of this relationship, no effort is made hereafter to distinguish between acts performed by Carey and those of its wholly owned and controlled subsidiary.

(f) Respondent, The Clark Asbestos Company (hereinafter sometimes referred to as Clark Asbestos), is a corporation, organized and existing under the laws of the State of Ohio, with its office and principal place of business located at 1893 East 55th Street, Cleveland, Ohio. It is a winder or converter of insulating materials, and on or about January 22, 1936, became a sublicensee of respondent, Tulloch, under the Toohey patent.

(g) Respondent, Empire Asbestos Products, Inc., (hereinafter sometimes referred to as Empire Asbestos), is a corporation, organized and existing under the laws of the State of New York, with its office and principal place of business located at Atlas Terminal, Glendale, Long Island, N. Y. It is a manufacturer of insulating materials, and on or about September 23, 1935, became a sublicensee of respondent, Tulloch, under the Toohey patent.

(h) Respondent, Gillen-Cole Company (hereinafter sometimes referred to as Gillen-Cole), is a corporation, organized and existing under the laws of the State of Oregon, with its office and principal place of business located at 714 S. W. Front Avenue, Portland, Oreg. It is a winder or converter of insulating materials, and on or about November 17, 1936, became a sublicensee of respondent, Tulloch, under the Toohey patent.

(i) Respondent, Johns-Manville Corporation (hereinafter sometimes referred to as Johns-Manville), is a corporation, organized and existing under the laws of the State of New York, with its office and principal place of business located at 22 East 40th Street, New York, N. Y. It is a manufacturer of insulating materials and is owner of the Toohey patent. On or about September 11, 1935, it granted an exclusive license under said patent to respondent, Tulloch, carrying the exclusive right to sublicense others, and coincidentally therewith it received a sublicense under said patent from respondent, Tulloch.

(j) Respondent, Keasbey & Mattison Company (hereinafter sometimes referred to as Keasbey & Mattison), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business located at Ambler, Pa. It is a manufacturer

of insulating materials, and on or about September 20, 1935, became a sublicensee of respondent, Tulloch, under the Toohey patent.

(k) Respondent, L. A. Rubber & Asbestos Works, Inc. (hereinafter sometimes referred to as L. A. Rubber), is a corporation, organized and existing under the laws of the State of California, with its office and principal place of business located at 124 East Third Street, Los Angeles, Calif. It is a winder or converter of insulating materials, and on or about November 23, 1936, became a sublicensee of respondent, Tulloch, under the Toohey patent.

(l) Respondent, G. A. MacArthur Company (hereinafter sometimes referred to as MacArthur), is a corporation, organized and existing under the laws of the State of Minnesota, with its office and principal place of business located at 2387 Hampden Avenue, St. Paul, Minn. It is a winder or converter of insulating materials, and on or about March 14, 1936, became a sublicensee of respondent, Tulloch, under the Toohey patent.

(m) Respondent, Norristown Magnesia and Asbestos Company (hereinafter sometimes referred to as Norristown), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business located in Norristown, Pa. It is a manufacturer of insulating materials, and on or about October 9, 1935, became a sublicensee of respondent, Tulloch, under the Toohey patent.

(n) Respondent, W. S. Nott Company (hereinafter sometimes referred to as Nott), is a corporation, organized and existing under the laws of the State of Minnesota, with its office and principal place of business located at Second Avenue North and Third Street, Minneapolis, Minn. It is a winder or converter of insulating materials, and on or about February 6, 1936, became a sublicensee of respondent, Tulloch, under the Toohey patent.

(o) Respondent, Pacific Asbestos & Supply Company (hereinafter sometimes referred to as Pacific Asbestos), is a corporation, organized and existing under the laws of the State of Oregon, with its office and principal place of business located at S. W. Front and Clay Streets, Portland, Oreg. It is a winder or converter of insulating materials, and on or about November 17, 1936, became a sublicensee of respondent Tulloch under the Toohey patent.

(p) Respondent, Plant Rubber & Asbestos Works (hereinafter sometimes referred to as Plant Rubber), is a corporation, organized and existing under the laws of the State of California, with its office and principal place of business located at 537 Brannan Street, San Francisco, Calif. It is a winder or converter of insulating materials, and on or about November 20, 1936, became a sublicensee of respondent, Tulloch, under the Toohey patent.

(q) Respondent, The Ruberoid Company (hereinafter sometimes referred to as Ruberoid), is a corporation, organized and existing under the laws of the State of New Jersey, with its office and principal place of business located at 500 Fifth Avenue, New York, N. Y. It is a manufacturer of insulating materials, and on or about October 7, 1935, became a sublicensee of respondent, Tulloch, under the Toohey patent.

(r) Respondent, Sall Mountain Company (hereinafter sometimes referred to as Sall Mountain), is a corporation, organized and existing under the laws of the State of Delaware, with its office and principal place of business located in Rockdale, Ohio. It is a manufacturer of insulating

materials, and on or about December 18, 1935, became a sublicensee of respondent, Tulloch, under the Toohey patent.

(s) Respondent, Standard Asbestos Manufacturing Company (hereinafter sometimes referred to as Standard Asbestos), is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business located in Chicago, Ill. It is a manufacturer of insulating materials, and on or about October 15, 1935, became a sublicensee of respondent, Tulloch, under the Toohey patent.

(t) Respondent, Donald Tulloch, Jr., is an individual, with his office and place of business located in Philadelphia, Pa. On or about September 11, 1935, he was granted an exclusive license by respondent, Johns-Manville, under the Toohey patent, with the exclusive right to grant non-exclusive sublicenses thereunder to others. Pursuant to this exclusive license, respondent, Tulloch, sublicensed the corporate respondents as aforesaid.

PAR. 2. The corporate respondents named in paragraph 1, except as otherwise specifically set forth therein, are engaged in the manufacture, processing, sale, and distribution of insulating materials, 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 business, each such corporate respondent (with the possible exception of Gillen-Cole) regularly transports insulating materials, or causes such materials to be transported, across State lines to purchasers thereof at locations outside the State in which such shipments originate. Said corporate respondents have maintained, and now maintain, a constant course of trade and commerce in insulating materials among and between the several States of the United States. Respondent, Donald Tulloch, Jr., is not individually engaged in the production, sale, or distribution of insulating materials, but has 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) The principal products involved in this proceeding are asbestos paper, asbestos rollboard, wool felt paper, and sponge felt paper, which are made in various weights or thicknesses; corrugated asbestos paper, which consists of a sheet of flat paper to which a sheet of corrugated paper has been cemented; and pipe coverings, boiler jackets, sheets and blocks, consisting of several plies of corrugated paper. Pipe coverings are made by rolling corrugated paper spirally so as to form a cylinder, then cut into short sections which are split longitudinally with one side open and the other hinged to facilitate fitting the two halves around a pipe. Pipe covering is made in varying numbers of plies of corrugated paper and in varying inside diameters to fit different sizes of pipe. The more common forms of pipe covering are low-pressure coarse corrugated, low-pressure fine corrugated, low-pressure laminated, wool felt, sponge felt, antisweat, frostproof, and high-pressure laminated. Pipe covering is usually sold in three-foot lengths, accompanied by staples and metal bands for use in holding it in position when placed around pipes. Some pipe covering is wrapped with canvas, and this canvas may be of varying weights or strength. Waterproof jackets are sold for use with pipe covering which, when installed, will be exposed to the elements. These jackets may be attached to the pipe covering when sold or furnished separately for attachment at a later time. There are numerous modifications and variations with respect to the above products not necessary to describe

here, and the record contains more detailed descriptions of the various products mentioned above. There is a substantial market for both plain and corrugated paper entirely apart from its use by respondents as a material in producing pipe covering, sheets, or blocks.

(b) Some of the respondents in this proceeding produce paper, corrugate it, fabricate it into pipe covering, sheets, and blocks; some do not produce paper, but carry out the other processes; and some merely convert corrugated paper into pipe covering, sheets, and blocks. Those who only fabricate paper purchased from others are known in the trade as winders or converters.

PAR. 4. (a) An NRA Code for the asbestos industry was approved November 1, 1933, with provision for establishing five divisions of the asbestos industry. The division pertinent to this proceeding was the Asbestos Paper and Allied Products Division, of which respondent, Tulloch, who had previously been secretary of a trade association in the asbestos industry and who had been connected with that industry since about 1922, was made manager. The Code provided for the filing of prices and for adherence thereto until other prices were filed. In addition, it authorized the members of each division to prepare simplification and standardization specifications and a merchandising plan which, subject to review by the administrator, became binding upon the members of the industry when approved by three-fourths of the members of the division to which it applied.

(b) Under the Code provision mentioned the members of the Asbestos Paper and Allied Products Division established a merchandising plan for their products the third revision and correction of which, dated December 21, 1933, became effective. The nature and particularity of the plan is illustrated by its provisions relating to pipe covering. It covered all sales of pipe covering by members in all parts of the United States except a Pacific Coast zone the limits of which were specified. It established and defined classes of buyers, required members to submit the names of customers to a merchandising committee of the division, and after approval by such committee, for the compilation therefrom of a master classified list to be available to members of the Code, with provision for additions or deletions subject to final decision by the Code manager. Definitions were established of carload, mixed car, stopover car, and less-than-carload shipments, with prohibition against hiring the trucks of customers or renting trucks to customers or making allowance for trucking charges where the material was picked up at the factory or warehouse by customers' trucks. Factory points, metropolitan areas, and manufacturers' warehouses were defined. Units of sale were established. Sales were required to be made at prices derived from one standard list price. Price differentials were fixed as between different thicknesses of coverings and different types of construction, as between the different geographical zones, and as between the various classifications of purchasers. Price differentials were fixed for differences in weight of canvas used on pipe coverings, for waterproof jackets, and for various types of bands. Procedures were established for many details of the handling of quotations and shipments, as well as the treatment of different classes of customers following an advance or decline in price. The method of determining warehouse prices was specified; the terms of payment, including cash discounts to different classes of buyers, were fixed; and important features of contracts were standardized. Consignment stocks were prohibited.

Substandard materials could not be offered below the normal selling schedule of the manufacturer. Territorial zones were defined for purposes of determining freight allowances. Similarly detailed schedules applied to other products.

(c) Before NRA there were a few practices such as zoning, customer classification, freight equalization, and the use of a standard price list, which were in general use in the industry, but with differences in detail as among different companies. The merchandising plan, a portion of which is briefly described above, was a composite and elaboration of these more or less general practices, supplemented by numerous other provisions, all of which were fitted together into a detailed and definite written document. This merchandising plan was continued in operation until the Schechter decision, and in general was used thereafter until it was replaced in November 1935 by a patent-licensing system, though with departures therefrom by individual manufacturers, the distinction being that it was not rigidly followed in all its details after the Schechter decision.

PAR. 5. (a) In September 1931, application for patent was made by certain employees of Johns-Manville and pursuant thereto U. S. Patent No. 1972500 was granted on September 4, 1934, and became the property of Johns-Manville. Without reference to the technical details of this patent, the change effected by its use in the manufacture of asbestos paper and insulating fabrics is the addition of a small proportion of melted paraffin and other ingredients to the mixture of water and asbestos or other fibers while in the paper beater being prepared for felting into paper. This is claimed to reduce the ability of the fibers so treated to absorb moisture from the air without resulting in a paper in which the pores between the fibers are closed. Also described is a means of treating the surface of the insulating fabrics with water-repellent materials to decrease the capillarity of the surface fibers for water. The claims of the patent, ten in number, cover various insulating materials, including those heretofore described, in which the wax treatment mentioned has been used.

(b) When pipe covering made in the ordinary way is exposed to moisture-laden air it absorbs moisture and expands slightly, and when thereafter it is applied to pipes carrying hot gases or liquids, the heat from such pipes drives the moisture from the covering and some shrinkage results. In instances where this occurs the shrinkage tends to create separations between sections of the pipe covering, thus exposing small sections of pipe and detracting from the appearance and in some degree the efficiency of the insulation. Pipe covering made pursuant to the Toohey patent is said not to shrink, or to shrink but little, thus overcoming or substantially reducing the effects of shrinkage as described above. The experimental and developmental costs of this patent to Johns-Manville were about \$20,000.

PAR. 6. (a) There is conflicting testimony as to whether or not respondent, Tulloch, approached a member of the industry in 1933, prior to the NRA Code, with a plan to use a patent for preshrinking asbestos paper as a means of stabilizing the price and merchandising conditions in the industry through a patent-licensing system. It is clear, however, that while Mr. Tulloch was manager for the Asbestos Paper and Allied Products Division of the Asbestos Code he was engaged upon a licensing plan for the industry under the Toohey patent. Within a month after the issuance of the Toohey patent Mr. Tulloch, with the cooperation and assistance of the larger and more important members of the industry, was

promoting and developing a licensing system and merchandising plan. Under date of October 11, 1934, Mr. Tulloch wrote the general sales manager of Keasbey & Mattison:

General—J. M. Patent No. 1,972,500
on Insulating Material

I am enclosing a copy of the above Patent for your perusal and to be turned over to Mr. Blagden if he cares to read it (Com. Ex. 358).

These patent-licensing proposals were being considered as an industry project for the common benefit of the members of the industry. Illustrative of this, on December 7, 1934, Mr. Tulloch, in his capacity as manager of the Asbestos Paper and Allied Products Division of the Code, wrote to Mr. Herbert Abraham, president of The Ruberoid Company, as follows:

Meeting—Re: Patents

I would like to arrange a meeting Thursday, December 13th in New York City, to discuss the Low Pressure Situation particularly in connection with certain new patents.

Would it be possible for you to attend such a meeting?

If not would Friday, the 14th, meet your conveniences.

The matter is vital to the paper and aircell division and your cooperation will be appreciated (Com. Ex. 32).

On December 11, 1934, Mr. Tulloch, in his capacity as manager under the Code, wrote A. S. Blagden, president of Keasbey & Mattison, as follows:

Re: Low Pressure Patents

Referring to my letter of the 10th, the meeting on the above subject, originally called for the Johns-Manville Conference room, has been transferred to the Commodore Hotel New York City, at the same time, 10:30 A.M., Thursday, Dec. 13th.

The room will be reserved in my name and posted on the bulletin board (Com. Ex. 361).

Counsel for Johns-Manville wrote that company on December 12, 1934, enclosing

* * * three copies of a draft agreement between Johns-Manville Corporation and Mr. Tulloch and three copies of a draft of sub-license agreement to be entered into by Mr. Tulloch and various members of the trade. * * * I am sending them to you now so that you may look them over before the meeting tomorrow morning * * * (Com. Ex. 348).

After the above meeting was held, Mr. Tulloch, under date of December 26, 1934, wrote Mr. Abraham of Ruberoid, who had been unable to attend because of absence from New York:

Re: License Agreement

I attach copy of revised license agreement.

This is submitted for your consideration and I will be glad to have any comments you care to make (Com. Ex. 51).

The enclosure accompanying this letter (Com. Ex. 52-A to N, inclusive) is a draft of a proposed license under the Toohey patent showing

respondent Tulloch as licensor. This draft is significant in indicating what the negotiating parties had in mind. It provided that the licensor could establish minimum selling prices and maximum terms and conditions of sale to the various classes of trade, and further:

The right and license granted hereunder is granted upon the express conditions and limitations that the Licensee shall not make, use or sell any sectional Asbestos Paper Pipe Covering, Sheets or Blocks, Rag Felt or Wool Felt Sectional Pipe Covering, Sheets or Blocks or other similar product used for the same or similar purpose, which does not embody, employ and contain the invention patented by said Letters Patent; that the Licensee shall not sell to any manufacturer of sectional Asbestos Paper Pipe Covering, Sheets or Blocks, Rag Felt or Wool Felt Sectional Pipe Covering, Sheets or Blocks or such other similar product, any paper or other product useful for any purpose for which paper embodying, employing and containing the invention patented by said Letters Patent is useful, unless such paper or other product embodies, employs and contains the invention patented by said Letters Patent; and that the Licensee shall not sell any paper or any such other product embodying, employing and containing the invention patented by said Letters Patent to persons or corporations which are not Licensees in good standing under a license granted by the Licensor under the said Letters Patent as herein provided.

When finally executed, the license did not contain the provision quoted above. Evidently Mr. Tulloch sent similar drafts of the proposed license to other important manufacturers. A letter dated February 8, 1935, from Keasbey & Mattison to Mr. Tulloch refers to Mr. Tulloch's letter of December 26, and states: " * * * we have given consideration to the agreement which accompanied it proposing a license under U. S. Patent No. 1,972,500, and have the following comments to make." The letter continues by criticizing the possibility that under one of its provisions Keasbey & Mattison might be required to pay double royalty, suggested that provision be made for an interval to afford a licensee time to change schedules when changes are required by the licensor, and concludes by stating:

If manufacturers and small winders representing a sufficient per cent of the output of the products coming within the scope of this patent, agree to become Licensees, and you will make the changes we have suggested in the proposed agreement, we shall be pleased to give the matter further consideration (Com. Ex. 33).

Under date of January 5, 1935, Mr. Tulloch wrote Mr. A. K. Burgstresser, president of Norristown:

General—Meeting—Wed. 1/9 (Toohey Patent)

I would like you to act as a member of an Advisory Committee on a merchandising plan under the Toohey Patent.

Will you please advise whether you could attend a meeting of this committee Wednesday, January 9, at 10:30 A.M. at the Hotel Commodore, New York. Unless I hear from you to the contrary, will expect you to attend (Com. Ex. 4).

The Committee referred to in the above letter to Norristown included representatives of Johns-Manville, Carey, Ruberoid, Norristown, and Keasbey & Mattison. From his long experience in the industry, Mr. Tulloch considered the volume producers to be Johns-Manville, Carey, Ruberoid, Norristown, Keasbey & Mattison, and Sall Mountain.

(b) While these negotiations were in progress, the Schechter decision was handed down and members of the Asbestos Code, including many of the respondents in this proceeding, prepared and submitted a so-called voluntary agreement to continue many features of the Code, including the filing of prices with the administrative agency and adherence to the prices and terms so filed, and with provisions looking to the preparation of a merchandising plan. The agreement was prepared in June and July of 1935 but was never approved by Governmental authorities and never became operative.

(c) During all this period, meetings were held by Mr. Tulloch with representatives of the more important of respondent manufacturers at which the proposed licensing plan, the terms of the license from Johns-Manville to Mr. Tulloch, the terms of the sublicenses to be issued by Mr. Tulloch, and the terms of the merchandising plan to be attached to such sublicenses were considered in detail. Drafts of such agreements were prepared and revised from time to time pursuant to suggestions by various parties. Several of the meetings referred to were held in New York, and at least one such meeting was held in Chicago.

(d) Illustrative of the final stages of the negotiations carried on concerning the license agreements, Mr. Tulloch, under date of September 5, 1935, wrote George W. Mills, Jr., of Carey:

I enclose agreements for your consideration in connection with the proposed license under the Toohey Patent.

I understand that you will advise me Monday whether these meet your approval for signature by your company (Com. Ex. 5).

On September 7, 1935, Mr. Mills of Carey replied, acknowledging the above letter and "draft of September 4, 1935 Agreement between Johns-Manville Corporation and yourself," suggested a number of changes, and continued:

I have hastily examined this agreement in order to be able to have something in your hands Monday morning. I will examine it further and if I have any other suggestions or comments will wire you Monday. If you have no word from me by wire Monday, you may consider this as my approval of the proposed license between Johns-Manville Corporation and yourself, granting you the right to license others. This, however, does not constitute my approval of the form of sublicense referred to as "Exhibit A" which is to be attached to this agreement as I have not as yet had an opportunity to examine same. As I advised you over the phone Thursday, I would try to approve the form of license between you and Johns-Manville, whereby you acquire the right to license others, so that you would have my approval or disapproval not later than sometime Monday, but I did not agree, as your letter suggests, to advise you by Monday whether the sublicense form Exhibit A met with my approval for the signature of the Philip Carey Company. That is a matter that requires not only my consideration but also conferences with our officials respecting the proposed schedules which you included in yours of August 30. * * * (Com. Ex. 6-A, B).

PAR. 7. (a) On September 11, 1935, an exclusive license from Johns-Manville to Mr. Tulloch granting him exclusive right to sublicense, and a sublicense thereunder from Mr. Tulloch to Johns-Manville with accompanying "Schedule of Minimum Prices, Terms and Conditions of Sale" for licensed materials, which schedule was known as the merchandising plan, were finally executed. Some changes of little conse-

quence were made at the time these agreements were signed. In writing Mr. Mills of Carey on September 13, 1935, sending him copies of the documents as executed, Mr. Tulloch characterized such changes thus:

You will note that there are a few changes but I think only minor ones (Com. Ex. 8).

(b) In the form executed, the exclusive license to Mr. Tulloch, among other provisions, gave him the exclusive right to sublicense others on terms no more favorable than those contained in the accompanying sublicense to Johns-Manville; required the payment by Mr. Tulloch of \$1,250 per year compensation to Johns-Manville; provided means for either party to terminate the agreement; and provided that at request of Johns-Manville Mr. Tulloch should bring suit against any infringer of the patent. The sublicense referred to in the exclusive license gave Johns-Manville a non-exclusive license under the patent; required payment of royalty fees to Mr. Tulloch amounting to one-fourth of one percent of the list value of licensed materials described in an accompanying schedule; provided right of inspection of books; prohibited the sublicensee from selling at lower prices or upon terms or conditions of sale more favorable than specified by the licensor; provided liquidated damages of 50 percent of the proper net selling price be paid to the licensor on any sales of licensed materials in violation of the licensor's schedule; established procedure for arbitrating disputes concerning the agreement; provided means for terminating the agreement; and contained a number of other provisions.

(c) The merchandising plan established pursuant to the sublicenses granted by Mr. Tulloch defined the various classes of purchasers and permitted classification or reclassification of any buyer by the licensor; required that contracts with buyers be in conformity with the merchandising plan; established time limits on quotations and shipment of orders; specified the manner of handling price advances or declines with customers and the nature and extent of protection which might be accorded customers or classes of customers; fixed the cash discount and terms of payment; prohibited future dating of invoices or the furnishing of consignment stocks; fixed a differential for warehouse prices; prohibited sales of substandard materials at less than the established prices without special permission; specified the manner of handling returns of material; required that unit prices be figured to the fourth decimal point and provided for the disposition of subsequent decimals and the manner of figuring extension totals; prohibited loans of licensed materials; established a pricing method on other than standard size materials; required that all invoices, estimate blanks, quotation sheets, or other papers used in quoting or selling conform to pertinent provisions of the license; forbade alternate quotations on public bids which resulted in a lower price than authorized; detailed the manner of invoicing materials; prohibited splitting of commissions with purchasers or the use of fictitious invoices; required that estimates from blue prints be for a specific quantity and that any additional materials needed to complete the job be charged for at the same rate; and prohibited anything not specifically permitted in the schedule.

Following these general provisions, the special conditions attached to the sale and distribution of the various licensed products were set out separately. One of these schedules covered pipe coverings, sheets and blocks, of the several types and defined standard construction thereof;

specified units of sale; supplied tables for calculating areas of sheets and blocks; fixed standard list prices for pipe coverings, sheets and blocks, and required prices be quoted in terms of discounts therefrom; outlined factory zones; divided the country into geographical zones for pricing purposes; specified the extent to which freight allowances might be made; established price differentials for different weights of canvas, for different types and number of bands, and for waterproof jackets with or without accessories; specified the method of figuring prices on sheets and blocks, flat, curved, or with cutouts; defined carload quantity, the method of applying carload prices, and the handling of stopover cars.

The schedule on corrugated or indented asbestos paper excluded from its application a few of the extreme western States, the exact limits excluded being defined; fixed the unit of sale and specified standard sizes; specified the prices to the various classes of purchasers in carlot and LCL quantities; defined carload and LCL shipments; fixed differentials for warehouse prices; made provision for special grades of these products and prices thereof; and outlined the manner in which freight might be equalized, naming the points to be used for equalization purposes.

The schedule for high-pressure laminated asbestos pipe covering, sheets and blocks, defined the unit of sale; specified constructions considered standard; required that prices be made f.o.b. factory in terms of discount from a standard list; specified points to be used for freight equalization purposes; forbade quoting prices on a freight-allowed basis unless demanded, and then only when calculated according to a specified formula; established differentials for different weights of canvas, types and number of bands, and waterproof jackets; stated a formula for figuring prices on sheets and blocks and price additions for special sizes, curved, or cylindrical shapes or cutouts; made the plan applicable to all but the Pacific Coast territory as defined; and fixed the prices for the different classifications of purchasers.

The schedule on asbestos paper and rollboard was made applicable to all of the United States except a Pacific Coast zone which was defined; specified units of sale; established standard weights and dimensions and fixed the prices therefor in carlot or LCL quantities and as between different classifications of customers; defined carload shipments, mixed cars, pool cars, and LCL shipments; fixed differentials for warehouse prices and prices on special grades; provided the formula for equalization of freight and specified points to be used for freight equalization purposes; established the relation between weights and thicknesses of paper and rollboard and required that other thicknesses be quoted on the basis of the next higher standard weight.

(d) The merchandising plan described above is in general outline and in many details merely a re-establishment, with additions, of the merchandising plan created by these respondents and others under NRA. The principal differences are that the present plan substitutes direct price fixing for price reporting, stops some loopholes for competition which existed in the NRA plan, and provides more direct and effective means of enforcement. The differences which exist between the two plans are largely a matter of degree rather than principle.

PAR. 8. (a) At various dates between September 11, 1935, when the license agreements were executed by Johns-Manville, and October 25, 1935, sublicenses were executed with twelve other members of the industry, including more important members such as Carey, Ruberoid,

Norristown, and Keasbey & Mattison. The merchandising plan attached to the sublicense to Johns-Manville bears the statement: "Effective—upon a date to be fixed hereafter by licensor." These sublicensees did not proceed individually to operate under the sublicenses when granted, or as soon thereafter as possible. Mr. Tulloch fixed November 1, 1935, as a common effective date for the commencement of operations under the patent in accordance with the merchandising plan described.

(b) The licensing system was viewed by members of the industry as being a program by and for the industry. This attitude on the part of both licensed and unlicensed concerns is illustrated below. The Chicago office of Johns-Manville announced the effective date of the merchandising plan to their salesmen by a circular dated November 1, 1935, reading in part:

We have been advised that effective November 1, 1935, the Low Pressure Insulation Manufacturing Industry begins operations under a patent and license agreement. The patent covers the manufacture of "Pre-shrunk" insulation materials.

Under the terms of the license, we and other manufacturers must manufacture and sell our products involving the patent in strict accordance with rules and price schedules established by the Licensor.

We have just been advised by the Licensor of the establishment of a schedule of selling prices, effective November 1, as per attached copy.

Note particularly that this schedule provides for an increase in the price of Low Pressure Pipe Coverings * * * (Com. Ex. 302).

On December 17, 1935, Clark Asbestos, which was not then a licensee, wrote Mr. Tulloch, stating:

Not having received any further correspondence since November 14th, 1935, we are anxious to know if the present set-up on low-pressure covering is in effect now.

The reason we ask, is that we have been following the prices as you laid down and find that our competitors are not doing this. In fact, the Poewils Asbestos Company had stated that they did not receive any new prices and are still quoting the old.

Please let us hear from you at once (Com. Ex. 183).

On December 21, 1935, Ehret Magnesia Manufacturing Company wrote Mr. Tulloch in part:

If you expect the Ehret Company to live up to the letter of your Merchandising Plan it is going to be necessary for you to send direct to us any memos or rulings, particularly regarding change in price or price clarification.

* * * * *

We realize we are not a Licensee under your patent but we are desirous of living up to all the rules and regulations just as if we were, but we can not do it unless we get the information just as soon as all Licensees get it (Com. Ex. 137).

Under date of December 27, 1935, Norristown acknowledged a memorandum from Mr. Tulloch concerning the above request by Ehret, and concluded by stating:

We would suggest at the time you send the Ehret Magnesia Mfg. Company their copy that you forward copy of such information direct to Grant Wilson, Inc., 4101 W. Taylor Street, Chicago, Ill. (Com. Ex. 138).

On January 2, 1936, Mr. Tulloch wrote Norristown concerning the Ehret request, stating in part:

In view of the fact that their financial arrangement is such that they practically control two accounts, which I hope will be Licensees, it does not seem to me that there can be any great amount of harm done (Com. Ex. 139).

Clark Asbestos, upon the insistence of Ehret, one of whose officials stressed to Mr. Clark the price-control and stabilization benefits rather than any advantages of preventing shrinkage through the use of the patent, became a licensee soon after the correspondence quoted above. Atlantic Asbestos, one of the respondent licensees, received the understanding that the licensing agreements and merchandising plan merely constituted a method adopted by the industry to stabilize asbestos products.

PAR. 9. The merchandising plan put into effect November 1, 1935, represented the result of common consideration by and understandings and agreements among some of the more important members of the industry, including Johns-Manville, Carey, Ruberoid, Norristown, and Keasbey & Mattison. Beginning soon after November 1, 1935, and continuing thereafter changes were made from time to time in its provisions. In general, these changes were made as a result of common consideration by the sublicensees and, insofar as possible in such a group, understanding and agreement among them. From a technical standpoint, all changes made were necessarily ordered by Mr. Tulloch in his own name, but such changes rarely, if ever, represented truly independent action by him. In fact, Mr. Tulloch consistently followed a policy of holding meetings with groups of licensees at frequent intervals to discuss proposed changes in prices, terms of sale, and other features of the merchandising plan which were suggested by him or by others. In addition, he regularly conducted negotiations concerning such matters with licensees individually and as a go-between for various licensees. The examples set out below illustrate these activities as well as the industry attitude referred to in the preceding paragraph. In a memorandum of February 3, 1936, addressed "TO ALL LICENSEES" Mr. Tulloch stated:

I would like to call a meeting of all Licensees at the Commodore Hotel, New York City, on Wednesday, February 19th at 10:30 A.M.

There are a number of matters of importance to discuss. Please advise promptly whether or not you will be present (Com. Ex. 142).

In a memorandum of February 20, 1936, addressed to licensees Mr. Tulloch stated:

*Subject: Committee Meeting—
Asbestos Paper Group*

I would like to call a meeting of the above group to shape policies on several matters for submission to a meeting of licensees around the middle of March.

The meeting is called for my office at 10:00 A.M., Thursday, February 27. Please advise promptly whether you can attend (Com. Ex. 146).

In writing Mr. Tulloch on February 24, 1936, the president of Norristown, in discussing pricing of foil and asbestos, stated in part:

We do think, however, that the Industry should reprice the $\frac{1}{2}$ " thick Aircell Boards when sold as a board without foil and this price should not exceed $3\frac{1}{2}$ ¢ per square foot to keep it in line with other thicknesses. My reason for asking this is that there will be some demands for this class of material and contrary to what we might say or think there is now being discussed this price by the user of such thickness of board. In the event the Industry agrees to this we would not price our $\frac{1}{2}$ " thickness of board lower than the price originally agreed upon or \$0.0608 per square foot and we will base our quotations on this price. I wish you would take this up with the Industry and see whether they will not agree on the price as outlined above (Com. Ex. 147).

Under date of July 28, 1936, Mr. Tulloch addressed a memorandum to licensees concerning change in Price Schedule II, stating in part:

Under separate cover you are being forwarded copies of revision of Schedule II.

You will note that many points indicate that I have used my best judgment in adopting compromises which seem to be in the best interests of the industry where differences of opinion on the part of licensees existed (Com. Ex. 321).

On September 22, 1936, Mr. Tulloch's office addressed a memorandum "TO ALL LICENSEES" concerning cut-size boards to equipment accounts, stating in part:

At our recent meeting it was agreed you would give further consideration to the above subject and make a study of the following suggestion designed to eliminate loss on waste. I shall appreciate your comment at your earliest convenience. The following is the suggestion * * * (Com. Ex. 324).

On October 29, 1936, Mr. Tulloch wrote Acme Asbestos concerning removing a provision in the schedules for protection of mechanical contractors and stated in part:

So far as the east is concerned, I'm sure we can remove it.

Can you let me hear on this by return mail so that we can make a decision before printing our new schedules.

Will appreciate it if you can agree with this viewpoint, and would like to know whether others in your territory, according to your recollection, feel as you do about it (Com. Ex. 214).

On November 9, 1936, Acme Asbestos replied to Mr. Tulloch's inquiry, expressing disagreement with a suggestion that the particular provision be removed and the matter be handled by special authorizations, stating in part:

For our own part we are very skeptical about the ultimate workability of any agreement in such a group as ours if it contains any number of "special authorizations." If we were entitled to such an arrangement, others would feel they were entitled to the same or different "special authorizations" which they thought desirable for their business.

If, on the other hand, by "special authorization" you mean it would be authorized in a bulletin to all licensees and in the same terms and conditions that now exist in the present schedule, this would not seem to us to be seriously out of order.

I do think Don you should strongly resist the effort of any one group or trade classification in the industry to appropriate too much of the protection and benefit of the License Agreement to itself. I feel that you as a guiding spirit of the low pressure industry should foster the interests of the plumbing and heating contractor and the job-

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ber just as much as the approved insulation contractors who are even now getting the long end of the deal * * * (Com. Ex. 215-A, B).

Under date of March 10, 1937, Mr. Tulloch's office addressed a memorandum to licensees concerning flexible range boiler jackets, stating:

Comments made on proof of the above Schedule were sent you February 4 and February 24. While there has been some difference of opinion relative to suggested changes, the general view seems to favor the following changes in the original proof.

* * * * *

If licensees approve the above, we can proceed at once to make effective Schedule VI—so your prompt comments are urged (Com. Ex. 221).

Under date of August 25, 1937, Acme Asbestos wrote Mr. Tulloch in response to his memorandum of August 13th concerning price protection in the event of price advances, stating in part:

We have reviewed your remarks very carefully and I hope you will defer ruling protection out until the matter has been openly discussed in a meeting. We think it quite too serious to pass on otherwise.

* * * * *

The advances our lines have made have been in some cases considerable over the last 12 or 18 months, but we think they have been accepted a lot more cheerfully in the trade by reason of the protection we have held out to them from time to time as advances have been published than might otherwise have been the case (Com. Ex. 225).

On December 9, 1937, Mr. Tulloch advised licensees in part:

A large majority of Licensees selling Flexible Range Boiler Jackets favor eliminating freight allowance on less than ten jackets.

* * * * *

Therefore on December 25th the following ruling becomes effective:

"Prices on less than 10 jackets F.O.B. factory. On 10 or more jackets prices are F.O.B. factory with full freight allowed" (Com. Ex. 227).

A few days later, on December 14, 1937, Mr. Tulloch advised licensees with regard to the same subject:

This is to advise that developments since publication of elimination of freight allowance on less than 10 jackets indicate the necessity for rescinding this ruling.

Will you therefore disregard the memo of December 9th on this subject.

It has been extremely difficult to find a common ground on which to solve this problem. It is obvious that allowance of freight on these small lots is expensive.

I would like your consideration of a general revision of Range Boiler Jacket prices, sufficient to take care of advancing costs, to be made effective sometime after the first of the year (Com. Ex. 228).

The respondent sublicensees who did not participate in the organization of the licensing system could not have remained ignorant of the fact that the merchandising plan was being administered upon the basis of cooperation, agreement, and understanding between and among the sublicensees and the licensor. The numerous communications from Mr. Tulloch to all his licensees alone make this plain, without reference to other negotiations and meetings.

PAR. 10. (a) Respondent Norristown owns a patent relating to range boiler jackets used principally for insulating household hot water tanks. Under this patent such jackets are made in flexible form, thus conserving shipping space and substantially reducing shipping costs as compared with rigid jackets. In 1933 Norristown licensed Carey under this patent but did not include any price-control provision in the license. In 1934 it licensed Johns-Manville and Sall Mountain under this patent, with provisions for price control. During the time Mr. Tulloch was actively negotiating arrangements for licensing under the Toohey patent, Norristown suggested to him that he also handle licenses under the Norristown patent. On June 26, 1934, Norristown wrote Mr. Tulloch in part:

We had a conversation some time ago with reference to your handling the License Agreements in connection with our flexible boiler jacket. We now hold such Agreement with Carey and J-M, and, while none of them are very profitable and we are not expecting them to be, we believe that by such cooperation far better results can be obtained (Com. Ex. 95).

On December 4, 1935, Norristown wrote Mr. Tulloch:

What progress have you made since we have turned over to you the License Agreement on Flexible Jackets?

There are a number of manufacturers such as National Asbestos, Standard Asbestos at Chicago, etc., who we think should be brought into line.

An expression from you will be appreciated by (Com. Ex. 104).

The lack of a price-control feature in the license to Carey was a hindrance to Norristown and Tulloch in securing licenses under the flexible jacket patent, and unsuccessful efforts were made to persuade Carey to accept a price-control provision in its license. For example, Norristown wrote Carey on November 9, 1934, in part:

Several days ago I was talking to Roy Hoff of the J-M Company and he told me that while in your company some time ago he mentioned the flexible jacket and the arrangement they have with us and the fact that he believed that a lack of cooperation on the part of some of the manufacturers was penalizing the profits that might be derived from the sale of these jackets. I have had this matter up with both Mr. Steffens and Mr. Moore from time to time and I want to give you an exact picture of our working arrangements at the present time.

You were the first manufacturer to cooperate with us and sign a License Agreement for the making of the flexible jacket. At that time we did not incorporate (sic) a price control, believing that we could work the matter out without such provision. Later the J-M Company signed an Agreement and in this we incorporated the price control and have found that it works very satisfactorily. They naturally want the same cooperation from other manufacturers who are under a License Agreement.

I realize that you are making several types of jackets and that for this reason you are not as much interested in the handling of this matter on a price basis as others might be but the fact that we have not been able to reach a satisfactory working arrangement with you on this part of the Agreement is the cause for our not being able to have several other manufacturers consent to handle the License Agreement for the present at least. This morning Keasbey & Mattison expressed their willingness to work with us on such an Agreement, again with the proviso that everybody of importance would do the same thing. I am, therefore, writing you and asking whether it would be possible to have you agree to such an arrangement (Com. Ex. 84).

The negotiations continued in a desultory manner during the remainder of 1934 and all of 1935. Mr. Tulloch made some efforts to secure licensees under the Norristown patent, and from time to time during this period various matters were taken up with him concerning operations under the Norristown patent. For example, on May 28, 1935, Norristown wrote Mr. Tulloch:

Some time ago I asked you to confirm the fact that K & M are not quoting our published prices on flexible jackets. Contrary to what you assume, they still have prices with some of the utilities that show a great reduction.

I wish you would check this very closely and if they do not intend playing ball we shall serve a legal notice on them to discontinue the making of this type material. We feel this is necessary to protect our interests as well as the other Licensees (Com. Ex. 100).

On January 8, 1935, Johns-Manville wrote Norristown in part:

We assume you will keep us advised periodically regarding your negotiations with Keasbey & Mattison and other range boiler cover manufacturers in regard to their accepting a license under your patent, as it would seem that this will have to be accomplished if we are ever to realize stabilization of prices in this field (Com. Ex. 91).

In writing Mr. Tulloch on January 16, 1936, concerning price cutting on boiler jackets in Detroit, Norristown stated in part:

* * * As you probably know, Empire and National are both selling boiler jackets today at ten per cent less than we are quoting. This is the reason I have thought it important that you proceed without further delay on the jacket proposition because it is coming (sic) serious in that area (Com. Ex. 141).

Sometime during 1936 the idea of bringing flexible boiler jackets under the Toohey patent was advanced and interest in securing licensees under the Norristown patent ceased. On July 23, 1936, Mr. Tulloch addressed a memorandum to his licensees reading:

I have a recommendation from one member of the Industry to the effect that Range Boiler Jackets which should be, and probably are being made out of patented materials, should be included in the schedules which I publish.

In order to get quick comments on the above, I am attaching, hereto, recommendations for both the rigid type and flexible type jackets.

I would appreciate your consideration of both of these, and your comments thereon (Com. Ex. 209-A).

(b) After extended consultations with and among licensees and after various revisions, Mr. Tulloch in the spring of 1937 published and put into effect under the Toohey patent Schedule VI, which controlled the pricing and merchandising of flexible range boiler jackets made from materials produced under the Toohey patent. This product had not theretofore been included in the merchandising plan. The schedule published was similar in scope, character, and degree of particularity to other schedules previously described. After the incorporation of flexible boiler jackets in the Tulloch merchandising plan, Norristown ceased publishing its own individual price schedules for this product and adopted the schedule published by Mr. Tulloch under the Toohey patent, as did its licensees and those of Mr. Tulloch who produced such jackets.

PAR. 11. (a) It was the policy and practice of respondent, Tulloch, to include in each sublicense only those of the products claimed to be subject to the patent as were produced by the particular concern to which

the sublicense was granted. The licenses to respondents, Bennett, Clark, Gillen-Cole, and Nott, covered only low-pressure pipe covering, sheets and blocks. Those issued to respondents, Acme Asbestos, Asbestos Asphalt, Empire Asbestos, L. A. Rubber, and MacArthur, included only low-pressure pipe covering, sheets and blocks, and corrugated asbestos paper. Those to Pacific Asbestos and Plant Rubber, included low-pressure pipe covering, sheets, and blocks, corrugated asbestos paper, and high-pressure laminated pipe covering, sheets and blocks. That to Atlantic Asbestos included low-pressure pipe covering, sheets and blocks, corrugated asbestos paper, and asbestos paper and rollboard. Those to respondents, Carey, Johns-Manville, Keasbey & Mattison, Norristown, Ruberoid, Sall Mountain, and Standard Asbestos, included low-pressure pipe covering, sheets and blocks, corrugated asbestos paper, high-pressure laminated pipe covering, sheets and blocks, sponge felt paper, wool felt paper, and asbestos paper and rollboard.

(b) The prices and merchandising plans established by respondent Tulloch applied only to the first sale of a licensed product by a licensee, except when the purchaser was also a licensee. Those respondents designated as winders or converters did not produce paper and necessarily bought their supplies thereof from others. The question of purchases by one licensee from another came up early in the history of the licensing plan. On January 21, 1936, Mr. Tulloch advised all licensees that:

It is quite definite that purchasing licensees must respect my selling schedules and pay royalties on materials they buy and sell, as well as materials they make and sell
* * * (Com. Ex. 308).

Although the sublicenses established minimum prices and completely controlled the merchandising of all of the products mentioned in (a) above, and also flexible boiler jackets, Mr. Tulloch did not require or collect royalties from licensees on any of the licensed products except pipe coverings, sheets and blocks.

(c) As heretofore stated, the sublicenses provided for liquidated damages when a licensee violated the merchandising plan. Under this provision Mr. Tulloch from time to time assessed and collected damages from licensees for infractions of the merchandising schedules.

(d) The amount paid to Johns-Manville by Mr. Tulloch for the exclusive license, \$1,250 per year, at most could no more than reimburse Johns-Manville for the development cost of the patent. When considered in connection with the fact that Johns-Manville was obligated to pay a royalty of one-fourth of one percent on all the licensed pipe covering, sheets, and blocks sold or used by it (and it produced no other kind), the financial return to Johns-Manville from the ownership of the patent was insignificant. Johns-Manville contends that it hoped to benefit from the licensing of others under the Toohy patent through the creation of a broader market for the licensed materials in which it would be able to hold its relative position. As a matter of fact, however, the other corporate respondents did little or nothing to promote and create demand for licensed products as against unlicensed. It is also evident from the record that insufficient consumer demand for licensed products developed to make it necessary, as a business policy, for respondents to remain in a position to supply licensed products to purchasers.

PAR. 12. The Commission has given consideration to the contention by some of the respondents that the various negotiations which preceded

the granting of the exclusive license to Mr. Tulloch represented no more than his efforts to ascertain whether it would be a profitable business venture for him to assume the obligations imposed by the exclusive license, and to the further contention that the negotiations concerning charges in or additions to the merchandising plans represented no more than the efforts of an intelligent business man, not himself engaged in the manufacture and sale of any of the licensed products, to inform himself of the conditions which existed in the manufacture and sale of such products to the end that he might properly administer the licenses. In view of the facts and circumstances shown in the record, however, the Commission concludes that these contentions are without merit.

PAR. 13. (a) The sublicenses granted by respondent Tulloch did not prohibit the sale by licensees of insulating materials made without utilizing the Toohey patent. Although sublicenses were accepted by some 25 concerns, including all the more important ones, there were some producers of pipe coverings and other insulating materials who did not accept sublicenses from Mr. Tulloch. Competition from these unlicensed concerns resulted in many sublicensees selling pipe coverings and other insulating materials not produced under license at prices less than those specified in the Tulloch schedules for licensed materials. Apparently Johns-Manville was the only sublicensee who did not meet such competition in this manner. Carey followed a policy of regularly selling in conformity with the Tulloch schedules except when a competitor offered lower prices on unlicensed materials. If Carey met such lower prices, it furnished unlicensed materials in filling such orders. The record shows a limited number of cases where unlicensed insulating materials were sold in accordance with the prices, terms, and conditions of the Tulloch merchandising plan. The price lists, conditions, and terms of sale issued by respondents to their customers were in accord with the Tulloch plan: they did not have two price lists or two merchandising plans, one for patented and the other for unpatented products. It is plain from the record that a number of the features of the Tulloch plan were frequently, if not regularly, used by respondents in the sale of unlicensed materials. These include matters such as terms of sale other than price, sales of certain types of products on a delivered-price basis and of other types on a freight-equalization basis, differences resulting from the use of the geographical zones, and other features of the merchandising plan. Respondents did not maintain and concurrently use two different merchandising plans for products which were alike except for the wax treatment, and as a practical matter it would have been difficult to do so.

(b) Certain unpatented materials are sold with pipe covering. These include canvas covers made a part of the pipe covering and accompanying accessories such as staples, metal bands, and waterproof jackets. The price for boiler jackets also included unpatented articles such as bands, staples, and asbestos cement, and differentials for extra bands were specified. By establishing price differentials on the same pipe covering when different weights of canvas were used, when different kinds or varying numbers of bands were supplied, and when waterproof jackets were furnished, as well as for unpatented articles used with boiler jackets, the sublicenses issued by Mr. Tulloch effectively fixed the prices for these unpatented articles when sold with pipe coverings or boiler jackets, as they usually are.

PAR. 14. (a) During the period the patent-licensing plan was being negotiated, prices of products covered by its claims were at a low level. When the licensing plan became operative, the prices of such products licensed under the Toohey patent were increased while similar products not made under that patent continued at the previous price levels until about the end of 1936. At that time a general upward trend began and continued until some indefinite time about 1940, when the condition known as a "seller's market" in such products was reached. It is common knowledge that in a seller's market sellers have little occasion for the use of or for interest in a price-stabilization program such as that provided by the Tulloch licensing plan heretofore described.

(b) The record shows that those respondents who discontinued the use of the Toohey patent ceased paying royalties to Mr. Tulloch on or about the following dates:

Pacific Asbestos	September 1937
W. S. Nott	March 1938
Plant Rubber	August 1938
L. A. Rubber	September 1938
Atlantic Asbestos	October 1938
Gillen-Cole	December 1938
Clark Asbestos	December 1938
Standard Asbestos	March 1939
Keasbey & Mattison	May 1939
Norristown	June 1939
Empire Asbestos	June 1939
Acme Asbestos	October 1939
Sall Mountain	January 1940
Ruberoid	May 1940
Bennett	July 1940
MacArthur	March 1941
Asbestos Asphalt	April 1941

Johns-Manville and Carey have continued to utilize the sublicenses which they hold and to produce and sell products covered by the Toohey patent.

(c) The sublicenses provided that they might be canceled on December 31 of any year by either party giving the other written notice 90 days in advance of that date. Some of the respondents have canceled their licenses in the manner provided; some have not done this, but have simply ceased utilizing the rights granted them by the sublicenses and therefore stopped paying royalties to Mr. Tulloch; and as to some, the record does not show whether or not cancellations in accordance with the terms set out in the sublicenses have been made.

PAR. 15. The Commission concludes from the evidence of record, and therefore finds, that the license from Johns-Manville to Mr. Tulloch was granted and the patent-licensing and merchandising plan heretofore described was established as a part of and as a means of effectuating the combination and conspiracy entered into and maintained by the respondents herein in the manner aforesaid. It further finds that the capacity, tendency, and effect of said combination and conspiracy and the acts and practices performed thereunder and in connection therewith by said respondents as set out herein has been, and is, to lessen, restrain, and suppress competition in the sale and distribution of pipe covering

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and other insulating materials as described herein in, among, and between the several States of the United States; to fix and maintain prices, terms, and conditions of sale for such materials and to deprive purchasers of such materials of benefits of competition in price; to collectively determine and establish classifications of customers for pricing purposes, and fix and determine price differentials as among such classes; to create substantial uniformity in contracts of sale and in terms and conditions specified therein; to determine and maintain uniform delivered prices on certain insulating materials; to determine and maintain uniform delivered costs to particular purchasers through a freight-equalization plan based upon specified equalization points; to determine and maintain geographical zones within which prices of certain insulating materials were made uniform, and using such zones so established for pricing purposes; to establish standard construction, size, and thickness specifications of products to facilitate price fixing thereon; and otherwise to promote and maintain their price-fixing combination and conspiracy and obstruct, lessen, and defeat any form of competition which threatened the maintenance and purpose of said combination and conspiracy.

CONCLUSION

The aforesaid combination and conspiracy, and the 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 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 amended complaint of the Commission, the answers filed thereto by respondents, testimony and other evidence in support of and in opposition to the allegations of said amended complaint taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, briefs in support of the amended 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 Section 5 of the Federal Trade Commission Act.

It is ordered, That the corporate respondents, Acme Asbestos Covering and Flooring Company; Asbestos, Asphalt and Insulation Manufacturing Company; Atlantic Asbestos Corporation; A. H. Bennett Company; The Philip Carey Manufacturing Company; The Clark Asbestos Company; Empire Asbestos Products, Inc.; Gillen-Cole Company; Johns-Manville Corporation; Keasbey & Mattison Company; L. A. Rubber & Asbestos Works, Inc.; G. A. MacArthur Company; Norristown Magnesia and Asbestos Company; W. S. Nott Company; Pacific Asbestos & Supply Company; Plant Rubber & Asbestos Works; The Ruberoid Company; Sall Mountain Company; and Standard Asbestos Manufacturing Company, their respective officers, agents, and employees; and respondent, Donald Tulloch, Jr., his agents, representatives, and employees, in or in connection with the offering for sale, sale, and distribution of insulating materials (asbestos paper or rollboard, wool felt or sponge felt paper, cor-

rugated asbestos paper, high- or low-pressure laminated asbestos pipe covering, sheets or blocks, low-pressure air-cell asbestos pipe covering, sheets or blocks, wool felt, antisweat, or frostproof pipe coverings, boiler jackets, waterproof jackets, and accessories usually sold with the above materials) 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, 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. Establishing or maintaining uniform prices, discounts, terms, or conditions in the sale of said materials, or in any manner agreeing upon, fixing, or maintaining any prices, discounts, terms, or conditions of sale at which such materials are to be sold.

2. Establishing or maintaining uniform differentials in price applicable to designated differences in specifications of said materials or to differences in the type or quantity of accessories sold with said materials.

3. Establishing or maintaining any classification of customers or any method or formula for classifying customers used or to be used in determining prices, discounts, terms, or conditions of sale to purchasers.

4. Continuing the uniform delivered-price zones heretofore fixed for making quotations and sales of materials, or establishing or maintaining any delivered-price zones which are similar to those heretofore used in that their use would result in making respondents' delivered prices identical despite their different costs of delivery.

5. Selecting or designating particular locations to be used as freight equalization points for pricing purposes.

6. Establishing or maintaining an exclusive method (such as f.o.b. factory, or f.o.b. factory with freight equalized, or delivered to destination) for quoting and pricing a particular material or group of materials.

7. Establishing or maintaining any formula for calculating unit prices, or for calculating total prices from unit prices, or using any formula so established or maintained.

8. Maintaining or continuing or aiding or assisting in the maintenance or continuance of the licensing system and merchandising plan heretofore established under and pursuant to the Toohey patent.

It is further ordered, That nothing in this order shall be construed to prohibit the owner or owners of the Toohey patent from granting lawful licenses to others to use said patent, or to prevent any respondent herein, or others, from taking lawful licenses to use said patent.

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.

IN THE MATTER OF

EDWARD LOWENTHAL, TRADING UNDER THE NAMES
INTERNATIONAL RESEARCH AND BUREAU OF INDUS-
TRIAL ALLOCATION; AND SIDNEY DEAN SARFF AND
H. J. WHITTINGTON

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

Docket 4832. Complaint, Sept. 8, 1942—Decision, Apr. 27, 1944

Where an individual with whom were associated two other persons as below set forth, engaged in interstate sale and distribution of mailing cards, forms, questionnaires and other printed matter designed for use in obtaining information concerning alleged delinquent debtors and to deceive persons from whom information was sought as to their purpose, and including a printed sheet headed "INTERNATIONAL RESEARCH, Room 801—Evans Bldg., 1420 New York Ave., N.W., Washington, D. C." and "RE: TRUST FUND NO. _____," which—after advising addressee that his name was "among those to whom we have been ordered to pay a sum of money from the above trust fund" and that "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," that, therefore, the complete information "requested below" was required, upon receipt of which remittance would be made but that failing to receive requested information not later than 15 days "we are instructed to make other dispositions of the amount involved"—called on the attached form, addressed to said International Research" at the above address and, under the statement "for the purpose of establishing my identity with your firm, I submit the following information," for debtor's name and address, those of his employer and bank and a personal reference—a similar form being used in addressing persons other than debtors;

Making use of a plan under which said form, accompanied by an envelope addressed to said "International Research," was enclosed in an unaddressed envelope, the units were sold to creditors and collectors and collection agencies who addressed and stamped them and shipped them in bulk to aforesaid two other persons associated with said individual, at the address above given in Washington, D. C., by whom they were mailed separately in said city so that each was postmarked Washington, D. C., and by whom the unopened replies received were shipped in bulk to said individual in Chicago, where latter identified the returns by numbers and sent them to the customers to whom the blank forms were originally sold, and mailed to person executing the questionnaire, from one to five pennies, from a supply of small change maintained in a cigar box in his home enclosed in a small envelope on which was printed: "RE: TRUST FUND NO. _____ QUESTIONNAIRE RECEIVED AND PROPERLY ANSWERED. ENCLOSED YOU WILL FIND THE AMOUNT RESERVED AND SET ASIDE FOR YOU. OUR FILES ARE CLOSED AND FURTHER CORRESPONDENCE UNNECESSARY. INTERNATIONAL RESEARCH."—

- (a) Falsely represented, and placed in the hands of his customers means of falsely representing that "International Research" had its place of business in Washington, D. C., and that recipients of forms might be the beneficiaries named in some trust and entitled to money or other property in substantial amount;

The facts being said representations, notwithstanding the subsequent establishment by him of a so-called trust fund in the amount of \$100, of which his wife was desig-

nated "trustee and trustor," and from which no withdrawals were made—though additional deposits were said to have been made—were false, the trivial sums actually sent to correspondents having been taken from a supply of small change maintained by him at his home, as aforesaid; and replenished from his own funds; and Where said individual, also engaged as aforesaid under the name "Bureau of Industrial Allocation" and in interstate sale and distribution of 3-unit perforated cards similar to questionnaires sent out by the Selective Service Administration, which (1) advised the addressee that "The within information is essentially important in its employment research service. All information is strictly confidential. 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," requested him to "complete the attached card"—addressed to the "Bureau of Industrial Allocation," Suite 801 Evans Building, Washington, D. C.—"and mail within five days" and stated that "your immediate attention is requested in order to keep our records up to date," (2) on said return cards called for the name and address of the debtor and his employer and such other information as his married status, wife's name, automobile, etc., (3) contained on the back a so-called "statistical control" chart and at the bottom the words "DO NOT WRITE IN THIS SPACE, BD NO. 1013, Registrant: _____," and attached thereto a stub designated "Voucher" with the direction "Detach This Stub and Mail Card Within 5 days," and on the reverse side bore the following: "VOUCHER, Registration Number *BD No. 1013*, Regional Agent for *CENTRAL AREA*, Keep This Stub," said "Control and voucher" having no other purpose than to serve as window dressing to aid in concealing from the addressee said individual's real purpose;

Making use of a scheme similar to that above described—

(b) Represented and placed in the hands of his customers the means of representing that said "Bureau of Industrial Allocation" had some relation to industry or employment therein and that the inquiry emanated from a governmental agency; when in fact the information sought was entirely for the purpose of aiding in collecting alleged debts;

With effect of misleading and deceiving debtors of his customers and placing in the hands of latter, as aforesaid, means to mislead them, as a result of which they furnished personal information which they would not otherwise have supplied; and Where aforesaid two persons, associated with said individual in his said plan for obtaining information, and constituting an important and essential part thereof—

(c) Assisted as aforesaid in bringing to fruition the purpose for which the misrepresentations were made by him:

Held, That aforesaid acts and practices of the persons above 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.

Mr. Myer L. Cherkas, of Chicago, Ill., for respondents; with whom also appeared—

Mr. Ralph D. Pittman, of Washington, D. C., for H. J. Whittington.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Edward Lowenthal, an individual, trading under the names International Research and Bureau of

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Industrial Allocation, and Sidney Dean Sarff and H. J. Whittington, individuals, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Edward Lowenthal, is an individual, trading under the names International Research and Bureau of Industrial Allocation, with an office and principal place of business at 188 West Randolph Street, Chicago, Ill.

Respondents, Sidney Dean Sarff and H. J. Whittington, are individuals, with an office and principal place of business at No. 801, Evans Building, 1420 New York Avenue, North West, Washington, D. C.

PAR. 2. Respondent Edward Lowenthal is now, and has been for more than six months last past, engaged in the business of selling and distributing envelopes, and printed matter referred to by bill-collectors as "lures," and post cards.

Said respondent Lowenthal causes the said envelopes, "lures" and cards to be transported from his aforesaid place of business in the State of Illinois 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 the said articles in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 3. In his business of selling and distributing envelopes and "lures," respondent Lowenthal has traded under the name "International Research."

The said envelopes and "lures" are designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

The "lure," designed to be sent to the debtor, is in the following form:

INTERNATIONAL RESEARCH

TO THE ADDRESSEE Room 801-Evans Bldg. RE: TRUST
OF THIS NOTICE: 1420 New York Ave., N. W. FUND NO. -----
Washington, D. C.

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 PAY-
MENT CAN BE MADE.

FOR THIS REASON WE REQUIRE THE COMPLETE INFORMATION
REQUESTED BELOW. UPON RECEIPT AND VERIFICATION THEREOF
REMITTANCE WILL BE MADE.

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Complaint

PLEASE GIVE THIS MATTER YOUR PROMPT ATTENTION. UNLESS WE RECEIVE THE INFORMATION REQUESTED NOT LATER THAN FIFTEEN DAYS FROM THE DATE THAT THIS NOTICE WAS MAILED WE ARE INSTRUCTED TO MAKE OTHER DISPOSITIONS OF THE AMOUNT INVOLVED.

INTERNATIONAL RESEARCH

TEAR OFF HERE, RETAIN UPPER PART, MAIL LOWER PART COMPLETELY FILLED OUT, IN ENCLOSED ENVELOPE PROPERLY STAMPED

Do not mail any other identification papers. This form is sufficient until further notice

INTERNATIONAL RESEARCH

Room 801-Evans Bldg.

1420 New York Ave., N. W.

Washington, D. C.

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) _____
(FIRST NAME) (MIDDLE INITIAL) (LAST NAME)

MY RESIDENCE IS _____
(NO. STREET) (CITY) (STATE)

PARENTS _____
(FATHER'S NAME) (MOTHER'S MAIDEN NAME)

I AM EMPLOYED BY _____ AS _____
(NAME OF EMPLOYER) (OCCUPATION)

ADDRESS OF EMPLOYER _____
(STREET) (CITY) (STATE)

I BANK AT _____
(NAME OF BANK) (BRANCH) (CITY) (STATE)

PERSONAL REFERENCE _____
(NAME) (STREET ADDRESS) (CITY) (STATE)

(SIGNED) _____

When sent to persons who may have knowledge concerning debtors, the "lure" is slightly modified to suit the occasion, but is essentially the same as that set forth above.

In the spaces following "Trust Fund No.," when the "lures" are delivered to purchasers thereof, respondent has placed a number, which is his serial number and identifies the customer to him.

The purchasers inserts in the "lures" the names of the debtors about whom he seeks information, encloses them in envelopes sold by respondent,

and addresses them to the debtors or others. Upon these envelopes in the upper left hand corner appears:

International Research
Room 801-Evans Building
1420 New York Avenue, N. W.
Washington, D. C.

With the "lures" are also enclosed unstamped envelopes, sold by respondent, to be used by the addressees in returning the questionnaires, addressed to "International Research" at the Washington, D. C. address given above.

Said purchasers place the necessary postage stamps on the envelopes addressed to the debtors, and others, and enclose them in large envelopes, which they then mail to "International Research" at the Washington, D. C. address given above.

At the said Washington, D. C. address they are received by respondents Sarff and Whittington and the individual communications to debtors, and others, deposited by them in the United States mail.

Such questionnaires as are returned are received by respondents Sarff and Whittington, at the Washington, D. C. address, and, without the envelopes being opened by them, sent by them to respondent Lowenthal at his Chicago, Ill. address. Lowenthal opens the envelopes, identifies his customers by the serial numbers, and sends the questionnaires to the proper customers. Sometimes, but not always, he sends to debtors who return the questionnaires, out of his own funds, trivial sums of from one penny to four pennies, in an envelope upon which it is stated that the sum is the "amount reserved and set aside" for the debtor.

PAR. 4. By means of the aforesaid "lures" and envelopes respondent Lowenthal 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, and that the value of such interests is substantially in excess of the cost of obtaining them to the debtors, and that the actual business location of said respondent is at Washington, D. C., which has the effect of inducing the recipients of the "lures" the belief that the representations concerning the trust funds are true and that the questionnaires have no connection with attempts to collect debts.

The said representations are false and misleading. In truth and in fact, there are no trust funds in the hands of respondent Lowenthal in which the debtors concerning whom information is sought have any interest, substantial or otherwise. The Washington, D. C. address is not a business address of respondent Lowenthal, but is merely a station from which letters are received and mailed and forwarded by respondents Sarff and Whittington as set forth above.

PAR. 5. In his business of distributing and selling post cards, respondent Lowenthal has traded under the name "Bureau of Industrial Allocation."

Through the use of the said name, said respondent has represented, directly and by implication, that his business bears some relation to industry and to employment therein.

This representation is false and misleading. In truth and in fact, respondent's business has nothing whatever to do with industry or employ-

ment therein, and the said name is merely a disguise for the true nature of his business.

PAR. 6. The said post cards are designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors, and are in the form exemplified by a photostatic copy thereof, Marked Exhibits A and B, attached hereto, and by this reference incorporated herein and made a part hereof.

The cards are numbered by respondent Lowenthal, sold by him, addressed and stamped for delivery, but not for return by his customers, sent by them to the said Washington, D. C. address, and there mailed by respondents Sarff and Whittington. The cards returned by the addressees to the Washington, D. C. address, are sent by Sarff and Whittington to respondent Lowenthal and by him delivered to his customers, the whole procedure being to all practical intents and purposes identical with that followed when the "trust fund lures" are used.

PAR. 7. By means of the aforesaid post cards respondent Lowenthal has falsely represented, and placed in the hands of his customers means of falsely representing, directly and by implication, to his customers debtors, that the request for information comes from an agency or branch of the Government of the United States.

The said representation is false. In truth and in fact, the respondent is in no way connected with the Government of the United States or any branch or agency thereof, and the cards are merely a device of said respondent used for the purpose of obtaining information for his own purposes and those of his customers.

PAR. 8. The participation of respondents Sarff and Whittington, as stated herein, is an essential part of the accomplishment of the plans for obtaining the desired information, whether the envelopes and "lures" or the post cards are used.

PAR. 9. 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 and 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 and to incur expense for postage in connection therewith.

Many agencies of the United States do, and for some time last past have, sent out to members of the public vocational questionnaires resembling the forms used by respondents on said post cards. Among the agencies of the United States which have sent out such vocational questionnaires is the Selective Service System. Among the persons receiving said post 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 post cards and requests for information have been sent to them by the Selective Service System. As a result of such beliefs and doubts many inquiries, both in person and by mail, are addressed to local boards and other divisions of said Selective Service System, and correspondence and other effort on the part of said Selective Service System, the Army of the United States, and other governmental divisions and agencies is made necessary, all of which is contrary to the public interest.

PAR. 10. The aforesaid acts and practices of 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.

VOUCHER

Registration Number **A No. 2451**

Regional Agent for **CENTRAL AREA**
Keep this stub

Name.....
 City.....
 Street or Route.....
 State.....
 Employed by.....
 Address.....
 Married.....
 Single.....
 Wife's Name.....
 Employed.....
 in a firm.....

Make of Auto.....
 Condition of Tires.....
 Distance to place of employment.....
 STATISTICAL CONTROL

Classification	Verified		Sub. No.	
	Mo	Day	Mo	Day
1	0	0	0	0
2	0	0	0	0
3	0	0	0	0
4	0	0	0	0
5	0	0	0	0
6	0	0	0	0
7	0	0	0	0
8	0	0	0	0
9	0	0	0	0
10	0	0	0	0
11	1	1	1	1
12	1	1	1	1
13	1	1	1	1
14	1	1	1	1
15	1	1	1	1
16	1	1	1	1
17	1	1	1	1
18	1	1	1	1
19	1	1	1	1
20	1	1	1	1
21	1	1	1	1
22	1	1	1	1
23	1	1	1	1
24	1	1	1	1
25	1	1	1	1
26	1	1	1	1
27	1	1	1	1
28	1	1	1	1
29	1	1	1	1
30	1	1	1	1

DO NOT WRITE IN THIS SPACE
A No. 2451
 REGISTRANT

Return to
**BUREAU OF
 INDUSTRIAL ALLOCATION**
 Evans Building
 WASHINGTON, D. C.

Return and Forwarding Postage Guaranteed

PLACE
13c
 STAMP
 HERE

HOWARD L. POL EXHIBIT X
 OBTAINED *8-19-47* 193
 BY *[Signature]*
 ATTORNEY-EXAMINER
 FILE NO. *28-2-3874*

(Exhibit "A")

(Exhibit "B")

Washington, D. C.

To Addressee:

The within information is essentially important in its employment research service. All information is strictly confidential. 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.

Please complete the attached card and mail within 5 days. Your immediate attention is requested in order to keep our records up to date.



[Signature]

Registrar

DETACH HERE

Detach This Stub and Mail Card
 Within 3 Days

PLACE
 1c
 STAMP
 HERE

**BUREAU OF
 INDUSTRIAL ALLOCATION**

Suite 801 - Evans Building

Washington, D. C.

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 8, 1942, issued and subsequently served its complaint in this proceeding upon respondents, Edward Lowenthal, Sidney Dean Sarff, and H. J. Whittington, individuals, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint herein 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 said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answers thereto, testimony and other evidence, report of the trial examiner, brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Edward Lowenthal, is an individual, trading as International Research and as Bureau of Industrial Allocation, with his office and principal place of business at 188 West Randolph Street, Chicago, Ill. He has been, and is now, engaged in the sale and distribution of mailing cards, forms, questionnaires, and other printed matter designed for use in obtaining information from or concerning alleged delinquent debtors.

Respondents, Sidney Dean Sarff and H. J. Whittington, are individuals, with their office and principal place of business at 1420 New York Avenue, N. W., Washington, D. C. They assist and cooperate in the conduct of the aforesaid business in the manner hereinafter found.

PAR. 2. Respondent, Lowenthal, causes the said mailing cards, forms, questionnaires, and other printed matter, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof in various other States of the United States. Said respondent maintains, and has maintained, a course of trade in said mailing cards, forms, questionnaires, and other printed or written matter in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, Lowenthal, sells said mailing cards and other printed material to merchants and various collection agencies for their use in locating and securing information from or concerning debtors and in making collections from such debtors. The cards, forms, questionnaires, and other printed matter sold by said respondent are designed to mislead and deceive persons from whom information is sought as to the use and purpose for which the information is desired. One type of material sold by respondent consists of a printed sheet which reads as follows:

Findings

38 F. T. C.

INTERNATIONAL RESEARCH

TO THE ADDRESSEE Room 801—Evans Bldg. RE: TRUST
 OF THIS NOTICE: 1420 New York Ave., N. W. FUND NO. -----
 Washington, D. C.

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 PAY-
 MENT 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 YOUR PROMPT ATTENTION. UNLESS
 WE RECEIVE THE INFORMATION REQUESTED NOT LATER THAN
 FIFTEEN DAYS FROM THE DATE THAT THIS NOTICE WAS MAILED
 WE ARE INSTRUCTED TO MAKE OTHER DISPOSITIONS OF THE
 AMOUNT INVOLVED.

INTERNATIONAL RESEARCH

Tear off here, retain upper part, mail lower part completely filled out, in
 enclosed envelope properly stamped

Do not mail any other identification papers. This form is sufficient until
 further notice

INTERNATIONAL RESEARCH

Room 901—Evans Bldg. RE: TRUST
 1420 New York Ave., N. W. FUND NO. ----- DATE ----- 19-----
 Washington, D. C.

FOR THE PURPOSE OF ESTABLISHING MY IDENTITY WITH YOUR
 FIRM, I SUBMIT THE FOLLOWING INFORMATION:

MY FULL

NAME IS (PRINT PLAINLY) -----
 (FIRST NAME) (MIDDLE INITIAL) (LAST NAME)

MY RESIDENCE IS -----
 (NO., STREET) (CITY) (STATE)

PARENTS -----
 (FATHER'S NAME) (MOTHER'S MAIDEN NAME)

I AM

EMPLOYED BY ----- SS -----
 (NAME OF EMPLOYER) (OCCUPATION)

ADDRESS

OF EMPLOYER -----
 (STREET) (CITY) (STATE)

I BANK AT -----
 (NAME OF BANK) (BRANCH) (CITY) (STATE)

PERSONAL

REFERENCE -----
 (NAME) (STREET ADDRESS) (CITY) (STATE)

(SIGNED) -----

(A similar form which varies but slightly is used in addressing persons other than a debtor.) This form, accompanied by an envelope addressed to International Research, Room 801 Evans Building, 1420 New York Avenue, N. W. Washington, D. C., is enclosed in an unaddressed envelope. Units of this type, when sold to creditors and collection agencies, are addressed and stamped by such purchasers and thereafter shipped in bulk to respondents Sarff and Whittington, who remove them from the bulk package and deposit them separately in the mail in Washington, D. C., so that each is postmarked "Washington, D. C." Replies received by respondents Sarff and Whittington as a result of the inquiries mailed out are shipped in bulk, unopened to respondent, Lowenthal, in Chicago. When the questionnaires are received and opened by Lowenthal, he is able to identify the returns received by reason of identification numbers, placed on the printed sheets, and he thereupon sends them to the customer to whom the blank form was originally sold. He also mails to the person executing such questionnaire in a manner considered appropriate and sufficient a trivial sum of from one to five pennies, the amount depending upon how he feels at the time. The pennies sent to those who reply to questionnaires are enclosed in a small envelope on the face of which is printed:

RE: TRUST FUND NO. -----

QUESTIONNAIRE RECEIVED AND PROPERLY ANSWERED.

ENCLOSED YOU WILL FIND THE AMOUNT RESERVED AND SET ASIDE FOR YOU.

OUR FILES ARE CLOSED AND FURTHER CORRESPONDENCE UNNECESSARY.

INTERNATIONAL RESEARCH

On August 3, 1942, some time after he became engaged in the sale of the printed materials described above, respondent Lowenthal established a so-called trust fund by opening Savings Share Account No. 15817 in the amount of \$100 in the First Federal Savings & Loan Association of Chicago, Ill. The "trustee and trustor" designated is the wife of respondent Lowenthal. The fund is subject to the sole discretion of the trustee. The beneficiary referred to "shall be the correspondents of International Research." The appointment of a "trustee" is controlled by respondent Lowenthal. No withdrawals have been made from this account, but additional deposits are said to have been made. The trivial sums actually sent to correspondents are taken from a supply of small change maintained by respondent Lowenthal in a cigar box at his home and replenished from respondent's own funds from time to time. This was the case both before and subsequent to the establishment of the so-called trust fund.

PAR. 4. The representations made as aforesaid caused correspondents to believe that "International Research" has its place of business in Washington, D. C., and that they may be the beneficiaries named in some trust and entitled to money or other property in substantial amount, and as a result of such erroneous belief they furnish information sought by respondent Lowenthal for the use of his customers. In truth and in fact, respondent, Lowenthal's, place of business is not in Washington, D. C., and there are no trust funds in his hands in which the debtors concerning

whom information is sought have any right or interest whatsoever. Respondent Lowenthal thus makes false representations as aforesaid and places in the hands of his customers means of making such false representations, and these representations have had, and have, the capacity and tendency to, and do, mislead and deceive those from whom information is sought into erroneous beliefs as aforesaid. As a result, individuals furnish personal information which they would not otherwise supply to respondent.

PAR. 5. Another method used by respondent Lowenthal to secure information for the use of his customers is carried on under the name "Bureau of Industrial Allocation." The mechanics followed are the same as in the case of International Research. The printed forms and material are sold to customers who place addresses on the units thereof and ship the addressed units in bulk to respondents Sarff and Whittington in Washington, D. C., who deposit the units separately in the mails there, receive the replies and ship them in bulk, unopened, to respondent, Lowenthal, in Chicago, who identifies them by the code numbers appearing thereon and sends each reply to the customer who originally purchased the forms.

The materials sold consist of a card of three units separated by perforated lines. The message to the addressee of the card reads:

The within information is essentially important in its employment research service. All information is strictly confidential. 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.

Please complete the attached card and mail within 5 days. Your immediate attention is requested in order to keep our records up to date.

The return card is addressed to the Bureau of Industrial Allocation, Suite 801 Evans Building, Washington, D. C., and the reverse side thereof contains a questionnaire, as follows:

Name -----
Print Name in Full

City ----- State -----

Street or Route -----

Employed By -----

Address -----

Married ----- Single -----

Wife's Name ----- Employed -----
Yes or No

Make of Auto -----

Condition of Tires -----

Distance to place of employment -----

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Findings

STATISTICAL CONTROL

Classification					Verified					Sub. No.										
Occup.					Base			Mo.		Day		Yr.		Tec.	Lab.	Off.	Pro.	Sten.	Bkp.	Sls.
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3

DO NOT WRITE IN THIS SPACE

BD NO. 1013

Registrant:

The card designated as "VOUCHER" is on a stub carrying directions "Detach This Stub and Mail Card Within 5 Days," and on the reverse side thereof appears the following:

VOUCHER

Registration Number BD NO. 1013

Regional Agent for CENTRAL AREA

Keep This Stub

The voucher stub has no use or purpose, and neither does the so-called "Statistical Control" chart on the return card, except to serve as window dressing to aid in concealing from the addressee respondent's real purpose. The Selective Service Administration sends employment and other questionnaires to registrants and the format of respondent's cards,

as well as the substance of the printing appearing thereon, is such as to aid in creating in the mind of the recipient the belief that the inquiry emanated from a governmental agency. The name "Bureau of Industrial Allocation" contributes substantially to the belief that the inquiry has some relation to industry and employment therein, and this is furthered by the Washington, D. C., post office address. In truth and in fact, respondent's business has no relation to industry or employment therein, and the information sought is entirely for the purpose of aiding in collecting alleged debts.

PAR. 6. The representations made by respondent Lowenthal as "Bureau of Industrial Allocation" have had, and have, the capacity and tendency to, and do, mislead and deceive debtors of his customers and place in the hands of his customers means to mislead and deceive their debtors into the erroneous belief that the Bureau of Industrial Allocation has some relation to industry or employment therein, and that the request for information comes from some governmental agency. As a result, individuals furnish personal information which they would not otherwise supply to respondents.

PAR. 7. The acts of respondent Sarff and Whittington as hereinabove set out constitute an important and essential part of the plan or method of operation by which information is obtained and assist in bringing to fruition the purpose for which the misrepresentations are originally made by respondent, Lowenthal.

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 in violation of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, 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 brief in support of the complaint, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Edward Lowenthal, individually, and trading as International Research, Bureau of Industrial Allocation, or under any other name, and respondents, Sidney Dean Sarff and H. J. Whittington, individuals, 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 forms, letters, cards, or any other printed or written material for use in obtaining information concerning debtors or alleged debtors, do forthwith cease and desist from:

1. Representing, or placing in the hands of others means of representing, directly or by implication, that money or other property is being

held for persons concerning whom information is sought, or that information sought is for use in determining whether the person about whom information is requested may be entitled to trust funds or other property.

2. Using the words "Bureau of Industrial Allocation," or any other words which import or imply connection with employment, to designate, describe, or refer to the business of respondents, or any of them, in seeking information concerning debtors or alleged debtors.

3. Representing, or placing in the hands of others means of representing, directly or by implication, that information sought concerning debtors or alleged debtors is sought by or on behalf of any governmental agency.

4. Using, or placing in the hands of others for use, forms, letters, questionnaires, or other printed or written material which represents, directly or by implication, that respondents' business is other than that of obtaining information for use in the collection of debts.

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.

Complaint

38 F. T. C.

IN THE MATTER OF

J. P. LEONARD, TRADING AS J. P. LEONARD COMPANY;
R. L. JACOBY; AND LIBERTY SALES SYSTEM, INC.

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

Docket 4949. Complaint, Apr. 19, 1943—Decision, Apr. 28, 1944

Where two individuals and a corporation engaged in the manufacture and interstate sale and distribution of sales promotion plans or devices, trading stamps and trading cards, a typical plan including a number of booklets along with sales receipts, trading stamps or coupons to be pasted therein, and providing that the consumer-customer who filled his booklet with purchase receipts from his dealer, became entitled, upon answering correctly quiz question concealed under seal of booklet, to awards or prizes of varying value such as \$25 war savings bond; \$10, \$5, \$2.50, \$2, \$1 or 50¢ in war savings stamps; or 25, 10, 5 or 3 gallons of gasoline; or a 5 quart Conoco oil change; or 4, 3 or 2 quarts of Conoco motor oil; as disclosed by the broken seal, and thus determined by lot or chance; and entitling him, should he be unable to answer question—a feature not included in a prior plan subsequently discarded—to certain specified merchandise—

Sold their said plans and devices to merchants, who distributed them to their customers and honored the awards as shown under the booklets' secret panels; thereby supplying to and placing in the hands of others, means of conducting games of chance, gift enterprises and lottery schemes in the sale of merchandise, contrary to the established public policy of the United States Government;

With tendency and capacity to induce members of the consuming public to deal with merchants using such plans, in preference to those using sales promotion plans of competitors of said individuals and corporation, which do not contain element of lot or chance, and with the result that retailers and merchants were attracted to their said sales plans by the element of chance involved and were thereby induced to purchase said promotion plans in preference to those offered by their competitors which do not involve lot or chance, and with capacity and tendency thereby unfairly to divert trade to them from their aforesaid competitors:

Held, That such acts and practices, under 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.

Cahill & Gallagher, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that J. P. Leonard, an individual, trading as J. P. Leonard Co., R. L. Jacoby, an individual, and Liberty Sales System, 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, J. P. Leonard, is an individual, trading as J. P. Leonard Co. with his office and principal place of business located at 111 North Canal Street, in the city of Chicago, Ill. Respondent, R. L. Jacoby, is an individual, with his office and principal place of business also located at 111 North Canal Street, Chicago, Ill. Respondent, Liberty Sales System, Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at the above address. All the respondents have acted together and in cooperation with each other in doing the acts and things herein alleged. Respondents are now and have been for more than one year last past engaged in the manufacture, printing and production of sales promotion plans or devices, trading stamps and trading cards and in the sale and distribution thereof to retail merchants and others located at points in the various States of the United States. Respondents cause and have caused their products when sold to be shipped and transported from their aforesaid place of business in the State of Illinois to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now and has been for more than one year last past a course of trade by said respondents in such products in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their said business, respondents are and have been in competition with other individuals and corporations and with partnerships engaged in the sale and distribution of sales stimulating plans which do not involve the use of lottery schemes or games of chance in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and distribute and have sold and distributed various sales promotion plans so designed, printed and arranged that their use constitutes a lottery scheme or gift enterprise when used by retail merchants and others in promoting and increasing sales of merchandise of such merchants, to the consuming public. One of said plans so sold by respondents is substantially as follows:

Respondent furnishes merchants or other customers with a number of booklets, together with a larger number of sales receipts, trading stamps or coupons. In the booklet are blank spaces providing for the pasting in of 210 of the sales receipts or trading stamps. On the outside of the booklet is a gold colored seal under which is listed a prize to be awarded when the spaces for the sales receipts or trading stamps are completely filled. The booklets which are distributed by the merchants of respondents' other customers to the consuming public contain the following legend:

D I V I D E N D
P L A N

(Gold colored seal here)

HOW YOU RECEIVE FREE AWARDS

of U. S. Defense Bonds, U. S. Defense
Stamps and other valuable awards.

Complaint

38 F. T. C.

You will receive a receipt for each 10¢ purchase made at our station. Paste your receipts in this book. A quiz question is concealed under the seal of this book. Do not damage or destroy the seal or you will not be allowed to participate in this dividend plan. When the book has been filled with receipts present it at our station and the attendant will open the seal revealing the quiz question underneath it. Also beneath the seal is shown the amount that you will win if you can answer this question correctly.

If you are able to give our attendant the correct answer you will win the award shown under the seal. If you are unable to answer the question correctly you will still receive the minimum award of 3 quarts of Cities Service Motor Oil.

The products, services or other awards so designated and described under the seal vary in accordance with the individual booklet and such designations or descriptions of said awards or prizes are effectively concealed from the purchasing public and the prospective purchasing public until the said receipts have been pasted in all the blank spaces of each of said booklets and the gold colored seal thereof is then broken and removed therefrom. The amount of said prize or prizes to be thus distributed to the purchasing public is determined wholly by lot or chance.

Respondents have distributed other sales plans and devices for the distribution of merchandise to the purchasing public by lottery means or games of chance, including the plan designated "Right in the Palm of Your Hand," all of which are similar to the sales plans hereinabove described.

PAR. 3. The retail merchants and others to whom respondents sell and have sold their sales plan, including the booklets and trading stamps, distribute the same to their customers and prospective customers and honor the awards as shown under the secret panel of said booklets. Respondents thus supply to, and place in the hands of others, the means of conducting lotteries, gift enterprises or games of chance in the sale of merchandise in accordance with the sales plans or methods hereinabove described.

The lot or chance feature connected with respondents' sales plan has the tendency and capacity to induce many of the consuming public to deal with or purchase merchandise from retail merchants using respondents' said sales plans in preference to retail merchants using sales promotion plans or devices of respondents' competitors which have connected with them no element of lot or chance and for this reason many retail merchants are induced to purchase respondents' said booklets and stamps in preference to the devices or plans of respondents' competitors and the sale by respondents of said sales plans involving lottery or games of chance is a practice contrary to the established public policy of the government of the United States.

PAR. 4. Many retail dealers and merchants are attracted by respondents' said sales plans or methods and by the element of chance involved in the sale of merchandise by said plans in the manner above described and are thereby induced to purchase said plans from respondents in preference to the sale of similar plans of respondents' competitors which do not involve lottery, game of chance or other chance elements and the use and sale of said sales plans by respondents has the capacity and tendency, because of such lottery scheme or element of chance, unfairly to divert trade to respondents from their competitors who do not use the same or similar 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 acts and practices in commerce within the 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 subsequently served its complaint in this proceeding upon respondents, J. P. Leonard, an individual, R. L. Jacoby, an individual, and Liberty Sales System, Inc., a corporation, charging them 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 respondents' answer thereto, certain facts were stipulated into the record and certain exhibits introduced at a hearing before an examiner of the Commission duly designated by it, and said stipulated facts and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, stipulated facts and other evidence, report of the trial examiner, 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, J. P. Leonard, is an individual, trading as J. P. Leonard Company, with his office and principal place of business located at 111 North Canal Street, Chicago, Ill. Respondent, R. L. Jacoby, is an individual, with his office and principal place of business located at 111 North Canal Street, Chicago, Ill. Respondent, Liberty Sales System, Inc., is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business located at 111 North Canal Street, Chicago, Ill. Respondents are now, and have been for more than one year last past, engaged in the manufacture, printing, sale, and distribution of sales promotion plans or devices, trading stamps, and trading cards, and have acted together and in cooperation with one another in carrying on said business and in doing the acts and things herein found.

PAR. 2. In the course and conduct of the aforesaid business respondent's cause, and have caused, their sales promotion plans or devices, trading stamps, and trading cards, when sold, to be shipped and transported from their place of business in the State of Illinois to purchasers at their respective points of location in the various States of the United States and in the District of Columbia. Respondents maintain, and have maintained, a course of trade in such products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Typical of the sales promotion plans and devices sold and distributed by respondents to merchants and other customers is one consisting of a number of booklets, together with a larger number of sales receipts, trading stamps, or coupons. In each booklet blank spaces are provided for pasting in 210 of the sales receipts, trading stamps, or coupons. On the outside of each booklet is a seal under which is listed a prize to be awarded when the spaces for sales receipts, trading stamps, or coupons in the booklet are filled. These booklets are distributed by the purchasers thereof to members of the consuming public. The operation of the plan is described in the booklet:

HOW YOU RECEIVE FREE AWARDS
OF WAR SAVINGS BONDS, STAMPS
AND OTHER GIFTS.

You will receive a receipt for each 10¢ purchase made at our station. Paste your receipts in this book. A quiz question is concealed under the seal of this book. Do not damage or destroy the seal or you will not be allowed to participate in this dividend plan. When the book has been filled with receipts present it at our station and the attendant will open the seal revealing the quiz question underneath it. Also beneath this seal is shown the amount that you will win if you can answer this question correctly.

If you are able to give our attendant the correct answer you will win the award shown under the seal. If you are unable to answer the question correctly you may still redeem your filled book of stamps for 2 Qts. of Conoco Motor Oil (Com. Ex. 1-A).

The products, services, or other prizes or awards designated and described under the seal, as well as the questions which must be answered, vary among the individual booklets. One such plan lists the "Prizes in Our Superior Dividend Plan" as a \$25 War Savings Bond; \$10, \$5, \$2.50, \$2, \$1, or 50¢ in War Savings Stamps; 25, 10, 5, or 3 gallons of gasoline; a 5-quart Conoco oil change; 4, 3 or 2 quarts of Conoco Motor Oil (Com. Ex. 1-A). The particular quiz question and the designation or description of the particular award or prize in each booklet are effectively concealed from the purchasing public until the seal is broken and removed. The amount of the prize or prizes thus distributed to members of the public is determined by lot or chance.

Until January 1942 respondents sold and distributed a sales promotion plan designated as "Right in the Palm of Your Hand" which was similar to the sales plan described above, except that no question to be answered was concealed with the designation of the award under the seal on the booklet.

PAR. 4. The merchants and others to whom respondents sell, and have sold, their aforesaid sales plans and devices, including the booklets and trading stamps described above, distribute the same to their customers and prospective customers and honor the awards as shown under the secret panel of the booklets. Respondents thus supply to and place in the hands of others a means of conducting games of chance, gift enterprises, and lottery schemes in the sale of merchandise in accordance with the plans or methods described above. The lot or chance feature of such sales plans has the tendency and capacity to induce members of the consuming public to deal with or purchase merchandise from merchants or others using such sales plans in preference to merchants or others using sales promotion plans of respondents' competitors which do not

contain the element of lot or chance. Retail dealers and merchants are attracted to respondents' said sales plans or methods by the element of chance involved in the sale of merchandise by said plans in the manner described above, and are thereby induced to purchase said plans from respondents in preference to sales promotion plans offered by respondents' competitors which do not involve lot or chance, and the use of said sales plans by respondents has the capacity and tendency, because of the lot or chance feature, unfairly to divert trade to respondents from their competitors who do not use the same or similar methods. The sale by respondents of the plans and devices involving luck or chance is a practice contrary to the established public policy of the Government of the United States.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair 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, certain facts stipulated into the record and other evidence introduced before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, J. P. Leonard, an individual, trading as J. P. Leonard Company or under any other name, respondent, R. L. Jacoby, an individual, and respondent Liberty Sales System, Inc., a corporation, and its officers, and their respective representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of sales promotion plans or devices, trading stamps, trading cards, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others sales plans or devices which are to be used, or may be used, in the sale or distribution of 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 chance, gift enterprise, or lottery scheme.

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.

IN THE MATTER OF
PREFERRED HAVANA TOBACCO 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 4983. Complaint, June 23, 1943—Decision, Apr. 28, 1944

Where a corporation continuously engaged at Tampa, Fla., in the manufacture of cigars from Havana tobacco and in interstate sale and distribution thereof to jobbers and retailers throughout the United States, since organization thereof in 1913, when it acquired all the stock and goodwill of (1) "Bustillo Bros. & Diaz, Inc., theretofore engaged in manufacture in Tampa, of cigars made exclusively from tobacco grown in Cuba and packed and branded by it under brand name "Flor del Mundo," and of (2) "Calixto Lopez & Co.," engaged prior to 1932 in manufacture, in Havana, at 48 and 50 Zuleta Street, of cigars packed and branded under names "Eden de Bances y Lopez Habana" and "Calixto Lopez Habana," acquiring also all the right, title and interest of said companies in and to the trade names and brands used by them, in addition to Bances y Lopez and Lopez Hermanos;

- (a) Represented that its said "Eden" brand of cigars were genuine Cuban cigars made at Havana, Cuba, of Cuban tobacco, and exported by a firm by the name of "Bances y Lopez" through use on the containers and bands of said cigars of designation "EDEN de Bances y Lopez Habana," the words "Vuelta Abajo," statement on the inside lid, in very small type and in capital letters;—"These cigars, now manufactured at Tampa, by SPANISH HAND WORKED METHOD of tobacco FULLY PREPARED IN CUBA—are identical with the famous IMPORTED EDENS made by us for over fifty years at Havana, Cuba," and legend on the outer front side of the container "Flor Fina Eldorados Claro Bances y Lopez Habana"; while statement "Formerly Eden—Imported" was so placed on the inside of the container as to be obscured by cigars when filled therewith;
- (b) Represented that the cigars branded and labeled as "Calixto Lopez" were manufactured in a three-story factory building operated at Havana, Cuba, by the Cuban firm of "Calixto Lopez & Co.," and imported into the United States, through use on containers and bands of such legends and matters as "Calixto Lopez Habana Flor Fina," "Calixto Lopez y Ca.," use, on the inside of the container lid, of full size picture of a factory building, with words, in large gilt letters "Calixto Lopez—Habana," and use thereof also in advertising material, including inside container cover labels, together with words in gold letters, immediately above and below the picture, "Calixto Lopez y Ca. Habana," and photographic likeness of the person Calixto Lopez, and address "Zuleta 48 y 50 Habana" beneath; and
- (c) Represented that the cigar labeled and branded "Flor del Mundo" (Flower of the World) originated with and was imported into the United States by the Cuban firm of "Bustillo Bros. & Diaz" located at Havana, through use on containers thereof, etc., of the words "Flor del Mundo de B. Bros. & D. Habana," and on the interior of the container in red letters the firm name "Bustillo Bros. & Diaz," with words "Tampa, Fla." beneath said line and hidden by cigars when contained therein;

Notwithstanding the fact that all the aforesaid brand names were employed in the sale of cigars made in and exported from Cuba prior to 1932, and since then manufactured exclusively at Tampa; no cigars were made at Havana thereafter in the factory building depicted, which since said year was used by it and its subsidiaries for Havana tobacco to be shipped to its Tampa factory; company in question, since 1932, made no cigars in Cuba; nor operated then or theretofore in Cuba any

such firms or enterprises as "Bustillo Bros. & Diaz, Inc.," or "B. Bros. & Diaz," "Bances y Lopez," or "Lopez Hermanos," trade names employed by it in connection with its Tampa-made cigars;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby into purchase of substantial quantities of said product, whereby substantial trade was diverted 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 of its competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. Marshall Morgan for the Commission.

Blumberg & Kleebblatt, 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 Preferred Havana Tobacco Company, a corporation, trading also as Bustillo Bros. & Diaz, Inc., Calixto Lopez & Company, Lopez Hermanos, and Bances y Lopez, 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, Preferred Havana Tobacco Company, hereinafter referred to as respondent, is a corporation, organized and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business located at No. 257 Fourth Avenue, New York City, with a factory located at No. 2111 N. Albany Street, Tampa, Fla., where respondent operates under its said corporate name and under various trade names, as will be more fully hereinafter related.

PAR. 2. Respondent is now, and for more than five years last past has been, engaged in the business of manufacturing various brands of cigars and selling and distributing the same to jobbers and retailers throughout the United States. All cigars sold and distributed by respondent are now and for more than five years last past have been manufactured by respondent at Tampa, Fla., as aforesaid, where they are packed, branded and labeled by respondent for sale and distribution to the purchasing public of the United States. In consummating such sales and in distributing such products, respondent causes the cigars so sold by it to be transported and delivered from its factory at Tampa, Fla., and from its principal office and place of business in New York City as aforesaid, through and into the various States of the United States other than the State of Florida or the State of New York, to the respective purchasers thereof at their respective points of location, and there is now and for more than five years last past, has been a constant current of trade and commerce by respondent in such cigars. In the course and conduct of its said business, respondent is now, and at all times since its organization has been, in substantial competition with other corporations and with firms, partnerships and individuals engaged likewise in the sale of cigars between and among the various States of

the United States. All orders for cigars are received by and payable at respondent company's New York Office.

PAR. 3. The cigar originated in the Spanish West Indies. The finest quality of tobacco for cigar purposes is grown in Cuba, not far from the city of Havana. The word "Havana," spelled "Habana" in the Spanish, is the name and designation of the tobacco on the Island of Cuba, which name and designation is and has been since time immemorial used and understood by the cigar-purchasing and consuming public of the United States and by cigar manufacturers and dealers throughout the United States, as meaning and designating tobacco which has been grown on the Island of Cuba. Such Havana tobacco has the reputation among the cigar consuming and purchasing public of the United States as being cigar tobacco of highest quality and excellence, and cigars made in whole or in part from said tobacco are, and for many years have been, in large demand throughout the United States. Many of the cigar dealers and many of the consuming public of the United States prefer to purchase cigars containing Havana tobacco and have believed, and still believe, that the use of such Havana tobacco in cigars adds to and increases the quality and desirability of such cigars.

For many years cigars made of Cuban or Havana tobacco were, and still are, manufactured in the city of Havana, Cuba, and were exported therefrom to the various markets of the world. Consequently such cigars became known in the trade and to the consuming public, and are still known, as Havana cigars and Cuban cigars, the terms being used interchangeably and synonymously. In fact the term "Havana" has been used for many years to designate and brand said cigars and has come to mean, when applied to said cigars, cigars manufactured from tobacco grown in the Island of Cuba.

Cuban tobacco has long been imported into the United States and widely and extensively used and consumed therein in cigars manufactured from such tobacco. For many years last past factories making cigars from Havana tobacco have been located in the United States, principally in and near the city of Tampa, Fla. Cigars manufactured at Tampa factories from tobacco grown in the Island of Cuba and imported into the United States are also known to the trade and to the public as Havana cigars.

PAR. 4. In the course and conduct of its said business, as described in paragraph 2 herein, respondent obtains orders for cigars through the medium of advertisements inserted in newspapers and other publications of general circulation and through salesmen and solicitors, and by mail.

The said cigars manufactured, sold and distributed by respondent in interstate commerce, as set forth in paragraph 2 herein, are and for many years last past have been sold and distributed by respondent in large and substantial quantities under various brand names and through the use of various trade names purporting to identify and designate the manufacturers of said respective brands. Among the brands so employed by respondent are Calixto Lopez, Flor del Mundo, and Eden. Among the trade names employed by respondent are Calixto Lopez & Co., Bustillo Bros. & Diaz, Inc., Lopez Hermanos, and Bances y Lopez. The containers for the said cigars manufactured by said respondent are the usual and customary boxes or cigar containers, of 25, 50 and 100 cigars each. A label, consisting of a paper band, is attached to each cigar.

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PAR. 5. In the course and conduct of its said business, in connection with and for the purpose of inducing the sale and distribution of its said cigars in commerce, respondent has made and is now making various advertising and sales representations concerning such product.

Among the cigars manufactured and sold by respondent as aforesaid, is a cigar designated, labeled and branded as "EDEN." Imprinted on the outer lid of one of the containers for said "Eden" brand of cigars appears a design in which is centered the mark or legend:

EDEN
de
Bances y Lopez
Habana.

Translated from the Spanish, this legend reads:

EDEN
of or from
Bances & Lopez
Havana.

This same legend is repeated in a border running along the outer edges of the container.

At the left of the design appearing on the outer lid of the container, are the words "Vuelta Abajo" and at the bottom thereof the words or legend: "Grand Prix, St. Louis 1904—the only one awarded for excellence of quality."

On the outside end of said container appears other language in Spanish detailing awards won by this brand of cigar.

On the inside of the lid of said container appears a design centering a picture of a woman's face, immediately above this design the word "EDEN," and immediately below the picture the word "HAVANA," each printed in heavy type, said words considered in connection therewith harmonizing with the language on the outside of the container, namely, "Eden de Bances y Lopez Habana."

Beneath the design on the inside lid of said container appears the following printed respectively in very small type and in capital letters:

These cigars, now manufactured at Tampa, by SPANISH HAND WORKED METHOD of tobacco FULLY PREPARED IN CUBA—are identical with the famous IMPORTED EDENS made by us for over fifty years at Havana, Cuba.

The only language in said legend that can be read at any distance is that composed of said capital letters, which from left to right reads as follows:

SPANISH HAND WORKED METHOD—FULLY PREPARED IN CUBA—IMPORTED EDENS.

Said language in capital letters, in fact, can be read at a much greater distance than the remainder of said supposedly qualifying legend.

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On the outer front side of said Eden container appears the legend in Spanish:

Flor Fina
Eldorados Claro
Bances y Lopez
Habana.

On the inside of said container at the top and back thereof and in a position that would be obscured were the container filled with cigars, appears the legend:

Formerly Eden—Imported.

Bands affixed by respondent to various types of its Eden brand of cigars read respectively:

Eden Oportuno—Habana—Printed in Cuba
and
Eden
de
Bances y Lopez
Habana.

On the outside of the lid of another container for cigars now, and for many years last past, used by respondent, Preferred Havana Tobacco Company, appears a label printed in large gilt letters reading:

Calixto Lopez
Habana
Flor Fina.

Around the upper edges of said container extending all the way around the box appears the following legend in Spanish:

Calixto Lopez y Ca.

This legend, translated in English, reads:

Calixto Lopez & Co.

On the inside of the lid of this container appears a full size picture of a factory building, together with the wording in large gilt letters:

Calixto Lopez—Habana.

Immediately below the lower right hand corner of the rectangular border enclosing this picture in smaller type appear the words:

Printed in Cuba.

In advertising material distributed in commerce including inside cover labels for cigar containers, this full size picture of a factory building appears in the center of a rectangular design in red and gold. Immedi-

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ately above and below the picture of the factory building appear respectively in gold letters, the following:

Calixto Lopez
Calixto Lopez y Ca. Habana

The last line above translated reads:

Calixto Lopez & Co. Havana.

The name of said firm in Spanish also appears in the picture, as a large sign running along the top of the building.

Surrounding the picture of the building appears a border of gold premium coins or medals and around these language in Spanish stating that said Calixto Lopez cigars have been exhibited and have won numerous prizes at various international expositions.

Beneath the rectangular gilt border surrounding said factory picture at the lower right corner thereof appear in small type the words:

Printed in Cuba.

On another label employed to designate and advertise said Calixto Lopez cigars in commerce appears a photographic likeness of the person Calixto Lopez, beneath which the following address is given:

Zulueta 48 y 50 Habana,

which translated reads:

Zulueta 48 and 50 Havana.

Centered on the outside of the lid of another container employed in commerce by respondent in connection with the sale of its said cigars, in conspicuous black type, appears the following brand name:

Flor del Mundo
de
B. Bros. & D.
Habana.

Translated, said brand name reads:

Flower of the World
from
B. Bros. & D.
Havana.

On the back side of the interior of said container appears, in red letters, the firm name "Bustillo Bros. & Diaz," and below this line where it would not be visible if there were cigars in the box the words:

Tampa, Florida.

PAR. 6. By means of the herein described branding, labeling and advertising representations of respondent, Preferred Havana Tobacco Company's, various brands of cigars sold and distributed by it in com-

merce, and others of like tenor and effect, respondent represents and has represented to the purchasing public that its Eden Brand of cigars are genuine Cuban cigars manufactured at Havana, Cuba, of Cuban tobacco and come from and are exported by a firm by the name of Bances and Lopez, located at Havana, Cuba; that said Eden cigars were made in Cuba from tobacco fully prepared in Cuba by Spanish Hand Worked Method and thereafter imported into the United States; that the cigar branded and labeled as "Calixto Lopez" was and is manufactured in a three-story factory building operated at Havana, Cuba, by the Cuban firm of Calixto Lopez & Company; that material advertising such cigar was printed in Cuba; that cigars labeled and branded "Calixto Lopez" are and were imported into the United States from Cuba and have taken premiums at many international expositions; and that the cigar labeled and branded "Flor del Mundo" (Flower of the World) originates with and is imported into the United States by the Cuban firm of Bustillo Bros. & Diaz located at Havana, Cuba.

PAR. 7. In truth and in fact the various statements and representations made and used by respondent, Preferred Havana Tobacco Company, and the acts and practices employed by it in the sale and offering for sale of its said cigars are and were false, deceptive and misleading in the following, among other particulars:

1. Respondent's said "Eden brand of cigars are not, and for many years last past, have not been made at Havana, Cuba, or elsewhere in the Island of Cuba and are not now and for many years last past have not been imported from Cuba into the United States.

2. No cigars are manufactured at Havana, Cuba, in the factory building depicted in respondent's advertising as the home of Calixto Lopez cigars by the firm of Calixto Lopez and Company, or by any other person or firm. Said alleged factory building located in the city of Havana has not been used in the manufacture of cigars for many years, but in truth and in fact said building is now and for many years last past has been used as a factory where cigarettes are manufactured, and as a warehouse or storage space for cigar leaf tobacco.

3. There is no business, company or concern by the name of Calixto Lopez or Calixto Lopez & Company located at Zulueta 48 and 50, or elsewhere in Havana, Cuba, engaged in the manufacture or sale or exportation of cigars.

4. There is no firm or person by the name of Bustillo Bros. & Diaz or B. Bros. & Diaz located at Havana, Cuba, or elsewhere in Cuba, engaged in the manufacture or sale or exportation of cigars under the brand name of "Flor del Mundo" or any other brand or name.

5. The labels employed by respondent in advertising and describing its said Calixto Lopez brand of cigars were not printed in Cuba.

6. Respondent's "Eden" brand of cigars advertised and labeled as coming from and originating with the firm of Bances & Lopez of Havana, Cuba, did not and do not come from Cuba, and they are not imported products, but on the contrary are now and for many years last past have been manufactured by respondent at Tampa, Fla. In truth and in fact, there is no such company or firm as that of Bances and Lopez located or operating at Havana or elsewhere in Cuba.

7. There is no corporation or stock company by the name of Bustillo Bros. & Diaz located or operating at Tampa, Fla., nor are the names Calixto Lopez & Company, Lopez Hermanos, and Bances y Lopez those

of partnerships, stock companies or other business enterprises actually engaged in the manufacture and sale of cigars at Tampa, Fla.;

8. Respondent corporation, Preferred Havana Tobacco Company, in truth and in fact is not engaged in the importation and sale of Cuban-made cigars, but on the contrary since approximately the year 1912 has operated a factory in its corporate name in the city of Tampa, Fla., manufacturing cigars there from both Cuban and American tobacco, employing in such connection such trade names as Bustillo Bros. & Diaz, Inc., and Bustillo Bros. & Diaz, Calixto Lopez & Company, Bances y Lopez, Lopez Hermanos and other Spanish names to the Commission unknown.

PAR. 8. The use by respondent of the said false and misleading statements and representations in describing, designating, labeling, branding, and advertising its said cigars has a tendency and capacity to and does mislead and deceive, and has misled and deceived, purchasers and prospective purchasers of respondent's said products into the erroneous and mistaken belief that such statements and representations are and were true, and into the purchase of substantial quantities of respondent's products as a result of such belief, and places and has placed in the hands of retailers and dealers an instrument and means of deceiving the purchasing public into the belief that respondent's cigars so described, designated, labeled, branded and advertised are and were manufactured in Cuba at or near the city of Havana and thereafter imported into the United States. The aforesaid false and misleading statements further have a tendency to and do divert and have diverted trade to respondent from its competitors engaged in the sale of cigars between and among the various States of the United States who truthfully represent their products. As a consequence thereof, substantial injury has been done and is now being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 23, 1943, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, 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. After the filing of an answer by respondent a stipulation as to the facts was entered into between Richard P. Whiteley, Assistant Chief Counsel for the Commission, and Blumberg & Kleeblatt, counsel for respondent. This stipulation provides that the facts set forth therein 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. Respondent 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 based thereon.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Preferred Havana Tobacco Company, is a corporation, organized in 1913 under the laws of the State of Delaware, having its principal office and place of business located at No. 257 Fourth Avenue, New York City with a factory located at No. 2111 N. Albany Street, Tampa, Fla., where respondent has operated, and now operates, under its said corporate name, and under various trade names, as will be more fully hereinafter related.

Bustillo Bros. & Diaz, Inc., is a corporation, organized in 1913 under the laws of the State of Delaware. Said corporation is the successor of Bustillo Bros. & Diaz, a partnership, which since about 1898, had manufactured in the city of Tampa, Fla., cigars made exclusively from tobacco grown on the Island of Cuba. Said cigars were packed and branded by said corporation and by its predecessor partnership under the brand name of "Flor del Mundo."

Calixto Lopez & Co., is a corporation, organized in 1908 under the laws of the State of New Jersey. Prior to the year 1932 the said Calixto Lopez & Co. had manufactured in the city of Havana, at the address 48 and 50 Zuleuta Street, and imported from Cuba into the United States, cigars packed and branded under the brand names "Eden de Bances y Lopez" and "Calixto Lopez."

"Habana"

"Habana"

In the year 1913, respondent, Preferred Havana Tobacco Company, acquired all of the stock and good will of Bustillo Bros. & Diaz, Inc., and Calixto Lopez & Co., respectively, including all the right, title and interest of said companies in and to the trade names and brand names used by them. Corporate respondent since 1913 has continuously used the brand names "Eden de Bances y Lopez," "Calixto Lopez," and "Flor del Mundo"

"Habana"

"Habana"

"Habana"

and the trade names Bustillo Bros. & Diaz, Calixto Lopez & Co., Bances y Lopez and Lopez Hermanos, among others, as will be more fully shown hereinafter.

PAR. 2. Respondent is now, and continuously since the year 1913 has been, engaged in the business of manufacturing various brands of cigars and selling and distributing the same to jobbers and retailers throughout the United States. All cigars sold and distributed by respondent are now and since the year 1913 have been manufactured by respondent at Tampa, Fla., as aforesaid, where they are packed, branded and labeled by respondent for sale and distribution to the purchasing public of the United States. In consummating such sales and in distributing such products, respondent causes the cigars so sold by it to be transported and delivered from its factory at Tampa, Fla., and from its principal office and place of business in New York City as aforesaid, through and into the various States of the United States other than the State of Florida or the State of New York, to the respective purchasers thereof at their respective points of location, and there is now and for more than

five years last past has been a constant current of trade and commerce by respondent in such cigars. In the course and conduct of its said business respondent is now and at all times since its organization has been in substantial competition with other corporations and with firms, partnerships, and individuals engaged likewise in the sale of cigars between and among the various States of the United States. All orders for cigars are received by and payable at respondent company's New York office.

PAR. 3. The cigar originated in the Spanish West Indies. The finest quality of tobacco for cigar purposes is grown in Cuba, not far from the city of Havana, Capital of the Republic of Cuba. The word "Havana," spelled "Habana" in the Spanish, is also the name and designation of the tobacco of the Island of Cuba, which name and designation is and has been since time immemorial used and understood by the cigar-purchasing and consuming public of the United States and by cigar manufacturers and dealers throughout the United States as meaning and designating tobacco which has been grown on the Island of Cuba. Such Havana tobacco has the reputation among the cigar consuming and purchasing public of the United States as being cigar tobacco of highest quality and excellence, and cigars made in whole or in part from said tobacco are and for many years have been in large demand throughout the United States. Many of the cigar dealers and many of the consuming public of the United States prefer to purchase cigars containing Havana tobacco, and have believed and still believe that the use of such Havana tobacco in cigars adds to and increases the quality and desirability of such cigars.

Cigars made of Cuban or Havana tobacco were for many years and still are manufactured in the city of Havana, Cuba, and exported therefrom to the various markets of the world. Such cigars became known in the trade and to the consuming public and are still known as Havana cigars and Cuban cigars, the terms being used interchangeably and synonymously. In fact, the term "Havana" has been used for many years to designate and brand said cigars and has come to mean, when applied to said cigars, cigars manufactured from tobacco grown in the Island of Cuba. For many years past it has been and still is the practice and custom of the American cigar manufacturing trade to employ the word "Havana" in branding and labeling cigars made from tobacco grown on the Island of Cuba to thereby indicate the origin of the tobacco composing the cigar, such term being employed alike on cigar containers, on cigar bands, and in advertising, and to use also in such connection Spanish words, scenes, and Spanish sounding names. Cuban tobacco has long been imported into the United States and widely and extensively used and consumed therein in cigars manufactured from such tobacco. For many years last past factories making cigars from Havana tobacco have been located in the United States, principally in and near the city of Tampa, Fla., and in the territory immediately surrounding said city and known as the Tampa district. Cigars manufactured at Tampa factories from tobacco grown in the Island of Cuba and imported into the United States are also known to the trade and to the public as "Havana cigars" and as "Tampa cigars" and have acquired a wide and favorable reputation.

PAR. 4. In the course and conduct of its said business, as described in paragraph 2 herein, respondent obtains orders for cigars through the medium of advertisements inserted in newspapers and other publications of general circulation, and through salesmen and solicitors, and by mail.

The said cigars manufactured, sold and distributed by respondent in interstate commerce, as set forth in paragraph 2 herein, are and for many years last past have been sold and distributed by respondent in large and substantial quantities under various brand names and through the use of various trade names. Among the brands so employed by respondent are Calixto Lopez, Flor del Mundo, and Eden. Among the trade names employed by respondent are Calixto Lopez & Co., Bustillo Bros. & Diaz, Inc., Lopez Hermanos, and Bances y Lopez. The containers for the said cigars manufactured by said respondent are the usual and customary boxes or cigar containers, of 25, 50 and 100 cigars each. A label, consisting of a paper band, is attached to each cigar.

PAR. 5. In the course and conduct of its said business, in connection with and for the purpose of inducing the sale and distribution of its said cigars in commerce, respondent has made and is now making various advertising and sales representations concerning such products.

Among the cigars manufactured and sold by respondent as aforesaid, is a cigar designated, labeled and branded as "EDEN." Imprinted on the outer lid of one of the containers for said "Eden" brand of cigars appears a design in which is centered the mark or legend:

EDEN
de
Bances y Lopez
Habana.

Translated from the Spanish, this legend reads:

EDEN
of or from
Bances & Lopez
Havana

This same legend is repeated in a border running along the outer edges of the container.

At the left of the design appearing on the outer lid of the container are the words "Vuelta Abajo," and on the outside end of said container appears other language in Spanish detailing awards won by this brand of cigar.

On the inside of the lid of said container appears a design centering a picture of a woman's face, immediately above this design the word "EDEN," and immediately below the picture the word "HAVANA," each printed in heavy type, said words considered in connection therewith harmonizing with the language on the outside of the container, namely, "Eden de Bances y Lopez Habana."

Beneath the design on the inside lid of said container appears the following, printed respectively in very small type and in capital letters:

These cigars, now manufactured at Tampa, by SPANISH HAND WORKED METHOD of tobacco FULLY PREPARED IN CUBA—are identical with the famous IMPORTED EDENS made by us for over fifty years at Havana, Cuba.

The capital-letter words, "SPANISH HAND WORKED METHOD FULLY PREPARED IN CUBA IMPORTED EDENS," can be read at a much greater distance than the remaining words in said legend.

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On the outer front side of said Eden container appears the legend in Spanish:

Flor Fina
Eldorados Claro
Bances y Lopez
Habana.

On the inside of said container, at the top and back thereof and in a position that would be obscured were the container filled with cigars, appears the legend:

Formerly Eden—Imported.

Bands affixed by respondent to various types of its Eden brand of cigars read respectively:

Eden Oportuno—Habana—Printed in Cuba
and
Eden
de
Bances y Lopez
Habana.

On the outside of the lid of another container for cigars now and for many years last past used by respondent, Preferred Havana Tobacco Company, appears a label printed in large gilt letters reading:

Calixto Lopez
Habana
Flor Fina.

Around the upper edges of said container, extending all the way around the box, appears the following legend in Spanish:

Calixto Lopez y Ca.

This legend, translated in English, reads:

Calixto Lopez & Co.

On the inside of the lid of this container appears a full-size picture of a factory building, together with the wording in large gilt letters:

Calixto Lopez—Habana.

In advertising material distributed in commerce, including inside cover labels for cigar containers, this full-size picture of a factory building appears in the center of a rectangular design in red and gold. Immediately above and below the picture of the factory building appear, respectively, in gold letters, the following:

Calixto Lopez
Calixto Lopez y Ca. Habana

The last line above translated reads:

Calixto Lopez & Co. Havana

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The name of said firm in Spanish also appears in the picture, as a large sign running along the top of the building.

On another label employed to designate and advertise Calixto Lopez cigars manufactured at Tampa, Fla., appears a photographic likeness of the person Calixto Lopez, beneath which the following address is given:

Zulueta 48 y 50 Habana

which translated reads:

Zulueta 48 and 50 Havana

Centered on the outside of the lid of another container employed in commerce by respondent in connection with the sale of its said cigars, in conspicuous black type, appears the following brand name:

Flor del Mundo
de
B. Bros. & D.
Habana

Translated, said brand name reads:

Flower of the World
from
B. Bros. & D.
Havana

On the back side of the interior of said container appears in red letters the firm name "Bustillo Bros. & Diaz," and below this line, where it would not be visible if there were cigars in the box, the words:

Tampa, Florida.

PAR. 6. The Commission finds that through the use of the herein described branding, labeling, and advertising representations by respondent, Preferred Havana Tobacco Company, in connection with the offering for sale and sale of its said cigars in commerce, including the geographical suggestions or implications contained in the trade and brand names and labels employed by respondent in describing, labeling, branding, and advertising its said cigars, respondent has represented that its said Eden brand of cigars are genuine Cuban cigars manufactured at Havana, Cuba, of Cuban tobacco, and come from and are exported by a firm by the name of Bances and Lopez located at Havana, Cuba; that said Eden cigars are made in Cuba from tobacco fully prepared in Cuba and thereafter imported into the United States; that the cigar branded and labeled as "Calixto Lopez" is manufactured in a three-story factory building operated at Havana, Cuba, by the Cuban firm of Calixto Lopez & Company; that cigars labeled and branded "Calixto Lopez" are imported into the United States from Cuba; and that the cigar labeled and branded "Flor del Mundo" (Flower of the World) originates with and is imported into the United States by the Cuban firm of Bustillo Bros. & Diaz located at Havana, Cuba.

PAR. 7. The Commission finds that the foregoing claims, statements, and representations of respondent are misleading and deceptive. In truth and in fact, respondent's said "Eden" or "Eden de Bances y Lopez"

brand of cigars is not and since the year 1932 has not been manufactured in or imported from the Island of Cuba, but on the contrary has been manufactured exclusively since said date at Tampa, Fla.

No cigars have been manufactured by the firm of Calixto Lopez & Company or by any other person or firm at Havana, Cuba, since 1932, in the factory building depicted in respondent's advertising as the home of Calixto Lopez cigars. Said factory building, located at Zulueta 48 and 50, Havana, Cuba, is now and since the year 1932 has been used by respondent and its subsidiaries for the purpose of purchasing, curing, and storing Havana tobacco for shipment to respondent's factory at Tampa, Fla.; and the brand names "Eden de Bances y Lopez" and "Calixto Lopez" are names which were employed in the sale of cigars which were manufactured in and exported from Cuba prior to the year 1932, and since said date manufactured at Tampa, Fla. The label on which there appears a photographic likeness of the person Calixto Lopez, and beneath it the address "Zulueta 48 y 50 Habana," is a label formerly employed in connection with the manufacture of the "Calixto Lopez" cigar at Havana, Cuba, prior to the year 1932. Not since the said year 1932 has Calixto Lopez & Company manufactured cigars in Cuba.

Respondent does not now own, control, operate, or maintain and since 1932 has not owned, controlled, operated, or maintained any cigar factory in Cuba. There do not now operate or exist in Cuba and at no time past have there operated or existed in Cuba any such firms or enterprises as Bustillo Bros. & Diaz, Inc., or B. Bros. & Diaz, Bances y Lopez, or Lopez Hermanos, said names being in fact trade names employed by respondent since 1913 and 1932, respectively, in connection with the manufacture and sale of cigars produced at its factory at Tampa, Fla.

In truth and in fact, respondent is not now engaged in the importation and sale of Cuban-made cigars, but on the contrary operates a factory in its corporate name in the city of Tampa, Fla., manufacturing cigars there from Havana tobacco and employing in such connection the brand and trade names as hereinbefore related.

PAR. 8. The use by respondent of the misleading and deceptive statements and representations herein set forth has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's products as a result of such belief. In consequence thereof, substantial trade has been diverted to respondent from its competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

stipulation as to the facts entered into between counsel for the Commission and counsel for the respondent which provides, among other things, that without further evidence or other intervening procedure the Commission may enter and serve upon 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, Preferred Havana Tobacco Company, a corporation, trading as Bustillo Bros. & Díaz, Inc., Calixto Lopez & Company, Lopez Hermanos, and Bances y Lopez, or trading under any other name, and its representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cigars in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using as a brand name, firm name, or otherwise, the words or terms "Eden de Bances y Lopez Habana," "Flor del Mundo de B. Bros. & D. Habana," or "Calixto Lopez y Ca. Habana," or any other word, words, or terms, or any pictorial representation, indicating Cuban manufacture or a Cuban manufacturing location in connection with cigars not made or manufactured in the city of Havana, Cuba, from Cuban tobacco.

2. Using the words or term "Fully Prepared in Cuba," or any other words or terms indicating or implying Spanish or Cuban origin, in connection with cigars made or manufactured in the United States, unless the tobacco used in making such cigars is a product of Cuba and has been treated and processed in Cuba as represented, and such words or terms are accompanied by a statement in letters of at least equal conspicuousness that such cigars are of domestic manufacture and that the language "Fully Prepared in Cuba" refers only to the tobacco in such cigars.

3. Using the word "Imported," or any other word or words of similar import, to designate, describe, or refer to any cigar not made or manufactured in a foreign country and imported into the United States, or otherwise misrepresenting the origin of respondent's products.

It is further ordered, That nothing contained herein shall operate to prohibit the use by respondent of the word "Havana," alone or in conjunction with any other appropriate word or words, to describe or designate only the type or origin of tobacco composing its cigars, if such tobacco was grown in and is the product of the Island of Cuba.

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
MAURICE KRESSIN, TRADING UNDER THE NAME
UNITED DELIVERY SYSTEM, AND
ESTHER KRESSIN

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

Docket 4873. Complaint, Nov. 24, 1942—Decision, May 1, 1944

Where a husband and wife engaged in the interstate sale and distribution of postcards, envelopes, and form letters, designed to be used by creditors and collection agencies in obtaining information concerning debtors—the cards, addressed to “UNITED DELIVERY SYSTEM, Distribution Department, 639 NEW YORK AVENUE, N. W., WASHINGTON, D. C.” and containing on the reverse side, among other matter, “Return this notice promptly, UNITED DELIVERY SYSTEM, Distribution Department, UNCLAIMED PACKAGE DIVISION, WASHINGTON, D. C., Package Reference Number, A package bearing your name and address is held at your risk—subject to your forwarding directions below.” and “CONSIGNEE MUST BE IDENTIFIED”; under the instruction “Deliver the Above Package to” calling for name and address of debtor and, under “For Identification I Refer You to My Employer and bank,” their name and address: and the form letters, using the same trade name and address, and such matter as “MERCHANDISE, Distribution Department, Specialists in Package Deliveries” and other statements calculated to create the impression of a storage, shipping and distribution concern, including the words “Unclaimed Package Division,” inquiring of the recipient when addressed to other than debtors, as to whether he could advise as to the present address of the debtor, and stating that “we have a package addressed to the above party and we understand that there has been some change in their address.” and “We would appreciate your kindness in advising us of their present location”; and that they were “enclosing a self addressed and stamped envelope, and would appreciate any information,” etc.; and, where employed for contacting the debtors directly, having appropriate changes such as “we have a package for you which we would like to complete delivery of,” etc.; and in both cases, including blanks for the name and address of the debtor and those of his employer and bank;

Making use of a plan under which material in question was sent by them—along with unaddressed envelopes bearing their return address and a notation “Postmaster—Important. If this letter cannot be delivered to address shown, please forward to last address.”—to their customers, who addressed the envelopes to the last known addresses of the debtors about whom information was sought and returned them in bulk to said persons in Washington, who there mailed said material to the debtors, sent to the customers, identified by a code number placed on the forms, the information received, and sent to debtors replying thereto a few paper cups or a six-inch cardboard ruler or some similar article of trivial value “in order to comply with the post office regulations”—

Falsely represented, through use of said name, “United Delivery System,” and placed in the hands of others the means of representing, through use of said cards and form letters, to the debtors and others, that the information was desired for use in connection with the delivery of goods to the proper consignees;

The facts being said name as thus used was merely a disguise to conceal from the addressee the true nature of said persons’ business;

Complaint

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With capacity and tendency to mislead and deceive the addressees of said matter, and cause them to furnish said persons with information which would not have been furnished if the true purpose of their inquiry were known:

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.

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

Mr. Randolph W. Branch for the Commission.

Mr. Albert Brick, of Washington, D. C., 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 Maurice Kressin, an individual, trading under the name United Delivery System, and Esther Kressin, 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 public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Maurice Kressin, is an individual, trading under the name United Delivery System, with an office and principal place of business at 639 New York Avenue, N. W., Washington, D. C.

Respondent, Esther Kressin, is the wife of respondent, Maurice Kressin, and is in active and actual charge of the business carried on by her husband under the name United Delivery System.

PAR. 2. Respondents are now, and have been for more than three years last past, engaged in the business of selling and distributing postcards, envelopes and forms designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Respondents cause the said postcards, envelopes and forms to be transported from their aforesaid place of business in the District of Columbia, to purchasers thereof in various States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said postcards, envelopes and forms in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The said cards sold and distributed by respondents are in the form exemplified by a photostatic copy thereof marked Exhibit A, attached hereto and by this reference incorporated herein and made a part hereof; the said forms so sold and distributed are in the forms exemplified by photostatic copies thereof marked Exhibits B and C, attached hereto, and by this reference incorporated herein and made a part hereof.

PAR. 4. In the space for "Package Reference No." on the cards, as exemplified by Exhibit A,¹ when they are delivered to purchasers thereof, respondents have placed numbers which are their serial numbers for identifying their customers to them.

Respondents' purchasers cause the said cards to be placed in envelopes, in the upper left hand corners of which appear:

If not delivered return to
United Delivery System
Merchandise Distributors
639 New York Avenue, N. W.
Washington, D. C.,

¹ See opposite page.

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Complaint

attach the necessary postage and cause them to be deposited in the United States mail.

Such of the return cards as are filled out and mailed are received by respondents and sent by them to the proper customers who are identified by the serial numbers.

Respondents then send to the debtors about whom information has been sought 6 inch rulers made of cardboard.

[Exhibit A]

PLACE
A
ONE CENT
STAMP
HERE

THIS SIDE FOR ADDRESS ONLY

UNITED DELIVERY SYSTEM

Distribution Department

639 NEW YORK AVENUE, N. W.

WASHINGTON, D. C.

Exhibit "A"

RETURN THIS NOTICE PROMPTLY

UNITED DELIVERY SYSTEM

DISTRIBUTION DEPARTMENT
UNCLAIMED PACKAGE DIVISION
Washington, D. C.

ON HAND DEPT.

PACKAGE REFERENCE
NUMBER

Locating Agent -----
Checked by -----
Charges -----

A package bearing your name and address is held at your risk subject to your forwarding directions below.

CONSIGNEE MUST BE IDENTIFIED

DELIVER THE ABOVE PACKAGE TO

Name -----

Address -----

City ----- State -----

FOR IDENTIFICATION I REFER YOU TO MY EMPLOYER AND BANK

Employer -----

Address -----

Bank -----

All shipments subject to storage charges ten days after receipt by consignee of this notice.

Exhibit "A"

PAR. 5. Upon the forms as exemplified by Exhibit B¹ when they are delivered to purchasers thereof, respondents have placed numbers which are their serial numbers and identify the customers to them. The purchasers insert opposite the word "Consignee" the name of the person concerning whom information is sought, and insert his last known address in the spaces opposite "Street," "City," and "State." Said purchasers then insert the forms in envelopes, purchased by them from said respondents, which they cause to be addressed to the persons concerning whom information is sought. Upon these envelopes in the upper left hand corner appears:

If not delivered return to
United Delivery System
Merchandise Distributors
639 New York Avenue, N. W.,
Washington, D. C.

With the said forms are also enclosed envelopes, also purchased from said respondents, to which said purchasers have attached the necessary postage; these envelopes are addressed to

United Delivery System
Distribution Department
639 New York Avenue, N. W.
Washington, D. C.

Said purchasers then cause the said envelopes, properly stamped, and their enclosures, to be delivered to respondents at their place of business aforesaid, and respondents cause them to be deposited in the United States mail. Such replies as are returned are received by respondents, who identify the customers by the code numbers heretofore mentioned, and send the replies to the proper customers. Respondents also send to each of the persons concerning whom the desired information has been received, a 6 inch cardboard ruler.

In the space opposite "File No." on the forms exemplified by Exhibit C,² when they are delivered to purchasers thereof, respondents have placed numbers which are their serial numbers, and identify the customers to them. These forms are used when information concerning an alleged debtor is sought from some person other than the debtor, and they are used and handled in a manner substantially identical with that in which the forms exemplified by Exhibit B are handled as hereinabove set forth.

PAR. 6. By means of the aforesaid cards, envelopes and forms, respondents have falsely represented, and placed in the hands of their 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 are consignees of packages sent by someone other than respondents, and in the hands of respondents in the usual course of their business; that the packages were of more than the trivial value of a 6 inch pasteboard ruler, and that delivery could not be made by reason of change in the address of the consignee.

PAR. 7. Through the use of the name "United Delivery System" respondents have represented, directly and by implication, that they are in some capacity connected with the movement and transportation of goods and their delivery to the proper consignees. The said name is merely a disguise for the true nature of respondents' business.

¹ See opposite page.
See page 414.

PAR. 8. The said representations were false and misleading. In truth and in fact respondents' business has, so far as the recipients of said cards and forms 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 and forms are intended to elicit information are not consignees of packages sent by others than respondents and in the hands of respondents. The packages to which the

[Exhibit B]

UNITED DELIVERY SYSTEM

Distribution Department
Specialists in Package
Deliveries

EXECUTIVE OFFICES
639 NEW YORK AVENUE, N. W.
Washington, D. C.

Phone Connections
Cable Address
"Arrange"

Contracts made for the distribution of all kinds of advertising matter, trade papers, publications, and general merchandise by uniformed force

* *

STORAGE AND SHIPPING

* *

Merchandise and advertising matter received in carload or less than carload lots stored, broken up and delivered or reshipped by parcel post, freight or express Pool car distributing and forwarding.

Always at Your Service

MERCHANDISE DISTRIBUTORS

Consignee -----
Street -----
City-----State -----

We have a package for you which we would like to complete delivery of, but due to some change in address we will appreciate it if you will send us your present and correct address in order to make immediate and proper delivery.

We are inclosing herewith a self-addressed and stamped envelope for your reply. We would appreciate it if you fill in the following and return at your earliest convenience.

Very truly yours,

UNITED DELIVERY SYSTEM.

For the purpose of complete identification all of the data below is required.

Name -----
Address -----
Former Address -----
Name of present employer -----
Address -----
Bank -----
Address -----
Name of reference for identification -----

The World's Largest Problem Today Is Distribution—Getting Goods From Where They Are To Where They Ought To Be—System!

Exhibit "B"

Complaint

38 F. T. C.

[Exhibit C]

MAURICE KRESSIN
General Mgr.

UNITED DELIVERY SYSTEM

Phone Connection

MERCHANDISE
Distribution Department
Specialties in Package
Deliveries

EXECUTIVE OFFICES

639 NEW YORK AVENUE, N. W.
WASHINGTON, D. C.

Unclaimed Package Division
File No. -----

Contracts made for
the distribution of
all kinds of
advertising matter,
trade papers,
publications, and
general merchandise
by uniformed force.

* *

STORAGE AND
SHIPPING

* *

Merchandise and
advertising matter
received in carload
or less than carload,
lots stored, broken
up and delivered
or reshipped by
parcel post,
freight or express.
Pool car distributing
and forwarding.

Always at Your
Service.

MERCHANDISE
DISTRIBUTORS

Name -----

Address -----

Can you inform us as to the present address or where-
abouts of -----

who formerly lived at -----

We have a package addressed to the above party and we
understand that there has been some change in their address.
We are desirous of making proper delivery and would ap-
preciate your kindness in advising us of their present loca-
tion.

We are enclosing a self addressed and stamped envelope
and we would appreciate any information you can give us
regarding this party's present address or place of employ-
ment so we can make prompt delivery of this package.

Thanking you for an early reply, we are

Very truly yours,

UNITED DELIVERY SYSTEM.

Name of party -----

Present address -----

City -----

Present employment -----

Remarks -----

*The World's Largest Problem Today Is Distribution—Getting Goods From Where They Are
To Where They Ought To Be—System!*

Exhibit "C"

 MAIL BACK IN ENCLOSED ENVELOPE 

said cards and forms refer are those made up by respondents containing the rulers referred to above. The whole scheme is merely an attempt to obtain information by subterfuge, and the information sought was not for the purpose of locating the whereabouts of and identifying the persons concerning whom information was sought as consignees of packages but was sought solely for the purpose of assisting respondents' customers in collecting alleged delinquent accounts.

PAR. 9. 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 and forms 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. 10. 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 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 24, 1942, issued and subsequently served its complaint in this proceeding upon Maurice Kressin, an individual, trading as United Delivery System, and Esther Kressin, 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' 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 regularly came on for final hearing before the Commission on the said complaint, the 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 the oral arguments of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDING AS TO THE FACTS

PARAGRAPH 1. Respondent, Maurice Kressin, is an individual, trading as United Delivery System, with his office and principal place of business at 639 New York Avenue, N. W., Washington, D. C. Respondent, Esther Kressin, is the wife of Maurice Kressin and aids, assists, and is active in the conduct of the business carried on by both respondents as a family enterprise under the name "United Delivery System."

PAR. 2. Respondents are now, and for more than three years last past have been, engaged in the sale and distribution of post cards, envelopes, and form letters designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors. Respondents cause said post cards, envelopes, and form letters, when sold, to be

transported from their place of business in the District of Columbia to purchasers thereof in various States of the United States, and maintain, and have maintained, a course of trade in said post cards, envelopes, and form letters in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. In advertising and promoting the sale of their cards, envelopes, and form letters respondents have represented to merchants, collection agencies, and other customers or prospective customers, with reference to "Locating persons commonly called 'skips' and obtaining information as to their employment," in part as follows:

Have you any persons upon your books commonly called "skips" who try to evade payment of honest debts due your firm, or persons who are deliberately refusing to answer your letters or purposely returning mail to make you believe that they have moved, thus leading you off your track in the collection of accounts?

We can help you locate these persons and their addresses and get you information as to their present employment, and thus make it more convenient for you to obtain judgment against them and issue garnishment proceedings against the employer as to money in their possession belonging to the debtor.

We are in the business of delivering packages and messages in all of the principal cities in the United States, with executive offices in the city of Washington, D. C.

Our plan briefly stated, in obtaining this information is as follows:

(a) A letter is sent by you on our letterhead to the party you wish to locate, stating that the United Delivery System has a package for him that we have been unable to deliver on account of a change of address.

(b) This letter is mailed out by you in which there is an additional envelope printed with our name and address thereon for their reply. After receiving this letter the party is naturally anxious to know what kind of a package we may have for him, and consequently he fills in the lines printed on the attached letter which shows name, address and present employer, and in the event the party happens to be an employer himself, a bank reference will be requested. The return replies are received at our executive offices and we in turn return them to you for your information, mailing to the person replying a box of paper cups in order to comply with the Post Office Regulations.

This system is now being successfully used by the leading credit houses throughout the United States. By using these letters you can accomplish the following:

1. Obtain the correct addresses of persons who have moved and who are trying to evade payment of their debts to you.
2. Obtain the name of their employer whose name you might use to great advantage in either bringing garnishment proceedings against debtor or compelling him to pay his account by threatening to do so.
3. Obtain bank references of employers who are debtors.
4. Locate persons who have purchased goods from you under assumed names.

PAR. 4. The cards sold by respondents are addressed to:

UNITED DELIVERY SYSTEM
DISTRIBUTION DEPARTMENT
639 NEW YORK AVENUE, N. W.
WASHINGTON, D. C.

409

Findings

and upon the reverse side bear the following:

Return this notice promptly
UNITED DELIVERY SYSTEM
DISTRIBUTION DEPARTMENT
UNCLAIMED PACKAGE DIVISION
 Washington, D. C.

On Hand Dept.

Package Reference Number

Locating Agent -----

Checked by -----

Charges -----

A package bearing your name and address is held at your risk subject to your forwarding directions below.

CONSIGNEE MUST BE IDENTIFIED

DELIVER THE ABOVE PACKAGE TO

Name -----

Address -----

City ----- State -----

FOR IDENTIFICATION I REFER YOU TO MY
EMPLOYER AND BANK

Employer -----

Address -----

Bank -----

All shipments subject to storage charges ten days after receipt by consignee of this notice.

In the space marked "Package Reference Number" appears a number assigned by respondents to the customer who purchases the particular cards. With this card is furnished an unaddressed envelope bearing respondents' return address and a notation, "POSTMASTER—Important: if this letter can not be delivered to address shown please forward to last address." Respondents' customers address these envelopes to the last-known address of the debtor about whom information is sought, return them in bulk to respondents, who mail them in Washington, D. C. When cards thus sent to debtors and others are returned to respondents with the information desired, the original purchaser is identified by the numbering process above mentioned and respondents thereupon send the cards to such purchaser.

The form letters sold by respondents for use by their customers in locating debtors, when addressed to other than debtors, read:

Unlimited Facilities

Courtesy and Efficiency

MAURICE KRESSIN
General Mgr.

UNITED DELIVERY SYSTEM

Unclaimed Package
Division

EXECUTIVE OFFICES
639 NEW YORK AVENUE, N. W.
WASHINGTON, D. C.

MERCHANDISE

Distribution Department
Specialties in Package
Deliveries

File No. _____

Contracts made for the distribution of all kinds of advertising matter, trade papers, publications, and general merchandise by uniformed force.

* *

STORAGE AND SHIPPING

* *

Merchandise and advertising matter received in carload or less than carload lots stored, broken up and delivered or reshipped by parcel post, freight or express. Pool car distributing and forwarding.

Always at Your Service

MERCHANDISE DISTRIBUTORS

Name _____

Address _____

Can you inform us as to the present address or whereabouts of _____ who formerly lived at _____

We have a package addressed to the above party and we understand that there has been some change in their address. We are desirous of making proper delivery and would appreciate your kindness in advising us of their present location.

We are enclosing a self addressed and stamped envelope and we would appreciate any information you can give us regarding this party's present address or place of employment so we can make prompt delivery of this package. Thanking you for an early reply, we are

Very truly yours,

UNITED DELIVERY SYSTEM.

Name of party _____

Present address _____

City _____

Present employment _____

Remarks _____

The World's Largest Problem Today Is Distribution—Getting Goods From Where They Are To Where They Ought To Be—System!

 MAIL BACK IN ENCLOSED ENVELOPE 

The form letters addressed to debtors¹ are upon a letterhead similar to the above, and read:

Unlimited Facilities

UNITED DELIVERY SYSTEM Courtesy and Efficiency

Distribution Department
Specialists in Package
Deliveries

EXECUTIVE OFFICES
639 NEW YORK AVENUE, N. W.
WASHINGTON, D. C.

Phone Connections
Cable Address
"Arrange"

Contracts made for the distribution of all kinds of advertising matter, trade papers, publications, and general merchandise by uniformed force.

* *

STORAGE AND SHIPPING

* *

Merchandise and advertising matter received in carload or less than carload lots stored, broken up and delivered or reshipped by parcel post, freight or express. Pool car distributing and forwarding.

Always at Your Service

MERCHANDISE DISTRIBUTORS

Consignee -----

Street -----

City-----State -----

We have a package for you which we would like to complete delivery of, but due to some change in address we will appreciate it if you will send us your present and correct address in order to make immediate and proper delivery.

We are inclosing herewith a self-addressed and stamped envelope for your reply. We would appreciate it if you fill in the following and return at your earliest convenience.

Very truly yours,

UNITED DELIVERY SYSTEM.

For the purpose of complete identification all of the data below is required.

Name -----

Address -----

Former Address -----

Name of present employer -----

Address -----

Bank -----

Address -----

Name of reference for identification -----

The World's Largest Problem Today Is Distribution—Getting Goods From Where They Are To Where They Ought To Be—System!

 MAIL BACK IN ENCLOSED ENVELOPE 

¹ Error in inadvertently using word "creditors" instead of "debtors" was corrected by *nunc pro tunc* order of the Commission dated May 31, 1944.

With these letters is furnished an addressed envelope directed to United Delivery System, Distribution Department, at respondents' Washington address, and also an unaddressed envelope, similar to that furnished to purchasers of cards, for use in mailing the letter and reply envelope. When addressed by the purchasers thereof, they are returned to respondents, who mail them in Washington, D. C., receive the replies, and send such replies to the original purchaser of the form letter.

When a card or letter containing the information requested for the use of their customers is returned to respondents by the person about whom the information is desired, they mail to him a few paper cups or a six-inch ruler made of cardboard, or some similar article of trivial value. These articles are furnished by respondents and sent out by them "in order to comply with the Post Office Regulations." In some instances replies have been received to as high as 90 percent of the inquiries sent out, but the average returns approximate 30 percent of the inquiries. Respondent Maurice Kressin testified that in some instances in the past, prior to mailing such inquiries, the packages containing the small articles of merchandise mentioned were addressed to persons to whom inquiries were sent, but this is not currently being done and was never the general practice. It is customary to make up and address these packages after a reply is received. Respondents in fact are not seeking to make delivery of merchandise to the debtors of their customers but only to request information for the use of their customers. Respondent Maurice Kressin also testified that the business of United Delivery System had two phases: one devoted to the delivery of merchandise and advertising matter; and the other devoted to the sale and handling of cards and form letters used in locating and securing information concerning delinquent debtors.

PAR. 5. Through the use of the name "United Delivery System" in the manner above set forth, respondents falsely represent to the debtors and others from whom information concerning debtors is sought that the information is desired for use in connection with the movement and transportation of goods and the delivery thereof to the proper consignees, and the name as thus used is merely a disguise to conceal from such addressees the true nature of respondents' business. The use of said name and the false representations made to debtors and to others from whom information is sought concerning debtors, as aforesaid, have the capacity and tendency to mislead and deceive the persons addressed and cause them to furnish respondents with information which would not be furnished if the true purpose of respondents' inquiry were known. Through the use of the cards, form letters, and envelopes heretofore described respondents place in the hands of others means of making the aforesaid false representations.

CONCLUSION

The 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 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 and in opposition to the allegations

of said complaint, report of the trial examiner and exceptions thereto, 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Maurice Kressin, an individual, trading as United Delivery System or under any other name, and respondent, Esther Kressin, an individual, jointly or severally, their 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 cards, form letters, envelopes, or any other printed or written material for use in obtaining information concerning debtors or alleged debtors, do forthwith cease and desist from:

1. Representing, or placing in the hands of others means of representing, directly or by implication, that persons concerning whom information is sought are the consignees of merchandise or other property being held for delivery to them.

2. Using the name "United Delivery System," or any other name which imports or implies the shipment, transportation, or distribution of merchandise, to designate, describe, or refer to respondents' business insofar as said business is concerned with obtaining information to be used in the collection of debts.

3. Using, or placing in the hands of others for use, cards, form letters, envelopes, or other printed or written material by means of which respondents' business of obtaining information for the purpose of facilitating the collection of debts is represented as a business of some other nature or character.

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.

IN THE MATTER OF

H. L. ROBINSON COMPANY

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

Docket 4906. Complaint, Feb. 12, 1943—Decision, May 2, 1944

Where an individual engaged in the manufacture of neon electrical display signs and in the leasing and installation thereof at the business places of purchasers in various States and in the District of Columbia, contacting, either personally or through salesmen, prospective lessees, many of whom, proprietors of small businesses such as filling stations and road-side restaurants, with only limited business experience, were unwilling to enter into leases for more than five years, or to enter into any fixed period lease until a trial satisfied them it would be profitable to do so, or preferred to purchase on the installment plan, and with whom it was the practice of said individual and his salesmen promptly to agree to whatever terms of lease or purchase were desired, telling the purchaser that the matter would be arranged to permit cancellation after trial, or installment purchase or whatever was desired—

- (a) Made use of lease agreements, bound in triplicate, which, regardless of verbal agreements, provided on their face for a five-year lease, and on the reverse side, concealed further by the carbons interposed, contained many important contractual provisions of which the other parties were carefully kept in ignorance, including provision "in Bible print" that if the user or his assignees were "in business at the expiration of the initial 60-month period, or any extension thereof as herein provided, this agreement . . . shall automatically . . . be extended for an additional like period of 60 months"; and, having written various matters on the face of the top sheets and obtained the signatures of the other parties thereon, refused to furnish copies until after the signs' installation and endeavored by every means at their command to induce the other parties not to read the face of the contracts upon which their signatures were placed, falsely representing that the contract was in accordance with the verbal understandings;

With the result that through said acts and practices and said forms of agreement, which were traps for the unwary and inexperienced, baited with the various representations of said individual and his salesmen, many persons were induced to enter into lease agreements as to the terms and conditions of which they had been intentionally misled, deceived and kept in ignorance; and

- (b) Made it their practice, in connection with certain of the agreements which provided that payment of rental for the signs was to be made by depositing coins in meters installed by said individual, to install such meters in a fashion which deprived the users of electric current for their entire establishments unless the said meters were fed at the times and in the amounts required by the lease, thus compelling users to pay rent for the signs as a prerequisite to obtaining electric current for other purposes:

Held, That such acts and practices, as above 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.

Cookingham & Hanley, of Portland, Ore., 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 Hubert L. Robinson, an individual, trading under the name of H. L. Robinson Company, 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, Hubert L. Robinson, trading under the name H. L. Robinson Company, is an individual with his office and principal place of business at 1447 Northwest Sandy Boulevard, city of Portland, State of Oregon.

PAR. 2. Respondent is now, and has been for more than four years last past, engaged in the business of manufacturing and leasing electrical display signs, commonly known as Neon Signs, and installing them at the places of business of the purchasers thereof. Respondent causes said signs, when sold, to be transported from his aforesaid place of business in the State of Oregon, to said purchasers 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 signs in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent has made and caused to be made numerous deceptive and misleading statements and representations with respect to the terms and conditions upon which said signs could be leased or acquired and has concealed and caused to be concealed from prospective lessees and purchasers the true terms and conditions of his lease agreements by reason of which many persons have been induced to sign them without being aware of the true import and terms thereof.

PAR. 4. Respondent's contact with prospective lessees of his signs is made either personally or through salesmen. Many of such prospects are proprietors of small businesses, such as gasoline filling stations and roadside restaurants, with only limited business experience. Many of such prospective lessees are unwilling to enter into leases of signs for more than limited terms of less than five years. Many others are unwilling to enter into leases for any fixed term until, after a period of trial, they are satisfied that it would be profitable so to do by reason of increased business due to the signs. Many others are unwilling to lease such signs but prefer to purchase them on the installment plan and many others do not desire lease terms in excess of five years. To whatever terms of lease or purchase the prospects desire, respondent and his salesmen promptly agree. If, for example, a three year lease is desired the prospect is assured that the lease will be so prepared. If a period of trial with a right to cancellation is desired, it is agreed to. If an installment purchase contract is desired, the purchaser is told that after a specified number of payments the sign would belong to him.

Having verbally agreed to whatever conditions are sought to be imposed by prospective lessees or purchasers, their signatures to lease-agreements are obtained. The said agreements are bound in pads or blocks, containing a number of such agreements, each in triplicate, each

copy being of a different color. Carbon paper is inserted between the top and middle and middle and bottom sheets so that the three copies are made simultaneously. In preparing the agreements, respondent and his salesmen write various matters on the face of the top sheets and obtain the signatures of the other parties thereon, the two other copies being made through the carbon paper. Respondent and his salesmen so conduct the transaction that the other parties are never afforded the opportunity of seeing the reverse sides of the agreements, and they refuse to furnish to the other parties copies thereof until after the signs covered by the agreements have been installed. The reverse sides of the agreements contain many important contractual provisions, of which such other parties are unaware and of which they are carefully kept in ignorance by respondent and his salesmen. Respondent and his salesmen endeavor by every means at their command to induce the other parties not to read even the face of the contracts upon which their signatures are placed, representing among other things that the contract is or would be in accordance with the terms of the verbal understandings. Regardless, however, of any verbal understandings as to what the terms of the agreements are to be, they provide on their face for a five year lease with a further provision, which appears on the back of the agreement "in bible print," as follows: "The duration and term of this agreement shall be as herein set out; provided that if said User or his assignees hereof continue in and be in business at the expiration of the initial 60-month period, or any extension thereof as herein provided, this agreement and all of the terms and conditions thereof shall automatically and by its own force and effect continue and be extended for an additional like period of 60 months."

As a result of the acts and practices aforesaid of respondent and his salesmen, many persons have been induced to enter into lease agreements as to the terms and conditions of which they have been intentionally misled, deceived and kept in ignorance by respondent. Respondent's forms of agreement are traps for the unwary and inexperienced, baited with the various representations of respondent and his salesmen.

PAR. 5. Certain of said agreements provide that payment of the rentals for the signs is to be made by depositing coins in meters installed by respondent. It is respondent's practice to install such meters in a fashion which deprives the users of electric current for their entire establishments unless the meters for the signs are fed at the times and in the amounts required by the leases, thus compelling users to pay rent for the signs as a prerequisite to obtaining electric current for other purposes.

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 February 12, 1943, issued and thereafter served its complaint in this proceeding upon respondent, Hubert L. Robinson, 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 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, Hubert L. Robinson, trading under the name H. L. Robinson Company, is an individual with his office and principal place of business at 1447 Northwest Sandy Boulevard, city of Portland, State of Oregon.

PAR. 2. Respondent is now, and has been for more than four years last past, engaged in the business of manufacturing and leasing electrical display signs, commonly known as Neon Signs, and installing them at the places of business of the purchasers thereof. Respondent causes said signs, when sold, to be transported from his aforesaid place of business in the State of Oregon, to said purchasers 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 signs in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent has made and caused to be made numerous deceptive and misleading statements and representations with respect to the terms and conditions upon which said signs could be leased or acquired and has concealed and caused to be concealed from prospective lessees and purchasers the true terms and conditions of his lease agreements by reason of which many persons have been induced to sign them without being aware of the true import and terms thereof.

PAR. 4. Respondent's contact with prospective lessees of his sign is made either personally or through salesmen. Many of such prospects are proprietors of small businesses, such as gasoline filling stations and roadside restaurants, with only limited business experience. Many of such prospective lessees are unwilling to enter into leases of signs for more than limited terms of less than five years. Many others are unwilling to enter into leases for any fixed term until, after a period of trial, they are satisfied that it would be profitable so to do by reason of increased business due to the signs. Many others are unwilling to lease such signs but prefer to purchase them on the installment plan and many others do not desire lease terms in excess of five years. To whatever terms of lease or purchase the prospects desire, respondent and his salesmen promptly agree. If, for example, a three year lease is desired the prospect is assured that the lease will be so prepared. If a period of trial with a right to cancellation is desired, it is agreed to. If an installment purchase contract is desired, the purchaser is told that after a specified number of payments the sign would belong to him.

Having verbally agreed to whatever conditions are sought to be imposed by prospective lessees or purchasers, their signatures to lease-agreements

are obtained. The said agreements are bound in pads or blocks, containing a number of such agreements, each in triplicate, each copy being of a different color. Carbon Paper is inserted between the top and middle and middle and bottom sheets so that the three copies are made simultaneously. In preparing the agreements, respondent and his salesmen write various matters on the face of the top sheets and obtain the signatures of the other parties thereon, the two other copies being made through the carbon paper. Respondent and his salesmen so conduct the transaction that the other parties are never afforded the opportunity of seeing the reverse sides of the agreements, and they refuse to furnish to the other parties copies thereof until after the signs covered by the agreements have been installed. The reverse sides of the agreements contain many important contractual provisions, of which such other parties are unaware and of which they are carefully kept in ignorance by respondent and his salesmen. Respondent and his salesmen endeavor by every means at their command to induce the other parties not to read even the face of the contracts upon which their signatures are placed, representing among other things that the contract is or would be in accordance with the terms of the verbal understandings. Regardless, however, of any verbal understandings as to what the terms of the agreements are to be, they provide on their face for a five year lease with a further provision, which appears on the back of the agreement "in bible print," as follows: "The duration and term of this agreement shall be as herein set out; provided that if said User or his assignees hereof continue in and be in business at the expiration of the initial 60-month period, or any extension thereof as herein provided, this agreement and all of the terms and conditions thereof shall automatically and by its own force and effect continue and be extended for an additional like period of 60 months."

As a result of the acts and practices aforesaid of respondent and his salesmen, many persons have been induced to enter into lease agreements as to the terms and conditions of which they have been intentionally misled, deceived and kept in ignorance by respondent. Respondent's forms of agreement are traps for the unwary and inexperienced, baited with the various representations of respondent and his salesmen.

PAR. 5. Certain of said agreements provide that payment of the rentals for the signs is to be made by depositing coins in meters installed by respondent. It is respondent's practice to install such meters in a fashion which deprives the users of electric current for their entire establishments unless the meters for the signs are fed at the times and in the amounts required by the leases, thus compelling users to pay rent for the signs as a prerequisite to obtaining electric current for other purposes.

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 the respondent,

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

It is ordered, That the respondent, Hubert L. Robinson, trading under the name H. L. Robinson Company, or any other name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of Neon Signs, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using forms of lease which provide for automatic renewal at the expiration of the stated lease term unless the provisions for such renewal are set forth in full in immediate connection with and as conspicuously as the provisions which relate to the initial term of the lease.

2. Procuring, or attempting to procure, signatures to contracts for lease or purchase by misrepresenting the terms thereof or by preventing the other parties from, or hampering them in, having a sufficient opportunity to discover the true and entire contents thereof, by the use of forms, which upon the side presented for signature appear to be complete but in which are incorporated by reference other contractual provisions set forth on the reverse side thereof, or otherwise.

3. Installing coin meters in which sums to be paid as rental for or the purchase price of such signs are to be deposited, in such a fashion as to deprive the lessee or purchaser of electric current for other purposes in the event that coins are not deposited as required by the lease or sale agreement unless such lessee or purchaser is specifically advised prior to such installation of the said consequences of such installation.

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 it has complied with this order.

IN THE MATTER OF

LAWRENCE BLANKET COMPANY; THOMAS B. KEEN
AND MARIAN C. KEEN, TRADING UNDER THE NAME
THOMAS B. KEEN COMPANY, AND ROBERT MARS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT, APPROVED SEPT. 26, 1914 AND
THE WOOL PRODUCTS LABELING ACT OF 1939, APPROVED OCT. 14, 1940

Docket 4946. Complaint, Apr. 19, 1943—Decision, May 6, 1944

Where a manufacturer of blankets and other products in Worcester, Mass.; two partners in New York City, sellers and distributors thereof; and an individual in Washington, D. C., who sold said products, secured through said partners; engaged in the interstate sale of products in question, including many which were wool products as defined by the Wool Products Labeling Act of 1939, in that they were composed in whole or in part of wool, reprocessed wool or reused wool—

Sold to agencies, departments and bureaus of the United States government and to other purchasers, blankets which were misbranded in violation of said Act in that when introduced in commerce they 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 and non-wool fiber, and maximum percentage of non-fibrous loading or adulterating matter; and proper identification of the manufacturer, seller, or reseller, or name of one or more persons subject to the Act with respect to product concerned:

Held, That aforesaid acts and practices, as above set forth, were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. DeWitt T. Puckett for the Commission.

Mr. Meyer Cohan, of Worcester, Mass., for Lawrence Blanket Co.

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 Lawrence Blanket Company, a corporation, Thomas B. Keen and Marian C. Keen, individually, and as copartners, trading under the name Thomas B. Keen Company, and Robert Mars, an individual, 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. Respondent, Lawrence Blanket Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Massachusetts and has its principal office and place of business at 9 Winter Street, Worcester, Mass.

Respondents, Thomas B. Keen and Marian C. Keen, are copartners, doing business under the name Thomas B. Keen Company and have their

principal office and place of business at 40 Worth Street, New York, N. Y.

Respondent, Robert Mars, has his principal office and place of business at 401 First Street, S. E., Washington, D. C.

PAR. 2. Respondent, Lawrence Blanket Company, is now and for several years last past has been engaged in the manufacture, sale and distribution of blankets and other products.

Respondents, Thomas B. Keen and Marian C. Keen, during the time mentioned herein have sold and distributed blankets and other products manufactured by respondent, Lawrence Blanket Company.

Respondent, Robert Mars, during the time mentioned herein has sold and distributed blankets and other products manufactured by respondent, Lawrence Blanket Company, which he secures through and from respondents, Thomas B. Keen and Marian C. Keen.

Respondents cause and have caused said products when sold by them to be transported from the States of Massachusetts and 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. 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. Among the products manufactured by the respondent, Lawrence Blanket Company, which have been sold and distributed in said commerce by all the respondents herein 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 products are composed in whole or in part of wool, reprocessed wool or reused wool as those terms are defined in the said act. Said wool products are subject to the labeling provision of said act and said rules and regulations.

Among the said wool products sold to agencies, departments and bureaus of the United States Government and to other purchasers and distributed by respondents in said commerce as aforesaid were blankets which were misbranded in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated under said 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 the wool product, exclusive of ornamentation not exceeding 5 percentum 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 percentum 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 re-seller 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. 4. 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 19th day of April, 1943, issued and subsequently served its complaint in this proceeding upon respondents, Lawrence Blanket Company, a corporation, Thomas B. Keen and Marian C. Keen, individually, and as copartners, trading under the name Thomas B. Keen Company, and Robert Mars, an individual, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939. After the issuance of said complaint, the Commission, by order entered herein, granted the motion of respondents, Lawrence Blanket Company, Thomas B. Keen and Marian C. Keen for permission to withdraw their answers filed to the complaint and to file answers admitting all the material allegations of fact set forth in the said complaint and waiving all intervening procedure and further hearing as to said facts, which answers were duly filed in the office of the Commission. Respondent, Robert Mars, submitted an answer admitting all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the said facts, 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 respondents' answers thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest 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, Lawrence Blanket Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Massachusetts and has its principal office and place of business at 9 Winter Street, Worcester, Mass.

Respondents, Thomas B. Keen and Marian C. Keen, are copartners, doing business under the name Thomas B. Keen Company and have their principal office and place of business at 40 Worth Street, New York, N. Y.

Respondent, Robert Mars, has his principal office and place of business at 401 First Street, S. E., Washington, D. C.

PAR. 2. Respondent, Lawrence Blanket Company, is now and for several years last past has been engaged in the manufacture, sale and distribution of blankets and other products.

Respondents, Thomas B. Keen and Marian C. Keen, during the time mentioned herein have sold and distributed blankets and other products manufactured by respondent, Lawrence Blanket Company.

Respondent, Robert Mars, during the time mentioned herein has sold and distributed blankets and other products manufactured by respondent, Lawrence Blanket Company, which he secures through and from respondents, Thomas B. Keen and Marian C. Keen.

Respondents cause and have caused said products when sold by them to be transported from the States of Massachusetts and 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. Respondents main-

tain, 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. Among the products manufactured by the respondent, Lawrence Blanket Company, which have been sold and distributed in said commerce by all the respondents herein 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 products are composed in whole or in part of wool, reprocessed wool or reused wool as those terms are defined in the said act. Said wool products are subject to the labeling provision of said act and said rules and regulations.

Among the said wool products sold to agencies, departments and bureaus of the United States Government and to other purchasers and distributed by respondents in said commerce as aforesaid were blankets which were misbranded in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated under said 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 the wool product, exclusive of ornamentation not exceeding 5 percentum 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 percentum 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.

CONCLUSION

The aforesaid acts, practices and methods of respondents, as herein found, were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder and 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of respondents, in which answers respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and 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 respondents, Lawrence Blanket Company, a corporation, Thomas B. Keen and Marian C. Keen, individually, and as copartners, trading under the name Thomas B. Keen Company, or trading under

Order

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any other name, and Robert Mars, an individual, jointly or severally, their respective 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 blankets or other "wool products," as such products are defined in the Wool Products Labeling Act of 1939, which contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," "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 five percentum 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 five percentum or more, and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool products of any non-fibrous 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.

Complaint

IN THE MATTER OF

BAUSCH & LOMB OPTICAL COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4903. Complaint, Feb. 9, 1943—Decision, May 9, 1944*

Where a corporation engaged in manufacture of ophthalmic and optical products, including spectacle lenses, and in competitive interstate sale and distribution of such spectacle lenses to wholesalers for resale to retailers, ophthalmologists, optometrists and opticians for distribution to the public through resale or use in filling prescriptions; having from 1913 to 1928 advertised its "Balcor" six-base meniscus and six-base toric lenses—which, respectively, provided a high degree of marginal correction, and a lesser degree thereof—through display advertising comparing photographic images taken through the old-fashioned flat lenses—largely supplanted since 1900 by the toric and meniscus lenses—with images taken through meniscus lenses, showing the picture produced by the flat lens clear in the center but blurred near the edges, and same area taken through the latter, clear throughout—

In advertising thereafter its "Orthogon" series of meniscus and toric lenses, introduced about 1928, through continued dissemination of photographic comparisons, in which the figure produced by the flat lens was clear on the center but blurred near the edges while that produced through the Orthogon meniscus lens was clear throughout its entire area,—

Represented, through use of word "ordinary" in matter accompanying said photographic comparison, in which it described the marginal blurred photograph, made with flat lens, as "made through an ordinary spectacle lens," not further described, with its "needless eye strain," as contrasted with that made through its "Orthogon spectacle lens" with its "extra margin of safety" and "same perfect vision" at the edge as at the center," that its said Orthogon lenses provided a greater degree of marginal correction as compared with the six-base meniscus and six-base toric lenses than they in fact did, through word's capacity and tendency to mislead into belief that comparison was between its "Orthogon" and other toric and meniscus lenses sold through same channels;

With capacity and tendency to cause members of the public in said erroneous belief to purchase its said Orthogon lenses in preference to products of its competitors and thereby unfairly divert trade from them to it:

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

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

Mr. R. P. Bellinger for the Commission.

Goodwin, Nixon, Hargrave, Middleton & Devans, of Rochester, N. Y., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Bausch & Lomb Optical Company, a corporation, hereinafter referred to as respondent, has violated the pro-

visions 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, Bausch & Lomb Optical Company, 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 in Rochester, N. Y.

PAR. 2. Respondent is now and for many years last past has been engaged in the manufacture and sale of optical products, including spectacle lenses, which it sells and has sold to dealers, opticians and optometrists who are engaged in reselling and distributing said products to the consuming public.

Respondent causes said products 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 products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is now and at all times referred to herein has been in substantial competition with other corporations and with firms, partnerships and individuals engaged in the sale of optical products, including spectacle lenses, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Prior to the advent of the twentieth century the bulk of spectacle lenses was made of flat pieces of glass ground to different powers. These were known as flat lenses and also as double convex or double concave lenses. They afforded correction in the central portion of the lens, but did not supply equal correction in the outer portion near the edge of the lens. Early in the decade which began with the year 1920 two types of improved lenses were developed from curved glass which secured a degree of correction throughout the entire lens area superior to and higher than that previously supplied by the old flat lens, and these two improved types of lens practically supplanted the flat lens in the market. One of said improved types is known as the Meniscus, the other as the Toric. The two now comprise the vast majority of all lenses sold in this country, and the flat lens above referred to is now seldom sold on prescription to the consuming public.

PAR. 5. For a number of years subsequent to the introduction of the Meniscus and the Toric lenses the respondent sold the said two lenses throughout the country, and the larger portion of the lenses which it now sells are Meniscus and Toric lenses. For the purpose of inducing purchases thereof, the respondent has disseminated or caused the dissemination in commerce, as commerce is defined by the Federal Trade Commission Act, of advertisements and advertising material among retail dealers, opticians and optometrists for their use, and which they have used and displayed, in selling and offering to sell the said lenses to their customers. The said advertising included photographic comparisons of images taken through different types of lenses to illustrate the improvements in marginal correction. In 1913, or thereabout, such comparisons were used in its advertising by respondent to indicate the difference between the flat lens and the more modern Meniscus lens or the Toric lens. In these illustrations the flat lens produced a clear picture through the center thereof

but was faded or blurred nearer the edges, while the Meniscus or Toric lenses produced a clear picture throughout the entire lens area.

About 1928 the respondent began to market a lens which it designed and designated as Orthogon, representing that this lens further improved marginal correction. Thereafter the advertising disseminated by respondent in commerce as aforesaid has continued to feature photographic comparisons of various pairs of objects. In some instances one of each pair is made to appear under the words "ordinary lens" and the other under the words "Orthogon lens." Each of said comparisons is accompanied by the following language:

LEFT: Actual photograph made through an ordinary spectacle lens. The eye can overcome some of this marginal blur, but only at the expense of needless eyestrain.

RIGHT: Actual photograph made through an Orthogon spectacle lens. Note the extra margin of safety . . . The same perfect vision at the edge of the lens as at the center.

A variation of the above advertisements and representations which has been and is being used by respondent is that under the "Left" illustration the words "flat" or "double convex" are substituted for the word "ordinary" so that it reads: "LEFT: Actual photograph made through a flat (or double convex) lens. The eye can overcome some of this marginal blur, but only at the expense of needless eyestrain."

PAR. 6. In truth and in fact the said photographic illustrations and other representations are deceptive and misleading, in that the "ordinary" lens now used, and for some time past used, is and has been either the Toric or the Meniscus, and in that a substantial part of the public is not informed of a distinction between the flat or double convex lens and the commonly used Toric and Meniscus lens. There exists, therefore, a tendency for a substantial part of the public to believe that the "ordinary" lens and the "flat" or "double convex" lens with which respondent in its advertising compares its Orthogon lens is the commonly used and competing Toric or Meniscus lens. The said photographic representations are further misleading and deceptive in that they have the capacity and tendency to and do convey the false impression that marginal blur and figure distortion are characteristic of or attributed to the refractive qualities of the Meniscus and the Toric lens.

PAR. 7. The aforesaid acts and practices of the respondent have had and now have the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said photographic illustrations and other similar representations used by respondent afford an accurate and true comparison of the superiority of the Orthogon lens over the Meniscus and Toric lenses. As a result of such erroneous and mistaken belief many members of the purchasing and consuming public have been induced to and have purchased substantial quantities of respondent's said product, in consequence of which trade has been unfairly diverted to respondent from its competitors, and thereby substantial injury has been done and is being done by the respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and respondent's competitors and constitute unfair methods of competition in commerce

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 9, 1943, issued and subsequently served its complaint in this proceeding upon respondent, Bausch & Lomb Optical Company, 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 an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, report of the trial examiner, and briefs in support of the complaint and in opposition thereto (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Bausch & Lomb Optical Company, 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 in Rochester, N. Y. It is now, and for many years has been, engaged in the manufacture and sale of ophthalmic and optical products, including spectacle lenses. For many years respondent has sold, and now sells, its spectacle lenses to wholesale distributors who resell and distribute said lenses to retail dealers, ophthalmologists, optometrists, and opticians who, in turn, distribute said lenses to the public by resale or through use in filling prescriptions for spectacles.

PAR. 2. In the course and conduct of its aforesaid business, respondent causes its products, when sold, to be transported from its place of business in the State of New York to purchasers at their points of location 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 said products in commerce between and among the various States of the United States and in the District of Columbia, and in the course thereof is now, and at all times material to this proceeding has been, in substantial competition with other firms and corporations engaged in the sale of ophthalmic and optical products, including spectacle lenses, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. For more than 200 years prior to 1900 spectacle lenses were generally made of flat pieces of glass ground to different powers. Such lenses are known as flat lenses, and also as double convex or double concave lenses. They afford correction in the central portion of the lens but

do not give equal correction in the outer portion near the edge of the lens. Substantial quantities of flat lenses are still sold in the United States, but not generally on prescription by the optical professions. For more than a hundred years marginally corrected lenses in spherical powers have been known and used. Such lenses are known as meniscus lenses because of their shape, and they afford a wider useful field of view than a flat lens of the same power. About 1900, marginal correction in lenses of cylindrical and compound powers became a practical reality with the development of commercial means of producing toric surfaces on glass. Since that time toric lenses for cylindrical and sphero-cylindrical corrections and meniscus lenses for spherical corrections have largely supplanted the old-fashioned flat lenses insofar as their use by the optical professions is concerned. Currently there are two types of meniscus lenses and two types of toric lenses in general use: one is known as the six-base meniscus or six-base toric, and the other is known as the marginally corrected meniscus or marginally corrected toric. For many years respondent has manufactured and sold meniscus and toric lenses, and the larger portion of the ophthalmic lenses which it now sells are of these types. Its six-base meniscus and six-base toric lenses are known by the trade name "Balcor." Its Balcor meniscus lenses provide a high degree of marginal correction, and its Balcor toric lenses provide a substantially lesser degree of marginal correction. Its second type of marginally corrected meniscus or toric lenses were first introduced and sold by the respondent in 1928. This type of lens is known by the trade name "Orthogon" and provides the highest degree of marginal correction of any lens manufactured by respondent. The Orthogon toric lens represents a substantial improvement over the six-base toric and the Orthogon meniscus lens a lesser improvement over the six-base meniscus.

PAR. 4. For the purpose of inducing the purchase of its meniscus and toric lenses, respondent began about 1913 to disseminate, and cause the dissemination, in commerce of advertisements and advertising material among optical wholesalers and retailers, ophthalmologists, optometrists, and opticians which they used in displaying for sale and selling such lenses to the trade and to the public. This advertising included comparisons of photographs of images taken through flat lenses with the same images taken through meniscus lenses. In these illustrations the picture produced through the flat lens was clear in the center but blurred near the edges, while the picture of the same area taken through the meniscus lens was clear throughout, and such comparisons were made to illustrate the improvement in marginal correction. If the pictures taken through these lenses had covered a wider angle of view, the marginal portion of the picture taken through the meniscus lens would have shown some blur, but to a lesser degree than that taken through the flat lens. In the photographic comparisons made in 1913 the useful field of vision of the flat lens was shown as 16 degrees and that of the meniscus lens as 52 degrees. When its Orthogon series of meniscus and toric lenses was introduced in 1928, respondent continued to disseminate, in the manner heretofore described, advertising featuring photographic comparisons in which the useful field of vision of flat lenses was shown as 20 degrees, of six-base toric lenses from 36 degrees to 50 degrees, and of the Orthogon series of meniscus and toric lenses as 60 degrees in all powers. Respondent in this advertising subsequent to 1928 featured comparisons of photographic images taken through flat lenses with those taken through an Orthogon meniscus lens.

In these comparisons the picture produced by the flat lens was clear in the center but blurred near the edges, while the picture produced through the Orthogon meniscus lens was clear throughout its entire area. In some instances respondent in its advertisements accurately described the lenses which were being compared. In other instances, continuously from the year 1928 until the end of the year 1941, the images taken through a flat lens were described as taken through an "ordinary lens" and the other as being taken through an "Orthogon lens." These comparisons were described thus:

LEFT: Actual photograph made through an ordinary spectacle lens. The eye can overcome some of this marginal blur, but only at the expense of needless eye strain.

RIGHT: Actual photograph made through an Orthogon spectacle lens. Note the extra margin of safety. . . . The same perfect vision at the edge of the lens as at the center.

PAR. 5. The comparisons of photographs taken through an Orthogon lens with those taken through a flat lens show a much greater superiority for the Orthogon lens than would have been the case in a comparison between an Orthogon lens and the six-base type of toric or meniscus lenses. The description of the flat lens used in making such comparisons as an "ordinary" lens has the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that the comparison was between an Orthogon lens and other lenses ordinarily sold through the same channels; namely, other toric and meniscus lenses. Such comparisons thereby serve as representations that Orthogon lenses have a far greater degree of superiority over six-base meniscus and six-base toric lenses than they in fact have, and have the capacity and tendency to cause members of the public, acting upon the aforesaid erroneous belief, to purchase respondent's Orthogon lenses in preference to products of its competitors, and thereby unfairly to divert trade from respondent's competitors to respondent.

CONCLUSION

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

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 an examiner of the Commission theretofore duly designated by it, report of the trial examiner, 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 respondent, Bausch & Lomb Optical Company, 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 spectacle lenses in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing by means of comparative photographs in which the lenses or types of lenses compared are not clearly and accurately identified, or in any other manner, that the marginal correction provided by respondent's Orthogon lenses is substantially greater in comparison with other toric or meniscus lenses than it is in fact.

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

IMPERIAL DRUG EXCHANGE, INC., ALSO TRADING AS
DUPREE MEDICAL COMPANY, AND ABRAHAM PARODNEYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5094. Complaint, Dec. 9, 1943—Decision, May 9, 1944*

Where a corporation and its president, engaged in the interstate sale and distribution of its "Dupree Brand New Formula Pills" and "Dupree Pills, Double Strength, New and Improved Formula"; in advertisements thereof which it disseminated through the mails and to dealers who distributed them among the purchasing public—

- (a) Falsely represented that their said preparations constituted a competent and effective treatment for delayed menstruation arising from colds, nervous strain, poor nutrition, anemia, fright, over-exposure, inadequate clothing, and change of climate; and
- (b) Failed to reveal facts material in the light of such representations or material with respect to the consequences which might result from the use of said preparations under prescribed or usual condition, in that they were irritant laxatives and as such potentially dangerous when taken by persons suffering from abdominal pain, nausea, vomiting or other symptoms of appendicitis;

With result that said advertising matter, disseminated by dealers, served as instrumentalities through which members of the purchasing public were deceived and misled as to the therapeutic value and safety of their said preparations, whereby such public was induced to purchase substantial quantities thereof:

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.

Mr. William L. Taggart for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Imperial Drug Exchange, Inc., a corporation, Imperial Drug Exchange, Inc., a corporation, trading as Dupree Medical Company and Abraham Parodney, individually, and as an officer of Imperial Drug Exchange, Inc., a corporation, herein 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. Imperial Drug Exchange, Inc., is a corporation, chartered and doing business under the laws of the State of New York with its principal place of business located at 20 East 17th Street, New York, N. Y. Said corporation trades and carries on certain of its business under the name of Dupree Medical Company, particularly that part of its business referred to in this complaint.

Abraham Parodney, is an individual, and is President, of the corporate respondent, Imperial Drug Exchange, Inc. This individual respondent

directs and controls the policies and practices of the respondent corporation including its business carried on as Dupree Medical Company. The address of said individual respondent is 20 East 17th St., New York, N. Y.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution of certain medicinal preparations designated as:

Dupree Brand New Formula Pills and
Dupree Pills, Double Strength, New and Improved Formula.

Respondents cause said preparations, when sold, to be transported from their 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. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparations by the United States Mail and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparations by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparations in commerce, as commerce is defined in the Federal Trade Commission Act. Respondents also cause such false advertising to be transported by means of the United States mails and by other means in commerce, to wholesale and retail dealers of their products. Wholesale dealers cause such material to be transported to retailers and retailers distribute the same among the purchasing public.

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, and by means of circulars and other advertising literature, are the following:

Dupree Pills have been used throughout the country by women who have found them effective in delayed menstruation due to colds and nervous strain.

The phenomenon of menstruation which appears about every 28 days is a natural function which may be disturbed by a number of causes, such as poor nutrition, anemia, fright, colds, over-exposure, (Inadequate clothing, and change of climate).

It is for delayed menstruation due to these causes only, that Dupree Pills are recommended.

Dupree Double Strength Pills may be taken for the same conditions as the Dupree Single Strength Pills, but are sold for use in cases which require a stronger medication.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, the respondents represent and have represented, that their preparations designated as "Dupree Brand New Formula Pills" and "Dupree Pills, Double Strength, New and Improved Formula," constitute a competent and effective treatment for delayed menstruation arising from colds, nervous

strain, poor nutrition, anemia, fright, over-exposure, inadequate clothing, and change of climate.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondents' preparations are not a competent and effective treatment for delayed menstruation arising from nervous strain, poor nutrition, anemia, fright, colds and troubles caused by over-exposure, inadequate clothing, change of climate, or from any other cause.

PAR. 6. Respondents 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 preparations 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 said preparations are irritant laxatives and are potentially dangerous when taken by persons suffering from abdominal pains, stomach ache, cramps, colic, nausea, vomiting or other symptoms of appendicitis.

PAR. 7. The circulars and advertising matter placed in the hands of wholesalers and retailers and distributed and disseminated by them serve as instrumentalities by and through which members of the purchasing public may be and are likely to be deceived and misled as to the therapeutic value and safety of respondents' preparations.

PAR. 8. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations with respect to their said preparations, disseminated as aforesaid, 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 respondents' preparations possess properties which they do not in fact possess, and that said preparations are in all cases safe and harmless, when such is not the fact. As a result of such erroneous and mistaken belief the purchasing public has been induced to purchase and has purchased substantial quantities of respondents' preparations.

PAR. 9. 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 the 9th day of December, 1943, issued and subsequently served its complaint in this proceeding upon respondents, Imperial Drug Exchange, Inc., a corporation, also trading as Dupree Medical Company, and Abraham Parodney, individually, and as an officer, of Imperial Drug Exchange, Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 17, 1944, the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter

and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Imperial Drug Exchange, Inc., is a corporation, chartered and doing business under the laws of the State of New York, with its principal place of business located at 20 East 17th Street, New York, N. Y. Said corporation trades and carries on certain of its business under the name of Dupree Medical Company, particularly that part of its business referred to herein.

Respondent, Abraham Parodney, is an individual, and is president of the corporate respondent, Imperial Drug Exchange, Inc. This individual respondent directs and controls the policies and practices of the respondent corporation, including its business carried on as Dupree Medical Company. The address of said individual respondent is 20 East 17th Street, New York, N. Y.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution of certain medicinal preparations designated as "Dupree Brand New Formula Pills" and "Dupree Pills, Double Strength, New and Improved Formula."

Respondents cause said preparations, when sold, to be transported from their 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. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparations by the United States mail and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparations by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents also cause such false advertising to be transported by means of the United States mails and by other means in commerce to wholesale and retail dealers in their products. Wholesale dealers cause such material to be transported to retailers, and retailers distribute the same among the purchasing public.

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 and by means of circulars and other advertising literature, are the following:

Dupree Pills have been used throughout the country by women who have found them effective in delayed menstruation due to colds and nervous strain.

The phenomenon of menstruation which appears about every 28 days is a natural function which may be disturbed by a number of causes, such as poor nutrition, anemia, fright, colds, overexposure (Inadequate clothing, and change of climate).

It is for delayed menstruation due to these causes only, that Dupree Pills are recommended.

Dupree Double Strength Pills may be taken for the same conditions as the Dupree Single Strength Pills, but are sold for use in cases which require a stronger medication.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, the respondents represent and have represented that their preparations designated as "Dupree Brand New Formula Pills" and "Dupree Pills, Double Strength, New and Improved Formula" constitute a competent and effective treatment for delayed menstruation arising from colds, nervous strain, poor nutrition, anemia, fright, overexposure, inadequate clothing, and change of climate.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' preparations are not a competent and effective treatment for delayed menstruation arising from colds, nervous strain, poor nutrition, anemia, fright, overexposure, inadequate clothing, change of climate, or from any other cause.

PAR. 6. Respondents' 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 preparations 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 said preparations are irritant laxatives and are potentially dangerous when taken by persons suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis.

PAR. 7. The circulars and advertising matter placed in the hands of wholesalers and retailers, and distributed and disseminated by them, serve as instrumentalities by and through which members of the purchasing public may be and are likely to be deceived and misled as to the therapeutic value and safety of respondents' preparations.

PAR. 8. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to their said preparations, disseminated as aforesaid, 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 respondents' preparations possess properties which they do not in fact possess, and that said preparations are in all cases safe and harmless when such is not the fact. As a result of such erroneous and mistaken belief, the purchasing public has been induced to purchase and has purchased substantial quantities of respondents' preparations.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on 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.

It is ordered, That the respondents, Imperial Drug Exchange, Inc., a corporation, also trading as Dupree Medical Company, or trading under any other name, its officers, and Abraham Parodney, individually, and as an officer, of said corporation, and respondents' representatives, agents, and employes, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondents' medicinal preparations designated "Dupree Brand New Formula Pills" and "Dupree Pills, Double Strength, New and Improved Formula," or any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or any other name or names, 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, that said preparations constitute competent and effective treatments for delayed menstruation arising from colds, nervous strain, poor nutrition, anemia, fright, over-exposure, inadequate clothing, change of climate, or from any other cause, or which advertisement fails to reveal that said preparations should not be used in the presence 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 a warning 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 preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 hereof, or which fails to comply with the affirmative requirements set forth 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.

IN THE MATTER OF

BELT OIL & CHEMICAL CORPORATION, ET AL.

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

Docket 4973. Complaint, June 4, 1943—Decision, May 10, 1944

Where a corporation, two officers thereof, and three partners, engaged in the interstate sale and distribution of their "Rubber-Life" product; in advertisements in circulars, newspapers, periodicals and by other means—

Falsely represented that their said product, painted on the treads of automobile tires, extended the life thereof, was "the answer" to the tire saving problem, added up to 25 per cent more mileage to a tire, or doubled its life, or otherwise increased its wearing qualities, prevented deterioration of rubber and was a tire "life-saver"; "seals the tiny pores and prevents the entrance of dust and humidity," "solidifies the millions of rubber particles on the surface into one mass," "improves the molecular structure of rubber," and "makes the rubber in a tire harder and more resistant";

Facts being product in question, a colorless glue-like mixture or compound of water and sodium silicate, contained nothing which would substantially affect the properties of the rubber used in tires, which was not porous in the sense that their said product would penetrate it and add something to or cause a change in the wearing surface thereof;

With effect of misleading and deceiving a substantial portion of the public into the erroneous belief that said representations were true, as a result whereof the public purchased substantial quantities of product in question:

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

Before *Mr. James A. Purcell*, trial examiner.

Mr. James M. Hammond for the Commission.

Mr. Gabriel Wartels, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Belt Oil & Chemical Corporation, a corporation, Ernest Buchbinder, and William Blitz, individually, and as officers, of Belt Oil & Chemical Corporation; and Philip M. King, Jr., Stella King, Lila King, and Lillian McKinley, individually, and as copartners, doing business under the firm name and style of Overman & Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Belt Oil & Chemical Corporation, 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 1265 Broadway, New York, N. Y.

Respondent, Ernest Buchbinder, an individual, is president and treasurer of respondent, Belt Oil & Chemical Corporation, with his office and place of business at 1265 Broadway, New York, N. Y.

Respondent, William Blitz, an individual, is vice president and secretary of respondent, Belt Oil & Chemical Corporation, with his office and place of business at 1265 Broadway, New York, N. Y.

Respondents, Philip M. King, Jr., Stella King, Lila King and Lillian McKinley, are copartners, doing business under the firm name and style of Overman & Co., having their office and place of business at Room 1821, 9 Rockefeller Plaza, New York, N. Y.

PAR. 2. Said respondents, acting concertedly and in cooperation each with the other, are now, and for more than one year last past have been engaged in the sale and distribution of a product known and described as "Rubber-Life."

PAR. 3. Respondents cause the said preparation, when sold, to be transported from the place where manufactured or from their place of business in the city of New York, State of New York, to purchasers thereof located in the several States other than the State in which said shipments originate and in the District of Columbia. At all times mentioned herein respondents have maintained and now maintain 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. 4. In the course and conduct of their business in said commerce as aforesaid, the said respondents have made and are now making, and have caused and are now causing the publication of false, misleading and deceptive representations concerning their said product, through the means of circulars, newspapers and magazines circulated among prospective purchasers, and by various other means. Among and typical of the false, misleading and deceptive representations so made and used by the respondents in connection with the offering for sale and sale of said product are the following:

Rubber-Life—It's the answer to your tire saving problem. Just paint it on the tread of your tires. It's colorless, but penetrates into the minute pores of rubber and increases resistance to wear.

Tests prove that "Rubber-Life" will add up to 25% more mileage to your tires.

RUBBER-LIFE. The new invention that increases tire mileage and prevents deterioration of rubber!

Add thousands of Extra Miles to the life of your tires for only 16¢ per tire!

It is a tire "Life-Saver." You Can Make The Tires You Have Last Longer—, many thousands of miles longer. "Rubber-Life" is the amazing new product that does this.

It's New, Sensational—RUBBER LIFE—add thousands of Extra miles to the life of Your Tires.

1. Seals the tiny pores and prevents the entrance of dust and humidity.
2. Solidifies the millions of rubber particles on the surface into one mass.
3. Improves the molecular structure of the rubber.
4. Makes it harder and more resistant.

Defense needs rubber. Defend your tires with Rubber-Life—Make your tires last twice as long.

PAR. 5. The foregoing representations, together with similar representations not herein set out, are false and misleading. In truth and in

fact, the product offered for sale and sold by respondents when applied as directed, or in any other manner, does not extend the life of a tire; it is not "the answer" to the tire saving problem; it does not add up to 25 percent more mileage to a tire or double the life of a tire or increase or add to the mileage or wearing qualities of a tire in any other degree or percentage; it does not prevent deterioration of rubber and it is not a tire "life-saver"; it does not seal the tiny pores and prevent the entrance of dust and humidity, or solidify the millions of rubber particles on the surface into one mass, or improve the molecular structure of rubber, or make the rubber in a tire harder and more resistant to wear. Respondent's said product is composed principally of water and sodium silicate, a colorless glue-like mixture or compound, and contains nothing which will substantially effect the properties of the rubber used in tires. Such rubber is not porous in the sense that respondents' said product will penetrate it and add something to or cause a change in the wearing surface of the tires.

PAR. 6. The use by the respondents of the foregoing false, misleading, deceptive and exaggerated representations with respect to their said product Rubber-Life, or any other like and similar products, mislead, and has had, and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that said statements and representations were, or are, true and into the purchase of substantial quantities of respondents' said product because of said erroneous and mistaken belief.

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 May 29, 1943, issued and on or about June 1, 1943, served its complaint in this proceeding upon respondents, Belt Oil & Chemical Corporation, a corporation, Ernest Buchbinder, and William Blitz, individually, and as officers, of Belt Oil & Chemical Corporation; and Philip M. King, Jr., Stella King, Lila King, and Lillian McKinley, individually, and as copartners, doing business under the firm name and style of Overman & Co., 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' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this procedure is in the interest 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, Belt Oil & Chemical Corporation, 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 1265 Broadway, New York, N. Y.

Respondent, Ernest Buchbinder, an individual, is president and treasurer of respondent, Belt Oil & Chemical Corporation, with his office and place of business at 1265 Broadway, New York, N. Y.

Respondent, William Blitz, an individual, is vice president and secretary of respondent, Belt Oil & Chemical Corporation, with his office and place of business at 1265 Broadway, New York, N. Y.

Respondents, Philip M. King, Jr., Stella King, Lila King and Lillian McKinley, are copartners, doing business under the firm name and style of Overman & Co., having their office and place of business at Room 1821, 9 Rockefeller Plaza, New York, N. Y.

PAR. 2. Said respondents, acting concertedly and in cooperation each with the other, are now, and for more than one year last past have been engaged in the sale and distribution of a product known and described as "Rubber-Life."

PAR. 3. Respondents cause the said preparation, when sold, to be transported from the place where manufactured or from their place of business in the city of New York, State of New York, to purchasers thereof located in the several States other than the State in which said shipments originate and in the District of Columbia. At all times mentioned herein respondents have maintained and now maintain 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. 4. In the course and conduct of their business in said commerce as aforesaid, the said respondents have made and are now making, and have caused and are now causing the publication of false, misleading and deceptive representations concerning their said product, through the means of circulars, newspapers and magazines circulated among prospective purchasers, and by various other means. Among and typical of the false, misleading and deceptive representations so made and used by the respondents in connection with the offering for sale and sale of said product are the following:

Rubber-Life—It's the answer to your tire saving problem. Just paint it on the tread of your tires. It's colorless, but penetrates into the minute pores of rubber and increases resistance to wear.

Tests prove that "Rubber-Life" will add up to 25% more mileage to your tires.

RUBBER-LIFE. The new invention that increases tire mileage and prevents deterioration of rubber!

Add thousands of Extra Miles to the life of your tires for only 16¢ per tire!

It is a tire "Life-Saver." You can Make The Tires You Have Last Longer—, many thousands of miles longer. "Rubber-Life" is the amazing new product that does this.

It's New, Sensational—RUBBER LIFE—add thousands of Extra miles to the life of Your Tires.

1. Seals the tiny pores and prevents the entrance of dust and humidity.
2. Solidifies the millions of rubber particles on the surface into one mass.
3. Improves the molecular structure of the rubber.
4. Makes it harder and more resistant.

Defense needs rubber. Defend your tires with Rubber-Life—Make your tires last *twice* as long.

PAR. 5. The foregoing representations are false and misleading. In truth and in fact, the product offered for sale and sold by respondents when applied as directed, or in any other manner, does not extend the life of a tire; it is not "the answer" to the tire saving problem; it does not add up to 25 percent more mileage to a tire or double the life of a tire or increase or add to the mileage or wearing qualities of a tire in any other degree or percentage; it does not prevent deterioration of rubber and it is not a tire "life-saver"; it does not seal the tiny pores and prevent the entrance of dust and humidity, or solidify the millions of rubber particles on the surface into one mass, or improve the molecular structure of rubber, or make the rubber in a tire harder and more resistant to wear. Respondents' said product is composed principally of water and sodium silicate, a colorless glue-like mixture or compound, and contains nothing which will substantially affect the properties of the rubber used in tires. Such rubber is not porous in the sense that respondents' said product will penetrate it and add something to or cause a change in the wearing surface of the tires.

PAR. 6. The use by the respondents of the foregoing false, misleading, deceptive and exaggerated representations with respect to their said product Rubber-Life, or any other like or similar products, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that said statements and representations are true. As a result of said erroneous and mistaken belief, the public has purchased substantial quantities of respondents' said product.

PAR. 7. It is further found that the person named in the complaint herein as Ernest Buchbinder is in truth and in fact the person named Ernst Buchbinder in the answer to the complaint herein as president and treasurer of the respondent, Belt Oil and Chemical Corporation, and that Ernest Buchbinder and Ernst Buchbinder are one and the same person.

PAR. 8. It is further found that the person named in the complaint herein as Lillian McKinley is the person named in the answer herein as Lillian McKinley, a partner in the firm of Overman & Co. and that Lillian McKinley and Lillian McKinley are one and the same person.

CONCLUSION

The aforesaid acts and practices of the respondents, Belt Oil & Chemical Corporation, a corporation, Ernest Buchbinder, being one and the same person as Ernst Buchbinder, and William Blitz, individually, and as officers, of Belt Oil & Chemical Corporation; and Philip M. King, Jr., Stella King, Lila King, and Lillian McKinley being one and the same person as Lillian McKinley, individually, and as copartners, doing business under the firm name and style of Overman & Co., 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 substitute answer of respondents, in which substitute answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Belt Oil & Chemical Corporation, a corporation, its officers, agents and employees, Ernest Buchbinder, being one and the same person known as Ernst Buchbinder, and William Blitz, individually, and as officers, of Belt Oil & Chemical Corporation; and Philip M. King, Jr., Stella King, Lila King, and Lillian McKinley, being one and the same person known as Lillian McKinley, individually, and as copartners, doing business under the firm name and style of Overman & Co., their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the product sold under the trade name "Rubber-Life" or any similar or like substance, whether sold under that name or any other name, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "RUBBER-LIFE" or any like or similar name to describe the paint like substance sold by it as a tire or rubber preservative.

2. Representing that said product penetrates into the minute pores of rubber, increases its resistance to wear; will add 25% or any other percentage to the life of tires; that it is a new invention which increases tire mileage and prevents deterioration of rubber; that it will add thousands of extra miles to the life of a tire; that it is a tire life saver and seals the tiny pores preventing the entrance of dirt and humidity to a tire; that it solidifies the millions of rubber particles on the surface of a tire into one mass; that it improves the molecular structure of rubber or makes rubber harder and more resistant to wear.

3. Representing that said product adds anything to the life or wearing qualities of rubber or to an automobile tire in any way whatsoever.

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

SCIENTIFIC MANUFACTURING COMPANY, INC., AND
HOWARD J. FORCE, LAWSON H. FORCE, AND LILLIAN B.
FORCE, TRADING AS THE FORCE COMPANY

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

Docket 4482. Complaint, June 12, 1942¹—Decision, May 11, 1944

Where an individual, acting through a corporation and its successor partnership, engaged in the manufacture and interstate sale and distribution of his "Pheno-Isolin" and "Pheno-Isolin Ointment," and "Dialin," for diabetes; in advertisements in newspapers and periodicals and by testimonial letters and other advertising literature—

- (a) Falsely represented that his said "Pheno-Isolin" preparations were powerful germicides and antiseptics, and had therapeutic value in the treatment of infectious conditions, such as ulcers, sores, boils, carbuncles, and abscesses; and of peritonitis, gangrene, and ulcerated cancer; and that the germicidal and antiseptic properties of the ointment—the same preparation as the other with the addition of a wax or paraffin base—were sufficient to make it of value in surgery and as surgical dressings;
- (b) Falsely represented that they were effective in the treatment of anklyosis or stiffening of the joints, and would cure coughs, colds, sore throat, sinus conditions, influenza, and other respiratory diseases, and diphtheria and septic sore throat;

The facts being they had no value in the treatment of joint conditions other than the benefit that might be received from massaging in the application thereof; to use or recommend them for use for diphtheria and septic sore throat would be dangerous; and claims made therefor were false;

- (c) Represented that their said preparations had therapeutic value in the treatment of athlete's foot; would relieve the burning and itching inflammation caused by said condition and help heal the irritated tissues; and were effective in the treatment of skin infections, eczema, and second-degree burns, and of hemorrhoids and piles;

The facts being that by reason of their oily content they might supply moisture which would help multiply the fungus responsible for athlete's foot; they were not competent treatment for skin diseases generally or of any value in the treatment of eczema as they would not reach the underlying cause; were contraindicated in the treatment of burns; and had no value in the treatment of hemorrhoids; and

- (d) Falsely represented that their "Dialin" was a competent and effective treatment for diabetes, which assisted the pancreas to produce insulin in the natural way and corrected abnormal conditions caused by diabetes, and that use thereof eliminated the necessity for the use of insulin;

The facts being there is no accepted treatment for diabetes other than diet and, if that is insufficient to reduce the blood-sugar level to normal, insulin administered by hypodermic injections adjusted to need of each patient; use of preparation in question, by reason of the mild diuretic action thereof would, by increasing the flow of urine, dilute the sugar so that its percentage would necessarily drop, but without affecting the blood-sugar level; and it might be definitely harmful to a patient suffering from diabetes, in that it would give a false sense of security and delay the inauguration of effective treatment;

¹ Amended and supplemental.

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such false and misleading statements were true and to induce it, because of such belief, to purchase such products:

Held, That aforesaid acts and practices, under 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. Merle P. Lyon and *Mr. William L. Pencke* for the Commission.

Mr. George W. Ellis, of Scranton, Pa., for respondents.

AMENDED AND SUPPLEMENTAL 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 Scientific Manufacturing Company, Inc., a corporation, and Howard J. Force, Lawson H. Force and Lillian S. Force, individually, and as copartners, trading as The Force Company, 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 amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Scientific Manufacturing Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 426 Prescott Avenue in the city of Scranton, State of Pennsylvania. Respondent, Howard J. Force, is president of said corporate respondent, Scientific Manufacturing Company, Inc., and in said capacity has formulated, directed, controlled and dominated the practices and methods of said corporate respondent.

Respondents, Howard J. Force, Lawson H. Force and Lillian S. Force, are individuals, who since on or about October 1, 1941 and at all times subsequent thereto, have engaged and are now engaging in business as copartners, trading under the name and style of The Force Company, with their principal office and place of business located at 426 Prescott Avenue, in the city of Scranton, State of Pennsylvania.

Respondents are now, and have been during the times mentioned herein, engaged in the manufacture of medicinal products, including certain preparations designated Pheno-Isolin, Pheno-Isolin Ointment, and Dialin, and in the sale and distribution of such products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondents, being engaged in business as aforesaid, cause and have caused their said products, when sold, to be transported from their said place of business in the State of Pennsylvania to purchasers thereof located in the States of the United States other than the State of Pennsylvania, and in the District of Columbia. Respondents maintain, and at all times mentioned 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 aforesaid business, 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 the United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products, by various 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, 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 in newspapers and periodicals, by testimonials, and by other advertising literature, are the following:

(With respect to Pheno-Isolin and Pheno-Isolin Ointment.)

Pheno-Isolin contains two percent of thymol, giving you a powerful agent to help destroy various kinds of bacteria, and is used with good results in surgical work as well as appendicitis, etc.

It is very rare to hear of a case of infection where Pheno-Isolin is used. The Ointment gives good results in dry skin conditions and rashes.

In cases of infection such as old ulcers, etc., Pheno-Isolin has often quickly healed them up, at the same time relieving the pain of burning sensation so often present.

You will find it an excellent preparation for treating various kinds of burns. Burns treated quickly with Pheno-Isolin show very little blistering as a rule. It is also widely used for treating sunburns. I have seen it used a number of times in treating poison ivy with splendid results. I have personally used it as well as many others for athlete's foot. It certainly makes short work of this condition in most instances.

As an adjunct for the relief of boils and carbuncles, apply freely on a pad, keeping the parts well covered with Pheno-Isolin.

For minor cuts, apply the Pheno-Isolin freely twice daily. For bruises, sprains, muscular pains or soreness, apply the Pheno-Isolin frequently.

Pheno-Isolin, being an oil, combines with all other oils and greases, and quickly penetrates to all the injured parts and so helps to destroy bacteria and promote healing.

I consider Pheno-Isolin a decided aid in cases of infection, including carbuncles, boils, abscesses, or a dressing on surgical wounds.

We have had a severe epidemic of flu, sore throat and Pheno-Isolin gave good results. Have just finished a very aggravated case of varicose ulcers, and it acted like a charm. I have also been getting very good results in a case of Ankylosis, following inflammatory rheumatism.

I know of no remedy that will clear up old, chronic, secondarily infected sores and ulcers so quickly and permanently as will Pheno-Isolin.

(With respect to Dialin)

The chemical formula of glucose or "grape sugar" ($C_6H_{12}O_6$) is just double that of lactic acid ($C_3H_6O_3$). If the chemical formula of lactic acid can be changed, its conversion into glucose will be prevented. Dialin, a safe colloidal alkaline product, is designed to effect this change. It helps eliminate thirst and reduce sugar in the blood in most cases.

Dialin has reduced the sugar in many cases of diabetes. It helps the pancreas to produce insulin in the natural way.

Diabetes is the result if the pancreas does not produce sufficient insulin. Dialin is made to try and correct this condition by giving certain elements in small doses. The first result noticed is the elimination of thirst, showing that the chemical reaction which

took place to cause the thirst has been checked. This would indicate that the pancreas is producing an increased quantity of insulin.

PAR. 4. Through the use of the foregoing representations, and others not specifically set out herein, the respondents have represented, directly or through inference, that their preparations Pheno-Isolin and Pheno-Isolin Ointment constitute competent and effective antiseptics and germicides; that they prevent infection and destroy bacteria; that said preparations possess substantial therapeutic value in the treatment of skin infections generally, ulcers, sores, boils, carbuncles, abscesses, wounds, burns, cuts, bruises, athlete's foot, eczema, gangrenous conditions, ankylosis, sore throat, nasal catarrh, infected tonsils, diphtheria, influenza, peritonitis and hemorrhoids.

PAR. 5. The preparation Pheno-Isolin is a mixture of essential oils such as pine oil, thymol, eucalyptus and camphor, in a base of linseed oil and resin, or resin oils. Pheno-Isolin Ointment is Pheno-Isolin made into an ointment by the addition of a base, such as paraffin, lanolin or petrolatum.

Respondents' representations with respect to the preparations Pheno-Isolin and Pheno-Isolin Ointment are grossly exaggerated, false and misleading. In truth and in fact, said preparations do not constitute competent or effective antiseptics or germicides. They are incapable of preventing infection or destroying bacteria. They do not possess any generally recognized material therapeutic value in the treatment of skin infections generally, ulcers, sores, boils, carbuncles, abscesses, wounds, burns, cuts, bruises, athlete's foot, eczema, gangrenous conditions, ankylosis, sore throat, nasal catarrh, infected tonsils, diphtheria, influenza, peritonitis or hemorrhoids.

PAR. 6. Through the use of the aforesaid representations with respect to the preparation Dialin, and other representations not specifically set out herein, the respondents have represented, directly or through inference, that said preparation Dialin constitutes a cure or remedy and a competent and effective treatment for diabetes; that it effects a chemical change in the blood so as to reduce the quantity of sugar in the blood; that it assists the pancreas to produce insulin in the natural way; that it eliminates the unnatural thirst of victims of diabetes and corrects other abnormal conditions of the body caused by diabetes.

PAR. 7. The preparation Dialin is represented by respondents to be a compound of magnesium carbonate, bicarbonate of soda, citric acid, rhubarb, ipecac, peppermint, glycerin, alcohol and small quantities of sodium sulphate, phosphate of iron, and sodium phosphate.

Said preparation does not constitute a cure or remedy for diabetes, nor does it possess any therapeutic value in the treatment of diabetes. It does not effect any chemical change in the blood with respect to the reduction of the quantity of sugar in the blood or with respect to any other condition of the blood. It is wholly incapable of assisting the pancreas to produce insulin. It does not eliminate the thirst of victims of diabetes, nor does it correct any other condition of the body caused by diabetes.

PAR. 8. Among the various pieces of advertising literature used by the respondents as aforesaid is a circular or leaflet captioned "What The Profession is Doing With Pheno-Isolin," and another circular or leaflet captioned "What They Say About Dialin." There appear in

such circulars purported statements or testimonials from physicians recommending respondents' preparations, each of such statements being preceded by some legend purporting to refer to a designated physician, as "Dr. F., Philadelphia, Pa." Through the use of such circulars and the purported testimonials contained therein, the respondents represent that their said preparations are used and recommended by the medical profession generally.

Such representations are grossly exaggerated, false and misleading. In truth and in fact, respondents' preparations are not used or recommended by the medical profession generally.

PAR. 9. The use by the respondents of the foregoing false, deceptive and misleading statements, representations and advertisements, disseminated as aforesaid, with respect to their said products, has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and to induce such portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said products.

PAR. 10. 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 April 5, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, Scientific Manufacturing Company, Inc., a corporation, and Howard J. Force, 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' 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, on June 12, 1942, the Commission issued and subsequently served an amended and supplemental complaint in this proceeding upon the respondents, Scientific Manufacturing Company, Inc., a corporation, and Howard J. Force, Lawson H. Force, and Lillian S. Force, individually, and as copartners, trading as The Force Company, 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 amended and supplemental complaint and the filing of respondents' answer thereto, additional testimony and other evidence in support of and in opposition to the allegations of said amended and supplemental complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said additional testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequent thereto, a stipulation was entered into between William L. Pencke, counsel for the Commission, and George W. Ellis, counsel for the respondents, dated October 30, 1943, which stipulation was subsequently approved and filed by the Commission on De-

ember 24, 1943. By the terms of said stipulation it was agreed that certain exhibits enumerated therein had been disseminated in commerce during the period from March 21, 1938, to October 1, 1941, by the respondent, Scientific Manufacturing Company, Inc., a corporation, and it was further agreed that the testimony and other evidence adduced at the hearings held in support of the allegations of the original complaint be received and considered, in so far as the same are material and competent and applicable to the parties respondent to the amended and supplemental complaint, in like manner and to the same effect as though said testimony and other evidence had been received at hearings held upon the charges contained in said amended and supplemental complaint and further reserving to the respondents all exceptions and objections to be considered in the final consideration of the matter by the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and amended and supplemental complaint, answers filed thereto, testimony and other evidence, report of the trial examiner upon the evidence, briefs filed in support of the complaint and in opposition thereto, and stipulation as to the facts entered into between counsel for the Commission and counsel for the respondents dated October 30, 1943; 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, Howard J. Force, is an individual, with his office and principal place of business at 426 Prescott Avenue, Scranton, Pa. On or about October 13, 1919, said respondent, Howard J. Force, together with J. C. Fritts, organized the Scientific Manufacturing Company under the Fictitious Names Act of the State of Pennsylvania. Subsequent thereto, on December 24, 1919, the respondent, Scientific Manufacturing Company, Inc., was incorporated under the laws of the State of Pennsylvania, with its principal office and place of business located at 426 Prescott Avenue, city of Scranton, State of Pennsylvania.

Respondent, Howard J. Force, was at all times from the time of its incorporation until it ceased doing business on September 24, 1941, president and manager of the Scientific Manufacturing Company, Inc., a corporation, and formulated the policies and directed and controlled the practices and methods of said corporation. J. C. Fritts for a time was a stockholder and director of said corporation but did not take an active interest in the management of said corporation and subsequently sold his stock to the respondent, Howard J. Force, leaving as stockholders and directors of said corporation, respondents, Howard J. Force, Lawson H. Force, and Lillian S. Force. Respondent, Lillian S. Force, who is the wife of respondent, Howard J. Force, took no active interest in the business, and respondent, Lawson H. Force, who is the son of respondent, Howard J. Force, acted as secretary of the corporation and helped his father in office work, manufacture, packing, and shipping.

On September 24, 1941, by reason of a fraud order issued by the United States Post Office Department against the Scientific Manufacturing Company, Inc., a corporation, business under that identity was dis-

continued and the assets transferred to The Force Company, a co-partnership, consisting of respondents, Howard J. Force, Lillian S. Force, and Lawson H. Force. The Force Company was subsequently registered under the Fictitious Names Act of the State of Pennsylvania on November 19, 1941. Respondent, Lillian S. Force, continued to take no active interest in the business, and the duties of respondent, Lawson H. Force, continued the same as hereinabove described. Respondent, Howard J. Force, continued to manage the business conducted under the name of The Force Company, formulated its policies, and directed and controlled its activities.

In his management and domination of the Scientific Manufacturing Company, Inc., a corporation, and its successor, The Force Company, respondent, Howard J. Force, acted with the same freedom as though no corporation or partnership existed, and the Commission finds that the acts and practices hereinafter described were the acts and practices of the respondent, Howard J. Force, individually, performed by him through and by means of the corporate entity Scientific Manufacturing Company, Inc., and the subsequent partnership entity, The Force Company.

PAR. 2. In the course and conduct of his business as hereinbefore described, respondent, Howard J. Force, was engaged in the manufacture and in the sale and distribution of certain medicinal preparations, including "Pheno-Isolin," "Pheno-Isolin Ointment," and "Dialin," by and through the corporate entity Scientific Manufacturing Company, Inc., and in the manufacture, sale, and distribution of Pheno-Isolin and Pheno-Isolin Ointment by and through the partnership entity The Force Company. Respondent caused said products when sold to be transported 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 at all times mentioned herein has maintained, a course of trade in said medicinal preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business in the manner and form as hereinabove described, the respondent, Howard J. Force, has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said products by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and in the course and conduct of his business in the manner and form as hereinabove described said respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said products by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said products 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 regarding Pheno-Isolin, Pheno-Isolin Ointment, and Dialin disseminated and caused to be disseminated by the respondent, Howard J. Force, by and through the corporate entity Scientific Manufacturing Company, Inc., prior to October 1, 1941, and by and through the partnership entity The Force Company regarding Pheno-Isolin and Pheno-Isolin Ointment subsequent to October 1, 1941, as hereinabove set forth were the following, which were disseminated by the United States mails, by advertise-

ments in newspapers and periodicals, by testimonials, circulars, and by other advertising literature:

1. That respondent's preparations Pheno-Isolin and Pheno-Isolin Ointment are powerful germicides and antiseptics and will prevent infection and destroy bacteria.

2. That the germicidal and antiseptic properties of respondent's preparations Pheno-Isolin and Pheno-Isolin Ointment are sufficient to be of value in surgery and as surgical dressings and that said preparations are effective in the treatment of peritonitis, gangrene, and ulcerated cancer.

3. That respondent's preparations Pheno-Isolin and Pheno-Isolin Ointment are effective in the treatment of ankylosis, or stiffening of the joints.

4. That respondent's preparations Pheno-Isolin and Pheno-Isolin Ointment have therapeutic value in the treatment of coughs, colds, sore throat, sinus conditions, influenza, and other respiratory diseases.

5. That respondent's preparations Pheno-Isolin and Pheno-Isolin Ointment have therapeutic value in the treatment of diphtheria and septic sore throat and will cure such diseases and conditions.

6. That respondent's preparations Pheno-Isolin and Pheno-Isolin Ointment have therapeutic value in the treatment of infections and infectious conditions, such as ulcers, sores, boils, carbuncles, and abscesses.

7. That respondent's preparations Pheno-Isolin and Pheno-Isolin Ointment have therapeutic value in the treatment of athlete's foot and will relieve the burning and itching inflammation caused by this condition and help heal the irritated tissues.

8. That respondent's preparations Pheno-Isolin and Pheno-Isolin Ointment are effective in the treatment of skin infections, eczema, and second-degree burns.

9. That respondent's preparation Pheno-Isolin is effective in the treatment of hemorrhoids and piles.

10. That respondent's preparation Dialin is a competent and effective treatment for diabetes, that it assists the pancreas to produce insulin in the natural way, corrects abnormal conditions of the body caused by diabetes, and that its use eliminates the necessity for the use of insulin where the condition of diabetes exists.

PAR. 4. Said respondent's representations with respect to the preparations Pheno-Isolin and Pheno-Isolin Ointment are grossly exaggerated, false, and misleading. The preparation Pheno-Isolin is composed of thymol, pine oil, oil eucalyptus, oil sassafras, oil peppermint, camphor, linseed oil, and rosin. Pheno-Isolin Ointment is Pheno-Isolin made into an ointment by the addition of a wax or paraffin base.

Based upon the testimony of expert witnesses and upon tests made of said products which show that neither the undiluted liquid nor the ointment will kill the germ staphylococcus aureus in less than from 21 to 24 hours at 30° C., the Commission finds that under conditions of use these preparations have no germicidal or antiseptic value and are incapable of preventing infection or destroying bacteria. These preparations do not have sufficient antiseptic or germicidal properties to make them of value in surgery or as surgical dressings and have no therapeutic value whatsoever in the treatment of peritonitis, gangrene, ulcerated cancer, and other infectious conditions. There is nothing inherent in these preparations or their ingredients that has any intrinsic value in

breaking up adhesions or changes which have taken place in a joint, producing ankylosis, and they have no value in the treatment of such condition other than the benefit that might be received from massaging in the application of the preparation. Neither of these preparations has any therapeutic value whatsoever in the treatment of coughs, colds, sore throat, sinus conditions, influenza, or other respiratory diseases. Pheno-Isolin and Pheno-Isolin Ointment have no therapeutic value in the treatment of diphtheria and septic sore throat, and it would be dangerous to use or recommend them for use in such conditions. These preparations do not have any therapeutic value in the treatment of ulcers, sores, carbuncles, boils, or abscesses. These preparations do not have any therapeutic value in the treatment of athlete's foot but, instead, because of their oily content, might supply moisture, which would help multiply the fungus associated with and causing athlete's foot. They do not constitute a competent or effective treatment for skin diseases generally and are of no value in the treatment of eczema, as they would not reach the underlying cause of this condition. These products have a mild rubefacient value and are contraindicated in the treatment of burns. Pheno-Isolin has no value in the treatment of hemorrhoids.

PAR. 5. Said respondent's representations with respect to the preparation Dialin are grossly exaggerated, false, and misleading. The preparation Dialin is composed of magnesium carbonate, bicarbonate of soda, citric acid, rhubarb, ipecac, peppermint, glycerine, alcohol, and small quantities of sodium sulphate, phosphate of iron, and sodium phosphate.

The Commission finds that respondent's preparation Dialin is not a competent or effective treatment for diabetes mellitus, commonly known as diabetes, and has no therapeutic value in the treatment of this condition. It will not assist the pancreas to produce insulin in the natural way, correct abnormal conditions of the body caused by diabetes, or eliminate the necessity of the use of insulin where the condition of diabetes exists.

PAR. 6. Diabetes mellitus is a disturbance of carbohydrate metabolism in which the blood sugar is elevated to abnormally high levels due to a decrease in the internal secretions of the pancreas.

Diabetes is diagnosed by proper tests made under appropriate conditions to determine the blood-sugar level and also by the appearance of sugar in the urine. The treatment consists of administration of proper diet. If that is insufficient to reduce the blood-sugar level to normal, insulin is given, which is administered by hypodermic injection. There is no accepted treatment for diabetes other than diet and insulin adjusted properly to meet the needs of each patient.

Said respondent's product Dialin has no effect on the essential diabetic disturbance. As it has a mild diuretic action, it may, by increasing the flow of urine, dilute the amount of sugar which has been discovered and by increasing the amount of urine the percentage of sugar would necessarily drop; but this would not affect the blood-sugar level. The use of this preparation may be definitely harmful to a patient suffering from diabetes, in that it would give a false sense of security and delay the inauguration of effective treatment.

The pancreas is a secreting gland which secretes certain enzymes into the digestive tract for the digestion of fat and protein and secretes chemical insulin into the blood stream for the handling of carbohydrates through all the body. Failure of the pancreas to secrete a sufficient amount of

insulin for the purposes of the body results in the condition known as diabetes, and where there has been a deterioration in the pancreas it is necessary that needed insulin be supplied artificially.

Insulin is extracted from the pancreatic glands of animals. Its action, when administered hypodermically, is to supplement the insulin of the pancreas. In some cases it helps to revive the pancreas where no deterioration has taken place. In those cases where diet alone is not effective in restoring action of the pancreas, the failure to give insulin increases the severity of the diabetic condition. In such conditions there is nothing known to modern medicine which will supplant or replace the use of insulin.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to his said products has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and has the capacity and tendency to induce such portion of the purchasing public, because of such erroneous and mistaken belief, to purchase such products.

CONCLUSION

The aforesaid acts and practices of the respondent, Howard J. Force, 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 and amended and supplemental complaint of the Commission, answers of the respondents filed thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint and amended and supplemental complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, briefs filed in support of the complaint and amended and supplemental complaint and in opposition thereto, and stipulation as to the facts entered into between counsel for the Commission and counsel for the respondents dated October 30, 1943; and the Commission having made its findings as to the facts and its conclusion that respondent, Howard J. Force, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Howard J. Force, an individual, and his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of his medicinal preparations designated "Pheno-Isolin," "Pheno-Isolin Ointment," and "Dialin," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other names, 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 preparation Pheno-Isolin or his preparation Pheno-Isolin Ointment is a powerful germicide or antiseptic or that its use will prevent infection or destroy bacteria.

b. That the germicidal and antiseptic properties of respondent's preparations Pheno-Isolin or Pheno-Isolin Ointment are sufficient to be of value in surgery or as surgical dressings or that said preparations have any therapeutic value in the treatment of peritonitis, gangrene, or ulcerated cancer.

c. That respondent's preparation Pheno-Isolin or his preparation Pheno-Isolin Ointment has any therapeutic value in the treatment of ankylosis, or stiffening of the joints.

d. That respondent's preparation Pheno-Isolin or his preparation Pheno-Isolin Ointment has any therapeutic value in the treatment of coughs, colds, sore throat, sinus conditions, influenza, or other respiratory diseases.

e. That respondent's preparation Pheno-Isolin or his preparation Pheno-Isolin Ointment has any therapeutic value in the treatment of diphtheria or septic sore throat.

f. That respondent's preparation Pheno-Isolin or his preparation Pheno-Isolin Ointment has any therapeutic value in the treatment of infections or infectious conditions, such as ulcers, sores, boils, carbuncles, or abscesses.

g. That respondent's preparation Pheno-Isolin or his preparation Pheno-Isolin Ointment has any therapeutic value in the treatment of athlete's foot or that its use will relieve the burning and itching inflammation caused by such condition or help heal the irritated tissues.

h. That respondent's preparation Pheno-Isolin or his preparation Pheno-Isolin Ointment constitutes a competent or effective treatment of skin infections, eczema, or burns.

i. That respondent's preparation Pheno-Isolin has any therapeutic value in the treatment of hemorrhoids or piles.

j. That respondent's preparation Dialin constitutes a competent or effective treatment for diabetes or has any therapeutic value in the treatment of diabetes.

k. That the use of respondent's preparation Dialin will assist the pancreas to produce insulin, correct abnormal conditions of the body caused by diabetes, or eliminate the necessity for the use of insulin where the condition of diabetes exists.

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 preparations, which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions thereof.

It is further ordered, That this matter be, and the same hereby is, closed as to the corporate respondent, Scientific Manufacturing Company, Inc., and the individual respondents, Lillian S. Force and Lawson H. Force, without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

It is further ordered, That the respondent, Howard J. Force, 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
AMERICAN ART CLAY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (a) AND SUBSEC. (d) OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5049. Complaint, Sept. 17, 1948—Decision, May 12, 1944

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of crayons, chalk, paint sets, art materials, educational supplies and allied products to customers—

(a) Discriminated in price between different purchasers by selling to some customers at higher prices than those at which it sold products of like grade and quality to others competitively engaged therewith, through granting, in addition to the general 50 per cent trade discount from list price, a 10 per cent discount to customers designated by it as "wholesalers" and "jobbers":

Effect of which discrimination in price had been and might be substantially to lessen competition in the line of commerce concerned, and to injure, destroy and prevent competition with it in the sale and distribution of said products, and to injure, destroy and prevent competition in the resale thereof between said favored customers and those to whom such discount was denied:

Held, That under said facts and circumstances, it discriminated in price in the sale of its products between different purchasers in violation of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act; and

Where said corporation, engaged as aforesaid—

(b) Granted and allowed to certain customers designated by it as "promotional distributors" an additional 10 per cent discount in consideration of merchandising and selling services furnished by them in connection with the sale of its products, without making said secret discount or allowance available on proportionally equal terms to other customers who competed therewith and were able and willing to furnish same services and facilities:

Held, That such granting to favored customers of promotional allowances without making same available to competing customers on proportionally equal terms was in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. John T. Haslett for the Commission.

Wise, Corlett & Canfield, of New York City, 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, has, since June 19, 1936, violated and is now violating the provisions of subsections (a) and (d) of section 2 of the Clayton Act (U.S.C., title 15, section 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

Charging violation of subsection (a) of section 2 of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. Respondent, American Art Clay Company, is a corporation, organized and existing under and by virtue of the laws of the State of Indiana with its principal office and place of business located at 4717 West 16th Street, Indianapolis, Ind.

PAR. 2. Respondent corporation is now and has been since June 19, 1936, engaged in the business of manufacturing, offering for sale, selling and distributing crayons, chalk, paint sets, art materials, educational supplies, and allied products. Respondent sells and distributes said products in commerce between and among the various States of the United States and in the District of Columbia and, as a result of such sales, causes said products to be shipped and transported from its place of business to purchasers thereof who are located in the various States of the United States other than the State in which respondent's place of business is located. There is and has been at all times mentioned a continuous course of trade and commerce in said products across State lines between respondent's factory and the purchasers of said products. Said products are sold and distributed for use and resale within 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, respondent is now and during the times herein mentioned has been in substantial competition with other corporations and with individuals, partnerships and firms engaged in the business of selling and distributing crayons, chalk, paint sets, art materials, educational supplies, and allied products in commerce.

Many of respondent's customers are competitively engaged with each other and with the customers of respondent's competitors in the resale of said products within the several trade areas in which respondent's said customers respectively offer for sale and sell the said products purchased from the respondent.

PAR. 4. In the course and conduct of its said business since June 19, 1936, respondent has been and is now discriminating in price between different purchasers buying said products by selling them to some of its customers at higher prices than it sells products of like grade and quality to other customers who are competitively engaged in the resale of said products within the United States with customers receiving the lower prices.

PAR. 5. The respondent has discriminated in price by the use of so-called trade discounts whereby it has sold to some customers at higher prices than it has sold goods of like grade and quality to other customers who are in competition with them in the resale of said products within the United States. Respondent offers and sells its said products from one list price from which all customers who purchase for use or for resale are allowed by the respondent a 50% trade discount. To some purchasers among this class of customers, whom respondent designates as "wholesalers" and "jobbers," the respondent grants and allows an additional discount of 10% over and above the regular trade discount of 50% given to all of respondent's customers who purchase for use or for resale.

The "wholesaler" and "jobber" customers of the respondent who are granted and allowed the 10% discount over and above the regular trade

discount of 50% off the list price as aforesaid, are in active competition with other customers of respondent who purchase respondent's products and who do not receive any discounts over and above such regular trade discount.

PAR. 6. The effect of the discriminations in price generally alleged in paragraph 4 hereof and of those specifically set forth in paragraph 5 hereof has been and may be substantially to lessen competition in the line of commerce in which respondent and its said customers are engaged and to injure, destroy and prevent competition with the respondent in the sale and distribution of crayons, chalk, paint sets, art materials, educational supplies and allied products, and has been and may be substantially to injure, destroy and prevent competition in the resale of such products between the favored customers of respondent who are granted and allowed the 10% discount as aforesaid over and above the regular trade discount of 50% off the list price and the customers from whom such extra discount is withheld.

PAR. 7. The foregoing acts and practices of respondent are violations of subsection 2(a) of section 1 of 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, section 13) and for other purposes."

COUNT II

Charging violation of subsection (d) of section 2 of the Clayton Act as amended, the Commission charges:

PARAGRAPH 1. Paragraphs 1 to 3, inclusive, of Count I of this complaint are hereby repeated and made a part of this charge as fully and with the same effect as though herein again set forth at length.

PAR. 2. In the course and conduct of its business as aforesaid, respondent, since June 19, 1936, has been and is now granting compensation in the form of a percentage discount or allowance to some of its customers who are selected by the respondent and who are designated as "promotional distributors." Such percentage discount or allowance has been and is granted to favored customers in consideration of merchandising and selling services furnished by them in connection with the sale of respondent's products. The percentage discount is deducted from the invoice price and is over and above the regular trade discount of 50% off the list price. The respondent grants and allows such percentage discount to its favored customers without making such discount or allowance available on proportionally equal terms to other of its customers that compete with such favored customers in the resale and distribution of respondent's said products. Such other customers are able and willing to furnish the same services and facilities to the respondent as those furnished by its favored customers designated by the respondent as "promotional distributors." The respondent has not made known to any but its favored customers that it grants and allows any discounts or allowances for promotional services.

PAR. 3. The foregoing acts and practices of said respondent are violations of subsection (d) of section 2 of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" approved October 15, 1914 (the Clayton Act), as amended by section 1 of an act 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, section 13), and for other purposes" approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission on September 17, 1943, issued and subsequently served its complaint in this proceeding upon the party respondent named in the caption hereof, charging it with violating the provisions of subsection (a) and subsection (d) of section 2 of said act, as amended.

After the issuance of said complaint, a stipulation was entered into between W. T. Kelley, Chief Counsel for the Commission, and the respondent, subject to the approval of the Commission, providing that the statement of facts contained therein might be taken as the facts in this proceeding and authorizing the Commission to proceed upon such statement and 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 and the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the stipulation of facts, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, American Art Clay Company, is a corporation, organized and existing under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 4717 West 16th Street, Indianapolis, Ind.

PAR. 2. Respondent corporation is now and has been since June 19, 1936, engaged in the business of manufacturing, offering for sale, selling and distributing crayons, chalk, paint sets, art materials, educational supplies and allied products. Respondent sells and distributes said products in commerce between and among the various States of the United States and in the District of Columbia, and, as a result of such sales, causes said products to be shipped and transported from its place of business to purchasers thereof who are located in the various States of the United States other than the State in which respondent's place of business is located. There is and has been at all times mentioned a continuous course of trade and commerce in said products across State lines between respondent's factory and the purchasers of said products. Said products are sold and distributed for use and resale within 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, respondent is now and during the time herein mentioned has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the business of selling and distributing crayons, chalk, paint sets, art materials, educational supplies and allied

products in commerce. Many of respondent's customers are competitively engaged with each other and with the customers of respondent's competitors in the resale of said products within the several trade areas in which respondent's said customers respectively offer for sale and sell the said products purchased from the respondent.

PAR. 4. In the course and conduct of its said business since June 19, 1936, respondent has been and is now discriminating in price between different purchasers buying said products by selling them to some of its customers at higher prices than it sells products of like grade and quality to other customers who are competitively engaged in the resale of said products within the United States with customers receiving the lower prices.

PAR. 5. The respondent has discriminated in price by the use of so-called trade discounts, whereby it has sold to some customers at higher prices than it has sold goods of like grade and quality to other customers who are in competition with them in the resale of said products within the United States. Respondent offers and sells its said products from one list price, from which all customers who purchase for use or for resale are allowed by the respondent a 50% trade discount. To some purchasers among this class of customers, whom respondent designates as "wholesalers" and "jobbers," the respondent grants and allows an additional discount of 10% over and above the regular trade discount of 50% given to all of respondent's customers who purchase for use or for resale.

The "wholesaler" and "jobber" customers of the respondent who are granted and allowed the 10% discount over and above the regular trade discount of 50% off the list price, as aforesaid, are in active competition with other customers of respondent who purchase respondent's products and who do not receive any discounts over and above such regular trade discount.

PAR. 6. The effect of the discriminations in price generally stated in paragraph 4 hereof and of those specifically set forth in paragraph 5 hereof has been and may be substantially to lessen competition in the line of commerce in which respondent and its said customers are engaged and to injure, destroy and prevent competition with the respondent in the sale and distribution of crayons, chalk, paint sets, art materials, educational supplies and allied products, and has been and may be substantially to injure, destroy and prevent competition in the resale of such products between the favored customers of respondent who are granted and allowed the 10% discount as aforesaid over and above the regular trade discount of 50% off the list price and the customers from whom such extra discount is withheld.

PAR. 7. In the course and conduct of its business, as aforesaid, respondent since June 19, 1936, has been and is now granting compensation in the form of a 10% discount or allowance to some of its customers who are selected by the respondent and who are designated as "promotional distributors." Such 10% discount or allowance has been and is granted to favored customers in consideration of merchandising and selling services furnished by them in connection with the sale of respondent's products. The percentage discount is deducted from the invoice price and is over and above the regular trade discount of 50% off the list price. The respondent grants and allows such percentage discount to its favored customers without making such discount or allowance available on proportionally equal terms to other of its customers

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that compete with such favored customers in the resale and distribution of respondent's said products. Such other customers are able and willing to furnish the same services and facilities to the respondent as those furnished by its favored customers designated by the respondent as "promotional distributors." The respondent has not made known to any but its favored customers that it grants and allows any discounts or allowances for promotional services.

CONCLUSIONS

Under the facts and circumstances set forth in the foregoing findings as to the facts, the Commission concludes that the respondent, American Art Clay Company, has discriminated in price in the sale of crayons, chalk, paint sets, art materials, educational supplies and allied products between different purchasers in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

The Commission further concludes that the respondent, American Art Clay Company, has granted to favored customers promotional allowances without making such allowances available to competing customers on proportionally equal terms in violation of subsection (d) 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 and the stipulation as to the facts entered into between the respondent herein and W. T. Kelley, Chief Counsel for the Commission, which provides among other things that without the presentation of argument or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusions based thereon and an order disposing of the proceedings, and the Commission having made its findings as to the facts and its conclusions that the respondent has violated the provisions of subsection (a) and subsection (d) of section 2 of an act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" (the Clayton Act), as amended by the Robinson-Patman Act.

It is ordered, That the respondent, American Art Clay Company, 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 crayons, chalk, paint sets, art materials, educational supplies and allied products in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist:

1. From selling such commodities of like grade and quality to competing purchasers at uniform prices and granting discounts therefrom in the manner and under the circumstances found in paragraph 5 of the aforesaid findings as to the facts and conclusions.

2. From continuing or resuming the discriminations in price referred to and described in paragraph 5 of the Commission's findings as to the facts herein.

3. From otherwise discriminating in price between purchasers of crayons, chalk, paint sets, art materials, educational supplies and allied

products of like grade and quality in a manner and degree substantially similar to the manner and degree of the discrimination referred to in paragraph 5 of the Commission's findings as to the facts herein, and in any other manner resulting in price discriminations substantially equal in amount to such discriminations except as permitted by section 2 of the Clayton Act, as amended.

4. From granting or allowing compensation to any customer of the respondent of an amount equal to 10% of the respondent's net billing price of the products sold by such customer, or any other compensation, for services or facilities furnished by or through such customer in connection with the handling, sale or offering for sale of respondent's products, unless such payments are made available on proportionally equal terms to all buyers from the respondent who are competitors of such customers.

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

IN THE MATTER OF

ZONITE PRODUCTS CORPORATION AND H. W. KASTOR &
SONS ADVERTISING COMPANY, INC.

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

Docket 4755. Complaint, May 1, 1942—Decision, May 17, 1944

Where a corporation, engaged in the manufacture and interstate sale and distribution of its "Zonite Liquid" and "Zonitors," and its advertising representative; in advertisements of said products—

- (a) Represented, directly and by implication, that they were effective in destroying germs and bacteria in the genital tract and constituted an adequate treatment for infections in the genito-urinary tract; and that when used as a means of feminine hygiene they constituted effective contraceptives, and were reliable and dependable for such use;

The facts being that while they had the power to kill germs and bacteria which they contacted, when used as recommended they would not effectively destroy all germs and bacteria or serve as an adequate treatment for infections for the reason that in use they could not be depended upon to, and did not, always contact all germs, bacteria, and infections as they exist in the genital or genito-urinary tract, and they were not dependable contraceptives in that they could not and did not always contact all spermatozoa therein; and

- (b) Failed to disclose that because of physical conformation, malformation, and for other reasons, it is impossible in many cases for said products, in use, to contact all germs, bacteria, and spermatozoa in the genito-urinary tract, and that in such cases effective results are not possible; and

Where said corporation, in advertisements of its said liquid,—

- (c) Represented that when used as a mouth wash, it would destroy tobacco breath, kill onion breath and eliminate all offending mouth odors; the facts being that it would not destroy tobacco breath or other odors where it could not reach their source and would not kill onion breath when it resulted from chemical substances in the blood stream;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such misrepresentations were true, and to induce it, because of such erroneous belief, to purchase 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. R. P. Bellinger for the Commission.

Littlefield & Marshall and *Mr. Horace C. Hitchcock*, of New York City, for Zonite Products Corp.

Mr. Harris F. Williams and *Mr. B. B. Harris*, of Chicago, Ill., for H. W. Kastor & Sons Advertising Co., Inc.

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 Zonite Products Corporation, a corporation, and H. W. Kastor & Sons Advertising Company, Inc., a

corporation, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Zonite Products Corporation, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 370 Lexington Avenue, in the city of New York, State of New York, and a factory located at Jersey and Van Dyke Avenues, New Brunswick, N. J.

PAR. 2. The respondent, Zonite Products Corporation, is now, and for several years last past has been, engaged in the manufacture, sale and distribution of certain medicinal preparations designated as "Zonite Liquid" and "Zonitors."

In the course and conduct of its said business respondent, Zonite Products Corporation, causes and has caused its said products, when sold, to be transported from its manufacturing plant in the State of New Jersey, or from its place of business in the State of New York, to purchasers thereof located in various States of the United States other than the States of New Jersey and New York, and in the District of Columbia. This respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, H. W. Kastor & Sons Advertising Company, Inc., is a corporation, with its principal office and place of business located in London Guarantee Building, Chicago, Ill. This respondent is an advertising agency and as such is engaged in formulating, editing, selling and disseminating advertising matter. This respondent is the advertising representative of the respondent, Zonite Products Corporation, and as such prepares, and aids in the preparation of, advertising material used by the respondent, Zonite Products Corporation, including the advertising matter hereinafter set forth, in connection with the sale and distribution of the medicinal preparations hereinabove designated.

PAR. 4. The respondents act in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 5. In furtherance of the sale and distribution of the medicinal preparations sold and distributed by the respondent, Zonite Products Corporation, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said products by the United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said products 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 in newspapers and periodicals, and by other advertising literature, are the following:

Can A Married Woman Ever Feel Certain?

Many married women take unnecessary risks with their nerves, health, happiness. Why? Generally, because feminine hygiene is considered too personal to be discussed. And so, many women use over-strong solution of acids for the douche which can actually burn, scar and even desensitize delicate tissues.

Today such risks are needless. Science has given womankind Zonite. So powerful, it kills instantly all germs and bacteria with which it comes in contact. Deodorizes—by actually destroying odors. Protects personal daintiness. Yet! Zonite is non-caustic, non-poisonous, safe for delicate tissues.

Your Daughter Has a Right to Know

It is every mother's duty to tell her daughter physical facts. How much better that she learn them from you, rather than from girls her own age. In feminine hygiene, facts may be distorted, or wholly untrue. Result, many brides use douches of over-strong solutions of acids which can actually burn or scar delicate tissues. Today, there is no need to use such deadly solutions. Science has given us Zonite. Non-poisonous, non-caustic, yet kills germs, bacteria on contact. Actually destroys undesirable odors. Protects personal daintiness. Most important, safe for delicate tissues.

2 Mistakes Wives So Often Make.

Because inward shyness or ignorance, many married women make needless mistakes—risk health, happiness. Why? Generally because feminine hygiene is considered too personal to be discussed. Today risks are needless. For science has given womankind Zonite. Non-poisonous, non-caustic, yet kills germs, bacteria on contact. Destroys undesirable odors. Protects personal daintiness. Most important, safe for delicate tissues.

Now Amazing Proved Hygiene Protection For Married Women.

Thousands upon thousands of women have now learned to use a sensational, scientific discovery for hygiene purposes. This boon to womankind is not a poison, yet actually kills germs at contact. It is called Zonite, and its action is amazing when used in a douche. It instantly kills germs and bacteria on contact, yet it is one douche proved safe—will not harm delicate tissues. And Zonite deodorizes—assures daintiness. Helps keep one fresh, clean and pure.

Feminine Hygiene Now Lasts Hours

Wherever you go you hear women willing to rave about a wonderfully advanced method of feminine hygiene. A dainty method that is safe—gives continuous action for hours without the use of poison, yet kills germs at contact.

Called Zonitors—these dainty, snow white suppositories spread a greaseless protective coating. To kill germs, bacteria on contact. To cleanse antiseptically. To deodorize—not by temporarily masking—but by destroying odor.

Zonitors are most powerful continuous-action suppositories, yet entirely gentle to delicate tissues. Non-caustic, contain no poison. Don't burn. Even help promote healing.

ONION BREATH—Tobacco Breath and Other Mouth Odors—Halitosis Sensational "Breath Tests" show that Zonite kills even onion odor! Thousands are embarrassed daily by mouth washes that fail—that merely mask local mouth odors. There is now a new scientifically proven way to destroy offending mouth odors. Zonite is a real deodorant which destroys odoriferous chemicals and putrid substances with which it comes in contact in the mouth.

Bad Breath stops you at the first kiss. . . . But Zonite kills even onion odor. Destroys tobacco breath. Kills other mouth odors.

PAR. 6. Through the use of the representations hereinabove set forth and others similar thereto not specifically set out herein, respondents represent, directly and by implication, that the use of said preparations "Zonite Liquid" and "Zonitors" constitutes a system of care and treatment which will result in preserving the health of women; that they are effective in destroying germs and bacteria in the genital tract, and in treating infections in the genital tract; that said preparations are safe and harmless for use in feminine hygiene; that the use thereof will not injure delicate tissues; that their use will eliminate the problem of feminine hygiene; that said preparations contain no caustics and are non-caustic; that they are effective, reliable and dependable contraceptives and will afford protection against conception and pregnancy; that the use of "Zonite Liquid" will destroy tobacco breath, kill onion breath permanently and destroy all offending mouth odors.

PAR. 7. The aforesaid representations and advertisements are grossly exaggerated, false and misleading. In truth and in fact, no preparation or substance is known that, in use, will result in preserving the health of women. Said preparations are not effective in destroying germs and bacteria as they exist in the genital tract or in treating infections in the genital tract. Said preparations are not safe and harmless for use in feminine hygiene and they are capable of injuring delicate tissues. Their use will not eliminate the problem of feminine hygiene. Said preparations do contain caustic ingredients and they are not non-caustic. Said preparations are not effective and reliable contraceptives and will not afford dependable protection against conception and pregnancy. The use of "Zonite Liquid" will not destroy tobacco breath, kill onion breath permanently or destroy all offending mouth odors.

PAR. 8. The advertisements disseminated, as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material with respect to the consequence which may result from the use of said preparations 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, said preparations liberate chlorine, in use, and contain other caustic ingredients which are definitely capable of bleaching, irritating and otherwise injuriously affecting sensitive membranes and delicate tissues with which they come in contact. Furthermore, said advertisements constitute false advertisements in that they fail to disclose that because of physical conformation, malformation, and other reasons, it is impossible in a majority of cases for the preparations, in use, to contact all germs and bacteria and effective results are therefore not possible.

PAR. 9. The use by respondents of the foregoing false, deceptive and misleading statements, representations and advertisements, disseminated as aforesaid, with respect to its said products, has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and to induce such portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said products.

PAR. 10. 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 May 1, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Zonite Products Corporation and H. W. Kastor & Sons Advertising Company, Inc., 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, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondent, Zonite Products Corporation, and its counsel, Littlefield & Marshall, respondent, H. W. Kastor & Sons Advertising Company, Inc., and its counsel, Harris F. Williams and B. B. Harris, 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, the rights to file briefs and to make application for oral argument being reserved in said stipulation but thereafter waived by respondents. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Zonite Products Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 370 Lexington Avenue, New York, N. Y., and its factory located at Jersey and Van Dyke Avenues, New Brunswick, N. J.

PAR. 2. Respondent, Zonite Products Corporation, is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of certain medicinal preparations designated as "Zonite Liquid" and "Zonitors." In the course and conduct of its said business, respondent, Zonite Products Corporation, causes, and has caused, its said products, when sold, to be transported from its manufacturing plant in the State of New Jersey or from its place of business in the State of New York to purchasers thereof located in various States of the United States other than the States of New Jersey and New York, and in the District of Columbia. This respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, H. W. Kastor & Sons Advertising Company, Inc., is a corporation, with its principal office and place of business located in London Guarantee Building, Chicago, Ill. This respondent is an advertising agency and as such is engaged in the preparation of advertising

matter and the placing of same through proper and desirable media for its customers. In that way this respondent is the advertising representative of the respondent, Zonite Products Corporation, and as such prepares, or aids in the preparation of, advertising material used by respondent, Zonite Products Corporation, including the advertising matter hereinafter set forth, except that as to mouth odors.

Respondent, H. W. Kastor & Sons Advertising Company, Inc., prepares the advertising matter from data furnished to it by the Zonite Products Corporation. After the advertising matter, whether for printed publications or the radio, is prepared, it is submitted to the Zonite Products Corporation for approval. After approval by the Zonite Products Corporation, H. W. Kastor & Sons Advertising Company, Inc., in collaboration with the Zonite Products Corporation, selects the media through which such advertising is to be placed. H. W. Kastor & Sons Advertising Company, Inc., receives no compensation from the Zonite Products Corporation, but the entire compensation of H. W. Kastor & Sons Advertising Company, Inc., is paid to it by way of commission from the publishers, and not otherwise. H. W. Kastor & Sons Advertising Company, Inc., has no interest in and no control over the business of the Zonite Products Corporation and receives no part of the profits and bears no part of the expense of the Zonite Products Corporation.

PAR. 4. The respondents have cooperated with each other in the promotion and dissemination of the advertising material hereinafter set forth.

PAR. 5. In furtherance of the sale and distribution of the medicinal preparations sold and distributed by the respondent, Zonite Products Corporation, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of advertisements concerning said products, by the United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of advertisements concerning said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the 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 periodicals, and by other advertising literature, are the following:

Can a Married Woman Ever Feel Certain?

Many married women take unnecessary risks with their nerves, health, happiness. Why? Generally, because feminine hygiene is considered too personal to be discussed. And so, many women use over-strong solution of acids for the douche which can actually burn, scar and even desensitize delicate tissues.

Today such risks are needless. Science has given womankind Zonite. So powerful, it kills instantly all germs and bacteria with which it comes in contact. Deodorizes—by actually destroying odors. Protects personal daintiness. Yet! Zonite is non-caustic, non-poisonous, safe for delicate tissues.

Your Daughter Has a Right to Know

It is every mother's duty to tell her daughter physical facts. How much better that she learn them from you, rather than from girls her own age. In feminine hygiene, facts may be distorted, or wholly untrue. Result, many brides use douches of over-strong solutions of acids which can actually burn or scar delicate tissues. Today, there is no need to use such deadly solutions. Science has given us Zonite. Non-poisonous, non-caustic, yet kills germs, bacteria on contact. Actually destroys undesirable odors. Protects personal daintiness. Most important, safe for delicate tissues.

* * * * *

2 Mistakes Wives So Often Make

Because of inward shyness or ignorance, many married women make needless mistakes—risk health, happiness. Why? Generally because feminine hygiene is considered too personal to be discussed, and so many women use douches of over-strong solutions of acids which can burn or scar delicate tissues. Today risks are needless. For science has given womankind Zonite. Non-poisonous, non-caustic, yet kills germs, bacteria on contact. Destroys undesirable odors. Protects personal daintiness. Most important, safe for delicate tissues.

* * * * *

New Amazing Proved Hygienic Protection for Married Women

Thousands upon thousands of women have now learned to use a sensational scientific discovery for hygiene purposes. This boon to womankind is not a poison, yet actually kills germs at contact. It is called Zonite, and its action is amazing when used in a douche. It instantly kills germs and bacteria on contact, yet it is one douche proved safe—will not harm delicate tissues. And Zonite deodorizes—assures daintiness. Helps keep one fresh, clean and pure.

* * * * *

Feminine Hygiene Now Lasts Hours

Wherever you go you hear women willing to rave about a wonderfully advanced method of feminine hygiene. A dainty method that is safe—gives continuous action for hours without the use of poison, yet kills germs at contact.

Called Zonitors—these dainty, snow white suppositories spread a greaseless protective coating. To kill germs, bacteria on contact. To cleanse antiseptically. To deodorize—not by temporarily masking—but by destroying odor.

Zonitors are most powerful continuous-action suppositories, yet entirely gentle to delicate tissues. Non-caustic, contain no poison. Don't burn. Even help promote healing.

* * * * *

ONION BREATH—Tobacco Breath and Other Mouth Odors—Halitosis Sensational "Breath Tests" show that Zonite kills even onion odor! Thousands are embarrassed daily by mouth washes that fail—that merely mask local mouth odors. There is now a new scientifically proven way to destroy offending mouth odors. Zonite is a real deodorant which destroys odoriferous chemicals and putriferous substances with which it comes in contact in the mouth.

Bad Breath stops you at the first kiss . . . But Zonite kills even onion odor. Destroys tobacco breath. Kills other mouth odors.

PAR. 6. Through the use of the representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents

represent, directly and by implication, that Zonite Liquid and Zonitors are effective in destroying germs and bacteria in the genital tract and constitute an adequate treatment for infections in the genito-urinary tract; and that when used as a means of feminine hygiene said preparations constitute effective contraceptives, are reliable and dependable for such use, and will afford protection against conception and pregnancy. Through said advertisements Zonite Products Corporation also represents that Zonite Liquid, when used as a mouth wash, will destroy tobacco breath, kill onion breath, and eliminate all offending mouth odors.

PAR. 7. The aforesaid representations and advertisements are grossly exaggerated, false, and misleading. While Zonite Liquid and Zonitors have the power to kill germs and bacteria which they contact, in truth and in fact said preparations, when used as recommended, will not effectively destroy all germs and bacteria in the genital tract or serve as an adequate treatment for infections of the genito-urinary tract for the reason that in use they cannot be depended upon to, and do not, always contact all such germs, bacteria, and infections as they exist in the genital or genito-urinary tract. Said preparations, when used as a means of feminine hygiene or otherwise, are not effective, reliable, or dependable contraceptives in that they cannot and do not always contact all spermatozoa in the genito-urinary tract. Zonite Liquid, when used as a mouth wash, will not destroy tobacco breath or other odors where the source of such odors can not be reached by said product and will not kill onion breath when it results from chemical substances in the blood stream. Furthermore, said advertisements constitute false advertisements in that they fail to disclose that because of physical conformation, malformation, and other reasons it is impossible in many cases for Zonite Liquid or Zonitors, in use, to contact all germs, bacteria, and spermatozoa in the genito-urinary tract, and in such cases effective results are therefore not possible.

PAR. 8. The use by respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements with respect to the said products disseminated as aforesaid has the capacity and tendency to 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 such portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said 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, the answers of the respondents, and a stipulation as to the facts entered into between the respondents herein and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, which provides, among other things, that without

further evidence or other intervening procedure except the rights to file briefs and be heard by oral argument, which rights have been waived by respondents, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Zonite Products Corporation, a corporation, and respondent, H. W. Kastor & Sons Advertising Company, Inc., a corporation, their respective officers, 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 preparations "Zonite Liquid" and "Zonitors," or any 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, 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 by inference:

(a) That said preparation will destroy all germs or bacteria in the genital tract, or destroy germs or bacteria which they contact in the genital tract, or that they constitute a treatment for infections of the genito-urinary tract, unless it is clearly and conspicuously revealed in immediate connection therewith that it is not always possible for said preparations to contact all germs and bacteria in the genito-urinary tract.

(b) That said preparations, as a means of feminine hygiene or otherwise, constitute contraceptives, unless it is clearly and conspicuously revealed in immediate connection therewith that it is not always possible for said preparations to contact all spermatozoa in the genital tract.

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That respondent, Zonite Products Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of its medicinal preparation "Zonite Liquid," or any 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 directly or indirectly:

3. 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 by inference, that said preparation, when used as a mouth wash or gargle, will eliminate or destroy tobacco breath, onion breath, or other mouth odors in excess of the extent to which said preparation can reach and oxidize odoriferous substances which may be the source of such odors.

4. Disseminating or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in

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Order

the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 3 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

38 F. T. C.

IN THE MATTER OF

WILLIAM PARRISH BENNETT, TRADING AS FORT WORTH
PEANUT COMPANY AND BILL'S PEANUT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4544. Complaint, July 21, 1941—Decision, May 18, 1944*

Where an individual engaged in the roasting of peanuts in the interstate sale and distribution thereof in shipping cases of 20 thirty-package cartons under a sales plan pursuant to which he included in one of each 15 five-cent packages a five-cent piece, and in about one out of each 600, a twenty-five-cent piece, and occasionally placed in one package as much as a dollar, and under which plan the individual packages were labeled "MONY-BAK PEANUTS You May Find 5¢ 25¢ 50¢ \$1.00 AS AN ADVERTISEMENT" or "MYSTERY PEANUTS THERE HAS BEEN FOUND 5¢—25¢—50¢—\$1.00 AS AN ADVERTISEMENT";

Sold such assortments of peanuts to dealers, and thereby supplied to and placed in their hands means of conducting lotteries in the sale thereof to the purchasing public, involving sale of a chance to procure a sum of money of greater value than the amount paid therefor, contrary to an established public policy of the United States government and in competition with some who do not use such or other method contrary to public policy;

With capacity and tendency to induce dealers to buy and sell his products in preference to those of said competitors and thereby to unfairly divert trade in commerce to him from them:

Held, That such acts and practices, as above set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. Arthur F. Thomas* and *Mr. Lewis C. Russell*, trial examiners.
Mr. Edw. W. Thomerson, *Mr. J. W. Brookfield, Jr.* and *Mr. Jesse D. Kash* for the Commission.

Mr. Frank Holaday, of Dallas, Tex., 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 Parrish Bennett, individually, and trading under the names of Fort Worth Peanut Company and Bill's Peanut Company, 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 Parrish Bennett, is an individual, doing business under the trade names of Fort Worth Peanut Company and Bill's Peanut Company, with his principal office and place of business located at 1001 Bryan Street, Fort Worth, Tex. Respondent is now, and for more than one year last past, has been engaged in processing, roasting and packing peanuts and in the sale and distribution thereof to dealers. Respondent causes and has caused its said peanuts, when sold,

to be shipped or transported from its aforesaid principal place of business in the State of Texas to purchasers thereof in the various States of the United States and in the District of Columbia at their respective points of location. There now is and for more than one year last past has been a course of trade by said respondent in such peanuts in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been in competition with other individuals and with firms and corporations engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, the respondent sells and has sold to dealers certain assortments of said peanuts so packed and assembled as to involve the use of game of chance, gift enterprise or lottery scheme when sold and distributed to the consumers thereof.

One of said assortments of peanuts is composed of a number of small sealed cartons of peanuts which retail to the ultimate consumer at 5¢ per carton. This assortment is designated by respondent as "Mony-Bak Peanuts" and on the outside of each of said cartons in said assortment there appears the statement "You may find 5¢, 25¢, 50¢, \$1.00." Sealed within a small number of said cartons are 5¢, 25¢, 50¢, or \$1.00, but ultimate purchasers cannot ascertain which cartons contain one of the above named sums until a selection has been made and the individual carton broken open. The aforesaid purchasers of said individual cartons of peanuts who procure said sums of money thus procure the same wholly by lot or chance.

Respondent sells and distributes various assortments of peanuts involving the chance or lot feature as aforesaid, but the sales plan in connection with each of said assortments is similar to the one hereinabove described, varying only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said peanuts 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 of his product in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his peanuts and the sale of said peanuts 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 peanuts to the purchasing public by the sales plan or method hereinabove set forth involves a game of chance or the sale of a chance to procure a sum of money of greater value than the amount to be paid therefor. Many persons, firms and corporations who sell and distribute products in competition with respondent as above alleged are unwilling to adopt or use said method or any method involving a game of chance or a 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 said sales plan or method employed by respondent in the sale and distribution of his peanuts and by the element of chance involved therein and are, therefore, induced to buy and sell respondent's peanuts in preference

to like or similar products of said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or an equivalent method.

As a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 21, 1941, issued and subsequently served its complaint in this proceeding upon respondent, William Parrish Bennett, charging him with the use of unfair methods of competition in commerce and the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, report of the trial examiners, and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, William Parrish Bennett, is an individual, trading as Fort Worth Peanut Company and as Bill's Peanut Company, with his principal office and place of business located at 1001-5 Bryan Avenue, Fort Worth, Tex. Respondent is now, and for several years last past has been, engaged in roasting, packaging, selling, and distributing peanuts.

PAR. 2. In the course and conduct of the aforesaid business respondent causes his said peanuts, when sold, to be shipped or transported from his place of business in the State of Texas to purchasers thereof at their points of location in the various States of the United States and in the District of Columbia, and maintains and has maintained a course of trade in such peanuts in commerce between and among the various States of the United States and in the District of Columbia. In the

conduct of his aforesaid business respondent is now, and has been, in competition with other individuals and with firms and corporations engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent packages his peanuts for sale and sells them to dealers in shipping cases, each of which contains 20 cartons. In each carton there are 30 pasteboard packages of peanuts, each of which contains a little more than an ounce of peanuts. These small packages of peanuts are intended to be sold to the ultimate consumer at 5¢ per package. In one out of each 15 of the 5¢ packages of peanuts respondent includes a 5¢ piece. In one of the 5¢ packages among approximately 600 respondent places a 25¢ piece, and occasionally he places as much as \$1 in one of the 5¢ packages. The 5¢ packages are sealed and the ultimate purchaser has no means of knowing which of such packages contain money in addition to peanuts until a selection has been made and the package opened. Each of the 5¢ packages bears a label:

Toasted and Salted
Crisp and Delicious

M O N Y — B A K
P E A N U T S

Cooked in Coconut Oil

You May Find
5¢ 25¢ 50¢ \$1.00

AS AN
ADVERTISEMENT

and each of the cartons containing 30 of the 5¢ packages bears a similar label.

Another assortment of peanuts sold and distributed by respondent is in all material particulars similar to the one described above except that the labels used on the packages read as follows:

M Y S T E R Y
P E A N U T S

THERE
HAS BEEN
FOUND

5¢—25¢—50¢—\$1.00

AS AN
ADVERTISEMENT

PAR. 4. Through the sale and distribution of peanuts packaged, assembled, and labeled in the manner described above, respondent supplies to and places in the hands of others the means of conducting lotteries in the sale of said peanuts. The use by respondent of said sales plan in the sale of his peanuts, and the sale of said peanuts 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.

When said peanuts are sold to the purchasing public by means of the sales plan described, such sales involve a game of chance or the sale of a chance to procure a sum of money of greater value than the amount to

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be paid therefor. Some of respondent's competitors have not adopted and do not use a method involving a game of chance or the sale of a chance to win something by chance, or other methods contrary to public policy. By reason of respondent's sales plan and the element of chance involved therein, said plan has the capacity and tendency to induce dealers to buy and sell respondent's peanuts in preference to like or similar products of competitors who do not use the same or an equivalent method, and to unfairly divert trade in commerce to respondent from his competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair 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 said complaint taken before examiners of the Commission theretofore duly designated by it, report of the trial examiners, 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.

It is ordered, That respondent, William Parrish Bennett, an individual, trading as Fort Worth Peanut Company, Bill's Peanut Company, or under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of peanuts 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 peanuts or other merchandise so packed and assembled that sales of such peanuts or other merchandise to the public are to be made or, due to the manner in which such peanuts or other articles of merchandise are packed or assembled at the time they are sold by respondent, may be made 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 chance, gift enterprise, or lottery scheme.

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

Complaint

IN THE MATTER OF

ROSE GREENBERG, TRADING AS CENTRAL STATES 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 3845. Complaint, July 11, 1939—Decision, May 31, 1944

Where an individual engaged in interstate sale and distribution of fishing tackle, silverware, rifles, radios, cups, blankets and other articles; in soliciting the sale of and in selling her said merchandise—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises or lottery schemes and distribution of push cards and circulars explaining her said plan, under which, as typical, the purchaser of a chance selecting that one of forty-four feminine names on the card corresponding to that concealed under a master seal, received a suede outing jacket, the three customers punching out certain numbers and the maker of the last punch each received a pair of "Solid Copper Nip cups," and the amount paid for a chance was determined by the particular number punched; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries in the sale of her merchandise, in accordance with aforesaid sales plan involving a chance to procure an article at much less than its normal retail price, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who refrain from use of such methods;

With the result that many persons were attracted by said plan and the element of chance involved therein, and were thereby induced to buy her merchandise in preference to that of said competitors, whereby trade was unfairly diverted to her from them:

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

Before *Mr. Miles J. Furnas* and *Mr. J. E. Cox*, trial examiners.

Mr. L. P. Allen, Jr. and *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 Rose Greenberg, individually, and trading as Central States Supply Company, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Rose Greenberg, is an individual, trading under the name of Central States Supply Company, with her principal office and place of business located at 537 South Dearborn Street, Chicago, Ill. Respondent is now, and for some time last past has been engaged in the sale and distribution of fishing tackle, silverware, rifles, radios, cups, blankets, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused, said merchandise, when

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sold, to be transported from her principal place of business in Illinois to purchasers thereof at their respective points of location located in various other States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is, and has been, in competition with other individuals, and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, as described in paragraph 1 hereof, the respondent, in soliciting the sale of, and in selling and distributing her said merchandise, furnishes, and has furnished, various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The sales plan or method adopted and used by respondent was, and is, substantially as follows:

Respondent distributes, and has distributed, to the purchasing public, certain literature and instructions, including, among other things, push cards, order blanks, illustrations of her said merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondent's push cards bears forty-four feminine names, with ruled columns for writing in the name of the customer opposite the feminine name selected. Said push card has twenty-five small, partially perforated discs, on the face of each of which is printed the word "Push." Concealed within each disc is a number, which is disclosed when the disc is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing elsewhere on the said card. The push card bears legends or instructions as follows:

Sizes 14 to 48
Maroon & Grey

Seller and party selecting girls'
name under seal each receive

(The Master
Seal)

SEAL

(Picture
of
man
wearing
suede
jacket)

FINE SUEDE
OUTING JACKET

Men's style Zipper front.
Ladies' style in CALIFORNIA
VESTEE MODEL.
Fully wind proof and
water proof.

EXTRA PRIZES

Nos. 20, 30, 40
and last number punched
each receive a PAIR of
SOLID COPPER
NIPCUPS.

Nos. 11 to 25 pay

what you draw.

Nos. over 25 pay

only 25¢

TOTAL—\$9.95

Sales of respondent's merchandise by means of said push cards are made in accordance with the above described legend or instructions. Said prizes or premiums are allotted to customers or purchasers in accordance with the above legend or instructions. The fact as to whether the purchaser receives an article of merchandise or nothing for the money paid, and which of said articles of merchandise the purchaser is to receive, if any, is determined wholly by lot or by chance.

Respondent furnishes, and has furnished, various push cards, accompanied by said order blanks, instructions, and other printed matter, for use in the sale and distribution of her merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes the said push cards use the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan or method. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of her merchandise in accordance with the sales plan or method hereinabove set forth. The use by respondent of said sales plan or method in the sale of her merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said sales plan or method, is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said sales plan or method, or any sales plan or method involving a game of chance, or the sale of a chance to win something by chance or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of her merchandise and by the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert substantial trade to respondent from her said competitors who do not use the same or an equivalent, sales plan or method.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 11, 1939, issued and thereafter served its complaint in this proceeding upon respondent, Rose Greenberg, individually, and trading as Central States Supply Company, charging her with the use of unfair methods of competition and unfair acts and practices in commerce in violation of the provisions of said act. Subsequently the respondent filed her answer in which answer she admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Rose Greenberg, is an individual, trading under the name of Central States Supply Company, with her principal office and place of business located at 537 South Dearborn Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of fishing tackle, silverware, rifles, radios, cups, blankets, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said merchandise, when sold, to be transported from her principal place of business in Illinois to purchasers thereof at their respective points of location located in various other States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is, and has been, in competition with other individuals, and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, as described in paragraph 1 hereof, the respondent, in soliciting the sale of, and in selling and distributing her said merchandise, furnishes, and has furnished, various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The sales plan or method adopted and used by respondent was, and is, substantially as follows:

Respondent distributes, and has distributed, to the purchasing public, certain literature and instructions, including, among other things, push cards, order blanks, illustrations of her said merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondent's push cards bears forty-four feminine names, with ruled columns for writing in the name of the customer opposite the feminine name

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Findings

selected. Said push card has twenty-five small, partially perforated discs, on the face of each of which is printed the word "Push." Concealed within each disc is a number, which is disclosed when the disc is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing elsewhere on the said card. The push card bears legends or instructions as follows:

Sizes 14 to 48

Maroon & Grey

Seller and party selecting girls'
name under seal each receive

(The Master
Seal)

(Picture
of
man
wearing
suede
jacket)

SEAL

FINE SUEDE
OUTING JACKET

Men's style Zipper front.
Ladies' style in CALIFORNIA
VESTEE MODEL.
Fully wind proof and
water proof.

EXTRA PRIZES

Nos. 20, 30, 40
and last number punched
each receive a PAIR of
SOLID COPPER
NIPCUPS.

Nos. 11 to 25 pay
what you draw.
Nos. over 25 pay
only 25¢

TOTAL—\$9.95

Sale of respondent's merchandise by means of said push cards are made in accordance with the above described legend or instructions. Said prizes or premiums are allotted to customers or purchasers in accordance with the above legend or instructions. The fact as to whether the purchaser receives an article of merchandise or nothing for the money paid, and which of said articles of merchandise the purchaser is to receive, if any, is determined wholly by lot or by chance.

Respondent furnishes, and has furnished, various push cards, accompanied by said order blanks, instructions, and other printed matter, for use in the sale and distribution of her merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes the said push cards use the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan or method. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of her merchandise in accordance with the sales plan or method hereinabove set forth. The use by respondent of said sales plan or method in the sale of her merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said sales plan or method, is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above found, are unwilling to adopt and use said sales plan or method, or any sales plan or method involving a game of chance, or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of her merchandise and by the element of chance involved therein, and are thereby induced to buy merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert substantial trade to respondent from her said competitors who do not use the same or an equivalent, sales plan or method.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce 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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states she waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Rose Greenberg, an individual, trading under the name of Central States Supply Company, or any other trade name, her representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of fishing tackle, silverware, rifles, radios, cups, blankets, or any other articles of merchandise in commerce as "com-

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merce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying or placing in the hands of others push cards, punch-boards, or other devices, either with assortments of merchandise or separately, 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.

2. Shipping, mailing, or transporting to dealers, agents, or members of the public, pull cards or other devices which are to be used, or may be used, in the sale and 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.

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

38 F. T. C.

IN THE MATTER OF

MAX HABERNICKEL, JR., AND JOHN A. ANDERSON,
TRADING AS HABAND COMPANY

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

Docket 4790. Complaint, July 30, 1942—Decision, May 31, 1944

Where two partners engaged in interstate sale and distribution of men's neckties by mail, chiefly, and in promoting sale thereof through circular letters in which were enclosed depictions of certain of their said products, and in some instances samples of material,—

- (a) Represented certain types as "all silk" in their advertising material and on the labels thereof, notwithstanding the fact product involved was not composed entirely of pure silk—preferred by the public over fabric containing weighting material—but contained about fifty per cent of metallic weighting;
- (b) Represented through their advertising material and labels that certain of their ties were "hand-made," facts being that while one of the operations employed in their manufacture was performed by hand, all the others were performed by machine, and products concerned, therefore, could not properly be designated as "hand-made"; and
- (c) Failed to disclose, or disclosed inadequately through a small part of a closely printed letter or through a partially concealed and inconspicuous statement on the innerlining of some of its ties, that the major portion of its said products—which had the appearance and feel of the preferred silk, and samples and pictorial representation of which created said impression—were composed entirely or in part of rayon;

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 products 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. Miles J. Furnas*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Alexander M. MacLeod, of Paterson, N. J., and *Rabbino & Rabbino*, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Max Habernickel, Jr., and John A. Anderson, co-partners, trading as Haband Company, 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. Max Habernickel, Jr., and John A. Anderson, are co-partners, trading under the name "Haband Company," with their principal place of business located at 680 Madison Avenue in the city of

Paterson, in the State of New Jersey. They are now, and for some time past have been, engaged in the sale and distribution of men's neckties in commerce between and among various States of the United States, causing said products, when sold, to be shipped from their place of business at Paterson, N. J., to various purchasers thereof located in States other than New Jersey. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said neckties in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business, and for the purpose of promoting the sale of their neckties, the respondents have engaged in the practice of falsely representing the constituent fiber or material of certain of such products and of falsely representing the source and kind of material of which certain others are made, and the persons by whom made, and the manner in which they are made; by means of false representations appearing on labels attached to said products, and otherwise, and by failing to disclose in their advertising literature the rayon content of certain others of said products.

PAR. 3. Illustrative of the respondents' practices described in paragraph 2 hereof is their labeling of a necktie designated as "The Aldrich No. 1202." This tie is labeled and represented as "all silk." For many years, the word "silk" has had, and still has, in the minds of the consuming public generally a definite and specific meaning, to wit, the product of the cocoon of the silkworm. For many years silk products have been held in high public esteem and confidence by reason of their preeminent qualities. Products composed entirely of pure silk and made without weighting are regarded by the public generally as superior to, and much to be preferred over, silk products which contain weighting. The label "all silk" attached to respondents' neckties designated "The Aldrich No. 1202," constitutes a representation that such neckties are made wholly and entirely from pure silk without any weighting material whatever.

PAR. 4. Weighted silk has the same general appearance as pure silk or unweighted silk and due to such similarity in appearance consumers generally are not able to distinguish between such products at the time of purchase. Respondents' failure to disclose the presence of weighting material in certain of their neckwear and the amount of such weighting constitutes a representation to their customers and to the purchasing public that such neckties are in fact made entirely from pure silk. In truth and in fact the fabric from which certain of respondents' neckties, including the one designated "The Aldrich No. 1202," are made is composed to a very substantial extent of weighting material.

PAR. 5. Among the products sold and distributed by respondents is a necktie designated "The Cherokee, No. 1275," bearing an Indian head on the label thereof and the legend "Hand Made Tie." By the use of such label, words and representations, respondents represent that the material of which said necktie is composed was woven by the Cherokee Indians and that it is made by hand. In truth and in fact, the material from which said necktie known as "The Cherokee" is composed is not woven or manufactured by the Cherokee Indians or any other Indians, and is not properly represented, designated or referred to as made by hand, since part of the work on such tie was and is performed with or by machines.

PAR. 6. The major portion of neckties sold and distributed by the respondents are composed entirely or in large part of rayon, but such fact is not disclosed in the advertising matter, sales promotional descriptions and representations or in the lithographed reproductions of such ties which are circulated by respondents to their customers. The lithographed reproductions of respondents' rayon ties are circulated by them to their customers and prospective customers along with reproductions of other ties which are designated "all silk" and "genuine wool." The word "rayon" is the name of the chemical fiber or fabric which can be manufactured so as to simulate silk in that it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk. By reason of these qualities, rayon, when manufactured to simulate silk and not designated as rayon, is readily believed and accepted by the purchasing public as being silk, the product of the cocoon of the silkworm.

The respondents' failure to disclose the rayon content of the fabrics from which said neckties were made has the capacity and tendency to conceal the fact that such neckties are made in whole or in part from rayon, and also has the tendency and capacity to mislead and deceive members of the public into the belief that such ties are composed of fabrics other than those made from rayon, including silk or wool.

PAR. 7. The use by respondents of the aforesaid method of labeling and representing certain of their neckties as "All-Silk," "Cherokee," and "Hand Made," and respondents' failure to disclose in their advertising and promotional literature the rayon content of certain other of their neckties, has had, and has, the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true, and that the rayon fabric and fiber used in the makeup of certain of said neckties is some material other than rayon, and to induce them to purchase substantial quantities of respondents' said neckties.

PAR. 8. 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 30, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Max Habernickel, Jr., and John A. Anderson, copartners, trading as Haband Company, 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 respondents' 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, 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, Max Habernickel, Jr., and John A. Anderson, are copartners, trading under the name Haband Company, with their principal place of business located at 680 Madison Avenue, Paterson, N. J. They are now and for a number of years last past have been engaged in the sale and distribution of men's neckties.

PAR. 2. In the course and conduct of their business respondents cause their products, when sold, to be shipped from their place of business in the State of New Jersey to purchasers thereof 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 products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Practically all of respondents' sales are made direct to the purchasing public through the mail. In promoting the sale of their neckties respondents send circular letters to many members of the public, and in such letters are enclosed pictorial representations of certain of respondents' ties and, in some instances, samples of the materials of which certain of such ties are made. Some of the letters themselves have imprinted thereon a pictorial representation of one type of tie sold by respondents, together with statements purporting to describe the method by which the tie is manufactured and the material of which it is made.

PAR. 4. Among the types of neckties advertised and sold by respondents is one which is represented by respondents as being "all silk," such representation being made both in respondents' letter and other printed advertising material and on labels attached to the ties. Actually, the fabric from which this tie is made is not composed entirely of silk but contains approximately fifty percent of metallic weighting material. The word "silk" has to the consuming public generally a definite and specific meaning, to wit, the product of the cocoon of the silkworm; and, when not qualified, the word is understood by the public as denoting pure or unweighted silk. There is a preference on the part of the public for products made of pure silk over those which are not composed entirely of silk but contain weighting material.

PAR. 5. Weighted silk has the same general appearance as unweighted or pure silk, and because of such similarity in appearance the public generally is unable to distinguish between the two types of products. In the absence of information to the contrary, the public understands that products having the appearance of silk are in fact made from pure silk rather than weighted silk. Respondents do not in any way disclose the presence of weighting material in the necktie in question, and the failure to make such disclosure has the effect of causing the public to believe that such necktie is made entirely from pure silk.

PAR. 6. Respondents also represent through their advertising material and by means of labels attached to certain of their neckties that such ties are "hand-made." While one of the major operations employed in

the manufacture of such ties is performed by hand, all of the other operations are performed by machine rather than by hand, and such ties therefore cannot properly be designated as hand-made.

PAR. 7. Although the major portion of respondents' neckties are composed entirely or in large part of rayon, such fact is not disclosed by respondents to prospective purchasers, or if any disclosure is made, such disclosure is inadequate. Rayon is a chemically manufactured fiber or fabric which can be manufactured so as to simulate silk, and when so manufactured it has the appearance and feel of silk and is practically indistinguishable from silk by the purchasing public. By reason of these qualities, rayon when manufactured to simulate silk and not designated as rayon is believed by the purchasing public to be silk and is accepted as such. The samples and pictorial representations which respondents enclose in their circular letters create the impression that the neckties are made of silk, and the ties themselves have the appearance and feel of silk. There is a preference on the part of a substantial portion of the public for products made of silk over those made in whole or in part of rayon.

Formerly, no disclosure at all was made by respondents of the fact that their ties contained rayon. In more recent years, however, some of respondents' circular letters have contained statements indicating that the ties are or may be composed of rayon. For example, one form of letter used contains the statement, "For years we have been marketing this one good quality rayon tie and this intensive concentration has resulted in a tie no one else seems to match at our price." This sentence constitutes only a small part of a closely-printed letter of about a page in length and is likely to escape the attention of the average purchaser. None of the pictorial representations enclosed in the letter refers to the fact that the ties are made of rayon.

During recent years respondents have caused to be stamped or imprinted on the lining of some of their rayon ties the legend, "Constructed of high grade rayon with an inner lining insuring long wear and good tying qualities." This statement, however, is partially concealed by the folds of the tie itself rendering it inconspicuous and likely to be overlooked by one examining the tie. In fact, certain members of the public who testified in this proceeding overlooked the legend in examining the tie, and also overlooked the statement in the circular letter.

The Commission therefore finds that such disclosure as respondents have made of the rayon content of their ties is inadequate and is insufficient to apprise the purchasing public of the fact that such ties are not composed of silk but are composed in whole or in part of rayon.

PAR. 8. The acts and practices of the respondents, as herein set forth, including the failure of respondents to disclose the presence and amount of weighting material in certain of their products and the failure to disclose that certain of their products are composed in whole or in part of rayon, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the materials of which respondents' products are made and the method of manufacture of such 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 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, 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, Max Habernickel, Jr., and John A. Anderson, individually, and as copartners, trading as Haband Company, 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' neckties in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "All Silk," or the unqualified word "Silk," or any other word or words of similar import, to designate or describe any fabric which is not composed wholly of unweighted silk, the product of the cocoon of the silkworm.

2. Advertising, offering for sale or selling products made in whole or in part from silk containing metallic weighting without clearly and conspicuously disclosing in all invoices and advertising material, and on labels or tags attached to such products, the presence of such weighting and the percentage thereof by weight in relation to the total weight of the silk in its finished state—as, for example, "Silk, weighted 50%"; provided, however, that such disclosure may be made by stating truthfully that such weighting is not in excess of a specified percentage—as, for example, "Silk, weighted not over 60%."

3. Advertising, offering for sale or selling products composed in whole or in part of rayon without clearly and conspicuously disclosing such rayon content in all invoices and advertising material, and on labels or tags attached to such products; and when such products are composed in part of rayon and in part of other fibers or materials, all of such fibers or materials, including the rayon, shall be disclosed in the manner and by the means set forth above.

4. Using the words "Hand Made," or any other word or words of similar import, to designate or describe products not made entirely by hand.

5. Misrepresenting in any manner or by any means the materials of which respondents' products are made or the method by which such products are made.

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

Complaint

38 F. T. C.

IN THE MATTER OF

CLERMONT CRAVAT COMPANY, INC.

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

Docket 4791. Complaint, July 30, 1942—Decision, May 31, 1944

Where a corporation engaged in the manufacture and interstate sale and distribution of men's neckties,

- (a) Represented certain type as "all silk" through labels attached thereto, notwithstanding fact product involved was not composed entirely of pure silk, preferred by the public over those containing weighting material, but contained about 50% of metallic weighting;
- (b) Represented through labels attached to certain of its neckties that they were "hand-made," facts being that while one of the major operations employed in the manufacture was performed by hand, all the others were performed by machine, and ties concerned, therefore, could not properly be designated as hand-made;

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 products 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. Miles J. Furnas*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Harry B. Denner and *Rabbino & Rabbino*, 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 Clermont Cravat Company, Inc., 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. Respondent, Clermont Cravat Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, and having its principal office and place of business at 39 West 29th Street in the city of New York, State of New York. It is now, and for some time past has been, engaged in the manufacture of men's neckties and in the sale and distribution thereof in commerce between and among the various States of the United States. It causes and has caused said products, when sold, to be shipped from its place of business in the State of New York, to various purchasers thereof located in States other than the State of New York. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, and for the purpose of promoting the sale of its products, the respondent has engaged in the practice of falsely representing the constituent fiber or material of certain of such products and of falsely representing the source of the material of which certain others of them are made, and the persons by whom made, and the manner in which they are made; by means of false representations appearing on labels attached to said products, and otherwise.

PAR. 3. Illustrative of the respondent's practices described in paragraph 2 hereof is its labeling of a necktie designated as "The Aldrich No. 1202." This tie is labeled and represented as "all silk." For many years, the word "silk" has had, and still has, in the minds of the consuming public generally a definite and specific meaning, to wit, the product of the cocoon of the silkworm. For many years silk products have been held in high public esteem and confidence by reason of their preeminent qualities. Products composed entirely of pure silk and made without weighting are regarded by the public generally as superior to, and much to be preferred over, silk products which contain weighting. The label "all silk" attached to respondent's neckties designated "The Aldrich No. 1202," constitutes a representation that such necktie is made wholly and entirely from pure silk without any weighting material whatever.

PAR. 4. Weighted silk has the same general appearance as pure silk or unweighted silk and due to such similarity in appearance consumers generally are not able to distinguish between such products at the time of purchase. Respondent's failure to disclose the presence of weighting material in certain of its neckwear and the amount of such weighting constitutes a representation to its customers and to the purchasing public that such neckties are in fact made entirely from pure silk. In truth and in fact the fabric from which certain of respondent's neckties, including the one designated "The Aldrich No. 1202," are made is composed to a very substantial extent of weighting material.

PAR. 5. Among the products manufactured and sold by respondent is a necktie designated "The Cherokee, No. 1275," bearing an Indian head on the label thereof, and the legend "Hand Made Tie." By the use of such label, words and representations, respondent represents that the material of which said necktie is composed was woven by the Cherokee Indians and that it is made by hand.

In truth, and in fact, the material from which said necktie known as "The Cherokee" is composed is not woven or manufactured by the Cherokee Indians or any other Indians, and is not properly represented, designated or referred to as made by hand, since part of the work on such tie was and is performed with or by machines.

PAR. 6. The use by respondent of the aforesaid methods of labeling and representing certain of its neckties as "All Silk," "Cherokee" and "Hand Made," has had, and has, 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 substantial quantities of respondent's said neckties.

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 July 30, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Clermont Cravat Company, 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 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, 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, Clermont Cravat Company, 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 39 West 29th Street, New York, N. Y. Respondent is now and for a number of years last past has been engaged in the manufacture and sale of men's neckties.

PAR. 2. In the course and conduct of its business respondent causes its products, when sold, to be shipped 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 products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Among the types of neckties manufactured and sold by respondent is one which is represented by respondent as being "all silk," such representation being made by means of labels attached to the ties. Actually, the fabric from which this tie is made is not composed entirely of silk but contains approximately fifty percent of metallic weighting material. The word "silk" has to the consuming public generally a definite and specific meaning, to wit, the product of the cocoon of the silkworm; and, when not qualified, the word is understood by the public as denoting pure or unweighted silk. There is a preference on the part of the public for products made of pure silk over those which are not composed entirely of silk but contain weighting material.

PAR. 4. Weighted silk has the same general appearance as unweighted or pure silk, and because of such similarity in appearance the public generally is unable to distinguish between the two types of products. In the absence of information to the contrary, the public understands that products having the appearance of silk are in fact made from pure silk rather than weighted silk. Respondent does not in any way disclose the presence of weighting material in the necktie in question, and the

failure to make such disclosure has the effect of causing the public to believe that such necktie is made entirely from pure silk.

PAR. 5. Respondent also represents by means of labels attached to certain of its neckties that such ties are "hand-made." While one of the major operations employed in the manufacture of such ties is performed by hand, all of the other operations are performed by machine rather than by hand, and such ties therefore cannot properly be designated as hand-made.

PAR. 6. The acts and practices of the respondent as herein set forth, including the failure of respondent to disclose the presence and amount of weighting material in certain of its products, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the materials of which respondent's products are made and the method of manufacture of such 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, 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, 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, Clermont Cravat Company, 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 respondent's neckties in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "All Silk," or the unqualified word "Silk," or any other word or words of similar import, to designate or describe any fabric which is not composed wholly of unweighted silk, the product of the cocoon of the silkworm.

2. Advertising, offering for sale or selling products made in whole or in part from silk containing metallic weighting without clearly and conspicuously disclosing in all invoices and advertising material, and on labels or tags attached to such products, the presence of such weighting and the percentage thereof by weight in relation to the total weight of the silk in its finished state—as, for example, "Silk, weighted 50%"; provided, however, that such disclosure may be made by stating truthfully that such weighting is not in excess of a specified percentage—as, for example, "Silk, weighted not over 60%."

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3. Using the words "Hand Made," or any other word or words of similar import, to designate or describe products not made entirely by hand.

4. Misrepresenting in any manner or by any means the materials of which respondent's products are made or the method by which such products are made.

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

Syllabus

IN THE MATTER OF

NATHAN I. GOLDBERG, TRADING AS COMMONWEALTH
TRAINING INSTITUTE

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

Docket 4880. Complaint, Dec. 30, 1942—Decision, May 31, 1944

Where an individual engaged in the interstate sale and distribution of correspondence courses to prepare students for examinations for certain Civil Service positions in the United States Government,—

- (a) Represented through statements in advertising material distributed to prospective students and through agents, designated as "registrars," who called upon them, that he could offer positions in the government which were under his control and which could be secured by taking his courses;
- (b) Represented through said "registrars" that he and his school were connected with the Government and were authorized by the Civil Service Commission to qualify applicants for government positions; and that applicants for his courses of training were specially selected; and
- (c) Represented, as aforesaid, that vacancies existed in certain branches of the Government which could be filled immediately after an applicant had passed the examination with respect thereto;

The facts being he had no positions to offer and could not qualify any one for a Government job, had no connection with the Government or any branch thereof, and could not guarantee positions or appointments of persons who passed examination; applicants were not specially selected, but all who applied were generally accepted; his list of positions contained many in which no open competitive examinations had been announced for a number of years; in many instances where his agents represented that vacancies existed, the positions had either been abolished or the vacancies supplied; and in many other cases, even though a student might successfully pass the examination and be placed on the eligible list, he might not be given appointment for a considerable period of time; and

- (d) Represented or implied to prospective students, through his trade name "Commonwealth Training Institute," that he conducted an institution of learning with a staff of experienced and qualified educators, and that his school was an extensive institution offering training in philosophy, art, science, and other learned subjects; employing such terms, to further said impressions, as "Department of Education," "Department of Administration," "Muniment of Matriculation," and other terms implying the existence of a substantial resident institution;

The facts being he offered only one course of study which was substantially the same regardless of the examination for which his students wished to prepare; all the material used by him in connection with his course was purchased from various publishers; no specific or thorough instruction was given in any subject of learning; and his said school was not an institution of learning in the accepted sense of the term;

With tendency and capacity to confuse, mislead, and deceive members of the public into the erroneous belief that such representations were true and thereby induce a substantial number thereof to purchase his courses of study and instruction and pursue the same:

Complaint

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

Mr. William L. Pencke for the Commission.

Mr. Joseph A. Aspero, of Worcester, Mass., 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 Nathan I. Goldberg, trading as Commonwealth Training Institute, 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, Nathan I. Goldberg, is an individual, trading and doing business under the firm name and style of Commonwealth Training Institute, with his principal office and place of business at 120 Front Street in the city of Worcester, State of Massachusetts.

PAR. 2. Respondent is now, and has been for more than two years last past, engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction intended for preparing students thereof for examinations for certain Civil Service positions under the United States Government, which said courses are pursued by correspondence through the medium of the United States mail. Respondent, in the course and conduct of said business during the time aforesaid, caused and does now cause his said courses of studying and instruction to be transported from his said place of business in the State of Massachusetts to, into and through States of the United States other than Massachusetts to the purchasers thereof in such other States.

PAR. 3. In the sale of said courses of study and instruction respondent makes use of printed advertising matter mailed or distributed to prospective students in many States of the United States in and by which various misleading representations are made in regard to said courses or matters and things connected therewith. Among such misleading representations are those which represent or imply that respondent has positions under the United States Government to offer which are under his control and which can be secured by taking respondent's courses. Typical of such representations are the following:

Subject: Government Jobs
Federal—State—Municipal

We will advise you free of charge how to qualify for a Government job.
Over 1700 Different Classifications of U. S. Civil Service Jobs.

Partial List Illustrating Various Positions

Railway Postal Clerk
City-Mail Carrier
Post Office Clerk

Immigration Patrol Inspector
Bookkeeper
Customs Inspector

Complaint

Rural (motor) carrier	Forest & Field clerk
Clerical-filing	Typist
Statistical Clerk	Stenographer
Watchman—Guard Laborer	Storekeeper—Gauger
Customs Patrol Inspector	Student fingerprint classifier

Positions either in Washington, D. C. or in most cases throughout the United States.

PAR. 4. By means of statements and representations made by agents and representatives of the respondent who are designated "Registrars" and who call upon prospective students, the respondent represents to such prospective students that he has positions in the United States Government to offer which are under his control or which he can secure for students taking his courses; that he and his school are connected with the United States Government and authorized by the United States Civil Service Commission to qualify applicants for government jobs; that the applicants for respondent's courses of training are specially selected; that vacancies exist in certain branches of the United States Government which can be filled immediately after an applicant has passed the examination with respect to such positions.

PAR. 5. All of such statements and representations are false, misleading and deceptive. In truth and in fact, respondent has no positions to offer and cannot qualify anyone for a government job; said partial list of various positions enumerated by respondent contains many positions in which no open competitive examinations have been announced for a number of years; respondent has no connection whatever with the government of the United States or any branch thereof, and cannot guarantee positions or appointments of persons who have passed examinations. Applicants for courses of study are not specially selected, but generally all who apply for the courses of instruction are accepted by the respondent. In many instances where respondent's agents have represented that vacancies exist, such positions have either been abolished by the Civil Service Commission or the vacancies have in fact been supplied. In many other instances even though the student may successfully pass a civil service examination and be placed on the eligible list he may not be given employment for a considerable period of time. Respondent's representatives are merely salesmen and the designation of such salesmen as "Registrars" further tends to mislead prospective students into the belief that they are officials of the Civil Service Commission.

PAR. 6. In his enrollment contract the respondent has embodied a provision for refund of tuition fees wherein it is stated that:

After completing the training and payment of fees as agreed, should the rating I earn on the first Civil Service Examination I take fail to make me eligible for appointment, I shall receive a refund in full under the following conditions:

1. That I make written request for refund within thirty days after receiving official notice of my failure;
2. That I return all text material and my Certificate of Completion, together with my request for refund;
3. That within 15 days after sitting for examination, I have informed you of its title and date.

It is distinctly understood that refund will be made under no other conditions.

PAR. 7. In truth and in fact, by concealing or failing to reveal pertinent facts, said refund provision has the tendency or capacity to mislead and deceive prospective students into the belief that the probabilities for obtaining appointments to Civil Service positions are greater than they are in fact. It is not disclosed to said prospective students that examinations for certain positions may not be called for several years; or that even if a student takes and passes an examination, his name may not be reached upon the eligible list for a number of years; nor is there any assurance that an appointment will be made although such student may have received an eligible rating.

PAR. 8. The name "Commonwealth Training Institute" under which respondent conducts his said business is misleading in that it represents or implies to prospective students that respondent conducts an institution of learning with a staff of competent, experienced and qualified educators, and that his school is an extensive institution offering training and instruction in philosophy, art, science and other learned subjects; and to further such impression, respondent employs such terms as "Department of Education," "Department of Administration," "Muniment of Matriculation" and other terms implying the existence of a substantial resident institution.

In truth and in fact respondent offers only one course of study and instruction in the lower level types of examinations, which is substantially the same regardless of the Civil Service examination for which his said students wish to prepare. Respondent, in the conduct of his said business, does not offer training or instruction in philosophy, art, science or other learned subjects. No basic or thorough or complete instruction is given in any subject of learning and said school is not an institution of learning in the accepted sense of that term. There is no faculty of learned persons engaged in teaching resident students the method of instruction consisting in the mailing of previously prepared sheets and the grading of papers by the employees of respondent. All of the material used in connection with said courses of study and instruction is purchased by respondent from various publishers.

PAR. 9. The representations of respondent, as aforesaid, have had and now have the tendency and capacity to confuse, mislead and deceive members of the public into the erroneous and mistaken belief that such representations are true and to induce a substantial number thereof to purchase respondent's courses of study and instruction and pursue the same on account thereof.

PAR. 10. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 30, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Nathan I. Goldberg, an individual, trading as Commonwealth Training Institute, charging him with the use of unfair and deceptive acts and

practices in commerce in violation of the provisions of said act. On February 8, 1943, the respondent filed his answer, in which he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Nathan I. Goldberg, is an individual, trading and doing business under the firm name and style of Commonwealth Training Institute, with his principal office and place of business at 120 Front Street, Worcester, Mass.

PAR. 2. Respondent is now, and has been for more than two years last past, engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction intended for preparing students thereof for examinations for certain Civil Service positions in the United States Government, which said courses are pursued by correspondence through the medium of the United States mails. Respondent, in the course and conduct of said business during the time aforesaid, caused and does now cause his said courses of study and instruction to be transported from his said place of business in the State of Massachusetts to, into, and through States of the United States other than Massachusetts to the purchasers thereof in such other States.

PAR. 3. In the sale of said courses of study and instruction respondent makes use of printed advertising matter mailed or distributed to prospective students in many States of the United States in and by which various misleading representations are made in regard to said courses or matters and things connected therewith. Among such misleading representations are those which represent or imply that respondent can offer positions in the United States Government which are under his control and which can be secured by taking respondent's courses. Typical of such representations are the following:

Subject: Government Jobs
Federal—State—Municipal

* * * * *

We will advise you free of charge how to
qualify for a Government job.

* * * * *

Over 1700 Different Classifications of U. S.
Civil Service Jobs.

* * * * *

Partial List Illustrating Various Positions

Railway Postal Clerk	Immigration Patrol Inspector
City-Mail Carrier	Bookkeeper
Post Office Clerk	Customs Inspector
Rural (motor) carrier	Forest & Field Clerk
Clerical-filing	Typist
Statistical Clerk	Stenographer
Watchman—Guard Laborer	Storekeeper—Gauger
Customs Patrol Inspector	Student fingerprint classifier

Positions either in Washington, D. C., or in most cases throughout the United States.

PAR. 4. By means of statements and representations made by agents and representatives of the respondent who are designated "Registrars" and who call upon prospective students, the respondent represents to such prospective students that he can offer positions in the United States Government which are under his control or which he can secure for students taking his courses; that he and his school are connected with the United States Government and authorized by the United States Civil Service Commission to qualify applicants for Government jobs; that the applicants for respondent's courses of training are specially selected; that vacancies exist in certain branches of the United States Government which can be filled immediately after an applicant has passed the examination with respect to such positions.

PAR. 5. All of such statements and representations are false, misleading, and deceptive. In truth and in fact, respondent has no positions to offer and cannot qualify any one for a Government job; said partial list of various positions enumerated by respondent contains many positions in which no open competitive examinations have been announced for a number of years; respondent has no connection whatever with the Government of the United States or any branch thereof, and cannot guarantee positions or appointments of persons who have passed examinations. Applicants for courses of study are not specially selected, but generally all who apply for the courses of instruction are accepted by the respondent. In many instances where respondent's agents have represented that vacancies exist, such positions have either been abolished or the vacancies have in fact been supplied. In many other instances even though the student may successfully pass a Civil Service examination and be placed on the eligible list he may not be given employment for a considerable period of time. Respondent's representatives are merely salesmen and the designation of such salesmen as "Registrars" further tends to mislead prospective students into the belief that they are officials of the Civil Service Commission.

PAR. 6. The name "Commonwealth Training Institute," under which respondent conducts his said business, is misleading in that it represents or implies to prospective students that respondent conducts an institution of learning with a staff of competent, experienced, and qualified educators, and that his school is an extensive institution offering training and instructions in philosophy, art, science, and other learned subjects; and to further such impression respondent employs such terms as "Department of Education," "Department of Administration," "Muniment of Matriculation," and other terms implying the existence of a substantial resident institution.

In truth and in fact, respondent offers only one course of study and instruction in the lower level types of examinations, which is substantially the same regardless of the Civil Service examination for which his said students wish to prepare. Respondent, in the conduct of his said business, does not offer training or instruction in philosophy, art, science, or other learned subjects. No basic or thorough or complete instruction is given in any subject of learning and said school is not an institution of learning in the accepted sense of that term. There is no faculty of learned persons engaged in teaching resident students, the method of instruction consisting of the mailing of previously prepared sheets and the grading of papers by the employees of respondent. All of the material used in connection with said course of study and instruction is purchased by respondent from various publishers.

PAR. 7. The representations of respondent, as aforesaid, have had, and now have, the tendency and capacity to confuse, mislead, and deceive members of the public into the erroneous and mistaken belief that such representations are true and to induce a substantial number thereof to purchase respondent's courses of study and instruction and pursue the same on account thereof.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That respondent, Nathan I. Goldberg, an individual, trading as Commonwealth Training Institute, or under any other name or designation, 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, directly or by implication:

1. Representing that respondent controls or will offer or procure the offer of Government jobs to his students.
2. Representing that positions are open in all the branches of the United States Civil Service for which instruction is offered.
3. Representing that respondent has any connection with the Government of the United States or any branch thereof.
4. Representing that appointments to positions in the Civil Service may or can be secured through respondent.

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5. Representing that applicants or prospective purchasers of said courses of study are especially selected.

6. Representing that vacancies exist for Civil Service positions which have in fact been abolished or which have been filled.

7. Representing that respondent's representatives and salesmen are registrars.

8. Using the term "Institute" as part of the name under which respondent's business of selling courses of instruction is conducted, or using the term "Institute" in any manner to designate, describe, or refer to respondent's business.

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

Syllabus

IN THE MATTER OF

EDWARD D. MILLER TRADING AS NATIONAL
TECHNICAL INSTITUTE

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

Docket 4789. Complaint, July 29, 1942—Decision, June 1, 1944

Where an individual engaged in the interstate sale and distribution of correspondence courses of instruction in diesel engineering, air conditioning, aeronautical engineering, electrical engineering and commercial training—

- (a) Represented through calls upon prospective students and their parents at their homes by him and his representatives, that the particular prospect had been especially recommended as a ranking high school graduate and was therefore being offered a scholarship as an "advertising student," under his policy of requiring such advertising student to recommend other students in lieu of other forms of advertising, and that such scholarship constituted a substantial reduction from the regular charge; the facts being that such representations were false, there was no special selection of students, nor any recommendations by high school principals or others for the so-called scholarship, which was the regular enrollment and did not carry any reduction in the tuition fee;
- (b) Represented that a substantial number of graduates had been employed in the respective industries at high salaries and that prospective students would have no difficulty in obtaining a lucrative position in any of them; the facts being that generally his graduates had not found such employment, and there had been no graduates of the aeronautical engineering course;
- (c) Represented that his plan of instruction differed from those of other similar schools in that, in addition to the lesson material mailed, a teacher who was thoroughly trained and qualified in the respective technical subjects would call upon the student at 30 day intervals, review the work done and generally explain and test the subjects being studied; the facts being the so-called instructors had no technical qualifications enabling them to render such service, but in fact acted as bill collectors to collect the required monthly installments;
- (d) Represented that the school maintained several buildings, substantial equipment and a large faculty of competent instructors, and that at the conclusion of the diesel engineering and air conditioning courses a student would receive five weeks shop training at one of the best schools in Chicago, and that students of the aeronautical engineering course would receive such training at an aeronautical school which would also give instruction in actual flying; the facts being there had been no graduates, as aforesaid noted, of said last course, and said individual was the sole operator of the business concerned; and
- (e) Represented through use of the words "National Diesel Institute" and "National Technical Institute," that the business consisted of a group of engineers in the diesel or other technical industries, instituted to consider their problems from a scientific and technical standpoint, to further the industries concerned and their welfare generally, and to conduct research and experiments therein; the fact being his business was a correspondence school organized and operated solely for his financial profit, he maintained no resident school, laboratory, library or any equipment whatever to conduct a school, and representations made as above set out were otherwise false;

With tendency and capacity to mislead purchasers and prospective purchasers into the mistaken belief that such representations were true and thereby induce them to purchase and pursue said courses:

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. 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 Edward D. Miller, an individual, trading as National Technical 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, Edward D. Miller, is an individual, who, as sole proprietor, has been trading under the firm name and style of National Technical Institute for the past two years and who prior thereto traded under the firm name of National Diesel Institute, with his principal office and place of business at 111 Sylvan Street, city of Virginia, State of Illinois.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the sale and distribution of correspondence courses of instruction in diesel engineering, air conditioning, aeronautical engineering, electrical engineering and commercial training to student purchasers 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 his business, and in connection with the sale and distribution of his correspondence courses, respondent transports or causes the transportation of printed copies of lessons, examination questions and various other documents from his 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.

PAR. 3. Respondent, in soliciting the sale of and in selling his said courses of study and instruction in commerce as herein described, has made numerous false, deceptive and misleading representations and statements personally and through his representatives engaged in the sale of said courses, as hereinafter more fully set out.

PAR. 4. In the course and conduct of his business respondent obtains the names of prospective students through high school principals or other local sources. Respondent and his sales representatives call upon said students and their parents at their respective residences and induce the purchase of said courses of study and instruction by making numerous representations which are to the effect that the student has been especially recommended as a ranking high school graduate and that because of such recommendation the respondent is offering him a scholarship as an "advertising student"; that it is the policy of respondent to require such advertising students to recommend other students for such

courses of study and instruction and that this practice is being followed in lieu, and to save the expense, of any other form of advertising; that such scholarship constitutes a substantial reduction from the price regularly charged by the respondent school; that a substantial number of graduates have been employed in the respective industries at high salaries and that the prospective student will have no difficulty in obtaining a lucrative position in any of said industries; that the plan of instruction differs from those of other correspondence schools in that, in addition to the lesson material mailed to the student, a teacher thoroughly trained and qualified in the respective technical subjects will call upon such student in person at 30-day intervals, review the work done, go over the lesson material and generally explain and teach the subjects being studied; that the school maintains several buildings, substantial equipment and a large faculty of competent instructors at its place of business in Virginia, Illinois; that at the conclusion of the diesel engineering and air conditioning courses, a student will receive five weeks shop training at one of the best schools of training in Chicago, Illinois; and that students of the aeronautical engineering course will receive shop training at an aeronautical school which also will give students instruction in actual flying.

PAR. 5. In truth and in fact said representations and statements are grossly exaggerated, false and misleading. Students are not especially selected, but on the contrary the course is offered to all students who are solicited by respondent or his agents and the so-called scholarship is the regular enrollment and does not carry with it any reduction in the tuition fee, said tuition fee being the same to all students and being in fact the regular price of the course. Generally respondent's graduates have not found lucrative employment in any of the industries. In truth and in fact there have been no graduates of the aeronautical engineering course. Respondent is the sole operator of said business, which is located at his residence in Virginia, Illinois. There are no buildings or any other equipment required for the teaching of the several courses offered by him and there is no faculty whatever qualified to teach any of said courses. The so-called instructors who call upon students who have enrolled for any of said courses have no technical qualifications enabling them to teach or review any of the subjects of study and are in fact acting as bill collectors to collect the monthly installments required to be paid by said students under the enrollment contract. Neither high school principals or any other person has recommended any prospective students for respondent's so-called scholarships.

PAR. 6. By using the words "National Diesel Institute" and "National Technical Institute" in his trade names, respondent falsely represents or implies that his business consists of a group or organization of engineers in the diesel or other technical industries instituted for the purpose of considering the problems of said industries from a scientific and technical standpoint and to further and promote the industries and the welfare of such industries generally and to conduct research and experiments in said respective industries.

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 diesel engineering, air conditioning, aeronautical engineering, electrical engineering and commercial training solely for the financial profit of respondent. Respondent maintains no residence school, has no laboratory or library or any equipment whatever to conduct a

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school, to pursue research work or to make any scientific or technical investigations and has no faculty or any personnel whatever with technical training or any knowledge of even the fundamental principles of the science of engineering.

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 29, 1942, issued and subsequently served its complaint in this proceeding upon respondent, Edward D. Miller, an individual, trading as National Technical Institute (formerly National Diesel Institute), charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 5, 1943, respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Edward D. Miller, is an individual, trading under the firm name and style of National Technical Institute, with his principal office and place of business at 111 Sylvan Street, Virginia, Ill. He formerly traded under the firm name of National Diesel Institute.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the sale and distribution of correspondence courses of instruction in diesel engineering, air-conditioning, aeronautical engineering, electrical engineering, and commercial training to student purchasers located in the various States of the United States other than the State of Illinois and in the District of Columbia. In connection with the sale and distribution of his correspondence courses, respondent transports or causes the transportation of printed copies of lessons, examination questions, and various other documents from his 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.

PAR. 3. Respondent, in soliciting the sale of and in selling his said courses of study and instruction in commerce as herein described, has

made numerous false, deceptive, and misleading representations and statements personally and through his representatives engaged in the sale of said courses, as hereinafter more fully set out.

PAR. 4. In the course and conduct of his business respondent obtains the names of prospective students through high school principals or other local sources. By means of personal calls upon said students and their parents at their respective residences, respondent and his sales representatives have induced the purchase of said courses of study and instruction by making numerous representations to the effect that the student had been especially recommended as a ranking high school graduate and that because of such recommendation the respondent was offering him a scholarship as an "advertising student"; that it was the policy of respondent to require such advertising students to recommend other students for such courses of study and instruction, and that this practice is followed in lieu of and to save the expense of any other form of advertising; that such scholarship constitutes a substantial reduction from the price regularly charged by respondent; that a substantial number of graduates have been employed in the respective industries at high salaries and that the prospective student will have no difficulty in obtaining a lucrative position in any of said industries; that the plan of instruction differs from those of other correspondence schools in that, in addition to the lesson material mailed to the student, a teacher thoroughly trained and qualified in the respective technical subjects will call upon such student in person at 30-day intervals, review the work done, go over the lesson material, and generally explain and teach the subjects being studied; that the school maintains several buildings, substantial equipment, and a large faculty of competent instructors at its place of business in Virginia, Illinois; that at the conclusion of the diesel engineering and air-conditioning courses a student will receive five weeks' shop training at one of the best schools of training in Chicago, Illinois; and that students of the aeronautical engineering course will receive shop training at an aeronautical school which also will give students instruction in actual flying.

PAR. 5. In truth and in fact, said representations and statements are grossly exaggerated, false, and misleading. Students are not especially selected but, on the contrary, the course is offered to all students solicited by respondent or his agents, and the so-called scholarship is the regular enrollment and does not carry with it any reduction in the tuition fee, said tuition fee being the same to all students and, in fact, the regular price of the course. Generally, respondent's graduates have not found lucrative employment in any of the industries. In truth and in fact, there have been no graduates of the aeronautical engineering course. Respondent is the sole operator of said business, located at his residence in Virginia, Illinois. There are no buildings or any other equipment required for the teaching of the several courses offered by him and no faculty whatever qualified to teach any of said courses. The so-called instructors who call upon students enrolled for any of said courses have no technical qualifications enabling them to teach or review any of the subjects of study and, in fact, act as bill collectors to collect the monthly installments required to be paid by said students under the enrollment contract. Neither high school principals nor any other person has recommended any prospective students for respondent's so-called scholarships.

PAR. 6. By using the words "National Diesel Institute" and "National Technical Institute" in his trade names, respondent falsely represents and implies that his business consists of a group or organization of engineers in the diesel or other technical industries instituted for the purpose of considering the problems of said industries from a scientific and technical standpoint, and to further and promote the industries and the welfare of such industries generally, and to conduct research and experiments in said respective industries.

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 diesel engineering, air-conditioning, aeronautical engineering, electrical engineering, and commercial training solely for the financial profit of respondent. Respondent maintains no residence school, has no laboratory or library or any equipment whatever to conduct a school, does not pursue research work or make any scientific or technical investigations, and has no faculty or any personnel whatever with technical training or any knowledge of even the fundamental principles of the science of engineering.

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, has had, and has, 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.

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

It is ordered, That the respondent, Edward D. Miller, an individual, trading as National Technical Institute, or under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of courses of instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing to prospective students that they have been especially selected; or representing to such students that they have been recommended to respondent by their high school principal or other persons, unless such recommendations have actually been made.

2. Representing, by means of so-called scholarships or otherwise, that the usual and customary tuition fee is a special or reduced price.

3. Representing that graduates of respondent's courses have usually or generally obtained lucrative employment in the particular field in which instruction has been received from respondent; or that respondent's training assures one of such employment.

4. Representing that respondent's school occupies any building or buildings larger than it in fact occupies; or owns, maintains, or uses any equipment or material in excess of that actually owned, maintained, or used.

5. Representing that respondent maintains or employs a faculty of engineers or teachers qualified to give instruction in the subjects of diesel engineering, air-conditioning, aeronautical engineering, electrical engineering, or commercial training.

6. Representing that instructors will call upon students at any time or times to teach, assist, or review the work of such students, unless this is in fact done by qualified instructors having the necessary technical qualifications.

7. Using the term "Institute" as part of the name under which respondent's business of selling courses of instruction is conducted, or using the term "Institute" in any manner to designate, describe, or refer to respondent's business.

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
M. G. NEUMAN, DOING BUSINESS AS VALMOR
PRODUCTS 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 4866. Complaint, Nov. 3, 1942—Decision, June 1, 1944

A contention that the institution of the instant proceeding was unwarranted because respondent's products and the claims with respect thereto were considered by the Commission in connection with the execution of a stipulation to cease and desist and a subsequent supplement thereto, was untenable where it appeared that the stipulation provided that in the event of violation of its provisions, the facts admitted might be used in evidence in the trial of a complaint with respect thereto and the supplement was accepted without prejudice to the right of the Commission to issue complaint at any time it deemed such action warranted, and respondent subsequently violated the terms of the stipulation.

Where an individual engaged in interstate sale and distribution of a large number of medicinal preparations, cosmetics and other articles—

- (a) Falsely represented through statements and depictions in catalogs, newspapers and periodicals, circulars, leaflets and other advertising literature that his "Sweet Georgia Brown Lemon Fragrance Cleansing Cream" was effective in producing a light complexion and clearing up dark complexions, that his "Brown Skin Beauty Skin Brightener" would lighten the skin and make it look brighter and clearer, that his "Brown Skin Beauty Lemon Fragrance Vanishing Cream" would prevent greasy skin, and that his "Sweet Georgia Brown Sleeping Beauty Night Cream" had a stimulating effect upon the skin;
 - (b) Falsely represented as aforesaid that his "Valmor" hair tonic would act as such for scalp and hair, promote growth of latter and prevent loss thereof, and that his "Valmor Walk Easy Foot Powder" would relieve tired aching feet;
 - (c) Represented that his "Valmor Little Blue Pills with Buchu" product was a kidney stimulant and of value in the treatment of lazy kidneys, was effective in relieving backache due to bladder irritation and pains in the back, broken sleep, and leg pains caused by ailing kidneys, that acids and poisons get into the blood because of improper functioning of the kidneys, and that the product would remove such poisons and acids from the blood;
- The facts being that it was an irritant diuretic and cathartic which would merely increase the burden on the kidneys, since it must be removed from the system; and it was without therapeutic value and would not accomplish results claimed;
- (d) Falsely represented that his "Brother Johnson's American Oil Haarlem Capsules" preparation would flush out the kidneys and constituted an adequate treatment for broken sleep, burning bladder flow, getting up nights, and other symptoms caused by inactive kidneys; the facts being there are diseased kidneys and normal kidneys, but no such thing as sluggish kidneys; and product concerned was an irritant diuretic which would tend to increase rather than relieve burning bladder flow and would not accomplish the other results claimed therefor;
 - (e) Represented that his "Old Indian System Tonic" was a general tonic and would exert a general tonic effect upon the system, that inactive bowels cause formation of poisons which attack the body, causing weakness, run-down condition and fatigue, and that said preparation would remove such poisons and effectively relieve

such conditions; that his "Valmor Red Clover Compound" was effective in keeping one strong and healthy and an adequate treatment for run-down, weak, and tired conditions, and would have a general tonic effect upon the system, that constipation causes poisons to enter the blood, and that said preparation was effective in removing poisons that might be in the blood; and that his "Old Indian Herb Tea" would prevent sickness and keep one in good health, that constipation is the cause of sour stomach, pimples, bad breath, and tired, dragged-out feeling, and that "Old Indian Herb Tea" was effective in remedying such conditions;

The facts being there is no medical proof that inactive bowels cause the formation of poisons which attack the body etc., constipation does not cause poisons to enter the blood and is not the cause of sour stomach and other results attributed thereto as above claimed; and said products were irritant cathartics which would temporarily relieve constipation but would not remove it, and would not act as general tonics nor have the other results claimed therefor;

- (f) Falsely represented that his "Madam Jones Vegetable Compound" was effective in overcoming cramps, pains and nervousness due to weak and run-down condition, made difficult periods more pleasant, and was of value before and after childbirth or during change of life, that it cleared the skin, made the eyes sparkle, and would provide good health and a happy nature; and that his "Madam Jones Female Tablet" product was harmless and entirely safe; the facts being the former was essentially a cathartic, and continued use of the latter, by virtue of its phenacetin content, would be harmful, and if used in excessive quantities might result in collapse;
- (g) Falsely represented through use of trade name "Gro-Strate Hair Dressing" to designate a product consisting of perfumed petrolatum advertised as a hair straightener, that it would cause hair to grow straight; and through use of the trade name "Eau de Quinine" to designate a product advertised as a tonic for the hair and scalp, that said product contained a substantial quantity of quinine; and
- (h) Failed to reveal facts material in the light of his said representations and with respect to consequences which might result from use of certain of aforesaid preparations under usual or prescribed conditions, in that said "Little Blue Pills" and "Haarlem Capsules" were irritant diuretics, and use thereof by those with kidney diseases or disorders might result in injury to their kidneys, while long continued use might cause irritation and injury to normal kidneys; its "Old Indian System Tonic," "Madame Jones Vegetable Compound," "Valmor Red Clover Compound" were irritant laxatives and potentially injurious when taken by those suffering abdominal pains, nausea or other symptoms of appendicitis; and said "Red Clover Compound," by virtue of its potassium iodide content, was potentially dangerous when taken by those suffering from active or arrested tuberculosis or a thyroid disease;

With the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and to induce a substantial portion of them, because of such belief, to purchase 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.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. William L. Taggart for the Commission.

Nash & Donnelly, of Washington, D. C., for respondent.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that M. G. Neuman, an individual, trading as Valmor Products Company, Famous Products Company and Madam Jones Company, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, M. G. Neuman, is an individual, trading as Valmor Products Company, Famous Products Company and Madam Jones Company, with his principal place of business located at 2241 Indiana Avenue, in the city of Chicago, State of Illinois. Respondent is now, and has been for several years last past, engaged in the advertising, sale and distribution of various medicinal preparations and cosmetics.

PAR. 2. In the course and conduct of said business, respondent causes such medicinal preparations and cosmetics, when sold, to be transported from his place of business in the State of Illinois to purchasers there or 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 products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Among the preparations advertised, sold and distributed by respondent are the following: "Sweet Georgia Brown Lemon Cleansing Cream," "Sweet Georgia Brown Skin Bleach Cream," "Sweet Georgia Brown One Minute Skin Lightener," "Sweet Georgia Brown Wonderful Vanishing Cream," "Brown Skin Beauty Skin Brightener," "Brown Skin Beauty Lemon Fragrance Vanishing Cream," "Sweet Georgia Brown Sleeping Beauty Night Cream," "Valmor Eau de Quinine Hair Tonic," "Sweet Georgia Brown No-Odor Liquid," "Sweet Georgia Brown Odor-Rid," "Valmor Walk-Easy Foot Powder," "Valmor Little Blue Pills with Buchu," "Brother Johnson's American Oil Haarlem Capsules," "Valmor Headache Tablets," "Old Indian System Tonic," "Madam Jones Vegetable Compound," "Madam Jones Female Tablets," "Valmor Red Clover Compound," "Madam Jones Douche Powder," "Old Indian Herb Tea."

PAR. 4. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his preparations 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 preparations, by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products 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 hereinafter set forth, by the United States mails, by catalogs, advertisements inserted in newspapers and periodicals, and by circulars, leaflets, pamphlets and other advertising litera-

ture directed to and circulated largely among members of the colored race, are the following:

(a) That respondent's preparation "Sweet Georgia Brown Lemon Cleansing Cream" is effective in producing a light complexion and clearing up dark complexions.

(b) That respondent's preparation "Sweet Georgia Brown Skin Bleach Cream" acts as a bleach for the skin and its use will lighten and bleach dark skins.

(c) That respondent's preparation "Sweet Georgia Brown One Minute Skin Lightener" is a skin beautifier and its use will lighten the skin within one minute or within a very short period of time.

(d) That respondent's preparation "Sweet Georgia Brown Wonderful Vanishing Cream" will brighten the skin, will disappear in use by sinking into the skin and will prevent oily skin and shiny nose.

(e) That respondent's preparation "Brown Skin Beauty Skin Brightener" will lighten the skin and make it look brighter and clearer.

(f) That respondent's preparation "Brown Skin Beauty Lemon Fragrance Vanishing Cream" will lighten the skin and prevent greasy skin.

(g) That respondent's preparation "Sweet Georgia Brown Sleeping Beauty Night Cream" makes all skins smoother and softer regardless of their condition and has a stimulating effect upon the skin.

(h) That respondent's preparation "Valmor Eau de Quinine Hair Tonic" will act as a tonic for the scalp and hair, will promote the growth and prevent the loss of hair.

(i) That respondent's preparations "Sweet Georgia Brown No-Odor Liquid" and "Sweet Georgia Brown Odor-Rid" will check perspiration odors and can be depended upon to relieve the body of odor caused by perspiration.

(j) That respondent's preparation "Valmor Walk-Easy Foot Powder" will relieve tired feet and rid the feet of bad odor.

(k) That respondent's preparation "Valmor Little Blue Pills with Buchu" is a kidney stimulant and is of value in the treatment of lazy kidneys; that said preparation is effective in relieving backache due to bladder irritation and pains in the back, broken sleep and leg pains caused by ailing kidneys; that acids and poisons get into the blood because of the improper functioning of the kidneys and that his said preparation will remove such poisons and acids from the blood; that said preparation is of therapeutic value in the treatment of all functional disturbances of the kidneys.

(l) That respondent's preparation "Brother Johnson's American Oil Haarlem Capsules" will flush out the kidneys and constitutes an adequate treatment for broken sleep, burning bladder flow, getting up nights, and other symptoms caused by inactive kidneys.

(m) That respondent's preparation "Old Indian System Tonic" is a general tonic and will exert a general tonic effect upon the system; that constipation is the cause of belching, sour stomach, nausea, headache, foul breath, coated tongue, tired feeling and loss of appetite and that said preparation is an adequate treatment for such conditions; that inactive bowels cause formation of poisons which attack the body, causing weakness, run-down condition and fatigue and that said preparation will remove such poisons and effectively relieve such conditions.

(n) That respondent's preparation "Madam Jones Vegetable Compound" is effective in overcoming cramps, pains and nervousness due to a weak and run-down condition; make difficult periods more pleasant and is of value before and after childbirth or during change of life; that it clears the skin, makes the eyes sparkle and will provide good health and a happy nature.

(o) That respondent's preparation "Madam Jones Female Tablets" is harmless and entirely safe in use.

(p) That respondent's preparation "Valmor Red Clover Compound" is effective in keeping one strong and healthy and is an adequate treatment for run-down, weak and

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tired conditions; that it is a general tonic and will have a general tonic effect upon the system; that constipation causes poisons to enter the blood and that said preparation is effective in removing poisons that may be in the blood.

(g) That respondent's preparation "Madam Jones Douche Powder" is effective in getting rid of bad odor and when used as an inside wash will be helpful in removing all secretions and foreign matter which may cause irritations in the vaginal tract.

(r) That respondent's preparation "Old Indian Herb Tea" will prevent one from getting sick and will keep one in good health; that constipation is the cause of sour stomach, pimples, bad breath and tired, dragged-down feeling and that said preparation is effective in remedying such conditions.

The aforesaid statements and representations disseminated by respondent as aforesaid are false and misleading and deceptive in the following respects:

(a) Respondent's preparation "Sweet Georgia Brown Lemon Cleansing Cream" will not produce a lighter complexion and will not clear up dark complexions.

(b) Respondent's preparation "Sweet Georgia Brown Skin Bleach Cream" is not a bleach for the skin and its use will not lighten and bleach dark skins.

(c) Respondent's preparation "Sweet Georgia Brown One Minute Skin Lightener" will not beautify the skin nor will it lighten the skin within one minute or at all.

(d) Respondent's preparation "Sweet Georgia Brown Wonderful Vanishing Cream" will not brighten the skin nor will it disappear in use by sinking into the skin. It will not prevent or correct oily skin or shiny nose.

(e) Respondent's preparation "Brown Skin Beauty Skin Brightener" will not lighten the skin and will not make it look brighter or clearer.

(f) Respondent's preparation "Brown Skin Beauty Lemon Fragrance Vanishing Cream" will not lighten the skin nor prevent or correct greasy skin.

(g) Respondent's preparation "Sweet Georgia Brown Sleeping Beauty Night Cream" will not make all skins smooth and soft and it has no appreciable stimulating effect upon the skin.

(h) Respondent's preparation "Valmor Eau de Quinine Hair Tonic" will not act as a tonic to the scalp and hair nor will it promote the growth of the hair or prevent the loss of hair.

(i) Respondent's preparation "Sweet Georgia Brown No-Odor Liquid" and "Sweet Georgia Brown Odor-Rid" will not check perspiration odors in the case of all persons and it cannot be depended upon to prevent perspiration odor in all individual cases.

(j) Respondent's preparation "Valmor Walk-Easy Foot Powder" will not relieve tired feet nor can it be depended upon to rid the feet of bad odor.

(k) Respondent's preparation "Valmor Little Blue Pills with Buchu" is not a stimulant for the kidneys and will have no significant value in stimulating the action of the kidneys. Normal kidneys are not lazy and said preparation has no therapeutic value in the treatment of sluggish kidneys brought about by disease or abnormality. Said preparation has no material value in relieving backache due to bladder irritation and pains in the back, broken sleep and leg pains that may be caused by ailing kidneys. Acids and poisons do not get into the blood because of improper functioning of the kidneys and said preparation has no value in eliminating poisons or acids that may be in the blood. It has no therapeutic value in the treatment of functional disturbances of the kidneys.

(l) Respondent's preparation "Brother Johnson's American Oil Haarlem Capsules" will not flush out the kidneys and does not constitute adequate treatment for broken sleep, burning bladder flow, getting up nights, or other symptoms that may be associated with inactive kidneys.

(m) Respondent's preparation "Old Indian System Tonic" does not contain the necessary ingredients to constitute a general tonic and will not provide a general tonic effect upon the system. Constipation is not the cause of belching, sour stomach and nausea and such preparation is not an adequate treatment for such conditions. While headache, foul breath, coated tongue, tired feeling and loss of appetite may be caused by constipation, this is an infrequent occurrence. When such conditions are brought about by some condition other than constipation said preparation would be of no value in the treatment thereof. Said preparation is not an adequate treatment for weakness, run-down condition or fatigue.

(n) Respondent's preparation "Madam Jones Vegetable Compound" is not adequate or effective in overcoming cramps, pains or nervousness due to a weak or run-down condition. It cannot be depended upon to make difficult periods more pleasant or to be of value for conditions arising before and after childbirth or during change of life in women. It will not clear the skin, make the eyes sparkle nor will its use provide good health and a happy nature.

(o) Respondent's preparation "Madam Jones Female Tablets" is not harmless and is not always safe in use.

(p) Respondent's preparation "Valmor Red Clover Compound" is not effective in keeping one strong and healthy and is not an adequate treatment for a run-down, weak and tired condition. It does not contain the necessary ingredients to constitute a general tonic and will not provide a general tonic effect upon the system. Constipation does not cause poisons to enter the blood and said preparation is not effective in removing poisons that may be in the blood.

(q) Respondent's preparation "Madam Jones Douche Powder" cannot be depended upon to deodorize in all cases nor will it be effective in removing all secretions and foreign matter which may cause irritation in the vaginal tract.

(r) Respondent's preparation "Old Indian Herb Tea" will not prevent one from getting sick nor will it keep one in good health. Constipation is not the cause of sour stomach and pimples and said preparation will have no therapeutic value in the treatment thereof. While bad breath and tired, dragged-down feeling may be due to constipation this is infrequent and such conditions cannot be attributed generally to constipation.

PAR. 5. Respondent in advertising certain of his products uses descriptive words and terms as a part of the trade name of said products; "Skin Bleach Cream" and "One Minute Skin Lightener" for a preparation represented as a bleacher or skin lightener; "Gro-Strate" for a preparation represented as a straightener for kinky or curly hair; "Eau de Quinine" for a tonic to be used on hair and scalp and "No-Odor" and "Odor-Rid" for preparations represented as deodorants.

Through the use of such descriptive words and terms respondent represents, directly and by implication, that said bleach cream will bleach and lighten the skin; that said one-minute skin brightener will lighten and brighten the skin in one minute; that said "Gro-Strate" when applied to the hair will cause the hair to grow straight; that "Eau de Quinine" tonic contains a substantial amount of quinine; that "No-Odor" and "Odor-Rid" will absolutely deodorize and rid the body of objectionable odors.

The use of such descriptive words and terms are false, deceptive and misleading. In truth and in fact respondent's bleach cream will not bleach and lighten the skin. "One Minute Skin Brightener" will not bleach and lighten the skin in one minute or at all. "Gro-Strate" will not cause the hair to grow straight. "Eau de Quinine" does not contain quinine. "No-Odor" and "Odor-Rid" will not deodorize or rid the body of objec-

tionable odors in the case of all individuals and under all conditions and circumstances.

PAR. 6. In addition to the statements and representations contained in said false advertisements, respondent makes use of pictorial representations allegedly showing the beneficial results derived from the use of certain of his preparations, particularly the change in color of the skin from dark to light. Such depictions, in themselves, constitute false representations with respect to the value of said preparations and enhance the deception and falsity of the direct statements and representations which they accompany.

PAR. 7. 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 or under such conditions as are customary and usual. Respondent's preparation "Valmor Little Blue Pills with Buchu" contains the drug, powder extract Buchu and extract of Juniper berries and "Brother Johnson's American Oil Haarlem Capsules" contain sulphurated oil of turpentine. These ingredients are highly irritating in nature and their irritating action may seriously injure diseased or disordered kidneys. The long-continued use of said preparations may cause irritation and injury to normal kidneys. Respondent's preparations "Old Indian System Tonic," "Madam Jones Vegetable Compound" and "Valmor Red Clover Compound" are irritant laxatives and are potentially dangerous when taken by one suffering from abdominal pains, stomachache, colic, cramps, nausea, vomiting or other symptoms of appendicitis. Their frequent or continued use may result in dependence on laxatives. Respondent's product "Madam Jones Female Tablets" contains the drug acetphenetidin. Frequent or continued use of this preparation is potentially dangerous and may produce ill effects to the user. Respondent's preparation "Valmor Red Clover Compound" contains the drug potassium iodide which is potentially dangerous when taken by those suffering from active or arrested tuberculosis or thyroid disease. Respondent's preparation "Valmor Headache Tablets" contain the drug acetanilid in the quantity of two grains to a tablet. The directions for use are as follows: "Take one tablet. Take more later if necessary." The continued use of the preparation in accordance with the directions may cause dependence upon the drug or collapse and its administration to children may be dangerous and injurious to health. Respondent's advertisements contain no warnings or statements revealing potential danger of the excessive use of his said preparation with respect to either the dosage or frequency of use and such failure has the tendency and capacity to lead the public to believe that said preparation may be safely taken in such amounts and with such frequency as may seem necessary to accomplish the represented and desired results.

PAR. 8. The use by the respondent of the aforesaid false, misleading and deceptive statements, representations and depictions with respect to his said preparation 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 that his preparations are entirely safe and harmless in use and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's said preparations.

The 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 3, 1942, issued and subsequently served its complaint in this proceeding upon respondent, M. G. Neuman, an individual, trading as Valmor Products Company, Famous Products Company, and Madam Jones Company, 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 the 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 regularly came on for final hearing before the Commission on the said complaint, the 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 the oral arguments of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Morton G. Neumann, the person referred to in the complaint as M. G. Neuman, is an individual, trading as Valmor Products Company, Famous Products Company, and Madam Jones Company, with his office and principal place of business located at 2241 Indiana Avenue, Chicago, Ill. Respondent is now, and for a number of years has been, engaged in the advertising for sale, sale, and distribution of a large number of medicinal preparations, cosmetics, and other articles of merchandise.

PAR. 2. In the course and conduct of said business respondent causes his medicinal preparations, cosmetics, and other articles of merchandise, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof at their points of locations in various other States of the United States and in the District of Columbia. Respondent maintains, and 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. Among the products advertised, sold, and distributed as aforesaid are Sweet Georgia Brown Lemon Fragrance Cleansing Cream, Brown Skin Beauty Skin Brightener, Brown Skin Beauty Lemon Fragrance Vanishing Cream, Sweet Georgia Brown Sleeping Beauty Night Cream, Valmor Eau de Quinine Hair Tonic, Valmor Walk-Easy Foot Powder, Valmor Little Blue Pills with Buchu, Brother Johnson's American Oil Haarlem Capsules, Old Indian System Tonic, Madam Jones Vegetable Compound, Madam Jones Female Tablets, Valmor Red Clover Compound, Old Indian Herb Tea, and Gro-Strate Hair Dressing.

PAR. 3. In the course and conduct of his aforesaid business, by means of the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his aforesaid preparations; and respondent, by various means, has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said preparations for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said products 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 as aforesaid by catalogs, advertisements inserted in newspapers and periodicals, circulars, leaflets, pamphlets, and other advertising literature are the following:

(a) Sweet Georgia Brown Lemon Cleansing Cream, now sold under the name "Sweet Georgia Brown Lemon Fragrance Cleansing Cream," contains beeswax, paraffin, mineral oil, borax, water, yellow color, and perfume oil. By means of advertisements such as "Know the joy of a LIGHT complexion," "Keep your skin clean and bright," "Have bright pretty skin," and "claimed by many women as being Wonderful for Clearing Up Dark Complexions," accompanied by pictorial representations indicating a much lighter skin color after use, respondent represents that this product is effective in producing a light complexion and clearing up dark complexions. This product does not have the effects claimed for it. It contains no ingredients which will affect the pigmentation or color of the skin. The presence of yellow coloring matter in the preparation may give a somewhat lighter appearance to a dark skin so long as the cream remains on the skin, but would not in any way affect the color of the skin itself.

(b) Brown Skin Beauty Skin Brightener contains petrolatum, zinc oxide, color, and perfume oil. By means of advertisements such as "Relieve yourself of the MISERY often caused by Dark, Muddy, Sallow Complexion. Help yourself to NEW LOVE with SMOOTH, LIGHTER, CLEARER Looking SKIN. TREAT Your SKIN. Order a package of SKIN BRIGHTENER right away. Give yourself a Treatment every Night before you go to sleep," respondent represents that it will lighten the skin and make it look brighter and clearer. There is nothing in this product which would affect the color of the skin. The presence of zinc oxide might give a lighter appearance to the skin while the preparation remained on it, but it would not tend to bleach or effect any change in the color of the skin itself.

(c) Brown Skin Beauty Lemon Fragrance Vanishing Cream contains stearic acid, glycerine, water, potassium hydroxide, lemon oil, and color. By means of advertisements such as "Greasy skin looks bad," "Don't let greasy looking SKIN spoil your fun," respondent represents that its product will prevent greasy skin. There is nothing in the product which would cause the skin to be less oily.

(d) Sweet Georgia Brown Sleeping Beauty Night Cream contains beeswax, mineral oil, paraffin wax, borax, water, perfume oil, and color. By means of advertisements such as "WHILE YOU SLEEP This Stimulating Cream not only helps to arouse your Skin to look Younger * * *" respondent represents that this product has a stimulating effect upon the skin. There is nothing in this product which could or would have any stimulating effect on the skin.

(e) Valmor Eau de Quinine Hair Tonic contains alcohol, water, perfume oil, and color. By means of advertisements such as "Don't lose hair because of improper care," "Intended for Dandruff, Falling Hair, and Itching Scalp," accompanied by pictures of two men, one bald and the other with a full amount of hair, respondent represents that this product will act as a tonic for the scalp and hair, promote growth of hair, and

prevent loss of hair. This product would in no way stimulate the growth of hair or in any way act as a tonic for the scalp or hair, nor would it have any effect whatsoever in preventing the falling of hair.

(f) Valmor Walk-Easy Foot Powder contains talc, powdered alum, boric acid, salicylic acid, magnesium carbonate, and bouquet de perse. By means of advertisements such as "Valmor WALK-EASY FOOT POWDER For Tired Aching Feet," "If you suffer from hot, tired, tender perspiring feet, sprinkle Foot Powder * * *," respondent represents that this product will relieve tired, aching feet. The powder would serve to relieve friction between the foot and the sock or shoe but would have no effect whatever in relieving tired or aching feet.

(g) Valmor Little Blue Pills with Buchu contain potassium nitrate, powdered extract of buchu, extract of cascara, and extract of juniper berries. By means of advertisements such as "Help Lazy Kidneys," "Don't Suffer," "Help Kidneys Work," "For Backache Due to Bladder Irritation," "Do you suffer from Pains in Back, broken sleep, leg pains, and other symptoms often caused by ailing KIDNEYS? If you do, lose no time in flushing your KIDNEYS with the help of LITTLE BLUE PILLS," "YOUR KIDNEYS contain millions of tiny filters that keep the Body Poisons out of your Blood. If they can't work because of functional troubles, acids and poisons get into your BLOOD, and you Suffer Pains and Aches. LITTLE BLUE PILLS act as a Stimulant diuretic and are intended to help KIDNEYS work right," respondent represents that this product is a kidney stimulant and is of value in the treatment of lazy kidneys, that it is effective in relieving backache due to bladder irritation and pains in the back, broken sleep, and leg pains caused by ailing kidneys, that acids and poisons get into the blood because of improper functioning of the kidneys, that the product will remove such poisons and acids from the blood, and that the preparation is of therapeutic value in the treatment of functional disturbances of the kidneys. The product is an irritant diuretic and irritant cathartic. It is not a kidney stimulant or of any value in the treatment of "lazy kidneys." It would have no effect in relieving backache due to bladder irritation or pain in the back, or broken sleep and leg pains caused by ailing kidneys. It would not aid in removing acids and poisons in the blood, and in fact, inasmuch as it is itself an irritant, would merely increase the burden of the kidneys since it must be removed from the system. If the kidneys will not remove poisons and acids from the blood, respondent's product will in no way affect this condition and, in fact, has no therapeutic value in the treatment of functional disturbances of the kidneys.

(h) Brother Johnson's American Oil Haarlem Capsules contain sulphurated oil of turpentine. By means of advertisements such as "Flush Out Your Kidneys," "Recommended as a Diuretic Stimulant to the Kidneys," "Kidney inactivity often causes getting up nights," "Do you suffer from broken sleep, burning bladder flow, and other symptoms, often caused by inactive Kidneys? See a physician if organic trouble is suspected. In the meantime Help your Kidneys by Taking BROTHER JOHNSON'S HAARLEM OIL CAPSULES," respondent represents that said preparation will flush out the kidneys and constitutes an adequate treatment for broken sleep, burning bladder flow, getting up nights, and other symptoms caused by inactive kidneys. The product is an irritant diuretic. It would not in any way aid inactive kidneys or any kidney disease. In fact, there is no such thing as sluggish kidneys: there are diseased kidneys and normal kidneys. The preparation would not relieve broken sleep, nor does it contain anything that would tend to relieve burning bladder flow. On the contrary, it would tend to increase it.

(i) Old Indian System Tonic contains cascara bark, buckthorn bark, berberis, mandrake root, gentian root, senna leaves, capsicum, aloes, juniper berries, and aromatics. By means of advertisements such as "Do You Feel Weak and Run Down? Maybe You Need a Tonic," "Are you run-down; can't enjoy life? * * * Are you losing your

grip on life, worrying a lot, finding yourself weak, sick, tired, and run-down? This condition is often due to inside poisons attacking the body from inactive bowels. That is the time to take OLD INDIAN SYSTEM TONIC," respondent represents that the product is a general tonic and will exert a general tonic effect upon the system, that inactive bowels cause formation of poisons which attack the body, causing weakness, run-down condition, and fatigue, and that said preparation will remove such poisons and effectively relieve such conditions. There is no medical proof that inactive bowels cause the formation of poisons which attack the body, causing weakness, run-down condition, and fatigue. The product is an irritant cathartic and would temporarily relieve constipation. A cathartic cannot be considered to be a tonic, and the product does not constitute an adequate treatment for the symptoms named.

(j) Madam Jones Vegetable Compound contains viburnum, blue cohosh, senna leaves, celery seed, poke root, berberis, cascara, squaw vine, pasiflora, juniper berries, black cohosh, buckthorn bark, salicylic acid, alcohol, and aromatics. By means of advertisements such as "When your strength begins to fail, when there are 'GRAY DAYS' every month, try taking MADAM JONES' Vegetable Compound. It helps many women to overcome cramps, pains, nervousness due to weakened run-down condition not caused by any organic or functional disease or disorder. Makes difficult periods more pleasant," "Helps Many Women. Regarded as valuable before and after child birth, at the change or whenever you feel nervous and run-down. If your nerves are at edge, if you feel tired, if you feel weak or blue, if you can't eat, if you can't sleep, try a bottle of MADAM JONES' Vegetable Compound. It may be just what you need," "Why be Drab When You Can Sparkle? Many men are attracted to women whose skin is clear—whose eyes sparkle—who have good health and a happy nature. If you are not as well as you want to be—if you are missing lots of fun because you do not feel right—that's the time to start taking care of yourself. Try One Bottle Now. Don't continue to be weak and suffer needlessly, when all you may need is a bottle of this safe medicine," respondent represents that this product is effective in overcoming cramps, pains and nervousness due to weak and run-down condition; makes difficult periods more pleasant, and is of value before and after child-birth or during the change of life; that it clears the skin, makes the eyes sparkle, and will provide good health and a happy nature. In fact, the product is essentially a cathartic with a bitter stomachic effect and would not constitute an adequate treatment for pains, cramps, nervousness, or run-down condition, or for the other symptoms described. It would not clear the skin, make the eyes sparkle, or provide good health or a happy nature.

(k) Madam Jones Female Tablets contain phenacetin, more properly known as acetphenetidin. By means of advertisements such as "Pure—Safe—Pleasant" respondent represents that this product is harmless and entirely safe in use. The drug acetphenetidin in the dosage prescribed would be harmful in the cases of unusual individuals, its continued use would have harmful effects upon a normal person, and if used in excessive quantities may result in collapse.

(l) Valmor Red Clover Compound contains cascara bark, gentian root, senna leaves, licorice root, potassium iodide, red clover tops, mandrake root, aloes, juniper berries, salicylic acid, alcohol, and aromatics. By means of advertisements such as "Helps You Look Like A Picture of Health," "Mother Nature's Treatment Helps Keep You STRONG and HEALTHY," "HELPS the SYSTEM. GOOD NEWS, for folks who may be Run-down, Weak, Grow tired too soon without suffering from any Organic or Functional Trouble," "Constipation often causes certain BODY POISONS to enter the BLOOD and it is these Poisons that may give you the MISERY. RED CLOVER COMPOUND has a laxative action. Helps the system get rid of waste matter. Order yourself a bottle of this fine medicine today," "Don't let your system get run-down, but if it is, you may find RED CLOVER COMPOUND A

BLESSING. Keep a bottle handy," respondent represents that said product is effective in keeping one strong and healthy and is an adequate treatment for run-down, weak, and tired conditions, that it is a general tonic and will have a general tonic effect upon the system, that constipation causes poisons to enter the blood, and that said preparation is effective in removing poisons that may be in the blood. The preparation, in fact, is essentially an irritant cathartic. There is nothing in the preparation which would act as a general tonic or have a tonic effect upon the system and it would not constitute an adequate treatment for run-down, weak, and tired conditions. Constipation does not cause poisons to enter the blood and the product would not be effective in removing poisons from the blood.

(m) Old Indian Herb Tea contains senna leaves, cascara sagrada, chamomile flowers, licorice root, juniper berries, red clover, dandelion root, sassafras bark, sarsaparilla, fennel seed, and red saffron. By means of advertisements, such as "Are you Sick and Run Down? Are you suffering with troubles that result from Constipation such as Sour Stomach, Bad Breath, Pimples, or that Tired, Dragged Down Feeling? OLD INDIAN herb Tea should help you if you need a good LAXATIVE. LOOK AT This Big, Strong Indian Chief, said to have never known a sick day. Do as the Indians did. Use Herbs," respondent represents that the product will prevent sickness and keep one in good health, that constipation is the cause of sour stomach, pimples, bad breath, and tired, dragged-out feeling, and that Old Indian Herb Tea is effective in remedying such conditions. The product is an irritant cathartic with a bitter stomachic effect and it will not prevent one from becoming ill or maintain good health. Constipation is not the cause of sour stomach, pimples, bad breath, and tired, dragged-out feeling, and consequently the preparation would not be effective in treating such conditions.

PAR. 4. (a) Through the use of the trade name "Gro-Strate Hair Dressing" to designate a product consisting of perfumed petrolatum, advertised as a hair straightener for kinky or curly hair, respondent represents that this product will have the effect of causing kinky or curly hair to grow straight. The product will not cause the hair to grow, nor will it do more than temporarily cause it to appear straight if a sufficient quantity is applied to act as a plaster and hold the hair straight.

(b) Through the use of the trade name "Eau de Quinine" to designate a product advertised as a tonic for the hair and scalp, respondent represents that the product contains a substantial quantity of quinine when, in fact, it contains no quinine whatever.

PAR. 5. Respondent's advertisements disseminated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations made and material with respect to the consequences which may result from the use of the preparations to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary and usual. Respondent's preparation "Valmor Little Blue Pills with Buchu" contain powdered extract of buchu and extract of juniper berries, and respondent's preparation "Brother Johnson's American Oil Haarlem Capsules" contain sulphurated oil of turpentine. These ingredients are irritant diuretics and their use by persons having kidney diseases or disorders may result in injury to their kidneys, and the long-continued use of such preparations may cause irritation and injury to normal kidneys. Respondent's products "Old Indian System Tonic," "Madam Jones Vegetable Compound," and "Valmor Red Clover Compound" are irritant laxatives and are potentially dangerous when taken by persons suffering abdominal pains, vomiting, nausea, or other symptoms of appendicitis. Respond-

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ent's preparation "Valmor Red Clover Compound" contains the drug potassium iodide, which is potentially dangerous when taken by those suffering from active or arrested tuberculosis or a thyroid disease.

PAR. 6. Respondent contends that the institution of this proceeding is unwarranted because respondent's products and the claims with respect thereto were considered by the Commission in connection with the execution of Stipulation to Cease and Desist No. 0150, approved May 1, 1933, and supplement thereto approved March 7, 1939. The original stipulation provided that in the event of violation of the provisions thereof the facts admitted therein might be used in evidence in the trial of a complaint with respect thereto, and the supplemental stipulation was accepted without prejudice to the right of the Commission to issue complaint at any time it deemed such action warranted. Thereafter, on October 31, 1942, prior to the issuance of the complaint herein, the Commission advised respondent that it had evidence of violation of the stipulations, had therefore reconsidered its acceptance of the stipulations, and had directed the issuance of complaint charging respondent with violation of the Federal Trade Commission Act. Respondent's contention that he has not violated the terms of the stipulation is without merit. For example, he agreed not to represent, directly or by implication, that his Red Clover Compound "helps the whole system or keeps the blood in better condition." A comparison of this agreement with the findings herein concerning the product in question sufficiently shows that respondent failed to comply with the agreement.

PAR. 7. The use by respondent of the false, misleading, and deceptive statements, representations, and depictions concerning his various preparations as herein found has had, and 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, representations, and depictions are true, and that his preparations are safe and harmless in use, and to induce a substantial portion of the purchasing public, because of such erroneous belief, to purchase respondent's said preparations.

CONCLUSION

The 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 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, report of the trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint, 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, Morton G. Neumann, an individual, trading as Valmor Products Company, Famous Products Company,

Madam Jones Company, or under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of his medicinal and cosmetic preparations hereinafter named, or any other preparation or preparations of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name or names, 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 by inference:

(a) That Sweet Georgia Brown Lemon Fragrance Cleansing Cream will lighten the complexion, clear up dark complexions, or in any way alter or change the color of the skin of the user.

(b) That Brown Skin Beauty Skin Brightener will lighten the skin or in any way alter or change the color of the skin of the user.

(c) That Brown Skin Beauty Lemon Fragrance Vanishing Cream will cause the skin of the user to be less oily or greasy.

(d) That Sweet Georgia Brown Sleeping Beauty Night Cream will stimulate the skin or have any stimulating effect upon the skin of the user.

(e) That Valmor Eau de Quinine Hair Tonic will promote the growth of hair, prevent the loss of hair, or act as a tonic for the scalp or hair.

(f) That Valmor Walk-Easy Foot Powder is a competent or effective remedy for tired or aching feet.

(g) That Valmor Little Blue Pills with Buchu have any therapeutic value in the treatment of functional disturbances of the kidneys; will act as a kidney stimulant; will in any way relieve backache due to bladder irritation, or pain in the back, broken sleep, or leg pains caused by ailing kidneys; or will in any way aid or assist the kidneys in removing poisons or acids from the blood; or which advertisement fails to reveal that the use of said preparation by persons having diseased or disordered kidneys may result in serious injury, and that prolonged administration of said preparation may injure normal kidneys: *Provided, however*, that any 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 on both label and labeling, contain the above warning.

(h) That Brother Johnson's American Oil Haarlem Capsules will in any way aid or assist inactive kidneys, or relieve or prevent broken sleep or burning bladder flow, or constitute a competent or effective treatment for any kidney disorder; or which advertisement fails to reveal that the use of said preparation by persons having diseased or disordered kidneys may result in serious injury, and that prolonged administration of said preparation may injure normal kidneys: *Provided, however*, that any 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 on both label and labeling, contain the above warning.

(i) That Old Indian System Tonic is a tonic or will exert any tonic effect upon the system; that inactive bowels cause the formation of poisons which attack the body, causing weakness, run-down condition, or fatigue, or that said preparation constitutes a competent or effective

remedy for weakness, run-down condition, or fatigue; or which advertisement fails to reveal that said preparation should not be used by persons suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis: *Provided, however*, that any 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 on both label and labeling, contain the above warning.

(j) That Madam Jones Vegetable Compound constitutes a competent or effective remedy for cramps, pains, and nervousness due to weak or run-down condition; that it will make difficult periods more pleasant, or is of any value before or after childbirth, or during change of life; or that its use will clear the skin, make the eyes sparkle, or provide good health or a happy nature to the user; or which advertisement fails to reveal that said preparation should not be used by persons suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis: *Provided, however*, that any 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 on both label and labeling, contain the above warning.

(k) That Madam Jones Female Tablets are harmless and entirely safe in use; or which advertisement fails to reveal that frequent or continued use of such preparation may be dangerous: *Provided, however*, that any 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 on both label and labeling, contain the above warning.

(l) That Valmor Red Clover Compound is a tonic or will have any tonic effect upon the system of the user; is a competent or effective treatment for tired, weak, or run-down conditions; that constipation causes poisons to enter the blood, or that said preparation would be effective in removing poisons from the blood; or which advertisement fails to reveal that said preparation should not be used by persons suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis, or by persons having goiter or other thyroid disease, or by any one suffering from active or arrested tuberculosis: *Provided, however*, that any 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 on both label and labeling contain the above warning.

(m) That Old Indian Herb Tea will keep the user in good health or prevent sickness; or is a competent or effective remedy for sour stomach, pimples, bad breath, or tired, dragged-out feeling.

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 1 hereof, or which advertisement concerning Valmor Little Blue Pills with Buchu, Brother Johnson's American Oil Haarlem Capsules, Old Indian System Tonic, Madam Jones Vegetable Compound, Madam Jones Female Tablets, or Valmor Red-Clover Compound fails to comply with the affirmative requirements set forth respectively in subparagraphs (g), (h), (i), (j), (k), or (l) of said paragraph 1 hereof.

It is further ordered, That said respondent, his representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

3. Using the term "Gro-Strate," or any other word or words of similar import, to designate, describe, or refer to his product "Gro-Strate Hair Dressing" or any other preparation having substantially similar ingredients or properties.

4. Using the words "Eau de Quinine," or any other words importing or implying that a preparation contains quinine, to designate, describe, or refer to any preparation which contains no quinine or an insubstantial quantity thereof.

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

IN THE MATTER OF
RIGID STEEL CONDUIT ASSOCIATION, ET AL.

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

Docket 4452. Complaint, Jan. 25, 1941—Decision, June 6, 1944

In a basing-point delivered-price formula such as employed in the rigid steel conduit industry, under which the matching of price quotations by all sellers at any given destination is achieved through use of a combination of the same base price and uniform freight delivery factors and each concern increases or decreases its mill net, or true price, so as to produce identical delivered prices or quotations at any point, such matching of prices may not correctly be characterized as "meeting competition." The resulting systematic price variations do not represent competition in the ordinary meaning of the term, each participant consciously intending, in the use of such formula, that no attempt shall be made to exclude any seller from the natural freight advantage territory of another and, in effect, inviting others to share the available business in his natural market in return for a reciprocal invitation.

A basing-point delivered-price formula, under which the different sellers make use of a combination of the same base price and uniform freight delivery charge and each increases or decreases his mill net or true price so as to produce identical delivered prices to any purchaser at any point, is recognized by economists as a controlled or monopolistic price system, and does not in its operation or results conform to the economic principles which indicate the existence of free or effective competition. Ready response to changing conditions of supply and demand as contrasted with operation of the system concerned which produced a high degree of rigidity and under which at times prices even moved contrary to what would be expected in a market amenable to the law of supply and demand, is one of the characteristics of effective competition. The existence of such competition is also inconsistent with the condition of mutual dumping produced by the use of the basing point pricing formula, as is the systematic pattern of discrimination among purchasers resulting therefrom, and the absence of such competition is indicated by the use of a formula which produces matched delivered price quotations.

The economic principle that in a truly competitive market the unit price of a homogenous commodity tends to become approximately uniform does not serve to explain the results of the use of a delivered-price basing-point system under which, through use by all sellers of a combination of base price and uniform freight delivery charges, there were produced identical delivered prices or quotations at each point. The tendency toward price uniformity in a free market results from the fact that in the purchase and sale of units of a homogenous commodity in such a market, sellers are indifferent as to whose money they get for their commodity, as are buyers as to whose commodity they thus acquire. The systematic differences in mill nets accepted by sellers making use of such a basing-point delivered-price system, under which each seller increases or decreases his mill nets or true prices to arrive at the matched delivered prices, violates said economic principle. It is also true, furthermore, that the law of uniform price is limited in its application to prices which eventuate from actual sales and has no application to, and cannot explain, uniformity of price quotations.

Where eighteen corporations, manufacturers and sellers of all the rigid steel conduit produced in the United States, in competition with one another to the extent that it had not been lessened through the acts and practices below described; acting with and through the association of which substantially all were members, a rate expert, a management corporation and its president, and various individuals and officers concerned—

With intent of limiting and restraining the normal forces of competition by means of a formula system of pricing, which enabled all sellers to quote the same price to a prospective purchaser at any location, and under which it was possible to maintain a price level high enough to permit each seller to sell in the natural territories of other sellers, and higher profits were offered to the favorably located seller on sales made in his natural territory in return for his refraining from pressing his advantage—

- (a) Entered into, cooperated in, and carried out a planned common course of action and understanding, agreement, combination and conspiracy, pursuant to which they—
- (1) Quoted and sold rigid steel conduit at prices determined in accordance with the basing-point delivered-price system long employed by them, and under which sellers, through use of the same base prices and uniform delivery charge factors, were enabled to quote identical delivered prices to any given destination and purchaser; issuing price cards from time to time, which were identical in all material particulars, and cooperatively determining upon and putting into operation alterations and simplifications;
- (2) Published and distributed, first through their said association, and later directly through a Pittsburgh traffic and rate expert whom they had theretofore employed for such compilation and service, and who advised and cooperated with the association's transportation committee and executive secretary, freight rate bulletins and supplements, which were not intended or adapted for use by purchasers as bona fide information for shipping purposes, but to supply a common factor for inclusion in price of conduit delivered at various destinations under aforesaid pricing formula; and made use, as aforesaid, of said bulletins and supplements or copies thereof; and

Where the aforesaid association, following employment of a management corporation and its president, who undertook the formulation and execution of plans for controlling certain conditions which tended to interfere with and disturb the operation of said basing-point delivered-price system; with the cooperation and assistance of wholesalers involved and their association—

- (b) Prepared and adopted uniform consignment contracts, to standardize the price structure in the industry and avoid the disturbing influence resulting from the action of distributive agents who sold at prices which did not accurately reflect the basing-point formula, in competition with wholesalers—theretofore free to quote their own prices; and to insure maintenance of formula prices under such contracts, exerted various forms of pressure upon the sellers and wholesalers and threatened cancellation of agreements with price cutters;
- (c) With a view to correcting irregular price conditions which had resulted from the floating supply of conduit left in the hands of contractors due to duplicate contracts and excessive amounts of conduit provided in contracts, and following complaint and recommendations of the conduit committee of the wholesalers association, prepared and brought about the use of a uniform specific building contract under which contractors were to be supplied conduit for specific jobs only, and established means for investigating and controlling the use of such contracts through aforesaid service corporation, and took action through use of forms and

exchange of information with those concerned so to do; whereby cancellations and partial cancellations of such contracts for large quantities of conduit were brought about;

- (d) Made trade discounts the subject of collective consideration by conduit sellers and wholesalers, following which identical trade discounts were put in effect by the various sellers, which in general outline followed a plan reported as meeting the consensus of opinion of the manufacturers or sellers, and the jobbing concerns and their associations; and

Where said sellers, or member sellers,

- (e) Supplemented the restraining effects of their general practices affecting price by direct action through exchange of information and other activity between themselves and their officers, agents and wholesalers, directed to maintenance of the desired price structure and correction or avoidance of departures therefrom;
- (f) Engaged, through the medium of their association, in collective activity directed to the classification of customers, and to determining whether or not particular concerns were to be treated as wholesalers; exchanged lists of presumed wholesalers or jobbers and invited comment thereon; and in their aforesaid uniform consignment contracts, included provisions whereby the distributive agent represented that he (1) conducted a warehouse suitable for carrying a stock of conduit and accessories in sufficient volume and range of sizes and types adequately to serve the territory involved, (2) regularly employed a force of salesmen, and (3) did not sell, as a contractor or otherwise, in significant amounts direct to the general public or individual ultimate consumers; reflecting thereby the more important qualifications required by the wholesalers' association, membership lists of which were available to the conduit sellers on request;
- (g) Discontinued, with the aid and cooperation of said wholesalers association, the maintenance by the sellers—except on the Pacific coast—of warehouse stocks in many large cities, which had been a source of dissatisfaction to large wholesalers, able to buy in carlot quantities at the lower carload freight rate, but who secured no advantage thereby in their competition with small wholesalers, who received on their smaller purchases from the warehouses the benefit of carload rates, and which had also created competitive difficulties among the conduit sellers; and

Where said rate expert, said organization service corporation and its president, said wholesalers' association, and various members thereof including the most influential in the industry—

- (h) Knowingly advised and cooperated with respect to the accomplishment of the aforesaid purposes, as above indicated;

Capacity, tendency and effect of which combination and conspiracy as above set forth, and acts and practices performed in connection therewith were to restrain and suppress competition in the sale and distribution of rigid steel conduit among the several states, deprive purchasers thereof of the benefits of competition in price, and maintain artificial and monopolistic methods and prices in the sale and distribution of said product; and bring about preparation, maintenance and use of common or uniform delivery charges or "freight adders," customer classifications, discounts, terms and conditions, and distributive and job contracts; control warehouse use; and use of investigations, reports, etc., in, in aid of their price maintenance purpose and program, as hereinabove indicated; and

Where said manufacturers and sellers, severally, and with knowledge that each of the others was simultaneously doing likewise—

- (i) Generally refrained from quoting f.o.b. particular seller's place of production of shipment, or prices independent of and unrelated to delivered price quotations

determined from a basing-point formula, but consistently made use of said basing-point delivered-price formula, under which the Chicago base price was maintained at about \$4.00 per ton above the Pittsburgh base price and through use of which, supplemented by the use of common delivery charge factors and common freight rate books to eliminate price differences which might arise through individual calculation of freight rates, a substantial degree of delivered price identity was brought about; and

- (j) Notwithstanding differences between the actual freight rates from the place of business of each concern and the rates from competitors' places of business, as an incident to the use of their said basing-point delivered-price formula, habitually and systematically demanded and received larger sums for products of equal quality and quantity from customers located at or near their respective places of business than from others farther away, and caused such nearby customers thereby to pay more to each seller for conduit and the more distant customers within a particular basing point area to pay less than would otherwise be the case; and thus deprived nearby customers of price advantages which they would naturally enjoy by reason of their proximity to points of production;

Capacity, tendency and effect of which concurrent use by sellers of said basing-point formula was to restrain competition in price in the sale and distribution of conduit, deprive purchasers of the benefits thereof, unfairly discriminate among purchasers, and create in each of said sellers a dangerous tendency toward a monopolistic control over price of said product:

Held, That said acts and practices constituted unfair methods of competition in commerce.

Systematic investigations made on special forms by an association of manufacturers and sellers of rigid steel conduit, of so-called "closed transactions," to ascertain whether the product was being sold in conformance with a delivered-price basing-point system made use of by such members, which automatically resulted in a uniform quotation and price at any given point to any given purchaser, as carried out, pressed and followed up, in conception and execution amounted in fact to a sophisticated form of price maintenance through united action, by means of which a conduit seller who did not maintain prices and require his distributors so to do was exposed to the collective pressure of his associates, with the effect of tending to prevent departures from the prices established pursuant to the formula; and such investigations could not be said, as contended, to constitute a proper activity necessary to enable sellers to secure information as to the condition of the conduit market.

As respects the use by manufacturers and sellers of rigid steel conduit, of a basing-point delivered-price formula under which the delivered price was a combination of controlling base price plus a uniform freight delivery charge, and through use of which there resulted an identical delivered price or quotation by all sellers to each purchaser at each point: the exact degree of adherence by individual sellers for particular periods of time was immaterial where it was clear that the percentage of adherence was substantial and at times almost complete, and where it also appeared that the record tended to show that departures from card prices were often largely confined to particular and limited areas and did not represent a condition throughout the country.

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

Mr. Everette MacIntyre for the Commission.

Tibbets, Lewis, Lazo & Welch, of New York City, for *Herbert S. Blake*,

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Paul Weiss, Robert S. Booth, N. Myles Brown, Thomas B. Jordan and C. C. Gregory.

Stewart & Lewis, of Pittsburgh, Pa., for Lawrence R. Quinn, Enamelled Metals Co., Steelduct Co., and along with—

Montgomery & McCracken, of Philadelphia, Pa., for H. S. Walker and Walker Brothers.

Mr. James M. Houston, of Pittsburgh, Pa., for I. A. Bennett, Charles Donley and Frank C. Hodkinson.

Mr. Thomas F. Patton and *Mr. A. J. Gentholls*, of Cleveland, Ohio, for J. M. Barton, Fretz-Moon Tube Co., Inc., Steel and Tubes, Inc. and Republic Steel Corp.

Sullivan & Cromwell, of New York City, for H. G. Morrow and Spang Chalfant, Inc.

Mr. Gerard Swope, Jr., of Bridgeport, Conn., and *Wright, Gordon, Zachry, Parlin & Cahill*, of New York City (appearing also, in case of latter, for Youngstown Sheet and Tube Co.), for A. E. Newman, General Electric Supply Corp. and General Electric Co., represented also as below set forth.

Cravath, de Gersdorff, Swaine & Wood, of New York City, and *Cravath, Swaine & Moore* (appearing also, in case of latter, for Youngstown Sheet and Tube Co.), of New York City, for General Electric Co.

Blaxter, O'Neill & Houston, of Pittsburgh, Pa., for Central Tube Co.

Pope & Ballard, of Chicago, Ill., and *Pope, Ballard & Loos*, of Washington, D. C., for Clayton Mark & Co.

Ulch & Poskanzer, of Albany, N. Y., for Cohoes Rolling Mill Co.

Campbell, Wick, Houck & Thomas, of Pittsburgh, Pa., for Garland Manufacturing Co. and *Mr. Frank W. Stonecipher*, of Pittsburgh, Pa., for J. R. Patrick and A. G. Holmes, Trustees in Bankruptcy.

Lewis, Rice, Tucker, Allen & Chubb, of St. Louis, Mo., for Laclede Steel Co. and Laclede Tube Co.

Mr. Morton Peyser, of New York City, for Triangle Conduit and Cable Co., Inc. and The M. B. Austin Co.

Monroe, Byrne & Kaye, of New York City, for Clifton Conduit Co.

Breed, Abbott & Morgan, of New York City, for The National Electrical Wholesalers Ass'n, its officers, members of its Conduit Committee and various members of said association.

Mr. Thomas J. Ward, of New York City, for Graybar Electric Co., Inc.

Mr. Harold Smith and *Mr. Job Taylor, 2nd*, of New York City, for Westinghouse Electric Supply 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 persons, partnerships, corporations and associations named or included by reference in the caption hereof and more particularly hereinafter described and referred to as respondents, have violated the provisions of Section 5 of the said act; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint against each of said parties, stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondent, Rigid Steel Conduit Association, is an unincorporated trade association with its offices and principal place of business located at 17 East 42nd Street, in the city of New York, N. Y. It was formed in 1934 to promote the interests of its members and has since that time included among its membership manufacturers of rigid steel conduit including respondents, Central Tube Company, Enamelled Metals Company, Fretz-Moon Tube Company, Inc., Garland Manufacturing Company, General Electric Company, General Electric Supply Corporation, Clayton Mark & Company, Steelduct Company, Walker Brothers, Youngstown Sheet and Tube Company, Cohoes Rolling Mill Company, Laclede Steel Company, Laclede Tube Company, Triangle Conduit and Cable Company, Inc. Said respondent members manufacture substantially all rigid steel conduit produced in the United States. Until about June 1, 1940, the said respondent members made use of the offices and other facilities of said respondent, Rigid Steel Conduit Association, for actively advising, assisting and cooperating with all members of that association and others in the industry in furtherance of the unlawful acts, things, practices and methods hereinafter set forth.

Respondent, Herbert S. Blake, at various times during the six years last past has as its president directed the affairs of the respondent, Rigid Steel Conduit Association, 17 East 42nd Street, in the city of New York, N. Y.

Respondent, Lawrence R. Quinn, at various times during the six years last past functioned as treasurer and a member of the board of directors of respondent, Rigid Steel Conduit Association, 17 East 42nd Street, in the city of New York, N. Y., and is vice president of respondent, Enamelled Metals Company, Etna, Pa.

Respondent, Paul Weiss, at various times during the six years last past functioned as assistant treasurer of respondent, Rigid Steel Conduit Association, 17 East 42nd Street, in the city of New York, N. Y.

Respondent, Robert S. Booth, at various times during the six years last past has functioned as executive secretary of respondent, Rigid Steel Conduit Association, 17 East 42nd Street, in the city of New York, N. Y. He succeeded one George H. Sicard, who served as executive secretary of respondent, Rigid Steel Conduit Association, from the time of its formation in 1934 for a period of approximately two years.

Respondent, I. A. Bennett, is chairman of the board of directors of the respondent, Rigid Steel Conduit Association, 17 East 42nd Street, in the city of New York, N. Y., and vice president of respondent, National Electric Products Corporation, Fulton Building, Pittsburgh, Pa.

Respondent, J. M. Barton, is a member of the board of directors of the respondent, Rigid Steel Conduit Association, and president of respondent, Fretz-Moon Tube Company, Butler, Pa.

Respondent, H. G. Morrow, is a member of the board of directors of respondent, Rigid Steel Conduit Association, 17 East 42nd Street, in the city of New York, N. Y., and vice president of respondent, Central Tube Company, First National Bank Building, in the city of Pittsburgh, Pa.

Respondent, H. S. Walker, is a member of the board of directors of respondent, Rigid Steel Conduit Association, 17 East 42nd Street, in the city of New York, N. Y., and president of respondent, Walker Brothers, Conshohocken, Pa.

Respondent, A. E. Newman, is a member of the board of directors of respondent, Rigid Steel Conduit Association, 17 East 42nd Street, in the city of New York, N. Y., and manager of the Wiring Materials Sales Division of respondent, General Electric Company, and in that capacity also serves respondent, General Electric Supply Corporation, 1285 Boston Avenue, Bridgeport, Conn.

Respondent, Central Tube Company, is a corporation, organized and existing under the laws of the State of Pennsylvania with its principal office and place of business located in the First National Bank Building, in the city of Pittsburgh, Pa. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others throughout the United States.

Respondent, Clayton Mark & Company, is a corporation, organized and existing under the laws of the State of Delaware with its principal office and place of business located at 1900 Dempster Street, in the city of Evanston, Ill. It manufactures rigid steel conduit and sells and distributes the same through jobbers and wholesalers throughout the United States.

Respondent, Cohoes Rolling Mill Company, is a corporation, organized and existing under the laws of the State of New York with its principal office and place of business located in the city of Cohoes, N. Y. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others throughout the United States.

Respondent, Enamelled Metals Company, is a corporation, organized and existing under the laws of the State of Pennsylvania with its principal office and place of business located in the city of Etna, Pa. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others throughout the United States.

Respondent, Fretz-Moon Tube Company, Inc., is a corporation, organized, and existing under the laws of the State of Pennsylvania with its principal office and place of business located in the city of Butler, Pa. It is 50% owned by respondent, Republic Steel Corporation, and is engaged in the manufacture of rigid steel conduit which it causes to be sold and distributed through its sales agent, the respondent, Steel and Tubes, Inc., 200 East 131st Street, in the city of Cleveland, Ohio, which is 100% owned by respondent, Republic Steel Corporation.

Respondent, Garland Manufacturing Company, is a corporation, organized and existing under the laws of the State of Pennsylvania with its office and principal place of business located in the city of Pittsburgh, Pa. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers and others throughout the United States.

Respondent, General Electric Company, is a corporation, organized and existing under the laws of the State of New York with its office and principal place of business located on River Road, in the city of Schenectady, N. Y. It manufactures conduit and sells and distributes the same to jobbers and others throughout the United States directly and through its subsidiary, the respondent, General Electric Supply Corporation, 1285 Boston Avenue, in the city of Bridgeport, Conn.

Respondent, Laclede Steel Company, and respondent, Laclede Tube Company, are corporations organized and existing under the laws of the State of Missouri with their principal offices and places of business located in the Arcade Building, in the city of St. Louis, Mo. The respondent, Laclede Steel Company, several years ago acquired the assets, ownership

and business of the Laclede Tube Company, a Delaware corporation, which had maintained membership in respondent, Rigid Steel Conduit Association, and which was engaged in conduit manufacture and sale to jobbers and others throughout the United States, prior to 1938. The respondent, Laclede Steel Company, has also maintained membership in said respondent, Rigid Steel Conduit Association. At that time respondent, Laclede Steel Company, dissolved the Laclede Tube Company, a Delaware corporation, and immediately formed as a nominal corporation the respondent, Laclede Tube Company, a Missouri corporation, for the purpose of preserving its corporate name.

Respondent, National Electric Products Corporation, is a corporation, organized and existing under the laws of the State of Pennsylvania with its principal office and place of business located in the Fulton Building, in the city of Pittsburgh, Pa. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others throughout the United States.

The respondent, Steelduct Company, is a corporation, organized and existing under the laws of the State of Ohio with its principal office and place of business located in the Republic Steel Building, 335 Market Street in the city of Youngstown, Ohio. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers and others throughout the United States.

Respondent, Triangle Conduit and Cable Company, Inc., is a corporation, organized and existing under the laws of the State of New York with its principal office and place of business located at Horace Harding and Queens Boulevards, Elmhurst, N. Y. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers and others throughout the United States.

Respondent, Walker Brothers, is a corporation, organized and existing under the laws of the State of Pennsylvania with its principal office and place of business located in the city of Conshohocken, Pa. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others throughout the United States.

Respondent, Youngstown Sheet and Tube Company, is a corporation, organized and existing under the laws of the State of Ohio with its principal office and place of business located in the Stambaugh Building in the city of Youngstown, Ohio. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers and others throughout the United States.

The respondents, Spang Chalfant, Inc., Steel and Tubes, Inc., the M. B. Austin Company, and George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway, and Jane Hatheway, partners, trading as Clifton Conduit Company, have cooperated with and assisted the members of the said respondent, Rigid Steel Conduit Association, in using and otherwise furthering the unlawful acts, things, practices and methods hereinafter set forth.

Respondent, Spang Chalfant, Inc., is a corporation, organized and existing under the laws of the State of Pennsylvania with its principal office and place of business located in the Grant Building in the city of Pittsburgh, Pa. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others throughout the United States.

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Respondent, Steel and Tubes, Inc., is a corporation, organized and existing under the laws of the State of Ohio with its principal office and place of business located at 200 East 131st Street in the city of Cleveland, Ohio. It sells and distributes to and through wholesalers, jobbers, and others throughout the United States conduit manufactured by the respondent, Fretz-Moon Tube Company, Inc.

Respondent, The M. B. Austin Company, is a corporation, organized and existing under the laws of the State of Illinois with its office and principal place of business located at 108 South Desplaines Street, in the city of Chicago, Ill. It sells and distributes to and through wholesalers, jobbers, and others throughout the United States rigid steel conduit which it causes to be manufactured for it by the respondent, Triangle Conduit and Cable Company, Inc.

Respondents, George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway, and Jane Hatheway, are company partners, operating and trading under the name and style of Clifton Conduit Company, with their offices and principal place of business located at 75 Montgomery Street, Jersey City, N. J. They sell and distribute to wholesalers, jobbers, and others throughout the United States rigid steel conduit which they cause to be manufactured for them by the respondent, General Electric Company.

Respondent, General Electric Supply Corporation, is a corporation, organized and existing under the laws of the State of Delaware with its offices and principal place of business located (in so far as such business relates to conduit manufacture and sale) at 1285 Boston Avenue, in the city of Bridgeport, Conn. It assists and cooperates with its parent corporation, the respondent, General Electric Company, in promoting and furthering the unlawful things, practices and methods hereinafter set forth.

Respondent, Republic Steel Corporation, is a corporation, organized and existing under the laws of the State of New Jersey with its office and principal place of business located in the Republic Steel Building, 335 Market Street, in the city of Youngstown, Ohio. It owns 50 per cent of the capital stock in the respondent, Fretz-Moon Tube Company, Inc., and all of the outstanding capital stock in respondent, Steel and Tubes, Inc., and controls, assists and cooperates in the activities of said respondent, Steel and Tubes, Inc. Said respondent, Republic Steel Corporation, in that manner and otherwise, cooperates with the respondents in promoting and furthering the unlawful acts, things, practices and methods hereinafter set forth.

The respondents, Central Tube Company, Clayton Mark & Company, Cohoes Rolling Mill Company, Enamelled Metals Company, Fretz-Moon Tube Company, Inc., Garland Manufacturing Company, General Electric Company, General Electric Supply Corporation, Laclede Steel Company, Laclede Tube Company, National Electric Products Corporation, Steelduct Company, Triangle Conduit and Cable Company, Inc., Walker Brothers, Youngstown, Sheet and Tube Company, Spang Chalfant, Inc., Steel and Tubes, Inc., Republic Steel Corporation, The M. B. Austin Company, George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway, and Jane Hatheway, partners, trading as the Clifton Conduit Company, more particularly named and described in the immediately preceding subparagraphs in this paragraph 1 will for the sake of brevity and convenience hereinafter be referred to collectively merely as respondent "conduit sellers."

Respondent, Charles Donley, has during the six years last past served as adviser to and traffic manager for shippers and their trade associations including respondent, Rigid Steel Conduit Association, and respondent members thereof in connection with preparation and distribution of compilations of freight factors or "adders" for use in calculating delivered price quotations. His office and principal place of business is located in the Dravo Building in the city of Pittsburgh, Pa.

Respondent, Frank C. Hodkinson, during the six years last past has served as a member of committees of the respondent, Rigid Steel Conduit Association, and also attended and participated in numerous meetings of the members of the Rigid Steel Conduit Association as a representative of the American Circular Loom Company, 205 East 42nd Street in the city of New York, N. Y., a wholly owned subsidiary of the respondent, National Electric Products Corporation, the present address of which is Fulton Building, in the city of Pittsburgh, Pa.

The aforesaid respondent "conduit sellers" have for a substantial period of time during the six years last past engaged in the manufacture of rigid steel conduit or caused it to be manufactured and shipped for them from the following locations: Central Tube Company, Pittsburgh, Pa.; Clayton Mark & Company, Evanston, Ill.; Spang Chalfant, Inc., Pittsburgh, Pa.; Cohoes Rolling Mill Company, Cohoes, N. Y.; Enamelled Metals Company, Etna, Pa.; Fretz-Moon Tube Company, Inc., Butler, Pa.; Garland Manufacturing Company, West Pittsburgh (Lawrence County), Pa.; General Electric Company, New Kensington, Pa.; General Electric Supply Corporation, New Kensington, Pa.; Clifton Conduit Company, New Kensington, Pa.; Laclede Steel Company, St. Louis, Mo.; Laclede Tube Company, St. Louis, Mo.; National Electric Products Corporation, Pittsburgh, Pa.; the Steelduct Company, Youngstown, Ohio; Triangle Conduit and Cable Company, Inc., Moundsville, W. Va.; The M. B. Austin Company, Moundsville, W. Va.; Walker Brothers, Conshohocken, Pa.; Steel and Tubes, Inc., Butler, Pa.; Youngstown Sheet and Tube Company, Cleveland, Ohio, and Youngstown, Ohio, to their respective customers located in the States of the United States other than the States of origin of such shipments. They sell and distribute principally through jobbers or wholesalers who buy and sell electrical supplies including conduit outright and on a consignment basis. Many such wholesalers or jobbers to whom they sell are members of respondent The National Electrical Wholesalers Association. Such wholesalers resell principally to electrical contractors and to government agencies. Each of said respondent "conduit sellers" has been, and is, in competition with one or more of the other respondent "conduit sellers" in making or seeking to make sales in commerce between and among the various States of the United States and in the District of Columbia, of rigid steel conduit except in so far as said competition has been hindered, lessened, restricted or forestalled, by the understanding, agreement, combination or conspiracy and acts, things, practices and methods done and carried on in pursuance thereto and in furtherance thereof as hereinafter set forth.

To the extent that they act collusively and collectively, or engaged in monopolistic practices in the production, price, or sale of rigid steel conduit respondent "conduit sellers" and respondent "conduit wholesalers" have been and are in a position to dominate and manipulate the price quotations which are made to unorganized purchasers of rigid steel conduit.

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PAR. 2. Respondent, Organization Service Corporation, is a corporation, organized and existing under the laws of the State of New York with its principal office and place of business located at 74 Trinity Place in the city of New York, N. Y. It has served as organizer, manager, and director of and adviser to various trade associations including the respondent, Rigid Steel Conduit Association, and its members at various times during the six years last past.

Respondent, Herbert S. Blake, is president of the respondent, Organization Service Corporation, with office and principal place of business located at 74 Trinity Place in the city of New York, N. Y.

Respondent, Herbert S. Blake, Jr., is vice president of the respondent, Organization Service Corporation, with office and principal place of business located at 74 Trinity Place in the city of New York, N. Y.

Respondent, N. Myles Brown, is vice president of respondent, Organization Service Corporation, with office and principal place of business located at 74 Trinity Place, in the city of New York, N. Y.

Respondent, Thomas B. Jordan, is vice president of respondent, Organization Service Corporation, with office and principal place of business located at 74 Trinity Place, in the city of New York, N. Y.

Respondent, Paul Weiss, is treasurer of respondent, Organization Service Corporation, with office and principal place of business located at 74 Trinity Place, in the city of New York, N. Y.

Respondent, C. C. Gregory, is secretary of the respondent, Organization Service Corporation, with office and principal place of business located at 74 Trinity Place in the city of New York, N. Y.

Said respondent, Organization Service Corporation, is not engaged in commerce, but it and its officers, employees and agents have during the six years last past aided, assisted, advised, managed, directed, and otherwise cooperated with respondent "conduit sellers" in carrying out the alleged unlawful acts, methods, policies, rules, and practices as hereinafter set forth in such manner as to directly and substantially hinder, suppress and lessen competition among such respondent "conduit sellers" who are engaged in commerce.

PAR. 3. Respondent, The National Electrical Wholesalers Association, with principal place of business and offices located at 165 Broadway in the city of New York, N. Y., is an unincorporated trade association of numerous wholesalers and jobbers, who are located in the various States of the United States and who are engaged in the purchase and wholesale distribution of electrical supplies in interstate commerce, including rigid steel conduit.

Said respondent, The National Electrical Wholesalers Association, was organized for the ostensible purpose of promoting the interests of its members through the furthering of a closer relationship between and among them.

The names and addresses of the officers and other leaders of the said respondent, National Electrical Wholesalers Association, who, as individuals, as such officers, and as representatives of its membership are named as respondents herein, are: J. G. Johannesen, Chairman, % General Electric Supply Corporation, 585 Hudson Street, New York, N. Y.; Alfred Byers, Secretary, % National Electrical Wholesalers Association, 165 Broadway, New York, N. Y.; L. E. Latham, Chairman of the Conduit Committee of National Electrical Wholesalers Association, % E. B. Latham & Company, 250 Fourth Avenue, New York, N. Y.; and D. L.

Fife, % Fife Electric Supply Company, 541 E. Larned Street, Detroit, Mich.; W. S. Blue, % Columbian Electrical Company, 2603 Grand Avenue, Kansas City, Mo.; W. J. Drury, % Graybar Electric Company, Inc.; 180 Varick Street, New York, N. Y.; A. H. Kahn, % General Electric Supply Corporation, 350 N. Ogden Avenue, Chicago, Ill.; C. H. McCullough, % W. T. McCullough Electric Company, 317 First Avenue, Pittsburgh, Pa.; H. E. Rasmussen, % Peerless Electric Supply Company, 122 South Meridian Street, Indianapolis, Ind.; H. O. Smith, % The Hardware and Supply Company, 475 High Street, Akron, Ohio; F. R. Eiseman, % Revere Electric Company, 757 West Jackson Blvd., Chicago, Ill.; W. R. Kiefer, % Kiefer Electrical Supply Company, 318 South Washington Street, Peoria, Ill.; H. B. Tompkins, % Westinghouse Electric Supply Company, 50 Varick Street, New York, N. Y.; A. L. Hallstrom, % Graybar Electric Company, Inc., 190 Cherry Street, Philadelphia, Pa.; A. S. Riechman, % F. D. Lawrence Electric Company, 217 West Fourth Street, Cincinnati, Ohio; D. M. Smith, % The C. S. Mersick and Company, 278 State Street, New Haven, Conn., members of the Conduit Committee of the National Electrical Wholesalers Association.

The membership of said respondent, The National Electrical Wholesalers Association, constitutes a class so numerous and changing as to make it impracticable to name as respondents each and all of such members without manifest delay, inconvenience and much expense. Therefore, the Commission names and includes as respondents in this proceeding the following:

1. General Electric Supply Corporation, a corporation, organized and existing under the laws of the State of Delaware with its office and principal place of business located (insofar as such business relates to jobber distribution of "conduit") at 585 Hudson Street in the city of New York, N. Y.
2. E. B. Latham & Company, a corporation, organized and existing under the laws of the State of New York with its office and principal place of business located at 250 Fourth Avenue in the city of New York, N. Y.
3. Fife Electric Supply Company, with office and principal place of business located at 541 E. Larned Street in the city of Detroit, Mich.
4. Columbian Electrical Company, 2603 Grand Avenue, Kansas City, Mo.
5. Graybar Electric Company, Inc., a corporation, organized and existing under the laws of the State of New York with office and principal place of business located at 420 Lexington Avenue in the city of New York, N. Y.
6. W. T. McCullough Electric Company, with offices and principal place of business located at 317 First Avenue in the city of Pittsburgh, Pa.
7. Peerless Electric Supply Company, with office and principal place of business located at 122 South Meridian Street in the city of Indianapolis, Ind.
8. The Hardware and Supply Company, with office and principal place of business located at 475 South High Street in the city of Akron, Ohio.
9. Revere Electric Company, a corporation, organized and existing under the laws of the State of Illinois with office and principal place of business located at 757 W. Jackson Street in the city of Chicago, Ill.
10. Kiefer Electrical Supply Company, a corporation, organized and existing under the laws of the State of Illinois with office and principal

place of business located at 318 South Washington Street in the city of Peoria, Ill.

11. Westinghouse Electric Supply Company, a corporation, organized and existing under the laws of the State of Delaware with office and principal place of business located at 150 Varick Street in the city of New York, N. Y.

12. F. D. Lawrence Electric Company, with office and principal place of business located at 217 West Fourth Street in the city of Cincinnati, Ohio.

13. The C. S. Mersick and Company, with office and principal place of business located at 278 State Street in the city of New Haven, Conn.

all of whom are hereinafter referred to as "respondent conduit wholesalers," individually and as representatives of all the members of respondent, National Electrical Wholesalers Association.

Each of said respondent "conduit wholesalers" has been, and is in competition with one or more of the other respondent "conduit wholesalers" in making or seeking to make sales of rigid steel conduit in commerce between and among the various States of the United States and in the District of Columbia, except insofar as said competition has been hindered, lessened, restricted, or forestalled by the understanding, agreement, combination or conspiracy and acts, things, practices, and methods done and carried on in pursuance thereto and in furtherance thereof as hereinafter set forth.

PAR. 4. Rigid steel conduit (hereinafter referred to merely as "conduit") is the commodity with which this proceeding is concerned. It is used as raceways specially constructed for the purpose of pulling in or withdrawing of wires or of cables after the conduit is in place. It is made of milled steel pipe that has been cleaned of scale and rust and been given enamelled, galvanized or metallic corrosion-resistant coatings. The galvanizing or enamelling is for the purpose of producing smooth surfaces so that when it is used as raceways for electric wiring such wiring may be drawn through it with facility and without injury to the wires. It is usually placed in large buildings as they are erected and the electric wiring is later drawn through the "conduit." In recent years, volumes exceeding 125,000 tons annually have been sold, and distributed in the United States by the respondent "conduit sellers."

PAR. 5. For more than six years last past, the respondents, acting between and among themselves, or through and by means of respondent, Rigid Steel Conduit Association, or through and by means of respondents, Organization Service Corporation, Herbert S. Blake, Herbert S. Blake, Jr., Thomas B. Jordan, Paul Weiss, C. C. Gregory, Robert S. Booth, George H. Sicard, Charles Donley, Frank C. Hodkinson and others, while they and others were acting in their official positions with respondent, Rigid Steel Conduit Association, or through and by means of cooperation with respondents, National Electrical Wholesalers Association, its officers, employees, agents and members or by other means and methods, have entered into, and thereafter engaged in and carried out, and are still engaged in and carrying out, a wrongful and unlawful understanding, agreement, combination and conspiracy, for the purpose and with the effect of substantially restricting, suppressing, eliminating and frustrating actual and potential competition as to price, and otherwise, in the sale and dis-

tribution of "conduit" in trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 6. Pursuant to said understanding, agreement, combination and conspiracy, and in furtherance thereof, said respondents, acting in cooperation with each other and others not named herein as respondents, in the manner and by the methods herein set forth, have done and performed, and still do and perform, among other acts, things, practices and methods the following:

1. Agreed to adopt, maintain and use and have adopted, maintained and used a basing point method or system in calculating and quoting prices on "conduit" to dealers, distributors and to certain users thereof, including various governmental agencies.

2. Adopted and continued in effect, by agreement, understanding, and concerted action among themselves, a price-fixing formula for ascertaining amounts or sums to be quoted to prospective purchasers as delivered costs of "conduit" to such prospective purchasers at destinations, whereby delivered price quotations of respondent "conduit sellers" and respondent "conduit wholesalers" have been and are uniform or identical as published to "conduit" users at any given destination by respondent "conduit sellers" and respondent "conduit wholesalers," and in that way have hindered and frustrated buyers and users of "conduit" from securing price quotations on such basis as would permit them to make purchases in disregard of and without relation to the uniform or identical delivered cost quotations presented them by respondent "conduit sellers" and respondent "conduit wholesalers."

3. Agreed to adopt, and have adopted and maintained, a system of delivered price quotations designed to prevent, and which does prevent, reflection of any differences in the cost of freight delivery between the respective places of manufacture of respondent "conduit sellers" and the places of business of the intending purchasers of "conduit" and creation of any advantage or disadvantage to said purchasers in delivery costs which would otherwise result because of different locations of different purchasers and sellers.

4. Agreed to adopt and have adopted and maintained, a plan whereby the United States is divided into so-called Pittsburgh and Chicago basing point areas so that all purchasers within one or the other of those two areas, regardless of the distance of the place of business of said purchaser from the place of origin of shipments of "conduit" made to him or caused to be made to him by respondent "conduit sellers" and respondent "conduit wholesalers" receive at a given point of time uniform or identical delivered cost quotations on "conduit" from all said respondent "conduit sellers" and said respondent "conduit wholesalers."

5. Agreed to adopt and have adopted, maintained and used through the cooperation and with the assistance of respondent, Charles Donley, and otherwise, a cooperative system of preparing, calculating and circulating among themselves a compilation of common freight factors or "adders" from points designated as basing points for pricing purposes to various destinations in the several States of the United States in order to negative differences in the actual freight charges from actual shipping points to said destinations and in order to negative differences in the interpretations and applications of official freight tariffs from the basing points.

6. Agreed to seek and secure and have sought and secured the advice, assistance, cooperation and management of respondent, Organization

Service Corporation, its officers, employees and agents, including respondent, Herbert S. Blake, and others, in formulating, adopting, publishing and using uniform terms and conditions of sale which were embodied by respondent "conduit sellers" and respondent "conduit wholesalers" in consignment agency agreements, "protective" contracts covering special jobs and contracts with manufacturers' agents or dealers and other buyers.

7. Agreed to adopt and have adopted, maintained and used uniform terms and conditions of sale which were embodied by respondent "conduit sellers" and respondent "conduit wholesalers" in consignment agency agreements "protective" contracts covering special jobs and other contracts with manufacturers' agents, dealers and other buyers.

8. Agreed to seek and secure and have sought and secured the advice, assistance and cooperation of respondent, Organization Service Corporation, its officers, employees, and agents, including respondent Herbert S. Blake, and others in developing, adopting and using a method or system of espionage or investigation of "protective" special building contracts and other forms of contracts.

9. Agreed to adopt, maintain and use and have adopted, maintained and used a method or system of espionage or investigation of "protective" special building contracts and other forms of contracts.

10. Agreed to seek and have sought and secured the advice, cooperation and assistance of respondent, Organization Service Corporation, its officers, employees and agents, including respondent, Herbert S. Blake and others in the preparation, publication and use of uniform price quotation sheets and uniform business practices.

11. Agreed to adopt, maintain and use and have adopted, maintained and used uniform price quotation sheets and uniform business practices.

12. Agreed to adhere to their announced prices, terms and conditions of sale and have for substantial periods of time adhered to such prices, terms and conditions of sale without deviation until other prices, terms and conditions of sale were likewise quoted and published.

13. Agreed and cooperated in defining and have defined what constitutes a "recognized" jobber or dealer and further cooperated and agreed in determining what individuals or firms should be recognized as jobbers or dealers and thereby entitled to purchase "conduit" at prices involving discounts and generally allowed to recognized jobbers and dealers.

14. Agreed to and have circulated lists of "recognized" jobbers and dealers.

15. Agreed to adopt and have adopted and used uniform terms and conditions of sale providing for uniform discounts or other amounts to be allowed their respective dealers, jobbers, wholesalers or "agents."

16. Agreed to act, and do act, concertedly to maintain said agreements.

17. Agreed to waive in some instances to competitors their respective economic and competitive advantages due to location and efficiency in management and operation and to require in other instances that their respective purchasers pay greater sums than other purchasers for equal merchandise or goods in order that respondent "conduit sellers" may conform to the aforesaid agreements.

18. Agreed to require by retaliatory pricing action and otherwise all firms and individuals engaged in the sale and distribution of "conduit" in commerce to conform to respondents' agreements.

19. Agreed to hold, and have held, meetings from time to time under the auspices and supervision of respondent, Organization Service Corpora-

tion, its officers, employees and agents, respondent, Rigid Steel Conduit Association, and respondent, National Electrical Wholesalers Association. During the course of said meetings and at other times respondents, Charles Donley, Organization Service Corporation, Rigid Steel Conduit Association and National Electrical Wholesalers Association, their officers, directors, employees, agents and members cooperated with and assisted the respondent "conduit sellers" their officers, directors, employees and agents and respondents "conduit wholesalers" their officers, employees and agents in furthering and carrying out the unlawful acts, practices and methods herein set forth.

PAR. 7. The acts, things, practices, methods and agreements of the respondents, as hereinbefore alleged, are all to the prejudice of actual and potential competitors of respondent "conduit sellers," respondent "conduit wholesalers" and of the public; have a dangerous tendency to, and have actually hindered, suppressed, eliminated, frustrated and prevented competition in the sale of "conduit" in commerce, within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said product; have a dangerous tendency to create in respondents a monopoly in the sale and distribution of said product and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

COUNT II

PARAGRAPH 1. Respondents, Central Tube Company; Clayton Mark & Company; Cohoes Rolling Mill Company; Enamelled Metals Company; Fretz-Moon Tube Company, Inc.; Garland Manufacturing Company; General Electric Company; Laclede Steel Company; Laclede Tube Company; National Electric Products Corporation; Steelduct Company; Triangle Conduit and Cable Company, Inc.; Walker Brothers; Youngstown Sheet and Tube Company; General Electric Supply Corporation; Spang Chalfant, Inc.; Steel and Tubes, Inc.; Republic Steel Corporation; The M. B. Austin Company; George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway, and Jane Hatheway, partners, trading as Clifton Conduit Company more particularly and fully described in paragraph 1 of Count I hereof (hereinafter for the sake of brevity and convenience referred to collectively merely as respondent "conduit sellers") have for a period of several years last past and do now sell and manufacture, or cause to be manufactured and shipped for them rigid steel conduit (more particularly and fully described in paragraph 4 of Count I hereof and hereinafter referred to merely as "conduit") from the following locations: Pittsburgh, Pa.; Evanston, Ill.; Cohoes, N. Y., Etna, Pa.; Butler, Pa.; West Pittsburgh, Pa.; St. Louis, Mo.; Youngstown, Ohio; Cleveland, Ohio; Moundsville, W. Va., and Conshohocken, Pa., to their respective customers located in the several States of the United States other than the States of origin of such shipments. In the course of such business they are in competition with each other, except to the extent such competition has been hindered, restrained, lessened, suppressed, frustrated, eliminated or prevented by the acts, things, practices and methods hereinafter set forth.

PAR. 2. Each said respondent "conduit seller," with knowledge that the other said respondent "conduit sellers" simultaneously do likewise,

generally refrain from quoting f.o.b. its place of production or shipment, prices that are independent of and unrelated to delivered price quotations determined from a basing point formula. Each said respondent "conduit seller," in arriving at the sums or amounts quoted in their respective published price cards or published price sheets, at a given point of time specify that delivered costs to any intending purchaser at his destination shall be the figure resulting from the use of a formula made up of a so-called basing point price, plus freight "adders" or factors specified in supplements to such price cards or sheets and applying from one or more specified basing points, irrespective of whether shipment is to be made or is made from such basing points or some other locations from which other and different freight factors actually apply. Since each respondent "conduit seller" uses the formula to quote delivered prices at a given point of time to customers at a given destination, uniformity in the delivered price quotations of all said respondent "conduit sellers" for such given time and destination is inherent in, and a necessary result of, such method or system of basing-point-delivered-price-quotations.

PAR. 3. Each said respondent "conduit seller" notwithstanding differences between the actual freight rates from its place of business and manufacture and the rates from its competitors' places of business, habitually and systematically demands, charges, accepts and receives as an incident to the aforesaid basing point method of delivered price quotations, larger sums and amounts for products of equal quality and quantity from their respective customers located at or near their respective places of business and manufacture than from other customers located at greater distances, and thereby causes such nearby customers to pay more to each said respondent "conduit seller" for "conduit," and the more distant customers within and without a particular basing point area to pay less, than would otherwise be the case; thus depriving the nearby customers of each said respondent "conduit seller" of price advantages which they would naturally enjoy by reason of their proximity to points of production.

PAR. 4. The acts, practices and methods of each said respondent "conduit seller," as described in paragraph 2 and paragraph 3 of Count II hereof (when so done and used and with the results therein described) are all to the prejudice of the public; have a dangerous tendency to, and have actually, hindered, restrained, lessened, suppressed, frustrated, eliminated and prevented competition in price in the sale of "conduit" in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably, and have unreasonably restrained, such commerce in said product; have a dangerous tendency to create in each of said respondent "conduit sellers" a monopolistic control over price in the sale and distribution of "conduit"; cause substantial unfair and discriminatory treatment among the customers of each said respondent "conduit seller" and therefore 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 January 25, 1941, 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 competi-

tion 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 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, this proceeding regularly came on for final hearing before the Commission upon the complaint, the answers 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 by opposing 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. (a) Respondent, Rigid Steel Conduit Association (hereinafter frequently referred to as RSCA), was an unincorporated voluntary association, the membership of which included the manufacturers of substantially all the rigid steel conduit produced in the United States. It was organized in April 1934 as the immediate successor to the Rigid Steel Conduit Section of the National Electrical Manufacturers Association, the members of which voted to dissolve that section and on the same day organized RSCA. In turn, the Rigid Steel Conduit Section of the National Electrical Manufacturers Association was successor to the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies, which was organized about 1915 and which became the National Electrical Manufacturers Association about 1926. RSCA was organized for the stated general purposes of considering matters of common interest in the manufacture and sale of rigid steel conduit, improving methods of distribution, and collecting and distributing information and data of value to the industry. The first step toward the dissolution of RSCA was taken at a meeting on April 19, 1939, the minutes of which recite in part:

* * * on motion, seconded and carried, it was voted to cease all forms of Association activities, except such as are necessary to close up outstanding commitments and obligations, and place the Association in abeyance, subject to its possible revival in the future, should conditions at a later date indicate the possibility of its functioning successfully in keeping with its originally expressed purposes (Comm. Ex. 35-E).

At a meeting on April 16, 1940, a resolution for the dissolution of RSCA was passed, to be effective as of May 31, 1940. From the time of its organization in 1934 until its formal dissolution it maintained its offices in New York City.

(b) Respondent, Herbert S. Blake, an individual, is a lawyer with offices in New York, N. Y., and as president of respondent, Organization Service Corporation, is engaged in the management of the affairs of a number of trade associations. In October 1936, he undertook to aid in and direct the affairs of RSCA, and in March 1937 he became president of RSCA and continued in that office until his resignation in April 1939.

(c) Respondent, Lawrence R. Quinn, an individual, vice president of respondent, Enameled Metals Company, was active in the Interior Con-

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duit Section of the Associated Manufacturers of Electrical Supplies, in the Rigid Conduit Section of the National Electrical Manufacturers Association, and in RSCA, in which at various times he served as treasurer, member of the board of directors, and chairman of the board of directors.

(d) Respondent, Paul Weiss, an individual, treasurer of respondent, Organization Service Corporation, served as assistant treasurer of RSCA from December 1936 until April 1938, and also supervised and carried on statistical work for RSCA.

(e) Respondent, Robert S. Booth, an individual, in the employ of respondent, Organization Service Corporation, served as secretary pro tem of RSCA from December 1936 to January 1938, when he became executive secretary of RSCA and continued in that capacity until April 1939. During his connection, and that of Organization Service Corporation, with RSCA he supervised and carried on many activities for and in behalf of that association.

(f) Respondent, I. A. Bennett, an individual, vice president of respondent, National Electric Products Company, was active in the Rigid Conduit Section of the National Electrical Manufacturers Association and took a leading part in the affairs of RSCA. At various times he served as a member of the board of directors of RSCA and as chairman of such board.

(g) Respondent, James M. Barton, the individual referred to in the complaint as J. M. Barton, president of respondent, Fretz-Moon Tube Company, Inc., was active in and at various times served as a member of the board of directors of RSCA.

(h) Respondent, Harry G. Morrow, the individual referred to in the complaint as H. G. Morrow, formerly vice president of respondent, Central Tube Company, and thereafter connected with respondent, Spang Chalfant, Inc., was active in the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies, in the Rigid Conduit Section of the National Electrical Manufacturers Association, and in RSCA. At various times he was a member of the board of directors of RSCA.

(i) Respondent, Hervey S. Walker, the individual referred to in the complaint as H. S. Walker, president of respondent, Walker Brothers, was active in the Rigid Conduit Section of the National Electrical Manufacturers Association and in RSCA. At various times he served as an officer of RSCA and as a member of its board of directors.

(j) Respondent, A. E. Newman, an individual, manager of Wiring Materials Sales of respondent, General Electric Company, was active in the affairs of RSCA. He was elected to the board of directors of that association in January 1938, but after attending at least two board meetings declined to accept the position, and on July 13, 1938, the board of directors accepted his resignation.

(k) Respondent, Central Tube Company (hereinafter frequently referred to as Central Tube), was a corporation, organized under the laws of the State of Pennsylvania, with its principal place of business in Pittsburgh, Pa. It was engaged in the manufacture and sale of rigid steel conduit until about February 1940, when its assets were purchased by respondent, Spang Chalfant, Inc., and thereafter its corporate existence was terminated in November 1940. Central Tube was a member of the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies, a member of the Rigid Conduit Section of the National Electrical Manufacturers Association, and a member of RSCA and participated in its affairs throughout the existence of that association.

(l) Respondent, Clayton Mark & Company (hereinafter frequently referred to as Clayton Mark), is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in Evanston, Ill. It succeeded the Mark Manufacturing Company, which was purchased by respondent, Youngstown Sheet and Tube Company, in 1923. Clayton Mark discontinued the manufacture of rigid steel conduit about October 1938 and has subsequently sold conduit bearing its own brands which it has secured principally from Youngstown Sheet and Tube Company, and, to a limited extent, from respondents, Enameled Metals Company and Fretz-Moon Tube Company, Inc. The Mark Manufacturing Company was a member of the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies. Clayton Mark was a member of the Rigid Conduit Section of the National Electrical Manufacturers Association and a member of RSCA and participated in its affairs from the organization of that association until its dissolution.

(m) Respondent, Cohoes Rolling Mill Company (hereinafter frequently referred to as Cohoes), is a corporation, organized and existing under the laws of the State of New York, with its principal place of business at Cohoes, N. Y. It is a manufacturer of rigid steel conduit, with a plant capacity of about 800 tons of such conduit per month, and also manufactures other iron and steel products. Its conduit business constitutes but a small part of its total business. About January 1934, Mohawk Tube Company, Inc., successor to Mohawk Conduit Company, was merged with Cohoes. Mohawk Conduit Company was a member of the Rigid Conduit Section of the National Electrical Manufacturers Association, to which membership the Mohawk Tube Company succeeded. The latter became a member of RSCA, in which membership it was succeeded by Cohoes. Cohoes resigned from RSCA effective July 31, 1938, but its representatives thereafter continued to attend meetings of that association and to take part in association activities.

(n) Respondent, Enameled Metals Company (hereinafter frequently referred to as Enameled Metals), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business at Etna, Pa. It manufactures rigid steel conduit from pipe purchased from respondent, Spang Chalfant, Inc., and has a plant capacity of about 3,000 tons of such conduit per month. It was a member of the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies, thereafter a member of the Rigid Conduit Section of the National Electrical Manufacturers Association, and thereafter a member of RSCA and participated in its affairs until the dissolution of that association.

(o) Respondent, Fretz-Moon Tube Company, Inc. (hereinafter frequently referred to as Fretz-Moon), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business at East Butler, Pa. It manufactures rigid steel conduit and has a plant capacity of about 1,000 tons of such conduit per month. Its conduit is fabricated in part from pipe produced by itself, in part from pipe purchased from respondent, Spang Chalfant, Inc. Its sales of conduit were made exclusively through respondent, Steel and Tubes, Inc., a wholly owned subsidiary of respondent, Republic Steel Corporation, from January 1934 until about September 1939. At that time Republic Steel Corporation, which owned 50 percent of the voting stock of Fretz-Moon, took over the assets of Steel and Tubes, Inc., including the contract between Fretz-Moon and Steel and Tubes, Inc., and thereafter conduit sales were

made by Republic. Fretz-Moon was a member of the Rigid Conduit Section of the National Electrical Manufacturers Association and became a member of RSCA. It resigned from RSCA on October 5, 1939, but continued the payment of dues to RSCA and its representatives continued to attend meetings and participate in the affairs of RSCA until the dissolution of that association.

(p) Respondent, Garland Manufacturing Company (hereinafter frequently referred to as Garland), 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 successor by change of name to Safety-Armorite Company, which in turn was successor by change of name to Safety Conduit Company, under which name this respondent, one of the earliest producers of rigid steel conduit, entered the conduit business about 1897. Garland has a plant capacity of about 1,400 tons of conduit per month. It was reorganized under the bankruptcy laws and since June 1936 has been under the control of trustees and receivers. Robert Garland, formerly president of the company, has been manager for such trustees and receivers. Safety-Armorite Company was a member of the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies, and Garland was a member of the Rigid Conduit Section of the National Electrical Manufacturers Association and of RSCA and participated in the affairs of that association until its dissolution.

(q) Respondent, General Electric Company (hereinafter frequently referred to as General Electric), is a corporation, organized and existing under the laws of the State of New York, with its principal place of business in Schenectady, N. Y. Although one of the largest manufacturers of rigid steel conduit, having a plant capacity of about 5,000 tons of conduit per month, that commodity constitutes a very small portion of the total business of General Electric. It was a member of the Rigid Conduit Section of the National Electrical Manufacturers Association and of RSCA. In July 1938, it submitted its resignation to RSCA but continued to participate in the activities of RSCA until approximately the time that association was dissolved.

(r) Respondent, Laclede Steel Company (hereinafter frequently referred to as Laclede Steel), is a corporation, organized and existing under the laws of the State of Missouri, with its principal place of business in St. Louis, Mo. For a number of years preceding 1936 Laclede Steel, which manufactures wire and other steel products, has a wholly owned subsidiary, the Laclede Tube Company (hereinafter frequently referred to as Laclede Tube), a corporation organized under the laws of the State of Delaware, which had a plant capacity of about 200 tons of rigid steel conduit per month. In December 1936, Laclede Steel took over the assets of Laclede Tube and the latter corporation was dissolved. Thereafter, Laclede Steel manufactured, sold, and distributed rigid steel conduit, and in general carried on directly the business previously carried on through its subsidiary, Laclede Tube. Immediately after the dissolution of Laclede Tube, Laclede Steel caused the organization of Laclede Tube Company, a Missouri corporation, for the purpose of preserving that name, but this corporation has not actively engaged in any business since its creation. Laclede Tube was a member of RSCA from January 1935 to June 1936, and although no representatives of either Laclede Steel or Laclede Tube attended meetings of the association, they both participated in carrying on the association activities and Laclede Steel continued to co-

operate with RSCA and its members until that association was dissolved.

(s) Respondent, National Electric Products Corporation (hereinafter frequently referred to as National Electric), is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business at Ambridge, Pa. Successor by change of name to National Metal Molding Company, it is one of the largest producers of rigid steel conduit, having a plant capacity of about 5,500 tons per month, and is also engaged on a substantial scale in the production and sale of other products. American Circular Loom Company, a Delaware corporation, was a wholly owned subsidiary of National Electric from about 1914 until its dissolution in January 1937. For a substantial portion of this period it manufactured, sold, and distributed rigid steel conduit, and thereafter sold and distributed under its own brand names conduit manufactured for it by National Electric. Certain of its brands have been continued by National Electric to the present time. National Metal Molding Company and American Circular Loom Company were members of the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies. National Electric and American Circular Loom Company were members of the Rigid Conduit Section of the National Electrical Manufacturers Association and were members of RSCA and participated in its affairs until the dissolution of RSCA in the case of National Electric, and until its own dissolution in the case of American Circular Loom Company.

(t) Respondent, Steelduct Company (hereinafter frequently referred to as Steelduct), 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 engaged in the sale and distribution of rigid steel conduit produced and shipped for it by Enameled Metals. Steelduct was a member of the Rigid Conduit Section of the National Electrical Manufacturers Association and thereafter a member of RSCA and participated in its affairs until the dissolution of that association.

(u) Respondent, Triangle Conduit & Cable Company, Inc. (hereinafter frequently referred to as Triangle), is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business at Elmhurst, N. Y. In June 1940, through a merger, it succeeded to the assets and business of Triangle Conduit & Cable Company, Inc., a New York corporation. For several years prior to 1929, Triangle secured its supplies of conduit from Fretz-Moon, but since that date has manufactured its own conduit. It is one of the largest producers of rigid steel conduit, having a plant capacity of about 6,000 tons of such conduit per month, and is also engaged in the manufacture and sale of other products. It was a member of the Rigid Conduit Section of the National Electrical Manufacturers Association and thereafter a member of and active in the affairs of RSCA until the dissolution of that association.

(v) Respondent, Walker Brothers, is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business at Conshohocken, Pa. It is a manufacturer of electrical construction materials, including rigid steel conduit, and has a plant capacity of approximately 2,000 tons of conduit per month. It was a member of the Rigid Conduit Section of the National Electrical Manufacturers Association, and thereafter a member of RSCA and participated in its affairs until the dissolution of that association.

(w) Respondent, Youngstown Sheet and Tube Company (hereinafter frequently referred to as Youngstown), is a corporation, organized and

existing under the laws of the State of Ohio, with its principal place of business in Youngstown, Ohio. As a small part of its business, it is engaged in the manufacture of rigid steel conduit and its two plants where this commodity is produced have a productive capacity of about 4,400 tons per month. For a number of years the rigid steel conduit business of Youngstown was carried on through a subsidiary known as the Western Conduit Manufacturing Company, which was a member of the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies. Youngstown was a member of the Rigid Conduit Section of the National Electrical Manufacturers Association and a member of RSCA and participated in its affairs from December 1935 to May 1938. Prior to its becoming a member of RSCA a representative of Youngstown attended meetings of that association as a guest, and subsequent to its resignation from that association Youngstown representatives frequently attended association meetings and served as members of association committees. Youngstown thus participated in the activities of RSCA at times when it was not a member of that association.

(x) Respondent, Spang Chalfant, Inc., is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Pittsburgh, Pa. It began the manufacture of conduit in February 1940, when it purchased certain assets of Central Tube and immediately began the operation of the conduit plant thus purchased. It has a productive capacity of about 2,500 tons of conduit per month, but this represents but a small part of its total business, as it is engaged in the sale and distribution of many other commodities. Spang Chalfant, Inc., was not a member of RSCA. In fact, the association dissolved soon after Spang Chalfant, Inc., acquired the assets of Central Tube in February 1940 and the only association meeting its representatives attended was the meeting of April 16, 1940, at which dissolution was voted.

(y) Respondent, Steel and Tubes, Inc., was a corporation, organized under the laws of the State of Ohio. It was a wholly owned subsidiary of respondent Republic Steel Corporation until October 1939, when it was dissolved, its assets taken over by Republic Steel Corporation, and its business continued as the Steel and Tubes Division of Republic Steel Corporation. As set out in subparagraph (o) above, Steel and Tubes, Inc., until its dissolution, was the rigid conduit sales agent of respondent Fretz-Moon, and thereafter the Steel and Tubes Division of Republic Steel Corporation was the exclusive sales agent for Fretz-Moon, one half of the voting stock of which is owned by Republic. Steel and Tubes, Inc., was not a member of RSCA but, nevertheless, its representatives frequently attended meetings of that association and Steel and Tubes, Inc., cooperated with and assisted in the activities of that association and its members.

(z) Respondent, Republic Steel Corporation (hereinafter frequently referred to as Republic), is a corporation, organized and existing under the laws of the State of New Jersey, with its principal place of business in Cleveland, Ohio. Republic is concerned in the manufacture of rigid steel conduit through its ownership of 50 percent of the voting stock of Fretz-Moon. From 1934 until the dissolution of its wholly owned subsidiary, Steel and Tubes, Inc., in October 1939, it was indirectly engaged in the sale and distribution of conduit, and thereafter, through its Steel and Tubes Division, it was directly engaged in such activities. Through the membership of Fretz-Moon in RSCA and through the activities of Steel and Tubes, Inc., and those of its own Steel and Tubes Division, Republic

has cooperated with and assisted in the activities of RSCA and its members.

(1-a) Respondent, M. B. Austin Company (hereinafter frequently referred to as Austin), is a corporation, organized and existing under the laws of the State of Illinois, with its principal place of business in Chicago, Ill. It sells and distributes rigid steel conduit which in recent years has been manufactured for it by respondent, Triangle, but marked with Austin brands. In January 1935 it became a sales agent for Triangle under a purported consignment arrangement by which sales were made at the prices and on the terms specified by Triangle. It presently operates under a contract negotiated with Triangle in November 1939 by which it purchases conduit bearing its brands from Triangle. This contract contains provisions respecting passing on to purchasers any part of discounts, commissions, or allowances received from Triangle under the contract. The provisions of this contract amount in substance to control of Austin's resale prices by Triangle. Though not a member of RSCA, through the relationship to Triangle directly, Austin has cooperated and assisted in the activities of that association and its members.

(1-b) Respondents, George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway, and Jane Hatheway, are copartners, trading as Clifton Conduit Company (hereinafter frequently referred to as Clifton), with their principal place of business in Jersey City, N. J. Clifton sells and distributes rigid steel conduit purchased from General Electric and marked with Clifton brands. Clifton's price announcements conform to those of General Electric. This concern was a member of the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies and applied for membership in the Rigid Conduit Section of the National Electrical Manufacturers Association, but apparently was not accepted because of difficulty over its status as a manufacturer. It was not a member of RSCA but followed many of the practices established or maintained by that association and its members.

(1-c) Respondent, Charles Donley, an individual, with offices in Pittsburgh, Pa., is engaged in serving various individuals, firms, and associations as traffic manager or adviser. Mr. Donley furnished railroad freight rate services to various individual conduit manufacturers; for a period of time he prepared and furnished compilations of rates to RSCA for the use of its members in computing delivered prices; and thereafter, with the collaboration and aid of RSCA, furnished such compilations directly to the individual conduit manufacturers. At various times he advised and consulted with RSCA and the transportation committee of that association as to the form of data to be furnished and the scope and manner of its distribution.

(1-d) Respondent, Frank C. Hodkinson, an individual, of East Orange, N. J., was connected with the rigid steel conduit industry in various capacities from 1897 to 1936. He has been connected with the Safety Conduit Company, Safety-Armorite Conduit Company, Garland, and American Circular Loom Company. His connection as vice president and general manager of the last-named concern was terminated in 1936 when that company was dissolved by its parent, National Electric, and he has not since had any substantial connection with the industry. During his service with the various concerns named, he was active in trade association matters. He assisted in the formation of the Associated Manufacturers of Electrical Supplies, and after the merger of that association with National

Electrical Manufacturers Association was at various times a member of its board of governors. During the NRA Code period he was appointed by the board of governors of the National Electrical Manufacturers Association as the supervisory agency of the Roughing-in Classification of the Electrical Manufacturing Industry for the administration of the NRA Code as it applied to rigid steel conduit and other products included in the roughing-in classification. He also served as representative of the American Circular Loom Company at various meetings of RSCA from April 1934 to July 1936.

(1-e) Respondent, Organization Service Corporation (hereinafter frequently referred to as OSC), is a corporation, organized and existing under the laws of the State of New York, with its principal place of business at 74 Trinity Place, New York, N. Y. Respondent, Herbert S. Blake, an individual, is the president and active head of OSC; respondents, Herbert S. Blake, Jr., an individual, N. Myles Brown, an individual, and Thomas B. Jordan, an individual, are vice presidents of OSC; respondent, Paul Weiss, an individual, is treasurer of OSC; and respondent, C. C. Gregory, an individual, is secretary of OSC. Among the activities carried on by OSC and its officers is that of managing and directing the activities of a number of trade associations and furnishing various services and facilities to such associations. By contract executed October 29, 1936, OSC undertook to manage the affairs of RSCA subject to the association's board of directors, and also undertook to supply RSCA with offices and facilities for the conduct of its affairs. This contract remained in effect until December 31, 1938, and thereafter was reduced in scope and continued until April 1, 1939, when relations between OSC and RSCA ceased. As heretofore found, certain officers and employees of OSC also served as officers of RSCA.

(1-f) Respondent, National Electrical Wholesalers Association (hereinafter frequently referred to as NEWA), is an unincorporated trade association of wholesalers and jobbers of electrical supplies, with its offices in New York City. It has a membership of approximately 200 such wholesalers and jobbers who are engaged in the sale and distribution of electrical supplies, including rigid steel conduit, through some 500 establishments scattered throughout most of the States of the United States. In the conduct of its affairs NEWA has various committees, designated as commodity committees, the members of which devote their attention, for the benefit of the entire membership, to particular classifications of electrical material. One such commodity committee is the rigid steel conduit committee. Respondents, J. G. Johannesen, D. L. Fife, and Alfred Byers, have served as chairman, vice chairman, and secretary, respectively, of the conduit committee, and respondents, W. S. Blue, W. J. Drury, A. H. Kahn, C. H. McCullough, H. E. Rasmussen, H. O. Smith, L. E. Latham, F. R. Eiseman, W. R. Kiefer, H. B. Tompkins, A. L. Hallstrom, A. S. Reichman and D. M. Smith, have at various times served as members of such committee. Through the activities of this committee NEWA and its members have cooperated with and assisted RSCA and its members as hereafter set forth.

(1-g) Respondent, General Electric Supply Corporation, is a corporation, organized and existing under the laws of the State of Delaware, with its principal offices in Bridgeport, Conn. It is a wholly owned subsidiary of General Electric. Respondent, E. B. Latham & Company, is a corporation, organized and existing under the laws of the State of New York,

with its principal place of business in New York City. Respondent, Fife Electric Supply Company, has its principal place of business at 541 East Larned Street, Detroit, Mich. Respondent, Columbian Electrical Company, has its principal place of business at 206 Grand Avenue, Kansas City, Mo. Respondent, Graybar Electric Company, Inc., is a corporation, organized and existing under the laws of the State of New York, with its principal place of business in New York City. Respondent, W. T. McCullough Electric Company, has its principal place of business at 317 First Avenue, Pittsburgh, Pa. Respondent, Peerless Electric Supply Company, has its principal place of business at 122 South Meridian Street, Indianapolis, Ind. Respondent, The Hardware and Supply Company, has its principal place of business at 475 South High Street, Akron, Ohio. Respondent, Revere Electric Supply Company (the concern referred to in the complaint as Revere Electric Company), is a corporation, organized and existing under the laws of the State of Illinois, with its principal place of business in Chicago, Ill. Respondent, Kiefer Electric Supply Company, is a corporation, organized and existing under the laws of the State of Illinois, with its principal place of business in Peoria, Ill. Respondent, Westinghouse Electric Supply Company, is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in New York City. Respondent, The F. D. Lawrence Electric Company, has its principal place of business at 217 West Fourth Street, Cincinnati, Ohio. Respondent, The C. S. Mersick and Company, has its principal place of business at 278 State Street, New Haven, Conn. The respondents named in this subparagraph are wholesalers of electrical supplies, including rigid steel conduit. Each is a member of NEWA and representatives of each have at various times served on the conduit committee of that association.

PAR. 2. (a) Each of the respondents named in subparagraphs (k) to (1-b), inclusive, of paragraph 1, except as otherwise stated therein, is engaged in the sale and distribution of rigid steel conduit to and through wholesalers, and pursuant to sales made, transports such conduit, or causes it to be transported, among and between various States of the United States and, in some instances, its territories, possessions, and foreign countries, and maintains, and has maintained, a course of trade in rigid steel conduit in commerce, as "commerce" is defined in the Federal Trade Commission Act. These respondents are hereinafter frequently referred to, both individually and collectively, as "conduit sellers."

(b) Each of the respondents named in subparagraph (1-g) of paragraph 1 is engaged in the sale and distribution of rigid steel conduit at wholesale, and in the course and conduct of their respective businesses, pursuant to sales made, transports rigid steel conduit, or causes it to be transported, between and among various States of the United States, and maintains, and has maintained, a course of trade in such conduit in commerce, as "commerce" is defined in the Federal Trade Commission Act. These respondents are hereinafter frequently referred to, both individually and collectively, as "conduit wholesalers."

(c) The respondents other than those referred to in (a) and (b) above are not individually engaged in the sale and distribution of rigid steel conduit in commerce but have directed, cooperated with, or assisted conduit sellers or conduit wholesalers in planning and executing the various policies, practices, and methods, as hereinafter set forth. Each of the various conduit sellers and conduit wholesalers is in competition with other con-

duit sellers and conduit wholesalers to the extent that such competition has not been lessened or restrained by the acts and practices hereinafter described.

PAR. 3. Rigid steel conduit (frequently referred to herein merely as conduit) is steel pipe which has been cleaned and galvanized or enameled in order to give it a smooth surface, particularly on the interior of the pipe. Usually made in 10-foot lengths and in sizes having interior diameters ranging from $\frac{1}{4}$ -inch to 6 inches, it is installed in buildings and other construction projects where electrical wiring is necessary in order to furnish a continuous channel or container for such wiring. It is ordinarily put in place during the progress of the construction work and wiring is later installed by drawing it through the conduit. Thereafter, such wiring may at any time be withdrawn or supplemented as circumstances may require.

PAR. 4. (a) For a long period of years respondent conduit sellers have used a delivered-price, basing-point system of quoting prices for and selling conduit. The manufacture of conduit had its origin a few years before the beginning of the present century. Several of the pioneer producers of conduit were merely agents of steel companies for the purpose of converting pipe into conduit and distributing it. Safety-Armorite Company and National Metal Molding Company, predecessors of Garland and National Electric, respectively, were converting and selling agents for the National Tube Company, a subsidiary of the United States Steel Corporation. The first price card of the series presently in use to announce prices offered by respondent conduit sellers was issued by these converting agents about August 1, 1913, and was designated as card No. 1. Similar price cards were issued by other conduit sellers then in business. These cards quoted conduit prices in terms of cents per foot and stated the Pittsburgh basing discounts from such prices, with provision for reducing the rate of discount and thus increasing the price according to the railroad freight rate from Pittsburgh to the purchaser's destination. Using card No. 1 of the American Circular Loom Company of Boston, Massachusetts, as an example (Resp. Ex. 257-A), $\frac{1}{2}$ -inch conduit was quoted at $8\frac{1}{2}$ cents per foot; the Pittsburgh basing discount on jobbers' carloads of galvanized conduit was 60 percent, so that the price delivered in Pittsburgh was \$3.30 per hundred feet. At any destination other than Pittsburgh the discount was reduced at the rate of one-tenth of a point per one cent of railroad tariff rate per hundred pounds. Thus, at a destination having a freight rate of 34 cents from Pittsburgh, the discount would be reduced 3.4 points to 56.6 percent, and the delivered price at such destination would therefore be \$3.69 per hundred feet. This formula does not produce a price difference between Pittsburgh and other points exactly equal to the freight rate.

(b) In 1924, at about the time the steel companies added Chicago, Illinois, as a basing point in the sale of pipe, Youngstown, which had a conduit plant at Evanston, Illinois, announced an Evanston base price for conduit \$4 per ton higher than the Pittsburgh base, and all other conduit sellers announced identical Evanston base prices. Clayton Mark, which established a conduit plant in Chicago in 1924 and began the distribution of conduit therefrom early in 1925, used a Chicago base price instead of an Evanston base. This did not amount to the general establishment of a third basing point, however, because the freight rates from Evanston and Chicago are the same to all points except locations within the Chicago switching district. The discounts from the Evanston and Chicago base prices quoted by all conduit sellers were two points lower than those ap-

plicable to the Pittsburgh base and the same provisions for determining delivered prices at other points according to the freight rates were applied as had previously existed with respect to the Pittsburgh base. The formula used also provided that at any given location the delivered price quotation of a conduit seller should be based upon Pittsburgh or Evanston, depending upon which base price and accompanying discount produced the lower figure at the purchaser's destination.

(c) Respondent conduit sellers followed the above-described list-and-discount method of determining delivered prices pursuant to their basing-point system until June 1930, when certain alterations cooperatively determined upon were made in the method of calculating such prices. The minutes of a meeting of the Rigid Steel Conduit Section of the National Electrical Manufacturers Association on June 4, 1930, attended by representatives of American Circular Loom Company, Central Tube, Enameled Metals, Fretz-Moon, Garland, General Electric, Mohawk Conduit Company, National Electric, Triangle, Walker Brothers, and Youngstown show the following action:

The matter of simplified billing of Rigid Conduit along the lines of the plan submitted to Mr. Neagle by Mr. Sicard was discussed and it was the concensus of opinion of the meeting that it is to the best interests of the public and the electrical trade that some such simplified method of net billing be followed (Comm. Ex. 692-Z84).

National Electric issued a booklet dated June 10, 1930 (Comm. Ex. 80-R), entitled "Freight Adders and Terms" containing various tables by the use of which a sum to be added to the base price as a delivery charge per thousand feet of conduit could be determined for a large number of destinations. These sums called "delivery charges" did not represent the exact amount of the freight rate from the controlling basing point to the destination specified, in part because of the manner in which fractions were treated in the calculations and in part because 5 percent was added to and included in such sum. Purchasers who took the discount for payment within the cash discount period were permitted to take such discount upon the delivered price, which included the so-called delivery charge. National Electric also issued price card No. 61 (Resp. Ex. 139-B), dated June 16, 1930, which was prepared for use in connection with the freight adders described above. Other conduit sellers made a similar change from the list-and-discount method of quoting prices. Price card No. 61 of Laclede Tube (Resp. Ex. 306-A to D), effective June 16, 1930, is in all substantial features and in almost all non-essential features a duplicate of the National Electric card. Beginning with card No. 1, all price cards issued by each of the respondent conduit sellers have borne numbers identical with those of the corresponding cards of the other conduit sellers, and the cards of all conduit sellers of any given number have been identical in all material particulars. In some instances individual conduit sellers have not issued a card of a given number and instead have announced a percentage discount from a previous card. Where the issuance of a card was thus omitted, however, the next card issued bore a number coinciding with that borne by corresponding cards of the other conduit sellers.

(d) The modification in pricing method described in the preceding subparagraph was followed by a further change made in the same year. Youngstown prepared a delivery charge booklet dated November 15, 1930 (Comm. Ex. 89), which was more comprehensive and somewhat easier to use than the one devised by National Electric. This booklet, instead of

using arbitrary key numbers, set out the delivery charges per thousand feet of each size of conduit according to any railroad tariff rate from one-half cent to \$2.24½ per hundred pounds, in steps of one-half cent each. These delivery charges also included an additional 5 percent, as had been the case with those devised by National Electric. Upon the request of other conduit sellers, Youngstown had copies of its publication printed without covers and sold numbers of them to respondents, Cohoes, Triangle, Walker Brothers, Enameled Metals, Steelduct, Steel and Tubes, Inc., Fretz-Moon, Garland, and Clifton. Upon the basis of circumstances shown in the record and a comparison of the pamphlets, it is concluded that Clayton Mark also secured copies of the Youngstown pamphlet. Respondent conduit sellers distributed these pamphlets to their-salesmen, sales agents, wholesalers, and other customers, for use by such parties in calculating delivered prices for conduit. At about this time Clayton Mark abandoned the use of a Chicago base and adopted the Evanston base, so that all respondent conduit sellers were then using only Pittsburgh and Evanston as basing points.

(e) The use of the Pittsburgh and Evanston bases exclusively continued until late in 1934, when Clayton Mark again instituted a Chicago base and ceased using Evanston. As heretofore stated, the rates from Chicago and Evanston are the same to all points except a few locations adjacent to these bases. Effective January 2, 1935, Youngstown instituted Chicago as a base and continued the Evanston base (Resp. Ex. 182). The situation thus created had prompt collective consideration. The minutes of a meeting of RSCA on January 17, 1935, recite in part:

(c) The Board of Directors recommends to the Association that the Evanston basing point be eliminated, leaving the two basing points—Pittsburgh, Pa. and Chicago, Ill.

After considerable discussion this recommendation was laid upon the table pending the report of the Special Committee on zoning (Comm. Ex. 3-B).

At the time of this meeting respondent conduit sellers' price cards No. 70, issued in July 1934, were in effect. The next price cards (No. 71) were issued by respondent conduit sellers in January 1936 and were limited to the Pittsburgh and Chicago bases, the Evanston base being eliminated. With the exception of a minor change by which freight adders were shown in terms of hundred feet of conduit instead of thousand feet, respondent conduit sellers have continued their basing-point system without further change. The last proposed change as shown by the record was one considered at a meeting of RSCA on November 16, 1939. The minutes of this meeting do not show that any consideration was given to basing points, but H. H. Benfield, who was present at the meeting as a representative of Fretz-Moon, addressed a memorandum marked "Confidential" to certain of his associates under date of November 20, 1939, in which he described various occurrences at the meeting. He said in part:

Please note this memorandum and destroy.

There was a meeting of the various manufacturers of conduit in New York on November 16th at which all major manufacturers were represented except Triangle.

* * * * *

The fact that neither Youngstown nor Clayton-Marks manufacture conduit in Chicago any more, the dropping of the Chicago base was briefly discussed but it was decided not to do anything about it for the time being because of the possibility of investigation (Comm. Ex. 622-A).

PAR. 5. (a) In the establishment and maintenance through collective action of the basing-point, delivered-price system in its present form, respondent conduit sellers had the purpose of limiting and restraining the normal forces of competition. They recognized that by virtue of location, some conduit sellers could, by reflecting such advantage of location in their prices, exclude others from selling in certain markets; that their basing-point, delivered-price system offered compensations in the form of higher profits to the favorably located seller on sales made in his natural territory in return for refraining from pressing his advantage of location; that in order to maintain a price level high enough to permit each seller to sell in the natural territories of other conduit sellers, price competition must be restrained; and that the operation of their formula system of pricing enables each seller to quote to a prospective purchaser at any location the same price as that quoted by other sellers, through the use of the same formula, and thus bring about a condition of matched prices. Examples of the knowledge and purpose of these respondents appear in the record in various ways. For example, the president of Garland, in his testimony concerning the basing-point system and the location of Walker Brothers' plant at Conshohocken, only a few miles from Philadelphia, stated:

If we didn't have our present practice, why, Walker would walk away with all the Philadelphia business (T. 1487).

Another example appears in the testimony of the president of Walker Brothers, who, when asked if he knew of any method other than the basing-point, delivered-price system which would afford a similar degree of uniformity in price, stated:

A. Oh, I am not willing to admit that the Pittsburgh basic method of selling is the only way by which uniform prices can be put together. It is one.

Q. Well, can you name other ways in which you could have reached the same degree of identity and uniformity as you did here, through the use of any other method?

A. I imagine that there are a great many other ways of figuring uniform prices outside of the Pittsburgh basic method of selling, but I can't answer your question without distorting the picture. This is one method by which it is done. There must be others. (T. 883-84).

(b) Certain aspects of respondent sellers' desire and purpose to restrain competition in the sale and distribution of conduit were openly revealed during the negotiations for and the administration of their Code promulgated under the National Industrial Recovery Act and through various activities claimed to be pursuant to such Code. For example, respondent conduit sellers' Code (Resp. Ex. 259) provided for the filing of prices, discounts, and terms of payment, for the relaying thereof to competitors, and for adherence thereto so long as the filing was not changed. Respondent, F. C. Hodkinson, who was appointed by the board of directors of the National Electrical Manufacturers Association as supervisory agency for the division of the electrical manufacturing industry which included conduit, in his capacity as such supervisory agency, called upon Garland by letter dated November 29, 1933, for an explanation of an apparent departure from its filed prices in a bid to The Panama Canal. In replying, Garland explained that:

Findings

38 F. T. C.

* * * our own price .1547 was in error, inasmuch as we used the 67¢ freight adder which at that time we thought was correct but now find that the less carload freight adder is 70¢, which hereafter will be used by us.

* * * * *

In the prices as quoted some confusion evidently exists as to the proper freight adder as several of the prices are slightly different from the correct which we figure should be .1554 (Comm. Ex. 247).

In replying to Garland, Mr. Hodkinson stated in part:

The filing of price lists, if these lists happen to be uniform, will assure all uniform quotations made on any inquiry, whether from the Government or a private individual, but with the matter of the delivery charges left up in the air as it has been, there is room for differences. I am therefore calling for the filing of these delivery charge schedules (Comm. Ex. 248).

The basis for pricing delayed deliveries of conduit on specific building contracts was determined as shown by the minutes of a meeting of RSCA on January 17, 1935, which read in part:

Upon motion made, seconded and carried, it was resolved that it is the understanding of each member of the Rigid Steel Conduit Association that any delivery of conduit upon any specific building contract, or order, after its six months expiration, shall be billed on the basis of current filed Card with N.R.A. Supervisory Agency, unless previously an extension has been granted by the Supervisory Agency under the prescribed method of investigation and substantiation of the requirement of extension. And to eliminate confusion, each member shall file a list of all existing contracts on January 25th and February 25th, 1935 (Comm. Ex. 3-B).

In their efforts to maintain identical prices and prevent purchasers from finding any advantage in dealing with one seller as against another, respondent conduit sellers did not stay within the provisions of their Code. An example of this appears in connection with bids made in February 1935 to the United States for supplying certain conduit for use in the Canal Zone. There were 30 bids submitted: 28 of these were each in the amount of \$3,080; one bid was at a higher figure; and one bid, that of Home Lighting Company, a jobber located in Baltimore, was low at \$3,075. Home Lighting Company received the award and sought to purchase the conduit from Cohoes, which was its regular source of supply. Before the order was shipped Mr. Hodkinson, in his capacity as supervisory agency under the Code, telegraphed Cohoes under date of March 28, 1935, in part:

REFERRING TO YOUR TELEPHONE MESSAGE WISH TO INFORM YOU THAT AS SUPERVISORY AGENCY I PROTESTED TO WASHINGTON BID SUBMITTED BY HOME LIGHTING COMPANY * * * I HAVE HAD NO REPLY AND BEFORE YOU SHIP THIS SPECIFICATION ON HOME LIGHTING ORDER THE MATTER SHOULD BE ADJUDICATED AT WASHINGTON (Comm. Ex. 287).

Under date of March 30, 1935, Cohoes advised Home Lighting Company in part:

We are in receipt of your letter of March 27th, and while we fully appreciate your situation, we are powerless to ship this specification until we have authority to do so from the Supervisory Code Authority (Comm. Ex. 289).

Home Lighting Company sought to purchase the conduit needed to fulfill its obligation under the bid from other conduit sellers. On April 5, 1935, it telegraphed Austin, as follows:

ADVISE WESTERN UNION CAN YOU MAKE SHIPMENT IN FIVE DAYS FIFTY THOUSAND FEET HALF INCH HOT DIPPED CONDUIT (Comm. Ex. 291).

On the same day Austin replied to Home Lighting Company that it could make the shipment, and added:

We sincerely hope to be favored with your order (Comm. Ex. 291).

On the next day, April 6, 1935, Austin advised Home Lighting Company that upon receipt of shipping instructions the order was identified as a Panama Canal bid, that evidently Austin conduit was not specified in the bid and it would be difficult to change the brand with the Government, and concluded by saying:

In view of this being for the Panama Canal I believe it will be very essential that you furnish the brand of conduit nominated in your proposal to avoid complications with the governmental authorities.

We, therefore, regret exceedingly that we are unable to handle the order and beg to remain (Comm. Ex. 292).

Home Lighting Company had secured an authorization from the Government purchasing agency on March 23, 1935, to supply Clayton Mark conduit "provided it complies with the specifications" (Comm. Ex. 332). However, Home Lighting Company was unable to purchase the conduit necessary to fulfill its bid. It secured some conduit from other jobbers and the Government purchased the remainder in the open market and charged the difference in cost to Home Lighting Company.

It was impossible for the bid by Home Lighting Company to be in violation of the Code administered by Mr. Hodkinson because that company was not subject to that Code. In addition, at the time these events occurred, Executive Order No. 6767, dated June 29, 1934, was in effect and provided that in sales to instrumentalities of the Government a price as much as 15 percent below filed prices would not violate Code provisions concerning filed prices.

PAR. 6. (a) The use of the same base prices and uniform delivery charge factors by the several respondent conduit sellers will, as a matter of simple mathematics, enable all such sellers to quote identical delivered prices to any given destination, provided the same railroad tariff rate is used by each seller in selecting the applicable delivery charge factor. Frequently, however, it is difficult to exactly determine the tariff rate and even experts sometimes differ as to the applicable rate. Mistakes by conduit sellers in the selection of the railroad tariff rate to be used in a particular instance were a fruitful source of differences in the delivered prices quoted.

(b) The record does not disclose the details of various steps taken by the respondent conduit sellers with respect to railroad tariff rates prior to 1936. In the beginning of the industry the conduit manufacturers who acted as converting and selling agents for pipe manufacturers used a freight bulletin on standard pipe prepared by National Tube Company. Apparently such rates on pipe were used generally by conduit sellers and

no freight bulletin on conduit was published until sometime after the organization of RSCA. During the Code period the problem of price differences resulting from variations in delivery charges was handled by the action of Mr. Hodgkinson requiring the filing of delivery charge schedules in connection with the price-filing provisions of the Code. This was supplemented by the action of George A. Sicard, secretary of RSCA, in furnishing a tariff rate for the common use of members of RSCA in cases involving unusual destinations or rates. An example of this appears in the bulletin dated January 31, 1935, addressed by Mr. Sicard to members of the association, concerning bids to be opened February 11, 1935, for 50,000 feet of $\frac{1}{2}$ -inch galvanized conduit for The Panama Canal. He wrote:

The published freight rate to Cristobal, Canal Zone is 47 $\frac{1}{2}$ ¢ per hundred pounds (Comm. Ex. 419).

The results on this bid have been heretofore set out in subparagraph (b) of paragraph 5.

(c) Sometime after its organization and before September 10, 1936, RSCA began the publication of freight rate bulletins for the common use of respondent conduit sellers in conjunction with the delivery charge pamphlets in ascertaining delivered prices to be quoted at the various destinations set out in the rate bulletins. Under date of September 10, 1936, RSCA published a rate bulletin entitled:

SUPPLEMENT
TO RIGID CONDUIT FREIGHT RATE BULLETIN
DATED APRIL 25, 1935
TO BE USED AS A BASIS IN
DETERMINING DELIVERED PRICES
ON
RIGID CONDUIT—LESS-CARLOAD
FOR
RAIL STATION DELIVERY
also
STORE DOOR DELIVERY
INCLUDING ALL TRUCK DELIVERIES
FROM
PITTSBURGH or CHICAGO and EVANSTON
TO
VARIOUS DESTINATIONS
IN
WESTERN and CENTRAL
UNITED STATES

(Comm. Ex. 74-Z26)

On October 9, 1936, I. A. Bennett, vice president of National Electric, addressed his sales representatives:

We are in receipt of a copy of letter, dated September 26th, sent out by the Triangle Conduit Company to their Sales Offices in which they enclose copy of the Rigid

Steel Conduit Association Supplement on Freight, which takes care of store door delivery at the rates shown.

This company wants to follow these rates, and charge will be made on all shipments on Pittsburgh or Chicago base where Rigid Conduit is shipped by truck to a job site, or to the store door of jobber.

It is difficult to put into effect any new program as each customer naturally resists paying for something he has been getting for nothing. Therefore, you will unquestionably run up against the story that someone is not doing this or doing that, and therefore, we should not do it.

It certainly seems logical to equalize on freight and transportation service, and therefore, we sent you on October 6th, copies of the Rigid Steel Conduit Association Supplement and ask that you use this to familiarize your customers, where effective, with this tariff, and endeavor to standardize it (Comm. Ex. 392).

The minutes of a meeting of RSCA on December 8, 1936, recite in part:

Chairman Bennett introduced the subject of the recently published freight supplement for discussion, and certain discrepancies were brought to light in the rates as published.

It was suggested that Mr. Kim confer with Mr. Donley, who compiled the supplement, with a view to having corrected certain errors which had been noted.

Further, it was voted to employ Mr. Donley to keep the supplement up to date in the light of such changes in existing rates as may be made from time to time (Comm. Ex. 9-D).

The last rate bulletin issued directly by RSCA was dated January 1, 1937. Supplements to this rate bulletin, however, were issued directly by the association until the RSCA meeting of September 27, 1937, the minutes of which recite in part:

At a meeting earlier in the year, Chairman Bennett had been authorized to employ Mr. Donley as Traffic Manager for the Association, and, following discussion, it was voted to pay Mr. Donley's bill as submitted to Mr. Booth, and advise him that his services were no longer required.

It was then voted to establish a Committee on Traffic to consist of Messrs. Kim, Welsh and Matthews, of the National Electric Products Corporation, Youngstown Sheet and Tube Company and Central Tube Company respectively (Comm. Ex. 22-D).

The rate bulletin of January 1, 1937 carried as a foreword:

METHOD OF FIGURING DELIVERED PRICE

The freight rates listed herein are to be used to ascertain delivery charges in figuring F.O.B. destination prices to all points in the United States and their possessions.

Where the freight rates shown are from Pittsburgh, Pa., the Pittsburgh basing prices must be used. If the freight rates shown are from Chicago or Evanston, Ill., the Chicago or Evanston basing prices must be used.

For an example:—To determine the F.O.B. destination on $\frac{1}{2}$ " Sherarduct Conduit F.O.B. Fort Wayne, Ind.—C/L—Mill Shipment.

Pittsburgh Basing Card 74.....	\$4.67 per 100 ft.
Freight rate 27 cwt. or (delivery charge).....	.24
	<hr/> 4.91 per 100 ft.

(Comm. Ex. 79-Z127 and others).

Some of the respondent conduit sellers used and distributed to the trade the bulletins issued by RSCA; and some, of which General Electric is an example, had bulletins separately printed which, though somewhat differ-

ent in appearance, were identical in material particulars and obviously merely copied from the association bulletins.

(d) The rate bulletins and supplements issued directly by RSCA were prepared by Charles Donley, a traffic and rate expert in Pittsburgh, engaged in the business of supplying rate information and other rate and traffic services to various business concerns and trade associations. Mr. Donley had furnished rate services to some of the individual conduit sellers prior to his employment by the association. On July 22, 1937, Mr. Donley addressed a letter to Mr. Booth, who was then acting as secretary for RSCA, with copies to the members of RSCA, in which he referred to his previous services, stated he understood the association would discontinue publication and distribution of a joint schedule, and continued:

May we suggest that it would be to the best interests of the individual members to prepare a freight rate schedule that would be distributed in the name of or by the individual member, such a schedule to contain the freight rates as they are not published, in carload and less carload, and from the origins of Pittsburgh, Chicago and Evanston to the various destinations and to be published in such form as to reduce the number of pages and then to have it printed, as some of the companies are already doing.

I am also suggesting that this schedule should not contain any reference whatever to the methods of figuring delivered prices and in the place of being prepared and issued by the Rigid Steel Conduit Association, that it be prepared and distributed, as suggested above, by the individual company. I believe if these two changes were made it would be of much more value and of more practical benefit to all who are concerned.

I am taking the liberty of submitting a suggested title page as well as a second page which contains the changed statements from those that are shown in the present schedule. Also a third page giving an idea as to the method of showing the actual freight rates (Comm. Ex. 401-A and B).

Thereafter, Mr. Donley, in compiling and publishing rate bulletins and supplements for the use of conduit sellers which were purchased and paid for individually by conduit sellers, advised and cooperated with Mr. Booth and with the transportation committee of RSCA. He wrote Mr. Booth, as executive secretary of RSCA, under date of August 11, 1938:

Confirming phone conversation today, wish to advise that our Bulletin of August 3, Subject 7080, Pick-up and Delivery Service Official Territory, was mailed (1 copy only) to all the firms on the list; namely:—

M. B. Austin Company	Chicago
Central Tube Co.	Pittsburgh
Clayton Mark & Co.	Chicago
Cohoes Rolling Mill	Cohoes, N. Y.
Fretz-Moon Tube	Butler, Pa.
Garland Mfg. Co.	West Pittsburgh, Pa.
Laclede Steel Co.	St. Louis, Mo.
Nat'l Elec. Prod.	Pittsburgh
*Steelduct Company	Youngstown
Triangle Conduit	New York
Walker Brothers	Conshohocken, Pa.
Youngstown S. & T.	Youngstown, O.

*Steelduct Company are furnished with a copy of bulletins of general nature such as the one above mentioned, but they have not been furnished with any Conduit Rate

Change Bulletins, as they did not have any printed when the last issue was prepared. Please advise if this firm should be furnished with Conduit Rate Change Bulletins from this office (Comm. Ex. 390).

Under date of September 14, 1938, Mr. Donley wrote Mr. Booth as follows:

After you phoned us yesterday we got in touch with Mr. Kim regarding the store door delivery situation about which the Triangle Conduit and Cable Company have written you.

Based on that conversation, we are to submit to the Transportation Committee some figures to show what the approximate cost would be for making the necessary changes in the Rigid Conduit Bulletin. This will be supplied within the next day or so and we will then await advices as to what we should do (Comm. Ex. 385).

Under date of November 24, 1939, Mr. Donley directed the printer as follows:

Enclosed are stickers for mailing revised pages to the rigid conduit schedule.

The following number of copies are to be mailed to respective companies:

Fretz-Moon Tube Co.	550
The M. B. Austin Co.	300
Garland Manufacturing Co.	280
Clayton Mark and Co.	825
Cohoes Rolling Mill Co.	600
Youngstown Sheet & Tube Co.	2200
Triangle Conduit & Cable Co.	1000
Central Tube Co.	660
Walker Brothers	500
Laclede Steel Co.	110

(Comm. Ex. 373).

(e) The freight rate bulletins heretofore described were intended for use and used to provide respondent conduit sellers with common factors in determining delivery charges to be included in the price of conduit delivered at various destinations. They also designated the rate from one or the other of the basing points to each destination, thus indicating the base price applicable at such destination. In determining the controlling base as shown in these bulletins, Mr. Donley used an arbitrary figure of \$4 per ton difference in base prices between Pittsburgh and Chicago, when in fact the difference between these base prices was generally slightly above or below \$4 per ton. These bulletins could not be used for shipping purposes by a conduit seller whose plant is not located in Pittsburgh or Chicago, because those are the only points from which rates are shown in such bulletins. They are not adequate for shipping purposes even for conduit sellers whose plants are in Chicago or Pittsburgh, because they do not contain information affecting rates, such as routing, loading, minimum weights, and other data ordinarily needed for shipping purposes.

(f) The following respondent conduit sellers purchased or otherwise secured and used so-called rate bulletins prepared by Mr. Donley: Central Tube, Clayton Mark, Cohoes, Fretz-Moon, Garland, Laclede Steel, National Electric, Spang Chalfant, Inc., Steelduct, Triangle, Walker Brothers, Youngstown, and Austin. Rate bulletins distributed by Enameled Metals are either Donley bulletins or copied therefrom; Laclede Tube used

Donley bulletins secured by Laclede Steel; Republic and Steel and Steel Tubes, Inc., used Donley bulletins secured by Fretz-Moon; Clifton copied its bulletins from General Electric, which in turn prepared or copied its bulletins from Donley bulletins. The above finding that Donley bulletins were copied by certain conduit sellers is in part based upon the identity of language, arrangement, destinations, and rates, as appears from a comparison of such bulletins with bulletins known to have been prepared by Mr. Donley.

(g) In preparing and selling the rate bulletins as aforesaid, Mr. Donley knew that they were not intended or adapted for use by the purchasers thereof as bona fide rate information for shipping purposes. He knew that they were intended for use as a common factor in pricing conduit according to a basing-point formula of pricing which included a differential of substantially \$4 per ton between the Pittsburgh and Chicago bases, and he was necessarily aware that the base prices which came to his attention were uniform as among respondent conduit sellers and would, therefore, through the application of a common rate factor, result in identical delivered prices at any given point.

PAR. 7. Following negotiations covering about two months, RSCA employed Herbert S. Blake and his company, OSC, to manage its affairs. After conferences with members of RSCA and an examination of merchandising policies and practices of conduit sellers, Mr. Blake, in collaboration with RSCA, undertook the formulation and execution of plans having the fundamental purpose of controlling certain conditions which tended to interfere with and disturb the operation of the basing-point, delivered-price system in producing matched price quotations and prices to conduit purchasers. Many of these activities supplementing the pricing system were purported to be carried on in the name of the Robinson-Patman Act, which apparently was viewed by these respondents as a grant of authority for collective action to prevent any departure from uniformity in prices, discounts, terms of sale, and merchandising policies, rather than as being directed toward the preservation of competition for the benefit of the public. The principal matters which were subjects of collective action and were promoted by Mr. Blake and RSCA were the use of consignment contracts, protection contracts, and other means to control distributors and prices, the investigation and control of specific building contracts, so-called closed transaction inquiries, elimination of warehouses, uniformity of trade discounts, and classification of purchasers.

PAR. 8. (a) For a long period of time preceding the employment of Mr. Blake and OSC, all the respondent conduit sellers except Clayton Mark sold substantial quantities, and in several instances a major part, of the conduit each handled to and through distributors pursuant to so-called consignment contracts. Little serious effort had been made to enforce price maintenance under these contracts, however, apparently because the distributor agents were obliged to compete with wholesalers who purchased conduit and were at liberty to use their own judgment as to the prices which they quoted. These distributor agents also sold conduit from time to time at prices which did not accurately reflect the use of the basing-point pricing formula. Such price variations had a disturbing influence upon the entire price structure. During the Code period means of controlling the prices at which wholesalers sold conduit were frequently considered. Lack of effective control under the Code was deplored and attention was given to the possibility of securing a uniform policy on this

subject by all conduit sellers. The minutes of a meeting of RSCA on April 4, 1935, recite in part:

The matter of a Sales Agent Contract was discussed at length and upon motion made, seconded and carried, Messrs. Hodkinson, Walker and Sicard were appointed as a Special Committee to consider this matter further (Comm. Ex. 4-B).

(b) It was a part of the plan engaged in by RSCA under the leadership of Mr. Blake to stabilize the price structure in the industry through the general use of consignment contracts which were to be made uniform and enforced according to their terms. Pursuant to this plan, Mr. Blake called upon the association members for copies of their forms of contracts with distributors, analyzed them, and prepared a tentative draft of a uniform consignment contract which was considered and discussed at length by the board of directors of RSCA. The minutes of a meeting of the board on November 20, 1936, recite in part:

It is the intention of the Board of Directors to try and have in the hands of the members a Uniform Jobber Agency Contract, a Uniform Specific Building Contract, and a set of Fair Trade Practice Rules for consideration of the Association at its next meeting to be held on Tuesday, December 8th, so that the Industry, if it so decides, could put these uniform instruments into operation by our next reporting period—namely, December 25th (Comm. Ex. 8-C).

The minutes of a meeting of RSCA on December 30, 1936, report that it was called to study the "recommendations relative to the Distributor Agents Contracts and other suggested forms in order to enable the manufacturers to adopt them without further delay if they cared to do so" and that Mr. Blake explained a number of changes which had been made (Comm. Ex. 10-D).

(c) One of the necessary steps was to enlist the cooperation and assistance of wholesalers, and this was done. The report of the conduit committee of NEWA on its meeting of September 28, 1936, at which representatives of Central Tube, Fretz-Moon, Laclede Tube, National Electric, Triangle, and Walker Brothers were present, includes the following:

Inasmuch as several manufacturers have expressed the opinion to various members of the Committee that the Conduit Industry can be placed on a sound economic and service basis only by Wholesalers acting as agents for the manufacturers, with consigned stocks, your Committee is of the opinion that this Association should recommend that the Conduit Manufacturers consider the advisability of selling conduit on a consignment basis (Comm. Ex. 39-A).

The regular procedure of the conduit committee of NEWA, referred to above, is for the members of that committee to have a meeting in the morning and this is followed by an afternoon meeting to which representatives of the various respondent conduit sellers are invited.

On January 14, 1937, H. G. Morrow of Central Tube wrote H. S. Walker of Walker Brothers in part:

Speaking for our own company, we are not holding back to see what other people are doing, believing that under Blake's leadership each member of the Association is sincerely in earnest to put his own house in order.

Here is what we have done—

1st—The Board recommended, and the Industry approved, a uniform contract with manufacturers' agents. We sent these contracts out and our agents have all signed them.

2nd—The Board recommended, and the Industry approved a form of specific building contracts, covering three types. We yesterday OK'd the proofs of these contracts and they will be sent to our district offices this week, to be used in connection with all future jobs.

3rd—Mr. Blake approved an addendum to our regular consigned stock contract which gives the same effect to resale price control as the agency contract which was adopted by the Industry. These forms are now being filled in and will be sent to our district offices this week, for presentation to the jobbers for signature.

4th—Assuming that all the manufacturers are sincere in regard to building contracts, we have acted on Blake's recommendation in the case of all contracts reported to us, with the result that we have already cancelled upward of 900 tons.

5th—The joint meeting of the Board of Governors and some of the other members of the Industry with representatives of the Jobbers' Association, in my opinion, did more to get the jobbers in a frame of mind to cooperate with us than anything we have heretofore done and it is my idea at the next general meeting of the Association, some definite program can be worked out which will be satisfactory to the manufacturers and pleasing to the jobbers.

I think the foregoing accomplishments since the employment of Blake show a very satisfactory rate of progress, in view of the divergent opinions of many manufacturers on certain fundamental problems, to say nothing of the pet peeves which had grown up between manufacturers.

So far as our company is concerned, we are going ahead, in good faith, with this whole program, with the full knowledge that should our competitors not follow an approved program, we can always turn back and make our marketing conditions conform exactly to those of our competitors (Comm. Ex. 577-A and B).

At a meeting of RSCA on January 27, 1937, Mr. Bennett of National Electric made an extended statement concerning the chaotic conditions which had developed in the industry, referred to the plans made with Mr. Blake and OSC to obtain better results, and stated that he was going to announce a policy to his sales department and customers, with copies to competitors, under which:

* * * It is our intent and purpose to obtain the support of our customers for this policy, and in our program we will establish such trade practices, customs, and forms of contracts as we deem necessary to protect our company from fraudulent manipulations (Comm. Ex. 11-H).

The minutes of the meeting record that thereafter:

There was a lengthy discussion of the various recommendations heretofore made by Organization Service Corporation, during which Mr. Blake stated that he had been informed that Messrs. Garland, Walker, Morrow, Bennett and Barton [all of whom were present at this meeting] had adopted for their individual companies many of the recommendations.

The discussion brought out the fact that all members were revising their merchandising procedure to include as many of the recommendations as were applicable to their individual needs (Comm. Ex. 11-I).

The report of the conduit committee of NEWA dated May 24-25, 1937, at which meeting representatives of Central Tube, Enameled Metals, Fretz-Moon, General Electric, National Electric, Steel and Tubes, Steel-

duct, Triangle, Youngstown, and Walker Brothers were present, includes the following:

It is very gratifying that the manufacturers are offering electrical wholesalers an equitable form of sales agency agreement.

Since coming to Hot Springs we have learned that quite a number of wholesalers have, for some reason or another, not executed an agency contract. No one believes the present contract is perfect, but many of us are sure it is better than anything we have had previously. If the present contract is made effective it can be bettered. If it is not supported, it will fail (Comm. Ex. 39-B).

The report of the same committee on its meeting of October 19, 1937, states in part:

On Wednesday morning, October 20, 1937, we had a further meeting at which several of our manufacturer friends entered into our discussions quite freely. More than ever your Committee decided on urging the wholesaler's whole-hearted cooperation in the sales agency plan of selling conduit. Don't abuse the plan by fictitious contracts or amounts of conduit needed. It ought to pay dividends to you in the near future (Comm. Ex. 39-C).

The report of this committee on its meeting of May 23, 1938, attended by representatives of Central Tube, Enameled Metals, Fretz-Moon, General Electric, National Electric, Steelduct, Steel and Tubes, Inc., Walker Brothers, and Youngstown, states in part:

The results of the questionnaires sent out by NEWA a few months ago show that 92% of those replying were of the opinion the sales agency plan for selling conduit represents an improvement over previous methods. The membership also recorded that in most instances manufacturers were cooperating to make the sales agency plan effective (Comm. Ex. 39-D).

The report of the meeting of the conduit committee of May 22, 1939, attended by representatives of Central Tube, Enameled Metals, Fretz-Moon, General Electric, National Electric, Steel and Tubes, Inc., Steelduct, Triangle, Walker Brothers, and Youngstown, recites in part:

While due to a combination of circumstances beyond the control of the manufacturers and wholesalers, the sales agency plan has failed to operate as originally designed, it is the definite desire of both industry groups that the plan be retained as a basis upon which to build a more satisfactory sales picture in connection with our conduit business (Comm. Ex. 40-C).

The conduit committee report of October 17, 1939, attended by representatives of Clayton Mark, Enameled Metals, Fretz-Moon, General Electric, National Electric, Steel and Tubes, Inc., Steelduct, Triangle, Walker Brothers, and Youngstown, contains the following:

As reiterated on the occasions of our Chicago and Hot Springs meetings, your committee again informed the manufacturers that wholesalers heartily approved the sales agency plan in connection with the distribution of rigid conduit. It is the opinion of your Committee that the general situation as it exists today is such that it appears the time is appropriate to give careful and serious consideration to the definite adoption of all the desirable features of this plan, and that the manufacturers study the matter with a view to this end in the reasonably near future. We were pleased during the course of our discussion with the manufacturers to find that their opinions coincided with the thinking of your Committee and encouraged to believe some action along these lines might soon be expected (Comm. Ex. 41-A).

(d) Respondents, Cohoes, Enameled Metals, Fretz-Moon, Garland, National Electric, Steel and Tubes, Triangle, Walker Brothers, and Austin adopted the Blake form of consignment contract, either without change or with insignificant changes. General Electric, Laclede Tube, Clifton, Steelduct, and Youngstown already had in use forms of consignment contracts which provided for price control, and they continued the use of those forms without adopting the Blake form. Spang Chalfant, Inc., when it entered the conduit business, adopted consignment contracts but not the Blake form.

(e) After the adoption of the uniform consignment contracts, the next logical step was taken to secure maintenance of prices according to the basing-point, delivered-price formula under these contracts. Various forms of pressure were exerted upon both conduit sellers and conduit wholesalers to that end. Among the steps taken was the request of the conduit committee of NEWA that conduit sellers insist that distributors observe the prices specified in the contracts and refuse to supply conduit to those who did not. Herbert S. Blake wrote the various conduit sellers urging that they terminate the contract of any distributor who failed to follow the manufacturer's instructions. Some of the conduit sellers wrote to their distributor agents insisting on full observance of prices. For example, in writing an agent on June 8, 1938, Garland stated in part:

We do not wish to threaten, but we are definitely going to cancel some of our distributor agent's agreements if they do not carry out our instructions, and if they are known as price cutters, it is going to be very hard for them to sign up new agreements with ourselves or others (Comm. Ex. 555).

The RSCA, in connection with reports of price cutting by distributors, wrote conduit sellers that they were responsible for the actions of these distributors and should insist upon distributors maintaining the manufacturers' "published position." Some distributors' contracts were in fact canceled because of their having cut prices.

PAR. 9. (a) Electrical contractors are called upon to submit bids for supplying and installing electrical wiring and equipment, and frequently a considerable period of time may elapse between the submission of a bid and the completion of the job. Consequently, such contractors desire protection against an advance in the price of conduit during that interval. It has been customary for conduit sellers, either directly or through their distributors, to protect the price of electrical contractors on specific construction projects. In actual practice these so-called specific building contracts have not amounted to more than options, because the conduit seller does not insist upon the contractor taking the conduit and if there is a price decrease the contractor receives the benefit thereof. The result has been that contractors sometimes entered into contracts with more than one conduit seller, each for the full requirements on a particular job, or took a contract for substantially more conduit than actually needed to complete the job purported to be covered by the contract. Duplicate contracts and excess amounts of conduit provided in contracts were of substantial importance to respondent conduit sellers only after a general increase in the price of conduit. Following a price increase, excess quantities of conduit covered in such contracts in effect constituted a floating supply of conduit available at a lower price. The contractor might transfer such excess to some other job or possibly sell it at a profit. The effect

of this floating supply was to create irregular price conditions and to make it difficult for conduit sellers to maintain an advance in price.

(b) The practices existing under the so-called specific building contracts were considered by the conduit committee of NEWA and the report of its meeting of May 4, 1936, recommended:

To correct the waste and unfairness of the building protection contracts your committee recommends: 1. That the manufacturer consider the economic value and the advisability of limiting such contracts to building operations requiring at least one car-load of conduit; 2. That efficient means be established to determine the actual amount of conduit required; 3. A bureau or bureaus be established to avoid the waste and unfairness of having so many protection contracts for a given building operation.

Both the manufacturer and the wholesaler must, of course, abandon unfair methods to accomplish the desired end (Comm. Ex. 40-A).

Under the leadership of Mr. Blake, as a part of its program to maintain prices and minimize competition in the industry, RSCA undertook the collective preparation of a form of so-called specific building contract to cover sales of conduit to contractors for use on a particular project and the establishment of means for investigating and controlling the use of such contracts. In this program Mr. Blake and RSCA had the cooperation of NEWA.

(c) A draft of a uniform contract was prepared by Mr. Blake through procedure similar to that followed in preparing the uniform consignment contract. The more significant features of this contract form were the detailed identification of the job, including, in addition to its name and location, the name and address of the owner, of the architect or engineer, and of the general contractor; the warranty by the buyer that the conduit will be used only on the job described; the prohibition against diversion; the provision that the price and terms are to be the seller's "regularly published prices and terms as shown by Card No. _____ dated _____"; the non-assignability of the contract; and the requirement for a certification by the architect or engineer that the quantity of conduit specified in the contract for the particular job is correct. Clifton, Garland, Enameled Metals, National Electric, Steel and Tubes, Fretz-Moon, and General Electric adopted the Blake form, in some instances with small alterations. Youngstown continued the use of a form of contract previously adopted which, however, contains provisions substantially the same as the Blake form except the certification by the architect. When Spang Chalfant, Inc., entered the industry, it adopted the Blake form. The record does not disclose whether the other respondent conduit sellers did or did not adopt the Blake form.

(d) Arrangements were made by RSCA and OSC for the latter to investigate or arrange for the investigation of the so-called "validity" of specific building contracts. When this activity was initiated, the conduit sellers sent lists of such contracts as they had in force to OSC and thereafter sent copies of new contracts from time to time as they were negotiated. The forms supplied to conduit sellers for the initial reporting called for the following information on each contract: The name of the reporting member; date of contract, location of job, name and address of the contractor, jobber, and architect, amount of conduit, and the price provided in the contract. The filing of copies of subsequent contracts disclosed similar information. Each conduit seller bore the cost of the investigation of the contracts he reported and the results of such investigations were

transmitted by Mr. Booth to the reporting conduit seller and such others as were interested in the particular job or inquired concerning it. The nature of the practice is best shown by the history of an investigation of an actual contract. Central Tube reported a contract for 110 tons of conduit for the Teaneck Armory, Teaneck, New Jersey. Mr. Booth reported the result of the first investigation made of this contract to Central Tube on January 14, 1937, which indicated that 110 tons would be required and that Central Tube conduit supplied through Westinghouse Electric Supply Company to Badaracco & Company as contractors would be used. He recommended reinvestigation in 90 days. On October 20, 1937, Central Tube asked that reinvestigation be made. The report of this recheck indicated that the contractor was using both Central Tube and Youngstown conduit and that 80 tons would be sufficient. In advising Central Tube of the result of this recheck under date of June 21, 1937, Mr. Booth stated in part:

If you wish to have me, I shall ask Youngstown how much material they have covered on this job as I am sure you will both be glad to cut your allotment in half in view of the card on which taken.

In the meantime, I am marking my records O. K. 80 tons, cancel 30. If you wish me to go into the matter further please advise (Comm. Ex. 487-I).

The contractor and the agent for Central Tube reasserted that 110 tons would be required. Further investigation was made, the result of which showed that the contractor insisted that the full tonnage would be required, while the investigator reported he thought his original estimate of 80 tons would be correct. In reporting this to Central Tube, Mr. Booth wrote in part:

I feel that you should respect our report of June 21st and limit the job to 80 tons or send a representative of your company or make an appointment for a representative of your company and Mr. Lodge to visit the job together but without a representative of the jobber or your New York agents (Comm. Ex. 487-D).

Central Tube gave way to Mr. Booth's insistence and directed its agents, sending a copy of the directions to Mr. Booth:

Do not permit Westinghouse to deliver more than 80 tons against this contract and if after the 80 tons are delivered they need additional conduit we will investigate the matter further (Comm. Ex. 487-B).

(e) This activity was supervised and directed by Mr. Booth, and the collective pressure exerted through him resulted in cancellations and partial cancellations of contracts for large quantities of conduit. From time to time during the progress of these investigations Mr. Booth reported to meetings of RSCA the results attained. A cumulative report made by him to the association appears in the minutes of a meeting of RSCA on July 13, 1937, and shows in part that 1,893 contracts were investigated, that these contracts covered 48,509 tons, that cancellation of 27,166 tons resulted, and that the percentage of tonnage canceled to the tonnage investigated amounted to 56 percent (Comm. Ex. 20-H).

PAR. 10. (a) The amount and terms of trade discounts to be granted by conduit sellers was the subject of collective consideration by such sellers and conduit wholesalers. NEWA made studies to determine an average cost of distribution of various electrical goods, including conduit,

and made recommendations based thereon concerning the trade discounts or margins which wholesalers should receive. This was followed by the action of I. A. Bennett, chairman of the board of directors of RSCA, in calling a conference between conduit sellers and conduit wholesalers. In extending an invitation to the managing director of NEWA to this meeting, Mr. Bennett stated in part:

The Rigid Steel Conduit Association have authorized the Board of Directors to make a study of the cost of distribution of Rigid Steel Conduit (Comm. Ex. 46).

(b) NEWA called together in New York City the members of its conduit committee for the purpose of attending the joint session with conduit sellers, and then the managing director of NEWA advised the chairman of its conduit committee in part:

Since issuing this call we have learned, however, that the proposed conference between manufacturers and distributors is wider than we had supposed, that, in fact, the manufacturers have invited to be present at the conference various distributors in their individual capacities as well as representatives of various local wholesaler Associations.

Under the circumstances I believe that you will quite agree that the National Association cannot very well take part, through its representatives, in a conference of this kind.

* * * * *

When you adjourn as a Committee, those of you who plan to take part in the proposed conference with manufacturers of Conduit will, of course, attend such a meeting with the manufacturers in your personal and individual capacities and not as official representatives of the National Electrical Wholesalers Association (Comm. Ex. 47).

One of the principal subjects of discussion at the meeting was the costs to wholesalers of doing business as shown in the cost study made by NEWA. The results of this joint meeting came before RSCA at its meeting of January 27, 1937, and the minutes of that meeting show that L. R. Quinn reported in part:

A brief resume of what transpired at the meeting of January 6, where various individuals representing manufacturing companies, jobbing companies and jobbers' associations met to discuss putting into effect the request of the jobbers made at the N. E. W. A. convention in Buffalo during October.

* * * * *

After a thorough analysis of what the various jobbers present had to report, it seemed to be the consensus of opinion that consideration should be given to the various brackets as follows:

- 6%—for carload and over.
- 17%—5,000 pounds to carload.
- 22%—1,000 to 5,000 pounds.
- 25%—Under 1,000 pounds.

Further, it was suggested that these percentages be based on the Pittsburgh value for each class as published and not include freight (Comm. Ex. 11-E and F).

(c) At the time of the joint conference on January 6th and of the RSCA meeting of January 27th, price cards numbered 74 issued by the various conduit sellers were in effect, quoting only carlot prices on conduit with certain provisions for trade discounts or agent's compensation. The fol-

lowing month respondent conduit sellers issued their price cards numbered 75, and these cards quoted conduit prices in four columns. Using $\frac{1}{2}$ -inch galvanized conduit, Pittsburgh base, as an example, the prices per hundred feet were \$4.72 in carlots, \$5.35 on quantities between 5,000 pounds and carlots, \$5.69 on quantities between 1,000 and 5,000 pounds, and \$5.92 on quantities less than 1,000 pounds. The trade discounts or agent's compensation provided by each conduit seller by card No. 75 differed from those previously in effect, but were identical as among the various conduit sellers, and in general outline followed the plan reported by Mr. Quinn as representing the "consensus" of opinion at the meeting of January 6th.

PAR. 11. (a) As a further step in their plan for maintaining price uniformity in accord with the pricing plan used in quoting conduit prices, RSCA instituted a system of investigating the prices at which specific sales were made, as well as the prices quoted. When a conduit seller lost an order and suspected that this was the result of a price cut by some one else, he could have an investigation made through OSC which would supply him with the information developed, and the same information was supplied to any other conduit seller who desired it or was interested in the particular transaction. The forms used in requesting, acknowledging, and reporting the results of these so-called "closed transaction" investigations were prepared by Herbert S. Blake and OSC and approved by RSCA.

(b) The real nature of these investigations can best be understood through an examination of a specific instance. On June 30, 1937, National Electric sent to Mr. Booth a tabulation of the bids made to a Philadelphia school district showing the amounts bid by "West Phila. Elec. Sy., Silvers Elec. Sy., Royal Electric, Gold Seal Elec., W. A. Leiser," and stated: "14 Other bidders quoted (Correct Price)," and then set out the prices said to be "correct" (Comm. Ex. 489-C). Under date of July 2, 1937, Mr. Booth acknowledged this on the usual form and sent out form inquiries to conduit sellers identifying the transaction and asking for information as to the connection with the transaction of each concern addressed. As a part of this inquiry he included the actual bids of the parties as reported by National Electric and made the statement:

These are not in accord with card 76. If any of the foregoing are handling your material, you should call this bid to their attention as you will be liable under the Robinson-Patman Act for the failure of these people to maintain your published schedule (Comm. Ex. 489-D and others).

Central Tube replied: "We do not sell any of these jobbers and have not quoted through them"; Cohoes replied that it did not receive the order and stated: "We have advised our jobber that the resale must be maintained especially on all public bids in future"; Enameled Metals reported: "We did not quote"; Steel and Tubes and Fretz-Moon answered: "We do not sell Fretz-Moon to any of these"; Garland, in reporting, inserted the names of the conduit sellers whose materials were quoted on; General Electric replied: "Do not sell them"; Clayton Mark reported that it did not receive the order; National Electric replied: "Do not sell any of those listed"; Steelduct reported: "None handling ours"; Triangle reported: "Unfortunately (maybe) the low bidder is not our baby. We do sell Gold Seal but *not lately*"; Youngstown reported: "Not Youngstown"; and Walker Brothers reported that it received the order "and cancelled our contract as per letter attached." The letter of July 2, 1937, from Walker Brothers to the successful bidder advised of the cancelation of the con-

tract because of failure to "observe our prices, selling terms, and other conditions of sale" (Comm. Ex. 490-K). Mr. Booth wrote Walker Brothers on July 21, 1937, and inferred that Walker Brothers should not have supplied the material to West Philadelphia Electric Supply to fulfill its bid. Walker Brothers replied that an unsuccessful effort had been made to get this bidder to withdraw its bid, and stated:

We don't feel that it is good policy to refuse to furnish material on a public bid unless the jobber in quoting reflects a primary price of less than card 76 but we do believe that when a jobber cuts our price and we then should cut him off and in this way teach him to have some respect for our prices without getting ourselves into an inquiry involving the validity of price control (Comm. Ex. 490-M).

On July 26, 1937, Mr. Booth advised National Electric of the results of this investigation, that Walker Brothers had canceled their contract with West Philadelphia Electric Supply, and continued:

Since then I understand that on another public bid, West Philadelphia was right on the line but they no longer have a consigned stock of Walker conduit. They are however, distributor agents for two other manufacturers, so they still have conduit on consigned stock (Comm. Ex. 490-F).

On the same date Mr. Booth similarly advised Garland of the results of the investigation and also said:

I understand that these people also have a stock of your conduit on consignment and hope you will see to it that they do not violate your agreement in any respect. Probably they have learned their lesson (Comm. Ex. 490-C).

(c) Respondent conduit sellers have contended that these "closed transaction" investigations constituted proper activity necessary to enable sellers to secure information as to the condition of the conduit market. The Commission finds, however, that in conception and execution these investigations amount in fact to a sophisticated form of price maintenance through united action by means of which a conduit seller who does not maintain prices and require his distributors to do the same is exposed to his associates and to the force of collective pressure, with the effect of tending to prevent departures from the prices established pursuant to the pricing formula.

PAR. 12. From time to time respondent conduit sellers supplemented the restraining effects of their general practices affecting price by more direct action. The scope and nature of these activities are indicated by many exhibits in the record, among which are those set out below. On October 13, 1937, Garland wrote one of its agents in part:

Yours of October 8th was duly received and we held same over for the reason that we had our Industry Meeting yesterday in Pittsburgh.

* * * * *

The manufacturers are doing their very best to stick to Card 76 on all new business and they believe it can be done. A few of the manufacturers made the statement that they had no difficulty whatever in obtaining Card 76 in the Metropolitan District. This is what we are aiming at, and it is our belief that the New York market will show a decided improvement from now on (Comm. Ex. 541).

On June 7, 1938, Triangle wrote Austin in part:

You received our wire today with regard to the importance of strict adherence to Card 76 prices by all of our conduit distributors.

It is my understanding that there will be a decided improvement in the competitive situation on all makes of conduit. * * * I have talked the matter over with several of our competitors and it is my understanding that they are taking similar action * * * (Comm. Ex. 448).

On June 8, 1938, Enameled Metals wrote a wholesaler in part:

First, we have been assured that the McCarthy Brothers & Ford—Lang deal has been straightened up. At least Youngstown has assured me that it has.

* * * * *

* * * We were directly told that if we wished to have a supply of pipe, we would have to maintain our resale. We have reason to believe that other Manufacturers sent out the same instructions to their agents that we did, and we sincerely trust that an honest effort will be made to hold Card 76. * * * (Comm. Ex. 531-A).

An agent of Garland, in writing to that company under date of June 22, 1938, stated in part:

I attended another meeting of the labeled conduit manufacturers to-day at the New York Athletic Club. In attendance were Robert Milford of Steel Duct, Milton Smith of Enameled Metals, J. Hawks of Triangle, Newt Walker of Walker Brothers and J. Carroll of National Enameled.

* * * * *

Several projects were discussed as to prices and agreements that had been made but nothing was pinned on to any of those present, which was in accordance with our agreement to maintain Card 76 on any new projects that might come up after our first meeting (Comm. Ex. 558).

The contract checking and "closed transaction" inquiries carried on by RSCA through OSC and Robert S. Booth were closely interwoven with other price maintenance activities. An example of this appears in an inter-office memorandum by Garland dated July 8, 1937, reading in part:

Booth called up late yesterday afternoon and got me at home. He said that he was telephoning all manufacturers, because three or four manufacturers had called him asking his ideas on continuing to sell definite carload orders on the basis of Card 75. He called my attention very definitely to the fact that protection orders of this type, not for Specific Buildings and not covered by Specific Building contracts, were only good for ninety days; and we were discriminating against other customers if we supplied any of this material. I told him it was my understanding that we had to ship this material before July 1st, and he said that this was true. He then asked me point blank if we intended to ship any more of such carload business, and I told him we were all through with it. * * * (Comm. Ex. 536).

Another instance appears in a memorandum from Mr. Booth to Garland under date of December 27, 1937:

In further connection with the statements made by Mr. Leiser, one of which involved Philip Cass, the report was that Enameled Metals had offered this party 10% inside, beyond card 76. Following is a reply from Major Quinn:

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"Philip Cass, although a personal friend of mine, is one of the damnest liars that ever lived. He used to be our customer. We have sold him \$700.00 worth in the last six (6) months. He is apparently buying from Garland. He is always making some kind of statements about what he could buy material for. I insist that the man that made this complaint go back to Mr. Cass and tell Mr. Cass that if he made the statement that we had quoted him a 10% inside, that Mr. Quinn says he is a plain liar. He is probably trying to chisel another Manufacturer. We have made no inside offer of any nature to Mr. Cass or anybody else."

I have already reported to you in connection with the Philadelphia Electric job on which Walker was involved.

I have asked for more definite information as to where Triangle was quoting off card 76 in Philadelphia as claimed by Mr. Leiser; this request having been made on December 22nd.

If you will furnish me with this information, I will be glad to follow through on it (Comm. Ex. 551).

PAR. 13. (a) The members of RSCA, through the medium of that association, engaged in collective activity directed to the classification of customers and to determining, upon the basis of collective opinion, whether or not particular concerns were entitled to be considered and treated as wholesalers. This activity is shown by the record to have been carried on at least as far back as 1934. Instances of these activities appear in the correspondence of George H. Sicard, then executive secretary of RSCA. Under date of November 28, 1934, Mr. Sicard addressed an inquiry to Mohawk Tube Company, Cohoes, New York, stating the course that should be followed in the case of a particular concern, as follows:

Have you put in a consigned stock with the Marshall Field Company in Chicago? If so, I don't see how they can qualify under your jobber's definition. Will you please advise (Comm. Ex. 445).

A similar instance is shown in Mr. Sicard's letter of December 3, 1934, to the same company:

Are you selling Glen Alden Coal Company, Eastern Pennsylvania as a jobber. I certainly cannot understand it if it is so because they are 100% users.

Will you let me hear from you (Comm. Ex. 444).

Mohawk replied under date of December 4, 1934:

Re: Glen Alden Coal Company—

In answer to yours of December 3rd, kindly note we are selling these people as users and not as jobbers (Comm. Ex. 443).

Under date of December 11, 1934, Mr. Sicard addressed inquiries to the members of RSCA reading:

Will you be good enough to advise me whether you consider the Hershy Lumber Company, Hershy, Pa., as a user or as a jobber.

Will you simply answer on the bottom of this sheet and also I would appreciate it if you would tell me whether this company is one of your customers (Comm. Ex. 440).

On December 30, 1934, Mr. Sicard wrote the members of RSCA:

You will recall that in November I wrote to you asking you for the names of concerns in the New England territory who in your opinion did not qualify as jobbers under the Rigid Steel Conduit Association definition.

I have also received from New England a copy of the list of companies recognized as wholesalers (jobbers) by the Electrical Manufacturers Representatives Club of New England and the Northeastern Electrical Wholesalers Association. This list was compiled jointly by the two associations given above.

From the preliminary investigation it would appear that concerns listed on the attached sheet are considered by some members of the Associations as jobbers, although they do not qualify under the Association definition.

Would you be good enough to tell me by return mail which of these companies you sell and whether you consider them as wholesalers under our definition and why.

When these replies are received I will take the matter up with each of you individually (Comm. Ex. 430).

On February 6, 1935, Mr. Sicard wrote the members of RSCA in part:

The Rigid Steel Conduit Association is extremely anxious to have a definite authentic list of all wholesalers or jobbers in the United States of America.

Will you send me for confidential compilation a list of all your customers to whom you extend jobbers or wholesalers compensation service commissions.

When these lists are received from all of the members, they will be compiled by States and cities. Naturally, no manufacturer's name will be used in connection with any company on such list (Comm. Ex. 413).

On February 20, 1935, Cohoes replied:

In conformity with yours of February 6th we are enclosing list of jobbers (Comm. Ex. 412).

On March 13, 1935, Mr. Sicard addressed the members of RSCA as follows:

The results of the questionnaire regarding Pusey and Jones was that no manufacturer has sold these people. We are investigating further (Comm. Ex. 435).

(b) When RSCA, with the assistance of Mr. Blake, prepared the uniform consignment contract heretofore discussed, a provision was inserted whereby the distributor agent, in executing the contract, represented that he conducted a warehouse suitable for carrying a stock of conduit and accessories in sufficient volume and range of sizes and types adequately to serve the territory in which he operated, that he regularly employed a force of salesmen, and that he did not sell as a contractor or otherwise in significant amounts direct to the general public or to individual ultimate consumers. These provisions reflect the more important qualifications required by NEWA as a prerequisite to membership, but the NEWA definition is in more detailed form. Membership lists of NEWA are available to conduit sellers on request.

(c) After the employment of OSC and Herbert S. Blake, RSCA continued the practice of seeking the collective opinions of its members as a guide to individual conduit sellers in classifying purchasers. This is illustrated in the case of Sanborn Electric Company of Indianapolis, Ind. On March 15, 1937, Steel and Tubes, Inc., wrote Fretz-Moon that Clayton Mark recognized Sanborn Electric Company as a wholesaler of conduit and stated that this company was strictly an electrical contractor. Fretz-Moon transmitted this inquiry to R. S. Booth, secretary of RSCA, who, on March 22, 1937, sent a questionnaire to members of RSCA, as follows:

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Subject: SANBORN ELECTRIC COMPANY.
INDIANAPOLIS, INDIANA.

I have been asked to ascertain the status of the above company; that is, whether they are treated as Wholesalers or Contractors.

Please reply hereon, returning this sheet to me stating how you treat this company (Comm. Ex. 491-C and others).

The record contains the replies received from Central Tube, Cohoes, Enameled Metals, Garland, General Electric, Clayton Mark, National Electric, Steelduct, Triangle, Walker Brothers, and Youngstown. Mr. Booth, under date of June 24, 1937, advised Fretz-Moon as follows:

Some time ago you sent me a memorandum from Steel & Tubes covering the status of Sanborn Electric Co., Indianapolis, Ind.

The report was that Clayton Mark Co. recognized Sanborn as a wholesaler whereas in the opinion of Steel & Tubes they are strictly electrical contractors.

This inquiry was sent to all members in addition to Clayton Mark and it is the opinion of the majority that they are contractors but Clayton Mark claims that his Jobber Purchase Agreement contract covers this situation and if any part of their sales is on other than a wholesale basis, they settle at the contractor's price.

There is some justification apparently in the position he takes as you will note from Mr. Walker's reply that the Directory of the Wholesalers Magazine states that these people do about 70% wholesaling. A majority of these dual accounts are very bothersome and I presume they will continue to be.

You will notice that no reply is enclosed from Laclede. However Mr. Oberhauser informed me yesterday by telephone that he knew nothing about this transaction.

Kindly return the papers to me when you are through with them with any comment you may care to make (Comm. Ex. 491-A).

PAR. 14. It was formerly the practice of conduit sellers to maintain warehouse stocks of conduit in many large cities. They made shipments of conduit to such stocks in carload lots and reflected the benefit of the lower carload freight rate in the price on warehouse sales of less-than-carload quantities of conduit to small wholesalers. This practice was a source of dissatisfaction to large wholesalers who were able to buy in carlot quantities but secured no advantage thereby in their competition with small wholesalers who purchased in small quantities from warehouse stocks of conduit sellers. In addition to objections by large wholesalers to that practice, the maintenance of such warehouse stocks created competitive difficulties among conduit sellers. By means of collective action, with the aid and cooperation of NEWA, respondent conduit sellers were able to, and did, discontinue the maintenance of warehouse stocks except on the Pacific Coast. Some of the activities of respondents concerning warehousing are indicated in the extracts from the record which follow. The report of the conduit committee of NEWA on its meeting of May 4, 1936, in discussing unsatisfactory conditions in the conduit business, attributed them in part to "manufacturers' uneconomic local warehouse stocks" and said in part:

Last year your committee recommended "the discontinuance of manufacturers' local warehouse stocks for the reason, among others, that sales and deliveries out of these stocks through warehouses or through agents result in unfair price discrimination against those wholesalers who do their own warehousing and otherwise perform the full distribution service for the manufacturer" (Comm. Ex. 40-A).

The report of the conduit committee of its meeting of September 28, 1936, recites in part:

It is very gratifying to your Committee to be able to state that manufacturers have discontinued local warehouse stocks in all sections of the country except the Pacific Coast. * * * (Comm. Ex. 39-A).

On May 25, 1937, Triangle wrote Austin in part:

* * * it is the general feeling today that once the bars are let down, even in Chicago, warehouses will return generally.

However, we will look into it, feel out our good friends again, and see what can be done. The only argument we have is that Chicago is a basing point, and the only way the whole thing can be worked out is for all companies, in view of Chicago being a basing point, to have a Chicago factory stock to take care of the Chicago basing point territory. There is one thing certain: I cannot get an edge for you in this matter, that is, if you do it I am sure that others will follow. However, let me look into it again (Comm. Ex. 526).

On June 17, 1938, I. A. Bennett of National Electric wrote to W. J. Drury of Graybar Electric, who was then a member of the conduit committee of NEWA, and stated in part:

The Youngstown Sheet and Tube Company and Triangle Conduit and Cable Company, both have local stocks of Rigid Conduit in the Chicago District.

This is the beginning of the opening of manufacturers' warehouse stocks, which have been eliminated everywhere except on the Pacific Coast. * * * (Comm. Ex. 603).

In September 1938 the rumored reinstatement of warehouse stocks was being investigated by RSCA. The minutes of an association meeting at that time show:

Mr. R. M. Garland stated that he had reports that warehouses were being established in various parts of the country, whereupon, Mr. Booth stated that he was investigating several reports which had come to him in this connection, but that his investigation was not complete at the present time (Comm. Ex. 34-Z2).

The conduit committee of NEWA, reporting on its October 18, 1938, meeting, attended by representatives of American Circular Loom Company, Inc., Austin, Central Tube, Enameled Metals, Fretz-Moon, General Electric, National Electric, Steel and Tubes, Inc., Steelduct, Walker Brothers, and Youngstown, said in part:

Much to the dismay of your Committee, information was presented to the effect that there is the possibility of a trend toward the re-establishment of manufacturers' local warehouse stocks in the key cities of the country. In at least one case this has become an accomplished fact. It was the very definite expression of manufacturers present at our meeting that the establishment of such local stocks was highly undesirable from an economic point of view. However, it was pointed out in no uncertain terms that if one or two manufacturers determined on such a policy it is quite obvious that others must in due course follow suit. It is the most apparent issue in this report that the wholesaler urge upon his respective suppliers a continuation of the policy of not establishing local warehouse stocks as being economically unsound, tending to duplicate stocks, and an unnecessary expense and waste (Comm. Ex. 39-E).

The reports of the meetings of the conduit committee of May 22, 1939, and October 17, 1939, contain statements similar to that appearing in the report of May 20, 1940, which reads in part:

The manufacturers continue to express entire satisfaction with the economies resulting from the discontinuance of their local warehouse expense, and reiterate their liking for wholesaler warehousing as now in operation, thereby eliminating the unnecessary waste of additional expense involved in local warehouse stocks (Comm. Ex. 42).

PAR. 15. (a) Through the use of the basing-point, delivered-price formula, supplemented by the use of common delivery charge factors and common freight rate books to aid in reducing and eliminating price differences which might arise through the individual calculation of freight rates and the conversion of such rates from terms of cents per hundred pounds to cents per hundred feet of conduit of any given size, respondent conduit sellers have been able to achieve a substantial degree of delivered price identity in quoting and selling conduit. The effectiveness of respondents' formula is illustrated in the record in several ways. The following examples taken from public bids show varying degrees of uniformity.

Bids to The Panama Canal for supplying 111,000 feet of conduit f.o.b. Cristobal or Balboa, Canal Zone, were opened June 17, 1935, and were as follows:

American Elec. Supply Company	\$8188.90	5%	10 days
M. B. Austin Company	8188.90	5%	10th proximo
Baitinger Electrical Co., Inc.	8188.90	5%	15th proximo
Philip Cass Co.	8188.90	5%	10th proximo
Central Tube Company	8188.90	5%	10th proximo
Clayton Mark & Co.	8188.90	5%	10th proximo
Enameled Metals Company	8188.90	5%	10th proximo
Gaffney Kroese Electric Supply Co.	8188.90	5%	10th proximo
Garland Manufacturing Company	8188.90	5%	10th proximo
Gertler Electric Supply Corp.	8188.90	5%	10th proximo
Graybar Electric Company	8188.90	5%	10th proximo
Greene Wolf Co., Inc.	8188.90	5%	15th proximo
Home Lighting Co., Inc.	8188.90	5%	10th proximo
Hudson Electric Supply Company	8188.90	5%	10th proximo
Laclede Tube Company	8147.70	5%	10 days
Lavenson & Savasta	8188.90	5%	10th proximo
Lee Electric Co.	8188.90	5%	10th proximo
Loman Electric Supply Co.	8188.90	5%	10 days
National Electric Products Corp.	8188.90	5%	10th proximo
Noland Company, Inc.	8188.90	5%	15th proximo
Shell Electric Supply Corp.	8188.90	5%	10 days
Thomas Summerville Co.	8188.90	5%	10th proximo
Steel and Tubes, Inc.	8188.90	5%	10 days
Steelduct Company	8188.90	5%	10th proximo after shipment
Triangle Conduit & Cable Co., Inc.	8188.90	5%	10th proximo
U. S. Electric Export Corp.	8188.90	5%	10th proximo
Walker Bros.	8188.90	5%	10th proximo
Weinstein Supply Company	8188.90	5%	10 days
West Philadelphia Electric Supply Co.	8188.90	5%	10th proximo

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Westinghouse Electric Supply Co.	8188.90	5%	10th proximo
Youngstown Sheet & Tube Co.	8188.90	5%	10th proximo
Baltimore Electric Supply Co.	8188.90	5%	10th proximo
National Electric Supply Co. (Comm. Ex. 318).	8188.90	5%	15th proximo

In the above instance, 12 respondent conduit sellers submitted bids. Austin, Central Tube, Clayton Mark, Enameled Metals, Garland, National Electric, Steel & Tubes, Inc., Steelduct, Triangle, Walker Brothers, and Youngstown each bid \$8,188.90, and Laclede Tube bid \$8,147.70, but under a policy of disregarding bids which did not comply with the invitation, the award in this instance was made by lot.

Bids on 100,000 feet of conduit for The Panama Canal opened January 6, 1938, were as follows:

American Electric Supply Co.	\$6200.00	5%	—10th proximo
M. B. Austin Company	6200.00	5%	—10th proximo
Baitinger Electric Company, Inc.	6200.00	5%	—10th proximo
Enameled Metals Company	6200.00	5%	—10th proximo
Gaffney Kroese Electric Company	6200.00	5%	—15th proximo
Garland Manufacturing Company	6200.00	5%	—30 days
Germantown Electric Supply Co.	6200.00	5%	—15th proximo
Gertler Electric Supply Corp.	6200.00	5%	—20 days
Gold Seal Electric Supply Co.	6200.00	5%	
Graybar Electric Company, Inc.	6200.00	5%	—10th proximo
Greene Wolf Company, Inc.	6000.00	2%	—10 days
Laclede Steel Company	6200.00	5%	—10th proximo
E. B. Latham & Company	6200.00	5%	—10th proximo
Loman Electric Supply Company	6200.00	2%	—10th proximo
Louis Electric Corporation	7000.00	2%	—10 days
Clayton Mark Company	6200.00	5%	—10th proximo
National Electric Products Corporation	6200.00	5%	—10th proximo
Noland Company, Inc.	6200.00	5%	—10th proximo
Shell Electrical Supply Corp.	6200.00	5%	—10 days
Steelduct Company	6200.00	5%	—10th proximo
Steel & Tubes, Inc.	6360.00	5%	—30 days
U. S. Electrical Export Corp.	6200.00	5%	—10th proximo
Walker Brothers	6200.00	5%	—10th proximo
S. Weinstein Supply Co.	5823.95	2%	—10 days
West Philadelphia Electric Supply Co.	6200.00	5%	—10 days
Westinghouse Electric Supply Co.	6200.00	5%	—10th proximo
Youngstown Sheet & Tube Company	6200.00	5%	—10th proximo
General Electric Supply Corp.	6200.00	5%	—10th proximo
Nathan Goodman Company, Inc. (Comm. Ex. 324).	6200.00	5%	—10th proximo

In the instance above, 10 of respondent conduit sellers submitted bids. Austin, Enameled Metals, Garland, Laclede Steel, Clayton Mark, National Electric, Steelduct, Walker Brothers, and Youngstown each bid \$6,200, and Steel and Tubes, Inc., bid \$6,360.

Bids on 2,000 feet of conduit for The Panama Canal opened December 21, 1938, were as follows:

Graybar Electric Co., Inc.	\$687.00	5%	—10th proximo
The Greene-Wolf Co., Inc.	687.00	5%	—10 days

Clayton Mark & Co.	687.00	5%—10th proximo
Monumental Electrical Supply Co.	638.00	5%—20 days
Steel & Tubes, Inc.	685.80	5%—10 days
Walker Bros.	687.00	5%—10th proximo
Williamsburg Electric Supl. Cor.	666.40	5%—10 days
General Electric Supply Corp.	686.60	5%—10th proximo
National Electric Products Corp.	687.00	5%—10th proximo
E. B. Latham & Co.	686.60	5%—30 days
Garland Mfg. Co.	687.00	5%—30 days
Gertler Elec. Supply Corp.	666.80	5%—10 days
Associated Hardware & Supplies Corp.	656.00	5%—20 days
Youngstown Sheet & Tube Co.	687.00	5%—10th proximo
Electrical Industrial Equipment & Supply Corp.	640.00	5%—10 days
American Electric Supply Co.	687.00	5%—10 days
(Resp. Ex. 12).		

It will be noted that 6 of respondent conduit sellers bid in the above instance. Clayton Mark, Walker Brothers, National Electric, Garland, and Youngstown each bid \$687, and Steel and Tubes, Inc., bid \$685.80.

(b) The effect of this pricing system in securing and maintaining identity of delivered-price quotations and prices in private sales was substantial. RSCA tabulated the percentage of all sales of conduit which were "on card"; that is, which accurately reflected the controlling base prices. In a memorandum circulated by Mr. Booth under date of February 10, 1938, it is stated:

The percentage of tonnage shipped in the month of December on Card 76 by the Industry was 81.46%.

This includes all the thirteen members in the Industry, and compares with 80.86% in the month of November 1937 (Comm. Ex. 496).

The report of the conduit committee of NEWA of its meeting of May 23, 1938, states in part:

You will probably be interested in knowing the manufacturers' report that in the month of March, 1938, 87½% of the rigid iron conduit sold at card 76 (Comm. Ex. 39-D).

Respondent conduit sellers placed evidence in the record indicating the percentage of adherence to card price by individual respondents for particular periods of time. The exact degree of adherence is immaterial, however, since it is clear from the entire record that the percentage of adherence was substantial and at times almost complete. The record also tends to show that departures from card prices were often largely confined to particular and limited areas and did not represent a condition general throughout the country.

(c) In addition to the statistical showing of the results of respondents' plans and activities, appraisals of results expressed in general terms appear in the record. Among these is a letter of December 23, 1938, from respondent Herbert S. Blake to I. A. Bennett summarizing the successes and failures of RSCA under his management and outlining a future course intended to correct the failures and "strengthen the basic value that the Association should be and can be made to be to the Industry * * *." He stated in part:

Major Quinn stated that you desired me to summarize my views as to the status of matters in the rigid steel conduit industry and outline what should be done to deal with the situation more effectively. This is rather a large order to fill by letter, especially as there are many "inside" things that should be said which are not desirable in a letter.

* * * * *

When the Association was reorganized, two years ago, consultation with the important factors in the industry resulted in the establishment of a method of merchandising which at that time was deemed necessary in order to correct the ills of the industry. This plan was based on the view that it was absolutely necessary to control the "secondary" market and the probability of the success of the plan was founded upon the belief that the Distributors of conduit would support the plan whole-heartedly, * * *.

There is no question but what the plan, throughout the period, which followed a most chaotic market condition, did, for some months promote a far greater degree of stability in the industry than had existed for a long time previous, and resulted in earnings which could not otherwise have been achieved. * * *

Mr. Blake then stated that the program failed of continued success because distributors did not give it unqualified support and producers did not maintain their published prices, and said both of these conditions were due to a drop in the aggregate volume of sales because of general business conditions and the incursion of substitute products. He continued:

* * * The force which undermines even an approach to stability in the secondary market is weakness in the primary market and the only manner in which a firm secondary market can be developed is on the basis of certainty on the part of Distributors that the primary market is stable (Comm. Ex. 576-A and B).

In writing Mr. Blake after his resignation, Fretz-Moon stated in part:

It requires only casual observation of what has happened to us since we have lost your leadership to realize the benefits sacrificed by our foolish action in allowing you to withdraw. It is costing us today at least \$5.00 per ton for not following your advice and at this rate the total cost runs into very substantial figures (Comm. Ex. 621).

PAR. 16. (a) In addition to the matters heretofore set out, there are certain facts of a general nature which relate to and are explanatory of the basing-point, delivered-price system used in quoting and selling conduit and of the results flowing from its use. Respondent conduit sellers produce all the conduit manufactured in this country. Conduit is produced by Cohoes at Cohoes, N. Y.; by Enameled Metals at Etna, near Pittsburgh, Pa.; by Fretz-Moon at East Butler, Pa.; by Garland at West Pittsburgh, Pa.; by General Electric at New Kensington, Pa.; by Laclede Steel at Alton, Ill., near St. Louis, Mo.; by National Electric at Ambridge, near Pittsburgh, Pa.; by Spang Chalfant at Etna, Pa.; by Triangle at Moundsville, W. Va.; by Walker Brothers at Conshohocken, near Philadelphia, Pa.; and by Youngstown at Struthers, Ohio, and Indiana Harbor, Ind. The Indiana Harbor plant of Youngstown produces only the large sizes of conduit and not a full line. Clayton Mark, Steelduct, Austin, and Clifton do not manufacture conduit, but sell and distribute conduit manufactured for them and under their own brands by one or more of the producers named above, and Republic, through its Steel and Tubes Division, dis-

tributes Fretz-Moon conduit. Seven of the twelve plants producing conduit are located within the switching limits of Pittsburgh, from which freight rates to other areas are the same although they may differ within the local area.

(b) The Chicago base price of conduit has been consistently maintained at a figure approximately \$4 per ton above the Pittsburgh base price. The area controlled by the Chicago base; that is, the area in which the sum of the Chicago base price plus delivery charge factors is less than the sum of the Pittsburgh base price plus delivery charge factors, is relatively quite small. It controls destination price quotations in Wisconsin, parts of Minnesota, Iowa, Missouri, Illinois, and Indiana, and certain small isolated areas in Wyoming, Colorado, Nevada, New Mexico, and Texas. Prices at all other destinations in the United States are controlled by the Pittsburgh base.

(c) Respondent conduit sellers have consistently published identical price quotations, and such quotations were upon a basing-point, delivered-price basis. With respect to the refusal of conduit sellers to quote true f.o.b. mill prices, occasional exceptions have occurred in the bids made to agencies of the Federal Government when land-grant freight rates were available to such agencies. Some of these exceptions, however, were more apparent than real, in that purported f.o.b. prices were in fact related to base prices or a method of freight equalization was used to eliminate differences resulting from the application of land-grant rates. Also, a conduit seller whose plant is located at a basing point can make sales to purchasers at locations where the price is controlled by such basing point upon an f.o.b. basis without necessarily infringing the basing-point price pattern.

(d) The price of conduit has shown a high degree of rigidity. For example, cards 72 and 82 were each in effect for at least 8 months, card 80 for about 10 months, card 69 for about 12 months, and card 70 for about 18 months. The failure of prices to respond to changing conditions of supply and demand, both locally and nationally, indicates the absence of effective competition. Some of the respondents have contended that the demand for conduit is not affected by price but is dependent upon the total volume of construction work, in which the cost of conduit is but a small factor. In some uses conduit must be installed regardless of price. In many uses, however, some of the products which compete with conduit may be installed in lieu of conduit when the price relationship and relative advantages and disadvantages warrant. A correlation of price changes with total sales of conduit, expressed in terms of percentage of industry capacity to produce, indicates not only that the volume of conduit sales responds to price changes, but also that the price of conduit has been rigid for long periods in the face of rapidly decreasing demand. At the time card 76 was issued in March 1937, increasing the price of conduit approximately 25 percent, total sales approximated 70 percent of the industry capacity to produce. Following this price increase, sales decreased rapidly and amounted to less than 25 percent of industry capacity in July 1938. In that month cards 77 and 78 were issued, the last of which reduced the price to the approximate level existing before card 76 was issued, and in November 1938 card 79 made a further reduction, which was canceled by card 80, issued in December 1938. Beginning with the first price reduction in July 1938, sales slowly and somewhat irregularly increased to about 50 percent of plant capacity in October 1939, when there was a price in-

crease by the issuance of card 81, and this increase was followed by a sharp decline in sales to about 25 percent of plant capacity in February 1940. A price reduction was made by card 82 in February 1940, and this was quickly followed by an increase in sales which reached about 60 percent of industry capacity before the end of 1940.

(e) Not all of the respondent conduit sellers distribute conduit on a national scale. The number and, in part, the identity of the conduit sellers whose products are available in any given section of the country vary as between different sections. Similarly, not all conduit sellers have sales representation at all locations where conduit is sold and the number and, in part, the identity of the conduit sellers whose products are available at any given location vary as between locations. The conduit sellers who actually distribute their products in sections and at locations where other conduit sellers do not seek to make sales are able to, and do, there maintain the basing-point, delivered-price formula as fully and as successfully as if all conduit sellers participated. In occasional instances in particular localities or to particular purchasers one or more conduit sellers, through intent or error, quote or sell conduit at prices which are not in accord with the basing-point delivered prices concurrently offered in the same localities or to the same purchasers by other conduit sellers. In such situations, when two or more but not all conduit sellers adhere to the formula prices, the effects produced by such adherence are similar in character but less in degree than those resulting when all conduit sellers adhere to the formula prices.

PAR. 17. (a) The use by respondent conduit sellers of the pricing formula heretofore described requires each such seller to discriminate among purchasers of conduit by charging some more than others for similar goods, not merely in the sense that the delivered cost to one purchaser is higher than to another by the amount of the difference in actual delivery costs, but through deliberately varying the seller's mill nets in order to quote prices identical with those of competitors at the same destinations according to the pattern established by the formula.

(b) A conduit seller whose mill is not located at a basing point charges fictitious delivery costs to purchasers located in his home town and at all other points where he has a freight advantage as compared with mills located at the controlling basing point, because under the formula generally followed his quotations at all such points amount to the sum of the base price plus the delivery charge factor from the basing point, although in fact the actual delivery cost is less than the delivery charge factor included in the delivered price. On such sales the seller's mill net is higher than the base price by the amount of "phantom freight" charged the purchaser. For example, Laclede Steel quotes prices in St. Louis which represent the sum of the Pittsburgh base price plus the delivery charge factor from Pittsburgh to St. Louis, although in fact the conduit is produced in and delivered from Alton, Ill., a few miles from St. Louis. A similar example is Walker Brothers, which has its plant at Conshohocken, Pennsylvania, a few miles from Philadelphia. This company, nevertheless, quotes prices in Philadelphia equivalent to the sum of the Pittsburgh base price plus the delivery charge factor from Pittsburgh. In one large transaction, Walker Brothers quoted a price in Philadelphia which included approximately \$25,000 in phantom freight. In each such quotation the seller increases his mill net or real price by the exact amount necessary to produce a quotation equivalent to the sum of the controlling base

price plus delivery charge factor from that base to the particular destination.

On the other hand, the conduit seller who is not located at a basing point shrinks his mill net below the controlling base price on sales at destinations where he is at a freight disadvantage as compared with the controlling base. In each such quotation the shrinkage of the mill net, or real price, is the exact amount necessary to produce a quotation equivalent to the sum of the controlling base price plus the delivery charge factor from that base to the particular destination.

(c) In the case of a seller whose plant is located at a basing point, his quotations at all destinations controlled by that base are the sum of the base price plus delivery charge factor from that base to the particular destination. However, when such a seller quotes at destinations controlled by another base, he shrinks his mill net or real price by the exact amount necessary to produce at any such destination a quotation equal to the sum of the controlling base price plus delivery charge factor from that base.

(d) In effect, this pricing pattern amounts to each seller inviting other sellers to share in the available business in his freight-advantage territory in return for the privilege of sharing in the available business in the freight-advantage territory of other sellers. It thus promotes the cross-shipping of conduit with the attendant costs, without tending to increase the total consumption of conduit. It requires the maintenance of a higher price level than would otherwise be necessary, in order that each seller may secure an additional margin on some sales to counterbalance the lower mill nets recovered on other sales, or, in other words, to permit sellers to distribute conduit, a heavy commodity upon which freight charges are substantial, upon a national scale. By denying to some purchasers the advantages of their location with respect to points at which conduit is produced, sellers are enabled to subsidize their own sales to other purchasers who are not so favorably located.

(e) Under the conditions which have existed in the industry each conduit seller has necessarily known that the other conduit sellers used the basing-point, delivered-price system in the sale and distribution of conduit. Aside from the conditions which have existed, it is inevitable that the use of such system by any conduit seller in quoting prices on conduit would come to the knowledge of the other conduit sellers through ordinary trade channels. As a practical matter, it would be impossible for one conduit seller to quote prices in accordance with the basing-point, delivered-price system and conceal that fact from the other conduit sellers.

PAR. 18. (a) In addition to knowledge of the use of the basing-point, delivered-price formula by others, each conduit seller knows that by its use each will be able to quote a price at any given destination identical with the prices quoted by others pursuant to such formula, and thus all users of the formula will be enabled to present to a prospective purchaser a condition of matched prices in which such purchaser is isolated and deprived of any choice on the basis of price. Respondent conduit sellers assert that in matching price quotations with other sellers at any given destination they are "meeting competition." In order to produce such matched prices sellers must, at numerous destinations, increase their mill nets or real prices and at numerous destinations concurrently reduce their mill nets. Such systematic price variations according to the pattern described do not represent competition in the ordinary meaning of that

term. Each participant in the use of this pricing formula consciously intends that no attempt be made to exclude any seller from the natural freight-advantage territory of another and by the use of the formula in effect invites others to share the available business in his natural market in return for a reciprocal invitation.

(b) Respondents' basing-point, delivered-price formula is a pricing system recognized by economists as a controlled price or monopolistic price system and does not in its operation or results conform to the recognized economic principles which indicate the existence of free or effective competition. One of the characteristics of effective competition is that prices readily respond to changing conditions of supply and demand, whereas respondents' system has produced a high degree of price rigidity and at times prices have even moved contrary to what would be expected in a market amenable to the law of supply and demand. The use of the pricing formula produces a condition of mutual dumping inconsistent with the existence of effective competition. The systematic pattern of discriminations among purchasers of conduit would not exist concurrently with effective competition and the use of a formula which produces a condition of matched delivered-price quotations indicates the absence of effective competition.

(c) The economic principle that in a truly competitive market the unit price of a homogenous commodity tends to become approximately uniform does not serve to explain the results of the use of respondents' pricing formula. The tendency toward price uniformity in a free market results from the fact that in the purchase and sale of units of a homogenous commodity in such market, sellers are indifferent as to whose money they get for their commodity and buyers are indifferent as to whose commodity they get for their money. The systematic differences in mill nets accepted by respondent conduit sellers violate the principle of indifference. It is also true that the law of uniform price is limited in its application to prices which eventuate from actual sales and has no application to and cannot explain uniformity of price quotations.

PAR. 19. (a) Pursuant to Count I of the complaint herein, the Commission concludes from the evidence of record, and therefore finds, that the capacity, tendency, and effect of the combination and conspiracy maintained by the respondents named therein 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 conduit in, among, and between the several States of the United States; to deprive purchasers of conduit of the benefits of competition in price; to maintain artificial and monopolistic methods and prices in the sale and distribution of conduit; to prepare and maintain common rate factors and common delivery charge factors or "freight adders" used and useful in determining and establishing price quotations and prices for conduit; to classify purchasers of conduit and determine the treatment to be accorded them; to establish and maintain uniform discounts, terms, and conditions of sale; to determine and control the use of warehouses in the distribution of conduit; to prepare, adopt, and use for the purpose of aiding in price maintenance and control, uniform contracts for distributors and for contractors buying for specific projects, and to enforce the terms of such contracts through investigations and reports thereon; to support and maintain their price structure through the conduct of investigations of sales

and offers to sell, and the circulation of reports thereon; and otherwise to maintain and promote the purposes of their combination and conspiracy to hinder, lessen, and restrain competition in the sale and distribution of conduit.

(b) Pursuant to Count II of the complaint herein, the Commission concludes from the evidence of record, and therefore finds, that the capacity, tendency, and effect of the use by each respondent named therein of the basing-point, delivered-price formula to determine price quotations and prices which will be made to conduit purchasers at any given destination concurrently with similar use of the same pricing formula by other of the said respondents has been, and is, to hinder, lessen, and restrain competition in price in the sale and distribution of conduit; to deprive purchasers of the benefits of competition in price; to unfairly discriminate among purchasers; and to create in each of said respondents a dangerous tendency toward a monopolistic control over price in the sale and distribution of conduit.

CONCLUSION

The aforesaid acts and practices of respondents constitute 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, 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, 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.

It is ordered. That respondent, Rigid Steel Conduit Association, an unincorporated voluntary association, its officers, directors, representatives, agents, and employees, the corporate respondents, Clayton Mark & Company, Cohoes Rolling Mill Company, Enameled Metals Company, Fretz-Moon Tube Company, Inc., General Electric Company, Laclede Steel Company, National Electric Products Corporation, Steelduct Company, Triangle Conduit & Cable Company, Inc., Walker Brothers, Youngstown Sheet and Tube Company, Republic Steel Corporation, M. B. Austin Company, their respective officers, representatives, agents, and employees, in or in connection with the offering for sale, sale, and distribution of rigid steel conduit 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, understanding, agreement, combination, or conspiracy between 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 rigid steel conduit at prices calculated or determined pursuant to or in accordance with the basing-point, delivered-price system; or quoting or selling rigid steel conduit at prices calculated or de-

terminated pursuant to or in accordance with any other plan, system, or formula which produces identical price quotations or prices for rigid steel conduit by respondents using such plan, system, or formula at points of quotation or sale, or to particular purchasers, or which prevents purchasers from finding any advantage in price in dealing with one or more of the respondents as against any of the other respondents.

2. Establishing, fixing, or maintaining prices, terms, or conditions of sale for rigid steel conduit, or adhering to any prices, terms, or conditions of sale so fixed or maintained.

3. Collecting, compiling, circulating, or exchanging information concerning common carrier transportation charges used or to be used as a factor in computing the price of rigid steel conduit; or using, directly or indirectly, any such information so collected, compiled, or received as a factor in computing the price of rigid steel conduit.

4. Collecting, compiling, circulating, or exchanging "freight adders," delivery charge booklets, or other information concerning delivery charges on rigid steel conduit used or to be used as a factor in computing the price of such conduit; or using, directly or indirectly, any such information so collected, compiled, or received as a factor in computing the price of rigid steel conduit.

5. Circulating or exchanging information concerning the classification granted or to be granted to any specific purchaser of rigid steel conduit; or determining upon any basis for the selection or classification of customers, or using any basis so determined for selecting or classifying customers.

6. Determining upon the location, establishment, maintenance, or discontinuance of warehouses or other places for the stocking of supplies of rigid steel conduit.

7. Formulating or adopting consigned stock, specific building, or any other forms of contracts or agreements concerning the sale or distribution of rigid steel conduit, or using any contracts or agreements so formulated or adopted, for the purpose or with the effect of aiding or assisting in arriving at or maintaining uniform prices, terms, or conditions in the sale or distribution of such conduit.

8. Directly or indirectly investigating or checking the prices, quantities, terms, or conditions of any sale or offer to sell rigid steel conduit to any buyer or prospective buyer for the purpose or with the effect of aiding or assisting in maintaining uniform prices, terms, or conditions in the sale of such conduit.

9. Doing or causing any of the things forbidden in the preceding paragraphs of this order to be done through respondents, Charles Donley, Herbert S. Blake, Organization Service Corporation, or any other individual, corporation, or organization.

It is further ordered, That respondent, Charles Donley, an individual, his representatives, agents, and employees, do forthwith cease and desist from knowingly, advising, assisting, or cooperating with the aforesaid respondents, or any of them, in doing any of the things forbidden by paragraph numbered 3 above.

It is further ordered, That respondent, Herbert S. Blake, an individual, his representatives, agents, and employees, and respondent, Organization Service Corporation, a corporation, its officers, representatives, agents, and employees, do forthwith cease and desist from advising, aiding, assisting, or directing the aforesaid respondents in any manner in doing any of

the things forbidden by paragraphs numbered 1 to 8, inclusive, of this order.

It is further ordered, That respondent, The National Electrical Wholesalers Association, an unincorporated association, its officers and members, the officers and members of its conduit committee, and respondents, General Electric Supply Corporation, a corporation, E. B. Latham & Company, a corporation, Graybar Electric Company, Inc., a corporation, Revere Electric Supply Company, a corporation, Kiefer Electrical Supply Company, a corporation, Westinghouse Electric Supply Company, a corporation, Fife Electric Supply Company, Columbian Electrical Company, W. T. McCullough Electric Company, Peerless Electric Supply Company, The Hardware and Supply Company, F. D. Lawrence Electric Company, and The C. S. Mersick and Company, individually, and as such members, their respective officers, representatives, agents, and employees, do forthwith cease and desist from aiding, assisting, or cooperating in any manner with the respondents subject to the provisions of paragraphs numbered 1 to 8, inclusive, of this order, or any of them, in doing any of the things forbidden in said paragraphs.

It is further ordered, That each of the corporate respondents, Clayton Mark & Company, Cohoes Rolling Mill Company, Enameled Metals Company, Fretz-Moon Tube Company, Inc., General Electric Company, Laclede Steel Company, National Electric Products Corporation, Steelduct Company, Triangle Conduit & Cable Company, Inc., Walker Brothers, Youngstown Sheet and Tube Company, Spang Chalfant, Inc., Republic Steel Company, and M. B. Austin Company, their respective officers, representatives, agents, and employees, and respondents, George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway, and Jane Hatheway, copartners, trading as Clifton Conduit Company, their representatives, agents, and employees, in or in connection with the offering for sale, sale, and distribution of rigid steel conduit in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from doing any of the following things for the purpose or with the effect of systematically matching delivered-price quotations with other of said respondents or producing the equivalent of such matched delivered prices through systematic discriminations in the mill nets received on sales to different purchasers:

(a) Quoting or selling rigid steel conduit at prices calculated or determined pursuant to, or in accordance with, the basing-point, delivered-price system.

(b) Quoting or selling rigid steel conduit at delivered prices calculated as, or systematically equivalent to, the sum of the price in effect at, plus a transportation charge factor from, any point other than the actual shipping point.

(c) Quoting or selling rigid steel conduit at delivered prices which systematically reflect the inclusion of a transportation factor greater or less than the actual cost of transportation from point of shipment to destination.

(d) Discriminating among purchasers by quoting or selling rigid steel conduit at prices which systematically differ in terms of mill nets according to the location of purchasers, and which mill nets, plus common carrier transportation charges to the respective locations of such purchasers, pro-

Order

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duce delivered costs identical with those to such purchasers from differently located respondents.

It is further ordered, That, for reasons appearing in the findings as to the facts, the complaint herein be, and the same hereby is, dismissed as to Central Tube Company, Garland Manufacturing Company, Laclede Tube Company (Missouri), Steel and Tubes, Inc., and F. C. Hodgkinson; that Count I of the complaint be, and the same hereby is, dismissed as to respondents, George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway, and Jane Hatheway, copartners, trading as Clifton Conduit Company, and respondent, Spang Chalfant, Inc.; and that Count II of the complaint be, and the same hereby is, dismissed as to respondent General Electric Supply 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.

Complaint

: IN THE MATTER OF

INDIAN RIVER FRUIT & VEGETABLE DISTRIBUTORS, INC.
AND FRANK C. SPADAROCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4730. Complaint, Mar. 16, 1943—Decision, June 6, 1944*

Where a corporation engaged in the packing of citrus fruits and in interstate sale and distribution thereof from its principal place of business at Vero Beach, Fla., in the heart of the Indian River district—citrus fruits of which are believed by many to be of superior flavor and quality—together with its president and general manager, who conducted said business in its name and in his own name—

Represented, through use of corporate name "Indian River Fruit & Vegetable Distributors, Inc.," and through use of words "Indian River" and the Indian head motif on the containers, on labels pasted thereon, and on the individual tissue wrappers, along with aforesaid corporate or trade name and in some cases words "Indian River Citrus Exclusively," that fruit in question was grown in that section of Florida known as the Indian River district, notwithstanding that a substantial part thereof was grown in other parts of Florida;

With effect of misleading and deceiving a substantial portion of the public and causing it to purchase from them substantial quantities of citrus fruits produced outside the Indian River district in the erroneous belief that such fruits were produced within said district:

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. Miles J. Furnas*, trial examiner.

Mr. Robt. N. McMillen for the Commission.

Mr. A. Lloyd Layton, of Jacksonville, Fla., 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 Indian River Fruit & Vegetable Distributors, Inc., a corporation, and Frank C. Spadaro, 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, Indian River Fruit & Vegetable Distributors, Inc., hereinafter referred to as respondent corporation, is a corporation, organized and existing under and by virtue of the laws of the State of Florida, with its office and principal place of business at Vero Beach, in said State. It is now, and for more than two years last past has been, engaged in the business of packing citrus fruits and shipping them from its said place of business to consignees for resale for its account, and to other customers, located in various States of the United States and the District of Columbia. It has maintained a course of trade in said fruits in said commerce.

PAR. 2. Respondent, Frank C. Spadaro, for more than two years has been and is now the President and General Manager of the respondent corporation and has actively controlled and conducted its business and formulated and carried out its business policies and practices, and has conducted the business of packing and shipping citrus fruits in its name and in his own name and as F. C. Spadaro Company, with his place of business at Vero Beach, Fla., from whence he ships and has shipped such fruits to consignees for resale for his account, and to other customers, located in various States of the United States and in the District of Columbia. Said respondent has maintained a course of trade in said fruits in said commerce.

PAR. 3. There is an area in Florida known as the Indian River district, which extends from Daytona Beach on the north to Stuart on the south and from the Atlantic Coast on the east to the swamps on the west. In this area is found a distinctive soil, a heavy hammock soil, which many persons believe produces citrus fruits of superior flavor and quality. There exists a substantial public demand in many markets of the United States for citrus fruits grown in this district. Vero Beach is located in the heart of this district.

PAR. 4. A substantial part of the fruit packed and shipped by respondents in the course of their business, as set forth in Paragraphs One and Two hereof, has been grown in parts of Florida other than the Indian River district; nevertheless, respondents have marked and labeled the crates and other containers in which said fruit was packed and shipped and in which it was intended it should be displayed for sale to the public, and in which it has been and is displayed for sale, as follows:

On the side of the crate appear the following words, in the following arrangement:

Indian River	(In large, red script)
Fruit & Vegetable Distributors, Inc.	(In smaller, blue letters)
Vero Beach, Florida.	(In larger red letters)

Labels pasted on the crates vary, but all have the Indian motif, typical of which is a circular label of an Indian head in colors, with the brand name, such as "Chief Purple Feather," and the name and address of either the respondent corporation or "F. C. Spadaro Company, Vero Beach, Florida." On some of these labels appear, in addition, the words "Indian River Citrus Exclusively" in such position and manner as to constitute a representation that respondents handle Indian River Citrus Fruits exclusively.

The tissue paper in which the individual fruits are wrapped bear an Indian head and the address, "Vero Beach, Florida."

PAR. 5. By the use of the corporate name, "Indian River Fruit & Vegetable Distributors, Inc.," and the labels and marks described and referred to in Paragraph Four hereof, in connection with the packaging and shipment and sale of citrus fruits grown outside the Indian River district, respondents falsely represent and imply and have represented and implied that said fruit was grown in that section of Florida known as the Indian River district.

PAR. 6. The aforesaid acts and practices of respondents have the capacity and tendency to, and do, mislead and deceive a substantial portion of the public and to cause it to purchase and it purchases, substantial quantities of citrus fruits from respondents produced outside the Indian River

district in the erroneous belief that such fruits were produced within said district.

PAR. 7. Said acts and practices are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 16, 1942, issued and subsequently served its complaint in this proceeding upon respondents, Indian River Fruit & Vegetable Distributors, Inc., and Frank C. Spadaro, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On February 7, 1944, a hearing was held in Boston, Massachusetts, and subsequently thereto respondents filed an answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Indian River Fruit & Vegetable Distributors, Inc., hereinafter referred to as respondent corporation, is a corporation, organized and existing under and by virtue of the laws of the State of Florida, and had its office and principal place of business at Vero Beach, in said State. For more than two years prior to the issuance of the complaint, it had been engaged in the business of packing citrus fruits and shipping them from its said place of business to consignees for resale for its account, and to other customers, located in various States of the United States and the District of Columbia. It had maintained a course of trade in said fruits in said commerce.

PAR. 2. Respondent, Frank C. Spadaro, for more than two years prior to 1942 was the president and general manager of the respondent corporation and actively controlled and conducted its business and formulated and carried out its business policies and practices, and conducted the business of packing and shipping citrus fruits in its name and in his own name, and as F. C. Spadaro Company, with his place of business at Vero Beach, Fla., from whence he shipped such fruits to consignees for resale for his account, and to other customers, located in various States of the United States and in the District of Columbia. Said respondent has at all times mentioned herein maintained a course of trade in said fruits in said commerce.

PAR. 3. There is an area in Florida known as the Indian River district, which extends from Daytona Beach on the north to Stuart on the south, and from the Atlantic Coast on the east to the swamps on the west. In this area is found a distinctive soil, a heavy hammock soil, which many persons believe produces citrus fruits of superior flavor and quality. There exists a substantial public demand in many markets of the United

States for citrus fruits grown in this district. Vero Beach is located in the heart of this district.

PAR. 4. A substantial part of the fruit packed and shipped by respondents in the course of their business, as set forth in paragraphs 1 and 2 hereof, had been grown in parts of Florida other than the Indian River district; nevertheless, respondents had marked and labeled the crates and other containers in which said fruit was packed and shipped and in which it was intended it should be displayed for sale to the public, and in which it had been displayed for sale as follows:

On the side of the crate appeared the following words, in the following arrangement:

Indian River	(In large, red script)
Fruit & Vegetable Distributors, Inc.	(In smaller, blue letters)
Vero Beach, Florida.	(In larger red letters)

Labels pasted on the crates varied, but all had the Indian motif, typical of which was a circular label of an Indian head in colors, with the brand name, such as "Chief Purple Feather," and the name and address of either the respondent corporation or "F. C. Spadaro Company, Vero Beach, Florida." On some of these labels appeared, in addition, the words "Indian River Citrus Exclusively" in such position and manner as to constitute a representation that respondents handled Indian River Citrus Fruits exclusively.

The tissue paper in which the individual fruits were wrapped bore an Indian head and the address, "Vero Beach, Florida."

PAR. 5. By the use of the corporate name, "Indian River Fruit & Vegetable Distributors, Inc." and the labels and marks described and referred to in Paragraph Four hereof, in connection with the packaging and shipment and sale of citrus fruits grown outside the Indian River district, respondents falsely represented and implied that said fruit was grown in that section of Florida known as the Indian River district.

PAR. 6. The aforesaid acts and practices of respondents had the capacity and tendency to, and did, mislead and deceive a substantial portion of the public and caused it to purchase substantial quantities of citrus fruits from respondents produced outside the Indian River district in the erroneous belief that such fruits were produced within said district.

CONCLUSION

The aforesaid acts and practices of the respondents, 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 TO CEASE AND DESIST

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

It is ordered, That the respondents, Indian River Fruit and Vegetable Distributors, Inc., its officers, and Frank C. Spadaro, 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 citrus fruits in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(a) Representing in advertisements and on labels, wrappers or otherwise, through the use of the words "Indian River," that the fruit sold and shipped by them is citrus fruit grown and produced in that section of the State of Florida known as the Indian River district, unless and until such fruit has in fact been grown and produced in said district.

(b) Representing, through the use of the words "Indian River Fruits Exclusively," or any other words or phrases of similar import, that all of the citrus fruit handled or sold by respondents was produced in that section of the State of Florida known as the Indian River district, unless and until such is the fact.

(c) Using the words "Indian River" as a part of a corporate or trade name or otherwise, or the picturization of an Indian head, or any other words or picturization indicating the Indian River section of the State of Florida in connection with citrus fruit not produced in that section of the State of Florida known as the Indian River district.

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

Complaint

38 F. T. C.

IN THE MATTER OF

TRANS-PAC SERVICES, INC. AND DORLAND
INTERNATIONAL, INC.

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

Docket 5039. Complaint, Sept. 1, 1943—Decision, June 7, 1944

Where a corporation, engaged in the interstate sale and distribution of its "OCA Pinkovels" and "OCA," together with its advertising agency, in advertisements in newspapers, radio continuities and circulars and other advertising material, all in the Spanish Language—

Represented that said preparation was a remedy and competent and adequate treatment for colds, use of which prevented the developments and complications of a cold, and that it overcame persistent pains in the head and back, and was a new preparation and harmless;

The facts being it had no effect on the treatment of a cold in excess of temporarily alleviating some of the symptoms thereof; could not be depended upon to overcome persistent pains in the head and back, systemic disorders which cannot be successfully treated by an analgesic preparation; ingredients thereof had been used for many years in such products; and it was not harmless in that frequent and continuous use might be dangerous;

With effect of misleading a substantial portion of the purchasing public into the mistaken belief that said representations were true, and into the purchase of substantial quantities of said preparation as a result of such erroneous 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 in commerce.

Mr. William L. Taggart for the Commission.

Vianull & Vianull, of New York City, for Trans-Pac Services, Inc.

Dannenberg & Hazen, of New York City, for Dorland International, Inc.

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 Trans-Pac Services, Inc., a corporation, and Dorland International, 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, Trans-Pac Services, Inc., is a corporation, organized and existing under the laws of the State of New York with its principal place of business located at 233 West 14th Street in the city of New York, State of New York. It is now and has been for more than one year last past engaged in the business of offering for sale and selling a medicinal preparation known and designated as OCA Pinkovels and OCA.

Complaint

Respondent, Dorland International, is a corporation, organized and existing under the laws of the State of Delaware with its principal place of business located in R.C.A. Building, Rockefeller Center, the city and State of New York. This respondent is an advertising agency and as such is engaged in preparing, disseminating and causing to be disseminated advertising matter. It is the advertising representative of the respondent, Trans-Pac Services, Inc., a corporation, and as such aids in the preparation of advertising material used by the respondent, Trans-Pac Services, Inc., and in the dissemination thereof, including the advertising matter hereinafter described and set forth.

The respondents, Trans-Pac Services, Inc., a corporation, and Dorland International, a corporation, act in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 2. The respondent, Trans-Pac Services, Inc., 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. This 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 the aforesaid business, respondents, acting in conjunction and cooperation, as aforesaid, have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said preparation by United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements of 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 United States mails, by advertisements, inserted in newspapers, by radio continuities, and by circulars and other advertising material all in the Spanish language, the English translation of which is as follows:

STOP THAT COLD

BEFORE IT GETS THE BETTER OF YOU!

OCA Pinkovels act quickly—are harmless

A cold is such a little thing. But what consequences it can have! Why run the risk of a serious illness? And, of course, you will not wish to serve as a carrier of cold germs and infect your family, your friends and the public when you sneeze or cough.

Follow the example of thousands of persons. Take OCA Pinkovels at the first sign of a cold. The rapidity of the action of OCA is really surprising! Doctors recommend OCA as the modern relief for ordinary headaches, neuralgia, aching muscles and incipient colds.

Carry OCA with you always. It is harmless and does not create a habit.

Complaint

38 F. T. C.

8 HOURS IN BED
WITHOUT HAVING SLEPT 8 MINUTES!

OCA a New and Rapid Relief for Headache

Is there anything worse than a persistent headache? What would you not give for a few hours of calm repose? But you toss all night, and when you get up in the morning you are—more tired than when you went to bed!

Headaches come from many causes—nervous extenuation, stomach disorders, eye fatigue, excess—but there is an easy, rapid method of obtaining relief. Thousands of men and women take advantage of it.

Doctors recommend OCA Pinkovels not only for simple headaches but for any ordinary pain, whether nervous, muscular or one caused by a cold. OCA acts rapidly! Thousands of persons consider it indispensable.

Carry OCA with you always. It is harmless and does not create a habit.

NO ONE LIKES A PERSON WHO
ALWAYS COMPLAINS

Doctors Recommend OCA Pinkovels

So many women spend their lives complaining of pains which end up by becoming a calamity! Friends avoid them, and even their own family members lose patience with them. And they are worthy of pity, because they are suffering!

It is often a headache, the persistence of which excites your nerves, making you irritable and rendering your tasks and diversions difficult. Or a persistent backache—or severe shoulder pains. You sleep and eat poorly. You feel half dead!

So much suffering may be unnecessary. Why suffer and annoy others with your complaints? Doctors recommend OCA Pinkovels for all ordinary pains, whether of the head, nerves, muscles or from incipient colds. Thousands of women find relief in OCA.

OCA is harmless and does not create a habit.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein respondents represent directly that said preparation is a remedy for and constitutes a competent and adequate treatment for colds; that its use prevents the development and complications of a cold; that it overcomes persistent pains in the head and back; that it is a new preparation and is harmless in use.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, said preparation neither prevents or mitigates a cold, is of no value in preventing the complications of a cold, and has no effect in the treatment of a cold in excess of temporarily alleviating some of the symptoms thereof. Said preparation cannot be depended upon to overcome persistent pains in the head and back. Persistent pains are usually symptomatic of systemic disorders which cannot be successfully treated by an analgesic preparation. Respondent's product is not new. Its various ingredients have been used for many years in analgesic preparations. Said preparation is not harmless. Frequent or continued use may be dangerous.

PAR. 6. The use by the respondents of the foregoing false, misleading and deceptive statements and representations with respect to said preparation 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 into the purchase

of substantial quantities of said preparation as a result of such erroneous or mistaken belief so engendered.

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 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 1st day of September, 1943, issued, and subsequently served its complaint in this proceeding upon respondents, Trans-Pac Services, Inc., a corporation, and Dorland International, Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 28, 1943, Dorland International, Inc., filed its answer herein, and on December 4, 1943, Trans-Pac Services, Inc., filed its answer admitting all the material allegations of fact set forth in said complaint. After the filing of answer by Dorland International, Inc., the Commission, by order entered herein, granted said respondent's motion for permission to withdraw its said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint, except that the acts and practices admitted were limited to those engaged in prior to October 31, 1942, which said substitute answer was duly filed in the office of the Commission. Both of the aforesaid answers waive 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 of Trans-Pac Services, Inc., and the substitute answer of Dorland International, Inc., and the Commission, having duly considered the matter, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Trans-Pac Services, Inc., is a corporation, organized and existing under the laws of the State of New York with its principal place of business located at 233 West 14th Street in the city of New York, State of New York. It is now and has been for more than one year last past engaged in the business of offering for sale and selling a medicinal preparation known and designated as OCA Pinkovels and OCA.

Respondent, Dorland International, Inc., is a corporation, organized and existing under the laws of the State of Delaware with its principal place of business located in R.C.A. Building, Rockefeller Center, in the city and State of New York. This respondent is an advertising agency and as such is engaged in preparing, disseminating and causing to be disseminated advertising matter. It was the advertising representative of the respondent, Trans-Pac Services, Inc., a corporation, and for some time prior to October 31, 1942, aided in the preparation of advertising material used by the respondent, Trans-Pac Services, Inc., and in the dissemination thereof, including the advertising matter hereinafter described and set forth.

The respondents, Trans-Pac Services, Inc., a corporation, and Dorland International, Inc., a corporation, acted in conjunction and cooperation with one another in the performance of the acts and practices hereinafter found.

PAR. 2. The respondent, Trans-Pac Services, Inc., 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. This 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 the aforesaid business, respondents, acting in conjunction and cooperation, as aforesaid, have disseminated and have caused the dissemination of, false advertisements concerning said preparation by United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused 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 United States mails, by advertisements inserted in newspapers, by radio continuities, and by circulars and other advertising material all in the Spanish language, are the following, the English translations of which are as follows:

STOP THAT COLD

BEFORE IT GETS THE BETTER OF YOU!

OCA Pinkovels act quickly—are harmless

A cold is such a little thing. But what consequences it can have! Why run the risk of a serious illness? And, of course, you will not wish to serve as a carrier of cold germs and infect your family, your friends and the public when you sneeze or cough.

Follow the example of thousands of persons. Take OCA Pinkovels at the first sign of a cold. The rapidity of the action of OCA is really surprising! Doctors recommended OCA as the modern relief for ordinary headaches, neuralgia, aching muscles and incipient colds.

Carry OCA with you always. It is harmless and does not create a habit.

8 HOURS IN BED

WITHOUT HAVING SLEPT 8 MINUTES!

OCA a New and Rapid Relief for Headache

Is there anything worse than a persistent headache? What would you not give for a few hours of calm repose? But you toss all night, and when you get up in the morning you are—more tired than when you went to bed!

Headaches come from many causes—nervous extenuation, stomach disorders, eye fatigue, excess—but there is an easy, rapid method of obtaining relief. Thousands of men and women take advantage of it.

Doctors recommend OCA Pinkovels not only for simple headaches but for any ordinary pain, whether nervous, muscular or one caused by a cold. OCA acts rapidly! Thousands of persons consider it indispensable.

Carry OCA with you always. It is harmless and does not create a habit.

NO ONE LIKES A PERSON WHO
ALWAYS COMPLAINS

Doctors Recommend OCA Pinkovels

So many women spend their lives complaining of pains which end up by becoming a calamity! Friends avoid them, and even their own family members lose patience with them. And they are worthy of pity, because they are suffering!

It is often a headache, the persistence of which excites your nerves, making you irritable and rendering your tasks and diversions difficult. Or a persistent backache—or severe shoulder pains. You sleep and eat poorly. You feel half dead!

So much suffering may be unnecessary. Why suffer and annoy others with your complaints? Doctors recommend OCA Pinkovels for all ordinary pains, whether of the head, nerves, muscles or from incipient colds. Thousands of women find relief in OCA.

OCA is harmless and does not create a habit.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein respondents represent that said preparation is a remedy for and constitutes a competent and adequate treatment for colds; that its use prevents the development and complications of a cold; that it overcomes persistent pains in the head and back; that it is a new preparation and is harmless in use.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, said preparation neither prevents nor mitigates a cold, is of no value in preventing the complications of a cold, and has no effect in the treatment of a cold in excess of temporarily alleviating some of the symptoms thereof. Said preparation cannot be depended upon to overcome persistent pains in the head and back. Persistent pains are usually symptomatic of systemic disorders which cannot be successfully treated by an analgesic preparation. Respondent's product is not new. Its various ingredients have been used for many years in analgesic preparations. Said preparation is not harmless. Frequent or continued use may be dangerous.

PAR. 6. The use by the respondents of the foregoing false, misleading and deceptive statements and representations with respect to said preparation 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 into the purchase of substantial quantities of said preparation as a result of such erroneous or mistaken belief so engendered.

CONCLUSION

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

Order

38 F. T. C.

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondents, Trans-Pac Services, Inc., a corporation, and Dorland International, Inc., a corporation, their officers, 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 designated OCA Pinkovels and OCA, or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or any other name or names, 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 advertisement represents, directly or through inference, that said preparation —

(a) Constitutes a competent and effective treatment for colds; will mitigate a cold or prevent the complications of a cold or is of any value in the treatment of a cold in excess of temporarily relieving some of the symptoms thereof.

(b) Can be depended upon to overcome persistent pains in the head or back.

(c) Constitutes a new preparation.

(d) Is safe or harmless in use.

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 respondents' preparation, 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.

Order

IN THE MATTER OF
 AGRICULTURAL INSECTICIDE & FUNGICIDE
 ASSOCIATION ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 4145. Order, June 8, 1944

Order, pursuant to provisions of section 5 (i) of the Federal Trade Commission Act, and in accordance with decrees below referred to, in proceeding in question, in which original order issued on July 24, 1942 in Agricultural Insecticide & Fungicide Association et al., Docket 4145, 35 F. T. C. 201, and in which Circuit Court of Appeals for the Second Circuit, on December 23, 1943 in *Phelps Dodge Refining Corp. et al. v. Federal Trade Commission*, 139 F. (2d) 393, 37 F. T. C. 828, unconditionally affirmed the Commission's order as to the six petitioning corporate respondents, and reversed it as to petitioner Demmon, and thereafter on February 21, 1944 entered decrees in accordance with stipulation entered into by the Commission with the petitioning respondents only—

Modifying, as to said petitioning respondents named, said order, which required respondents therein enjoined, in connection with offer, etc., in commerce, of agricultural insecticides, fungicides, and related chemicals and items for similar usage, to cease and desist from entering into, continuing, directing, instigating, or cooperating in, "any common course of action," mutual agreement, etc., to fix, establish or maintain prices, whether on a delivered basis or otherwise, etc., or to make use of the various other practices as there specified; so that as to aforesaid named respondents the above quoted words are changed to read "cooperating in any agreed or planned common course of action"; and

Dismissing complaint as to respondent Demmon.

ORDER MODIFYING ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers thereto of the several respondents named in the caption hereof, and certain stipulations of additional facts, and respondents having expressly waived all intervening procedure and hearing as to the facts and consented that the Commission may, without any further intervening procedure, make and enter its findings as to the facts, its conclusion based thereon, and its order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act, and having entered its cease and desist order herein on July 24, 1942; and, thereafter, the respondents, Phelps Dodge Refining Corporation, Tennessee Corporation, American Cyanamid & Chemical Corporation, John Powell & Company, Inc., Southern Acid & Sulphur Company, Inc., Stauffer Chemical Company, Inc., and R. Earl Demmon, having filed in the United States Circuit Court of Appeals for the Second Circuit their petitions for a review of the Commission's said order to cease and desist, entered on July 24, 1942; and, thereafter, on December 23, 1943, the said United States Circuit Court of Appeals for the Second Circuit having unconditionally affirmed the Commission's said order to cease and desist as to the said respondents, Phelps

Dodge Refining Corporation, Tennessee Corporation, American Cyanamid & Chemical Corporation, John Powell & Company, Inc., Southern Acid & Sulphur Company, Inc., and Stauffer Chemical Company, Inc., and having reversed the Commission's said order as to the respondent, R. Earl Demmon; and, thereafter a stipulation having been entered into by the Commission, with the petitioning respondents only, that the Commission's said order of July 24, 1942, should be modified to the extent that the language "cooperating in any common course of action" appearing in the Commission's said order to cease and desist entered on July 24, 1942, should be changed to read "cooperating in any agreed or planned common course of action," and thereafter decrees to this effect having been entered on February 21, 1944, with respect to the said petitioners only; now, therefore, in conformity with the decrees entered by the United States Circuit Court for the Second Circuit,

It is ordered, That as to the respondents, Phelps Dodge Refining Corporation, Tennessee Corporation, American Cyanamid & Chemical Corporation, John Powell & Company, Inc., Southern Acid & Sulphur Company, Inc., and Stauffer Chemical Company, Inc., the Commission's said order to cease and desist heretofore entered on July 24, 1942, be and the same hereby is amended and modified to the extent that the language "cooperating in any common course of action" appearing therein be, and the same hereby is changed so as to read "cooperating in any agreed or planned common course of action."

It is further ordered, That the said complaint as to the respondent, R. Earl Demmon be, and the same hereby is dismissed.

It is further ordered, That the Commission's said order to cease and desist as entered herein on July 24, 1942, be and the same hereby is ratified and confirmed in all other respects save and except as herein modified.

Note: The original order (reported with the complaint and findings in 35 F. T. C. 201), follows:

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and a stipulation as to the facts entered into between the respondents herein (except Antiseptic Products Co., Fred L. Lavanburg Co., Lucas Kil-Tone Co., Allegheny Chemical Corporation, and Pittsburgh Plate Glass Co.) and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that the said Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs, and which waives the filing of a report upon the evidence by the trial examiner; 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 said respondent, Agricultural Insecticide & Fungicide Association, its officers, agents, and employees; the following respondent corporations, The Acme White Lead and Color Works, The American Agricultural Chemical Co., The American Cyanamid and Chemical Cor-

poration, The American Nicotine Co., Inc., The California Spray-Chemical Corporation, The Chipman Chemical Co., Inc., George W. Cole and Co., Inc., The Hercules Glue Co., Ltd. (a corporation trading under the name of Colloidal Products Corporation), The Commercial Chemical Co., Derris, Inc., Dow Chemical Co., E. I. duPont de Nemours & Co., Inc., The Latimer-Goodwin Chemical Co., The Niagara Sprayer and Chemical Co., Inc., The Nicotine Production Corporation, John Powell & Co., Inc., The Sherwin-Williams Co., Inc., The Southern Acid & Sulphur Co., Inc., The Stauffer Chemical Co., Inc., The Tobacco By-Products and Chemical Corporation, The J. W. Woolfolk Co., Ansbacher-Siegle Corporation, General Chemical Co., Phelps Dodge Refining Corporation, and Tennessee Corporation, their officers, agents, and employees; and the following individual respondents, R. N. Chipman, L. S. Hitchner, June C. Heitzman, H. D. Whittlesey, H. P. Mansfield, J. B. Cary, J. H. Boyd, A. J. Flebut, R. E. Demmon, G. F. Leonard, G. E. Riches, and J. M. Taylor, general partner, and E. P. Brown and E. W. Parker, special partners, trading as Taylor Chemical Works, Ltd., and their respective representatives, agents, and employees, in connection with the offering for sale or sale and distribution of agricultural insecticides, fungicides, and related chemicals and items for similar uses in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, carrying out, directing, instigating, or cooperating in, any common course of action, mutual agreement, understanding, combination, or conspiracy between and among any two or more of said respondents, with or without the cooperation of others not parties hereto, for the purpose, or with the tendency or effect, of fixing the prices for, or of restricting, restraining, or eliminating competition in, the sale in said commerce of agricultural insecticides, fungicides, or related chemicals and items for similar uses, and from doing any of the following acts and practices pursuant thereto.

1. Fixing, establishing, or maintaining the prices, whether on a delivered basis or otherwise, or the charges at which the products of said respondents are to be sold or offered for sale, or fixing, establishing, or maintaining any method of pricing which deprives buyers of opportunity to obtain more favorable terms from one respondent corporation than from another, or fixing, establishing, or maintaining any discounts, terms, or conditions of sale.

2. Adhering to any price list compiled or distributed by or on behalf of any of the said respondents.

3. Imposing, or attempting or threatening to impose, any penalty on, or coercing, or attempting to coerce by any means, any manufacturer who fails or refuses to adhere to or adopt charges, discounts, terms or conditions of sale, prices, or pricing methods fixed or established by said respondents.

4. Exchanging, distributing, or relaying among respondent members or through respondent Association or any other medium or central agency, price lists or other information showing current or future prices or current or future terms or conditions of sale.

5. Determining or attempting to determine by any means, either directly or indirectly, which purchasers shall be recognized as jobbers of, or as retail dealers in, and thus entitled to certain price differentials on, said products manufactured and sold or offered for sale by said respondents.

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6. Furnishing to the respondent Association, or to any other central medium or agency, any list or lists of jobbers or retail dealers or any classification of customers as jobbers or retail dealers and thus entitled to certain price differentials on products sold or offered for sale by any of the said respondents.

7. Compiling or distributing in any manner, either directly or indirectly, between and among any of the respondents, lists of names or classifications of dealers or users who are to be sold by any of said respondents.

8. Holding or participating in any meetings, discussions, or exchanges of information concerning proposed or future prices, terms or conditions of sale, or concerning any actual or proposed recognition or classification as jobber or retail dealer of any customer to whom the products of any of said respondents are sold or offered for sale.

9. Taking any action for the purpose, or with the effect, of preventing or hindering any dealer or user or any class of dealers or users from obtaining the products manufactured by the respondents, or any of them, at such prices and terms as may be satisfactory between the individual buyer and seller.

10. Continuing or resuming by tacit and common consent among two or more respondents, any practice herein forbidden when such continuation or resumption results in purchasers being prevented from obtaining more favorable prices, terms, or conditions of sale from one of respondent corporations than from the others.

It is further ordered, That the complaint herein be, and it hereby is dismissed as to the following named respondents: Antiseptic Products Co., Fred L. Lavanburg Co., Lucas Kil-Tone Co., Allegheny Chemical Corporation, and Pittsburgh Plate Glass Co.

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

THE PRIME MANUFACTURING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4978. Complaint, June 8, 1943—Decision, June 13, 1944*

Where a corporation engaged in the manufacture and interstate sale and distribution of its "Prime Electric Fence Controller"; in advertising in trade journals, folders, circular letters and other advertising material, directly or by implication—

Falsely represented that its said electric fence controllers were free of trouble; that use thereof ended fencing worries; that said controller was a positive, sure or certain method of confining livestock, and would prevent the escape of livestock under all conditions; and that only an electric fence equipped with a "Prime Electric Fence Controller" was respected by animals;

The facts being it was not the only fence controller respected or feared by livestock, and an electric fence equipped with its electric fence controller would not confine fence breakers without prior and proper training of such animals by causing them to come in contact with the wire or wires charged with electricity, nor confine all livestock and particularly any animal of a size which would permit it to pass readily under or over the wire without contact, nor any animal whose natural covering or coat would serve to insulate it from electric shock at the point of contact with the wire;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and into the purchase of its product because of such mistaken belief:

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

Mr. Jesse D. Kash for the Commission.

Lecher, Michael, Spohn & Best, of Milwaukee, Wis., 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 Prime Manufacturing Company, 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. The Prime Manufacturing Company, is a corporation, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at 1669 S. First Street, Milwaukee, Wis. The respondent is now, and for more than two years last past has been, engaged in the business of manufacturing and selling electric fence controllers, designated "Prime Electric Fence Controller." Respondent causes its said product, when sold, to be transported from its aforesaid place of business in the State of Wisconsin to

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purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said electric fence controllers 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 aforesaid business, and for the purpose of inducing the purchase of its said electric fence controllers, the respondent has circulated, and is now circulating, among prospective purchasers throughout the United States, by United States mails, by advertisements inserted in trade journals, by means of advertising folders, pamphlets, circular letters and other advertising material, distributed generally to prospective purchasers, many false, misleading and deceptive statements and representations concerning its said product. Among and typical of such statements and representations are the following:

PRIME Electric Fence Controller

—a wartime “natural” helping protect your business by giving you merchandise to sell now . . . at a profit . . . without headaches . . . to people who want and need it as never before. * * * The electric fence they use must be safe, dependable, trouble-free. That's where Prime comes in. * * *

No more fence worries.

PRIME Electric Fence Controllers

HOLD ALL of your livestock ALL of the time ALL over the farm.

Prime is the only fence he respects.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others of similar import not specifically set out herein, the respondent has represented, directly or by implication, that its electric fence controllers are free of trouble; that the use of its electric fence controllers ends fencing worries; that it is a positive, sure or certain method of confining livestock, and will prevent the escape of livestock under all conditions; that only an electric fence equipped with a Prime Electric Fence Controller is respected by animals.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's electric fence controllers are not free from trouble and do not end fencing worries; the use of its fence controllers is not a positive, sure or certain method of confining livestock, and will not prevent the escape of livestock under all conditions; it is not the only fence controller respected or feared by livestock. An electric fence equipped with respondent's electric fence controller will not confine fence breakers, and will not confine animals of any kind or nature without prior and proper training of such animals by causing them to come in contact with the wire or wires charged with electricity.

PAR. 6. The use by the respondent of the foregoing false, misleading and deceptive representations and statements with respect to 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 erroneous and mistaken belief that such false statements and representations are true, and into the purchase of respondent's product because of such erroneous and mistaken belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 8, 1943, issued and served its complaint in this proceeding upon the respondent, The Prime Manufacturing Company, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

On July 28, 1943, the respondent filed an answer in this proceeding and thereafter a stipulation was entered into whereby it was stipulated and agreed that the statement of facts signed and executed by the respondent, The Prime Manufacturing Company, by H. E. Wild, President, and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Federal Trade Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto and that said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereof, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs; and the respondent expressly waives the filing of the report upon the evidence by the Trial Examiner. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation. Said stipulation has been approved, accepted and filed and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The Prime Manufacturing Company, is a corporation, existing and doing business under and by virtue of the laws of the State of Wisconsin with its office and principal place of business located at 1667 South First Street, Milwaukee, Wis. The respondent is now and for more than two years last past has been engaged in the business of manufacturing and selling electric fence controllers, designated "Prime Electric Fence Controller." Respondent caused its said product, when sold, to be transported from its aforesaid place of business in the State of Wisconsin to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said electric fence controllers 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 aforesaid business and for the purpose of inducing the purchase of its said electric fence controllers, the respondent has circulated and is now circulating, among prospective purchasers throughout the United States, by United States mails, advertisements inserted in trade journals, by means of advertising folders, pam-

phlets, circular letters and other advertising material, distributed generally to prospective purchasers, many misleading and deceptive representations concerning its said product. Among and typical of such statements and representations are the following:

PRIME Electric Fence Controller—a wartime “natural” helping protect your business by giving you merchandise to sell now . . . at a profit . . . without headaches . . . to people who want and need it as never before. * * * The electric fence they use must be safe, dependable, trouble-free. That’s where Prime comes in. * * *

No more fence worries.

Prime Electric Fence Controllers HOLD ALL of your livestock ALL of the time ALL over the farm.

Prime is the only fence he respects.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others of similar import not specifically set out herein, the respondent has represented, directly or by implication, that its electric fence controllers are free of trouble; that the use of its electric fence controllers ends fencing worries; that it is a positive, sure or certain method of confining livestock, and will prevent the escape of livestock under all conditions; that only an electric fence equipped with a Prime Electric Fence Controller is respected by animals.

PAR. 5. The foregoing representations are grossly exaggerated and misleading. In truth and in fact, respondent’s electric fence controllers are not free from trouble and do not end fencing worries; the use of its fence controllers is not a positive, sure or certain method of confining livestock, and will not prevent the escape of livestock under all conditions; it is not the only fence controller respected or feared by livestock. An electric fence equipped with respondent’s electric fence controller will not confine fence breakers without prior and proper training of such animals by causing them to come in contact with the wire or wires charged with electricity. An electric fence equipped with respondent’s electric fence controller will not confine all livestock and particularly will not confine any animal of a size which would permit it to readily pass under or over the wire without coming in contact with the same, and will not confine any animal whose natural covering or coat would serve to insulate it from electric shock at the probable point of its body that would come in contact with the wire.

PAR. 6. The use by the respondent of the foregoing misleading and deceptive representations and statements with respect to 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 erroneous and mistaken belief that such statements and representations are true, and into the purchase of respondent’s product because of such erroneous and mistaken belief.

CONCLUSION

The foregoing acts and practices of the respondent, The Prime Manufacturing Company, as herein found, are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the stipulation of the facts entered into by the respondent, The Prime Manufacturing Company, 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 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 conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The Prime Manufacturing Company, a corporation, its agents, employees and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of an electric fence controller designated Prime Electric Fence Controller, or any other electric device of similar construction, whether sold under the same 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:

1. That such electric fence controllers are free of trouble.
2. That such controllers eliminate fence worries.
3. That the use of such controllers is a positive or sure method of confining livestock and will prevent the escape of livestock under all conditions.
4. That only a fence equipped with respondent's controller is respected by animals.
5. That the use of such controllers will hold or confine fence breakers without clearly and conspicuously disclosing that such fence breakers must first have received proper training.

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

IN THE MATTER OF

SAMUEL B. SMITH

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

Docket 5030. Complaint, Aug. 18, 1943—Decision, June 13, 1944

Where an individual engaged in interstate sale and distribution of printed mailing cards, designed and intended for use by creditors and collection agencies in obtaining information concerning debtors, which, captioned "Identification" on the detachable stub at the top, followed by words "Identification No." and "Divisional Office," advised addressee to "Please Retain This Stub," called on the part below for his name and address and those of his employer, for his monthly earnings, minimum salary desired, information as to car and home ownership, the number of his dependents, length of time in present position, name and place of employment of spouse, if married, invited him "to describe briefly type of work for which you are best fitted," and gave as return address "Central Clearing Office Occupational Information";

Making use of a plan under which purchasers addressed the cards—identified by numbers he placed thereon—to the persons concerning whom information was sought at their last known address, inserted opposite the words "Divisional Office" a geographical designation such as "Western" or "Central," and stamped and mailed them and he sent to purchasers such reply cards as were filled out and mailed back—

Falsely represented through use of said cards and name "Central Clearing Office Occupational Information," and placed in the hands of his customers means of falsely representing, directly and by implication, to those to whom said cards were sent, that he was engaged in the business of conducting an employment agency and placing individuals in gainful positions;

When in fact the whole scheme was an attempt to obtain by deceit and subterfuge, information for the sole purpose of facilitating the collection of alleged delinquent accounts;

With effect of misleading and deceiving many persons to whom the said cards were sent into the mistaken belief that said representations were true and that the said name truthfully indicated the character of the concern requesting the information, and, by reason thereof, into giving 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.

Before *Mr. Arthur F. Thomas*, 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 Samuel B. Smith, 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, Samuel B. Smith, is an individual, with an office and principal place of business at Room No. 505, United Mine Workers Building, Springfield, Ill. In conducting his business respondent has used the name "Central Clearing House Occupational Information."

PAR. 2. Respondent for a period prior to about May 1, 1943, was engaged in the business of selling and distributing printed mailing cards, designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Respondent caused said cards to be transported from his aforesaid place of business in the State of Illinois to purchasers thereof in various States of the United States and in the District of Columbia. Respondent maintained a course of trade in said cards in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The said cards sold and distributed by respondent were substantially in the form exemplified by a photostatic copy of the said card, marked Exhibit A, attached hereto and by this reference incorporated herein and made a part hereof.¹

Upon said cards 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 to the persons concerning whom information was sought at their last known addresses, inserted opposite the words "Divisional Office" a geographical designation such as "Western" or "Central," attached the postage necessary for their delivery to such persons and deposited them in the United States mails.

Such of the reply cards 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.

PAR. 4. Through the use of the said cards and the use of the name "Central Clearing Office Occupational Information" 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 the business of conducting an employment agency and placing individuals in gainful positions.

PAR. 5. The said representations were false and misleading. In truth and in fact respondent was not engaged in the business of conducting an employment agency or placing individuals in gainful positions. The cards were sent only for the purpose of obtaining information concerning the recipients for the sole purpose of facilitating the collection of alleged delinquent accounts, and the whole scheme was merely an attempt to obtain this information by deceit and subterfuge.

PAR. 6. The use by respondent, as hereinabove set forth, of the foregoing false and misleading statements and designation has had the tendency and capacity to mislead, and has misled and deceived, many persons to whom the said cards were sent into the erroneous and mistaken belief that said statements and designation were true and correct, and by reason thereof to give information which they would not have otherwise supplied.

PAR. 7. The aforesaid acts and practices of respondent, as herein al-

¹ Not published. For identical exhibit included with the findings, see p. 621 infra.

leged, 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 18, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Samuel B. Smith, an individual, 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. Subsequent to the service of the complaint, on February 10, 1944, a hearing for the taking of testimony and other evidence was held at Springfield, Illinois, before Arthur F. Thomas, an examiner of the Commission theretofore duly designated by it, at which hearing respondent admitted all the material allegations of fact set forth in said complaint, and waived further hearing as to the facts and other intervening procedure and agreed that the Commission might enter its order without further hearing. Thereafter the matter came on for final hearing on the complaint, the admission aforesaid, and certain testimony introduced by respondent at said hearing, and duly recorded and filed in the office of 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, Samuel B. Smith, is an individual, with an office and principal place of business at Room No. 505, United Mine Workers Building, Springfield, Ill. In conducting his business respondent has used the name "Central Clearing Office Occupational Information."

PAR. 2. Respondent for a period prior to about May 1, 1943, was engaged in the business of selling and distributing printed mailing cards, designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Respondent caused said cards to be transported from his aforesaid place of business in the State of Illinois to purchasers thereof in various States of the United States and in the District of Columbia. Respondent maintained a course of trade in said cards in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The said cards sold and distributed by respondent were substantially in the form exemplified by a photostatic copy of the said card, marked Exhibit A, attached hereto and by this reference incorporated herein and made a part hereof.

Upon said cards 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 to the persons concerning whom information was sought at their last known addresses, inserted opposite the words "Divisional Office" a geographical designation such as "Western" or "Central," attached the postage necessary for their delivery to such persons and deposited them in the United States mails.

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Findings

IDENTIFICATION

ADDRESSEE, PLEASE
RETAIN THIS STUB

7509

Identification No.
Divisional Office

Name.....
Street.....
City..... State.....
Telephone No.....
Present Monthly Earnings \$.....
Minimum Salary Desired \$.....
Date of Birth.....
Weight..... Height.....
Own Car..... Own Home..... Rent.....
Number of Dependents.....
Now Employed by.....
(Give Name and Address of Present Employer)

How long in this position.....
If married, give name and place of employment of
husband or wife:

Describe briefly type of work for which you are
best fitted:

Do Not Write in This Space
7509
IDENTIFICATION No.

Return to
Central Clearing Office

OCCUPATIONAL INFORMATION
506 Mine Workers Building
SPRINGFIELD, ILLINOIS

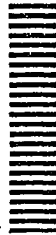
*Ex Bmtly 1.
5-28-43
1-1234
T J McNamee*

ADDRESSEE: Tear Off and Keep
Stub—Mail Card Without Delay



BUSINESS REPLY CARD
First Class Permit No. 679, Sec. 610, P. L. & R., Springfield, Illinois

Central Clearing Office,
OCCUPATIONAL INFORMATION
506 Mine Workers Building
SPRINGFIELD, ILLINOIS



Such of the reply cards 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.

PAR. 4. Through the use of the said cards and the use of the name "Central Clearing Office Occupational Information" 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 the business of conducting an employment agency and placing individuals in gainful positions.

PAR. 5. The said representations were false and misleading. In truth and in fact respondent was not engaged in the business of conducting an employment agency or placing individuals in gainful positions. The cards were sent only for the purpose of obtaining information concerning the recipients for the sole purpose of facilitating the collection of alleged delinquent accounts, and the whole scheme was merely an attempt to obtain this information by deceit and subterfuge.

PAR. 6. The use by respondent, as hereinabove set forth, of the foregoing false and misleading statements, including the use of the name "Central Clearing Office Occupational Information," has had the tendency and capacity to mislead, and has misled and deceived, many persons to whom the said cards were sent into the erroneous and mistaken belief that said statements and designation were true and that the said name truthfully indicated and described the character of the concern making the inquiry and requesting the information, and by reason thereof 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 respondent's admission of all the material allegations of fact set forth in said complaint made at a hearing held at Springfield, Ill., on February 10, 1944, at which hearing respondent waived the filing of the Trial Examiner's report upon the evidence, further hearing as to the facts and other intervening procedure, and agreed that the Commission might make its findings as to the facts and enter its order without further hearing, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Samuel B. Smith, an individual, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of post cards or other mailable matter in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Central Clearing Office Occupational Information," or any other words of similar import, to designate, describe or refer to respondent's business; or otherwise representing, directly or by implication, that respondent's business is that of an employment agency or of placing persons in gainful positions.

2. Selling or distributing post cards or other mailable matter 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

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Order

by means of such devices is for any purpose other than for use in the collection of debts.

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 therewith.

Complaint

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IN THE MATTER OF

STACY WILLIAMS COMPANY, 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 5087. Complaint, Nov. 26, 1943—Decision, June 13, 1944

Where the president of a corporation which was engaged in the manufacture of various types, grades and brands of table syrups and in the purchase, sale and distribution of food products, steel and glass containers, and other commodities, purchasing a large portion of its requirements or such containers, etc., through a second concern; together with the individual who was president, secretary and treasurer of said second concern, as well as secretary and treasurer of said first corporation; and said two corporations, the entire stock of both of which was owned by the two men and their wives—

Received, in connection with their purchases of steel and glass containers and other commodities from numerous sellers in other states, in their own behalf and for their own account for resale, directly or indirectly, brokerage fees or commissions in substantial amounts from such sellers:

Held, That such receipt and acceptance of sums of money—generally referred to as brokerage fees or commissions—from interstate sellers, by aforesaid individuals, and by said concern and corporation, in connection with their respective purchases, was in violation of subsec. (c) of sec. 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Beddow, Ray & Jones, of Birmingham, Ala., for respondents.

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, Stacy Williams, is an individual, residing in the city of Birmingham, Ala., and is president of Stacy Williams Company, Inc., and is also a stockholder in Bennett Brokerage Company, Inc.

Respondent, Claude Bennett, is an individual, residing in the city of Birmingham, Ala., and is president, secretary and treasurer of Bennett Brokerage Company, Inc., and is secretary and treasurer of the Stacy Williams Company, Inc.

Respondent, Bennett Brokerage Company, Inc., is a corporation, organized and existing under the laws of the State of Alabama, with its principal office and place of business located at 221 Fourth Avenue, North, Birmingham, Ala. This organization is a closed corporation, the entire stock of which is owned by respondent, Stacy Williams, and respondent, Claude Bennett, and/or their respective wives. Said respondent company since June 19, 1936, has engaged in negotiating the sale of steel and glass con-

tainers, including tin cans, glass bottles and various other products and commodities. Said respondent's principal customer for such merchandise is the respondent, Stacy Williams Company, Inc., as the respondent, Bennett Brokerage Company, Inc., receives approximately seventy-five percent of its income from brokerage fees or commissions on sales of merchandise to respondent, Stacy Williams Company, Inc.

Respondent, Stacy Williams Company, Inc., is a corporation, organized and existing under the laws of the State of Alabama, with its principal office and place of business located at 221 Fourth Avenue, North, Birmingham, Ala. This organization is a closed corporation, the entire stock of which is owned by Stacy Williams and Claude Bennett and/or their respective wives. Said respondent company is engaged in the business of manufacturing various types, grades and brands of table syrups and also in the purchase, sale and distribution of steel and glass containers, including tin cans, glass bottles and various other products and commodities. Said respondent company has a branch located at Tuscaloosa, Ala., which is principally engaged in the purchase, sale and distribution of food products and other commodities. The respondent, Stacy Williams Company, Inc., purchases a large portion of its requirements of steel and glass containers, including tin cans, glass bottles and various other products and commodities, through the Bennett Brokerage Company, Inc.

PAR. 2. The active management and operation of said respondent corporations are directed from the same private office by respondents, Stacy Williams and Claude Bennett. The same office force is available and is utilized in the operations of both of said respondent corporations. The respective wives exercise no control or direction of the operations of either respondent corporation. The offices of both individual respondents named and of both respondent corporations are located in a building owned by the individual respondents at 221 Fourth Avenue, North, Birmingham, Ala. Respondent, Stacy Williams Company, Inc., has a capital stock of ten thousand dollars, which is divided into one hundred shares of stock with a par value of one hundred dollars each. The stock of this corporation is owned by the following individuals in the amount stated:

Stacy Williams	49 shares
Bessie Williams	1 share
Claude Bennett	49 shares
Lucille Bennett	1 share

Respondent, Bennett Brokerage Company, Inc., has capital stock in the amount of two thousand dollars, which is divided into twenty shares of stock with a par value of one hundred dollars each. The stock is owned by the following individuals in the amount stated:

Claude Bennett	1 share
Lucille Bennett	9 shares
Bessie Williams	10 shares

Thus there is a complete interlocking stock ownership of these two companies, and the income received by both corporations is for the benefit of the respective stockholders. Stacy Williams and Bessie Williams, his wife, own a fifty percent stock interest, and Claude Bennett and Lucille

Bennett, his wife, own the other fifty percent stock interest in respondent, Stacy Williams Company, Inc., and in respondent, Bennett Brokerage Company, Inc.

PAR. 3. Respondents, Stacy Williams, individually and as president of Stacy Williams Company, Inc.; Claude Bennett, individually and as president, secretary and treasurer of Bennett Brokerage Company, Inc.; and as secretary and treasurer of Stacy Williams Company, Inc., Bennett Brokerage Company, Inc., and Stacy Williams Company, Inc.; in the course and conduct of their respective businesses since June 19, 1936, purchased a substantial portion of their requirements of steel and glass containers, including tin cans, glass bottles and various other products and commodities, through the instrumentality of Bennett Brokerage Company, Inc. Such purchases are made from various sellers located in States other than the State in which the respective respondents are located. Pursuant to said purchases and respondents' instructions, said merchandise is shipped and transported by the respective interstate sellers thereof across State lines to the respondents Bennett Brokerage Company, Inc., and Stacy Williams Company, Inc.

PAR. 4. Respondents, Stacy Williams; individually and as president of Stacy Williams Company, Inc.; Claude Bennett, individually and as president, secretary and treasurer of Bennett Brokerage Company, Inc., and secretary and treasurer of Stacy Williams Company, Inc.; Bennett Brokerage Company, Inc., and Stacy Williams Company, Inc., since June 19, 1936, in connection with their purchases of a substantial portion of their requirements of steel and glass containers, including tin cans, glass bottles and various other products and commodities in interstate commerce, in their own behalf and for their own account for resale, have been and are now receiving and accepting, directly or indirectly, brokerage fees or commissions in substantial amounts from numerous interstate sellers of said merchandise.

PAR. 5. A representative, but by no means complete, list of sellers who, since June 19, 1936, have sold and delivered steel and glass containers, including tin cans, glass bottles and various other products and commodities to respondents, Stacy Williams, Claude Bennett, Stacy Williams Company, Inc., and Bennett Brokerage Company, Inc., and who have allowed, granted and paid, directly or indirectly, to each of said respondents brokerage fees or commissions on such purchases and sales, is as follows:

National Can Corporation, New York, N. Y.
Clinton Company, Clinton, Iowa.
Ruggles & Rademaker Salt Company, Manistee, Mich.
Continental Can Company, Memphis, Tenn.
Knox Glass Bottle Company, Jackson, Miss.

PAR. 6. The receipt and acceptance of sums of money generally referred to as brokerage fees or commissions from interstate sellers since June 19, 1936, by Stacy Williams, individually and as president of the Stacy Williams Company, Inc.; by Claude Bennett, individually and as president, secretary and treasurer of the Bennett Brokerage Company, Inc., and secretary and treasurer of the Stacy Williams Company, Inc.; by Bennett Brokerage Company, Inc., and by Stacy Williams Company, Inc., in connection with their respective purchases and sales of steel and glass con-

tainers, including tin cans, glass bottles and various other products and commodities by said respondents, is in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

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 November 26, 1943, issued and thereafter served its complaint in this proceeding upon the parties respondent 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 on November 26 1943, and the filing of the respondents' answer on December 20, 1943, the Commission, by order entered herein, granted respondents' motion for petition to file a supplemental answer, which supplemental answer was duly filed on January 11, 1944, and in said answer and supplemental answer each of the respondents admitted all material allegations of fact set forth in said complaint and waived all intervening procedure, further hearings as to said facts, and expressly waived the filing of briefs and oral argument. The respondents in their answer, however, further alleged that since the complaint was issued they have taken the necessary steps to discontinue the practices complained of. Thereafter this proceeding came on for final hearing before the Commission on said complaint, answer and supplemental answer, 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, Stacy Williams, is an individual, residing in the city of Birmingham, Ala., and is president of Stacy Williams Company, Inc., and is also a stockholder in Bennett Brokerage Company, Inc.

Respondent, Claude Bennett, is an individual, residing in the city of Birmingham, Ala., and is president, secretary and treasurer of Bennett Brokerage Company, Inc., and is secretary and treasurer of the Stacy Williams Company, Inc.

Respondent, Bennett Brokerage Company, Inc., is a corporation, organized and existing under the laws of the State of Alabama, with its principal office and place of business located at 221 Fourth Avenue, North, Birmingham, Ala. This organization is a closed corporation, the entire stock of which is owned by respondent, Stacy Williams, and respondent, Claude Bennett, and/or their respective wives. Said respondent company since June 19, 1936, has engaged in negotiating the sale of steel and glass containers, including tin cans, glass bottles and various other products and commodities. Said respondent's principal customer for such merchandise is the respondent, Stacy Williams Company, Inc., as the respondent, Bennett Brokerage Company, Inc., receives approximately seventy-five percent of its income from brokerage fees or commissions on sales of merchandise to respondent, Stacy Williams Company, Inc.

Respondent, Stacy Williams Company, Inc., is a corporation, organized and existing under the laws of the State of Alabama, with its principal office and place of business located at 221 Fourth Avenue, North, Birmingham, Ala. This organization is a closed corporation, the entire stock of which is owned by Stacy Williams and Claude Bennett and/or their respective wives. Said respondent company is engaged in the business of manufacturing various types, grades and brands of table syrups and also in the purchase, sale and distribution of steel and glass containers, including tin cans, glass bottles and various other products and commodities. Said respondent company has a branch located at Tuscaloosa, Alabama, which is principally engaged in the purchase, sale and distribution of food products and other commodities. The respondent, Stacy Williams Company, Inc., purchases a large portion of its requirements of steel and glass containers, including tin cans, glass bottles and various other products and commodities, through the Bennett Brokerage Company, Inc.

PAR. 2. The active management and operation of said respondent corporations are directed from the same private office by respondents, Stacy Williams and Claude Bennett. The same office force is available and is utilized in the operations of both of said respondent corporations. The respective wives exercise no control or direction of the operations of either respondent corporations. The offices of both individual respondents named and of both respondent corporations are located in a building owned by the individual respondents at 221 Fourth Avenue, North, Birmingham, Ala. Respondent, Stacy Williams Company, Inc., has a capital stock of ten thousand dollars, which is divided into one hundred shares of stock with a par value of one hundred dollars each. The stock of this corporation is owned by the following individuals in the amount stated:

Stacy Williams	49 shares
Bessie Williams	1 share
Claude Bennett	49 shares
Lucille Bennett	1 share

Respondent, Bennett Brokerage Company, Inc., has capital stock in the amount of two thousand dollars, which is divided into twenty shares of stock with a par value of one hundred dollars each. The stock is owned by the following individuals in the amount stated:

Claude Bennett	1 share
Lucille Bennett	9 shares
Bessie Williams	10 shares

Thus, there is a complete interlocking stock ownership of these two companies, and the income received by both corporations is for the benefit of the respective stockholders. Stacy Williams and Bessie Williams, his wife, own a fifty percent stock interest, and Claude Bennett and Lucille Bennett, his wife, own the other fifty percent stock interest in respondent, Stacy Williams Company, Inc., and in respondent, Bennett Brokerage Company, Inc.

PAR. 3. Respondents, Stacy Williams, individually and as president of Stacy Williams Company, Inc.; Claude Bennett, individually and as president, secretary and treasurer of Bennett Brokerage Company, Inc., and as secretary and treasurer of Stacy Williams Company, Inc.; Bennett

Brokerage Company, Inc., and Stacy Williams Company, Inc., in the course and conduct of their respective businesses since June 19, 1936, purchased a substantial portion of their requirements of steel and glass containers, including tin cans, glass bottles and various other products and commodities, through the instrumentality of Bennett Brokerage Company, Inc. Such purchases are made from various sellers located in States other than the State in which the respective respondents are located. Pursuant to said purchases and respondents' instructions, said merchandise is shipped and transported by the respective interstate sellers thereof across State lines to the respondents, Bennett Brokerage Company, Inc., and Stacy Williams Company, Inc.

PAR. 4. Respondents, Stacy Williams, individually and as president of Stacy Williams Company, Inc.; Claude Bennett, individually and as president, secretary and treasurer of Bennett Brokerage Company, Inc., and secretary and treasurer of Stacy Williams Company, Inc.; Bennett Brokerage Company, Inc., and Stacy Williams Company, Inc., since June 19, 1936, in connection with their purchases of a substantial portion of their requirements of steel and glass containers, including tin cans, glass bottles and various other products and commodities in interstate commerce, in their own behalf and for their own account for resale, have been and are now receiving and accepting, directly or indirectly, brokerage fees or commissions in substantial amounts from numerous interstate sellers of said merchandise.

PAR. 5. A representative, but by no means complete list of sellers who, since June 19, 1936, have sold and delivered steel and glass containers, including tin cans, glass bottles and various other products and commodities to respondents, Stacy Williams, Claude Bennett, Stacy Williams Company, Inc., and Bennett Brokerage Company, Inc., and who have allowed, granted and paid, directly or indirectly, to each of said respondents brokerage fees or commissions on such purchases and sales, is as follows:

National Can Corporation, New York, N. Y.
Clinton Company, Clinton, Iowa.
Ruggles & Rademaker Salt Company, Manistee, Mich.
Continental Can Company, Memphis, Tenn.
Knox Glass Bottle Company, Jackson, Miss.

CONCLUSION

The receipt and acceptance of sums of money generally referred to as brokerage fees or commissions from interstate sellers since June 19, 1936, by Stacy Williams, individually and as president of the Stacy Williams Company, Inc.; by Claude Bennett, individually and as president, secretary and treasurer of the Bennett Brokerage Company, Inc., and secretary and treasurer of the Stacy Williams Company, Inc.; by Bennett Brokerage Company, Inc., and by Stacy Williams Company, Inc., in connection with their respective purchases and sales of steel and glass containers, including tin cans, glass bottles and various other products and commodities by said respondents, is found by the Commission to be in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer and supplemental

Order

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answer of the respondents, which supplemental answer admits all the material allegations of the complaint to be true and waives all other 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 subsection (c) of Section 2 of "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 of June 19, 1936 (Robinson-Patman Act).

It is ordered, That the respondents, Stacy Williams, individually and as president of Stacy Williams Company, Inc.; Claude Bennett, individually and as president, secretary, and treasurer of Bennett Brokerage Company, Inc., and secretary and treasurer of Stacy Williams Company, Inc., and their respective representatives, agents, and employees; and respondents, Bennett Brokerage Company, Inc., a corporation; and Stacy Williams Company, Inc., a corporation, and their respective officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the purchase by the respondents, or any of them of their requirements of steel or glass containers, including tin cans, glass bottles, and various other products and 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 any seller anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon purchases of steel or glass containers, tin cans, glass bottles, and various other products and commodities made by the respondents or for their account.

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 and have complied with this order.

Complaint

IN THE MATTER OF

ATLANTIC CITY WHOLESALE DRUG COMPANY ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (f) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY ACT OF JUNE 19, 1936

Docket 4957. Complaint, May 3, 1943—Decision, June 14, 1944

- Where a corporation and two individuals, its president and sales and advertising manager, respectively, engaged in the wholesale drug business in competition with others similarly engaged, and in publishing a magazine, not as an independent business operated in good faith on a profit basis, but as a subterfuge knowingly designed and operated to induce prices which discriminated in its favor in the purchase of drugs, cosmetics and other merchandise—
- Induced manufacturers and sellers to enter into contracts with them for advertisements in said magazine, value of which was insubstantial, on the agreement or understanding that the charges made for such advertising—which was uniform neither as to amount required nor price charged therefor—would be credited upon their purchases from such manufacturers and sellers, and refused to make purchases from manufacturers or sellers unless they purchased such advertising;
- With result that they thereby obtained discriminations in price amounting to differentials in their favor of from 20 percent to about 40 percent less than their competitors paid such sellers for merchandise of like grade and quality, and were thus enabled to and did resell such products at prices substantially less than those charged by the manufacturers and distributors of such products to the same classes of customers;
- Effect of which discriminations in price induced and received by them was substantially to lessen competition and to tend to create a monopoly in the sale and distribution of drug products and to injure, destroy, and prevent competition between said corporation and its customers on the one hand and their competitors on the other hand and between and among customers of each:
- Held*, That such acts and practices, under the circumstances set forth, were in violation of Sec. 2 (f) of an Act of Congress approved October 15, 1914, as amended by an Act of Congress approved June 19, 1936.

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

Mr. Edward S. Ragsdale for the Commission.

Frank & Frank, of New York City, for Atlantic City Wholesale Drug Co. and Roy H. Cochran.

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 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. The respondent, Atlantic City Wholesale Drug Company, is a corporation, organized and existing under the laws of the State

of New Jersey, having its office and principal place of business in the Boardwalk National Arcade Building, Atlantic City, N. J.

The individual respondent, Roy H. Cochran, is president of the respondent corporation, and is now, and for the last several years has been, in active and direct charge of the management and operation of said respondent corporation.

The individual respondent, Rodney S. Pullen, Jr., is now, and was during several periods of time since June 19, 1936, actively engaged with Roy H. Cochran in the operation of the respondent corporation, and for a period of such time was sales and advertising manager of the respondent corporation.

PAR. 2. The respondent corporation, with the active cooperation, aid and assistance of the individual respondents, is now and has been since June 19, 1936, engaged in the wholesale drug business and has bought, sold and distributed in interstate commerce, drugs, cosmetics and other merchandise for its own account, and during this period of time, in the course and conduct of said business, has been in substantial competition with other corporations, individuals, partnerships and firms similarly engaged in the business of buying, selling and distributing drugs, cosmetics and other merchandise in interstate commerce.

PAR. 3. Each of the respondents and the competitors of respondents buy said drugs, cosmetics and other merchandise from a large number of manufacturers, jobbers, importers and distributors (hereinafter called sellers), located in the various States of the United States. Each of said sellers sells and distributes drugs, cosmetics, or other merchandise in commerce between and among the various States of the United States and the District of Columbia and cause said drugs, cosmetics and other merchandise to be shipped and transported from their respective places of business in the various States of the United States to the respondent corporation at its principal place of business in Atlantic City, N. J., and to competitors of said respondent and to competitors' customers located in various States of the United States and the District of Columbia. The respondents and the respondents' competitors resell and distribute said drugs, cosmetics and other merchandise in commerce between and among the various States of the United States and the District of Columbia.

PAR. 4. The respondent corporation, since June 19, 1936, with the active cooperation, aid and assistance of the individual respondents, has adopted, followed and pursued purchasing policies and practices which were knowingly designed and intended to induce, and did induce, discriminatory prices favorable to the respondent corporation in its purchases of said drugs, cosmetics and other merchandise.

The parties respondent, pursuant to and in furtherance of said purchasing policy and practices, have caused a magazine to be published, first under the trade name of Shore Topics, the name of which was thereafter changed to the Boardwalker (both of the magazines are hereinafter referred to as the magazine). The magazine has been issued under one name or the other at irregular intervals, but usually twelve issues are published each year. The publication of the aforesaid magazines is not an independent business operated in good faith on a profit basis, but is a subterfuge, knowingly designed and operated solely as an incident to the wholesale drug business and operated by the respondents primarily as an instrument for obtaining discriminations in prices on drugs, cosmetics and other merchandise.

Since June 19, 1936, numerous sellers have been induced, and are being induced, to enter into contracts or agreements authorizing advertisements to be inserted in the magazine, which contracts or agreements either provide, or it is so understood and so carried out, that the charges made for said advertisements shall be credited on the purchase price of the drugs, cosmetics and other merchandise purchased by the respondent corporation from such sellers. The respondents refuse to purchase said drugs, cosmetics or other merchandise from said sellers unless such sellers purchase advertising in its magazine and all, or a very large percentage, of the drug, cosmetics and other merchandise purchased by respondents is purchased only from sellers who advertise in respondents' magazine. The respondent corporation, with the cooperation, aid and assistance of the individual respondents, receives information as to the prices paid by its competitors to said sellers for said drugs, cosmetics or other merchandise and knowingly induces said sellers to grant it substantially lower and discriminatory prices by refusing to purchase said drugs, cosmetics or other merchandise from said sellers unless said sellers pay to respondent corporation a substantial portion of the regular purchase prices of said merchandise for advertising in respondents' magazine.

The discriminations in price which favor the respondents are not uniform on all drugs, cosmetics or other merchandise purchased, or from each seller, varying either with drugs, cosmetics and other merchandise, or with the sellers. As a result, the respondents pay said sellers from approximately twenty percent to approximately forty percent less than respondents' competitors pay said sellers for drugs, cosmetics and other merchandise of like grade and quality. The magazine had no real value as an advertising medium and there were no substantial benefits and considerations accruing to sellers who enter into contracts for such advertising with the respondents and who agree to pay and do pay respondents, directly or indirectly, for such advertising or by granting and allowing credits, discounts and allowances to the respondents on respondents' purchases of drugs, cosmetics and other merchandise.

PAR. 5. The effect of said discriminations in price, as set forth above, may be substantially to lessen competition, in the line of commerce in which the respondents and their competitors are engaged, and to injure, destroy, or prevent competition with respondents, in the resale of said drugs, cosmetics and other merchandise of like grade and quality purchased from said sellers.

PAR. 6. The foregoing alleged acts of each of said respondents are a violation of Section 2 (f) of the said Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U.S.C. Title 15, Sec. 13) and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid act, the Federal Trade Com-

mission, on May 3, 1943, issued and subsequently served its complaint upon the respondents, Atlantic City Wholesale Drug Company, a corporation, Roy H. Cochran, individually and as president of Atlantic City Wholesale Drug Company, and Rodney S. Pullen, Jr., individually and as sales and advertising manager of Atlantic City Wholesale Drug Company, charging them with violating the provisions of subsection (f) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act. After the issuance of said complaint and the filing of the answers of respondents, Atlantic City Wholesale Drug Company, a corporation, and Roy H. Cochran, an individual, thereto, testimony and other evidence in support of 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, and report of the trial examiner upon the evidence and exceptions filed thereto (no brief having been filed by attorney for the Commission or attorney for the 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 respondent, Atlantic City Wholesale Drug Company, is a corporation, organized and existing under the laws of the State of New Jersey, having its office and principal place of business in the Boardwalk National Arcade Building, Atlantic City, N. J. Respondent, Roy H. Cochran, who resides at 5011 Ventnor Avenue, Ventnor, N. J., is an individual and was president of respondent corporation and was in active and direct charge of the management and operation of said corporate respondent. Respondent, Rodney S. Pullen, Jr., whose present address is 241 Moss Avenue, Oakland, Calif., is an individual and at various periods of time since June 19, 1936, was actively engaged with respondent Roy H. Cochran in the operation of respondent corporation and for a period of such time was sales and advertising manager of respondent corporation.

The individual respondents, during the times herein mentioned, have had dominant control of the business activities of said corporate respondent. All of the respondents have acted in conjunction and cooperation with each other in doing the acts and practices hereinafter described.

PAR. 2. The respondents, since June 19, 1936, have been engaged in the wholesale drug business and have bought, sold, and distributed drugs, cosmetics, and other merchandise for their own account in commerce among and between the various States of the United States, and in the course and conduct of said business have been in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of buying and selling drugs, cosmetics, and other merchandise in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of said business, the respondents purchased drugs, cosmetics, and other merchandise from various manu-

facturers, jobbers, importers, and distributors located in various States of the United States, which said merchandise was shipped by the sellers thereof to the respondents at their place of business in Atlantic City, N. J., and the respondents, in turn, resold and distributed said drugs, cosmetics, and other merchandise to purchasers thereof located in various States other than the State of New Jersey.

PAR. 4. The respondent corporation, since June 19, 1936, with the active cooperation, aid, and assistance of the individual respondents, has adopted, followed, and pursued purchasing policies and practices which were knowingly designed and intended to induce, and did induce, discriminatory prices favorable to the respondent corporation in its purchases of drugs, cosmetics, and other merchandise of like grade and quality to those purchased by competing purchasers.

PAR. 5. The respondents, pursuant to and in furtherance of said purchasing policy and practices, caused a magazine to be published, first under the trade name of "Shore Topics," which name was later changed to "The Boardwalker." Manufacturers and sellers were induced to enter into contracts or agreements authorizing advertisements to be inserted in said magazine, which contracts or agreements either provided, or it was so understood and so carried out, that the charges made for said advertisements were to be credited on the purchase price of the drugs, cosmetics, and other merchandise purchased by respondents from such manufacturers and sellers.

In carrying out their purchasing policies and practices, the respondents refused to purchase drugs, cosmetics, and other merchandise from the manufacturers or sellers thereof unless such manufacturers or sellers purchased advertising in respondents' magazine, and all or a very large percentage of the drugs, cosmetics, and other merchandise purchased by respondents was purchased only from manufacturers or sellers who advertised in respondents' magazine.

The amount of advertising which the respondents required the manufacturer or seller to purchase and credit upon sales made to the respondents was not uniform, and the prices charged by the respondents for advertising space in said magazine varied as between advertisers.

PAR. 6. The Commission finds that the publication of respondents' magazine was not an independent business operated in good faith on a profit basis but was a subterfuge knowingly designed and operated solely as an incident to their wholesale drug business and was operated by respondents primarily as an instrument for obtaining discriminations in price favorable to them from manufacturers and sellers of drugs, cosmetics, and other merchandise. Respondents' magazine had no substantial value as an advertising medium, and there were no substantial benefits or considerations accruing to manufacturers and sellers who entered into contracts for such advertising with the respondents and who agreed to pay, and did pay, the respondents directly or indirectly for such advertising by granting and allowing credits, discounts, and allowances to respondents on respondents' purchases of drugs, cosmetics, and other merchandise.

PAR. 7. The discriminations in price thus obtained by the respondents were substantial, amounting to differentials in favor of respondents of from 20 percent to approximately 40 percent less than respondents' competitors paid said sellers for drugs, cosmetics, and other merchandise of like grade and quality, and as a result thereof it was possible for the respondents to, and they did, resell such drugs, cosmetics, and other mer-

chandise to retail dealers and other purchasers at prices substantially less than those charged by the manufacturers and distributors of such products to the same classes of customers.

PAR. 8. The effect of the aforesaid discriminations in price induced and received by the respondents has been substantially to lessen competition and to tend to create a monopoly in the sale and distribution of drug products and to injure, destroy, and prevent competition between and among the corporate respondent and its customers on the one hand and their competitors on the other hand and between and among customers of each.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are in violation of Section 2(f) of said Act of Congress approved June 19, 1936, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of respondents, Atlantic City Wholesale Drug Company, a corporation, and Roy H. Cochran, individually and as president of said corporate respondent, testimony and other evidence in support of the allegations of said complaint, and report of the trial examiner upon the evidence and exceptions filed thereto; and the Commission having made its findings as to the facts and its conclusion that the respondent, Atlantic City Wholesale Drug Company, a corporation, and the individual respondents, Roy H. Cochran and Rodney S. Pullen, Jr., have violated subsection (f) of Section 2 of "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 of June 19, 1936 (Robinson-Patman Act).

It is ordered, That the respondent, Atlantic City Wholesale Drug Company, a corporation, and its officers, representatives, agents, and employees, and the individual respondents, Roy H. Cochran and Rodney S. Pullen, Jr., and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the purchase of drugs, cosmetics, and other merchandise by the respondents, or any of them, in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Inducing sellers to contract for or purchase advertising space in any magazine or publication published by the respondents, or any of them, at prices greater than the actual value of such space as an advertising medium to the sellers paying therefor.

2. Inducing sellers to discriminate in price between the respondents, or any of them, and other purchasers of commodities of like grade and quality by granting, allowing, or paying to said respondents, or any of them, any advertising allowances or anything of value in lieu thereof which is not granted by such sellers to all other customers on proportionately equal terms.

Order

3. Receiving and accepting any discriminatory price or the benefit of any discrimination in price obtained in the manner set forth in, and prohibited by, this order.

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

38 F. T. C.

IN THE MATTER OF
 JAMES JEBAILY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT APPROVED SEPT. 26, 1914, AND THE WOOL PRODUCTS LABELING ACT OF 1939, APPROVED OCT. 14, 1940.

Docket 5066. Complaint, Oct. 21, 1943—Decision, June 14, 1944

Where a corporation engaged in the manufacture of women's robes, housecoats, pajamas and other articles of wearing apparel, some of which were made from rayon and some from fabrics composed of rayon and other fibers—

- (a) Misleadingly and deceptively failed to inform the purchasing public in words familiar to it that certain articles of women's clothing, and outer and inner linings of others simulating fabrics of silk, product of the cocoon of the silk worm, were not made from silk but from rayon, whereby many members of said public were led to believe that articles in question were composed of silk;
- (b) Misleadingly and deceptively designated certain of aforesaid clothing in advertisements as "taffeta," "crepe" and "satin," accompanied in many instances by word "Celanese," but without accompanying the same with words familiar to the purchasing public disclosing fact that fabrics in question were not composed of silk which, as aforesaid, they resembled, but of rayon, whereby many members of said public were led to believe that such fabrics were silk;

With effect of misleading and deceiving wholesale and retail purchasers of its said clothing, and members of the purchasing public, as to the fiber content thereof, and of placing in the hands of said dealers a means and instrumentality whereby they might and did mislead and deceive the purchasing public as to the fiber content of said clothing, as a result of which substantial quantities of its products were purchased as composed wholly of silk;

- (c) Sold certain products composed in whole or in part of wool, reprocessed wool, or reused wool, misbranded in violation of the Wool Products Labeling Act of 1939 in that they did not have affixed thereto a stamp, tag, etc. showing the percentage of the total fiber weight of wool, reprocessed wool, reused wool and non-wool fiber, and maximum percentage of adulterating matter; and proper identification of the manufacturer, seller, etc. subject to the Act:

Held, That such acts, practices and methods, 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 acts concerned.

Mr. DeWitt T. Puckett for the Commission.

Rigby, Leon & Weill, of New York City, for respondent.

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 James Jebaily, Inc., a corporation, hereinafter referred to as respondent, has 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. Respondent, James Jebaily, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, and has its principal office and place of business at 36 East 31st Street, New York, N. Y.

PAR. 2. Respondent is now and for more than one year last past has been engaged in manufacturing women's robes, housecoats, pajamas and various other articles of wearing apparel. Some of said articles are manufactured wholly from fabrics composed of rayon, while others are manufactured from rayon fabrics and other fabrics composed of fibers other than rayon. Some of said articles of clothing are referred to and described by the respondent as "Celanese."

Respondent causes its said clothing, when sold, to be transported from its place 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. Respondent maintains and for several years last past has maintained a course and current 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. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate silk and, when so manufactured, it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk. By reason of these qualities rayon is, when manufactured to simulate silk and not designated as rayon, readily believed to be and accepted by the purchasing public as being silk, the product of the cocoon of the silk worm.

PAR. 4. Products manufactured from silk, the product of the cocoon of the silk worm, have for many years held and still hold a great public esteem and confidence because of their outstanding qualities. Such fibers have long been woven into a variety of fabrics and distinctive terms well-known to and understood by the purchasing public have been applied to such silk fabrics as designating the different types of weaving. Among the terms well-known to and understood by the purchasing public as designating a type of fabric woven from silk are "taffeta," "crepe," and "satin." The use of these terms to designate, describe or refer to fabrics having the texture and appearance of silk is understood by the purchasing public to indicate that the fabrics are composed of silk, unless such terms are accompanied by words familiar to the purchasing public indicating clearly that such fabrics are not composed of silk but of fibers other than the product of the cocoon of the silk worm.

PAR. 5. The respondent manufactures and sells and distributes in commerce as aforesaid women's clothing composed wholly of rayon fibers and also articles of clothing the outer lining and inner lining of which are composed of rayon fibers, which linings and materials simulate in texture and appearance fabrics composed of silk, the product of the cocoon of the silk worm. The respondent does not inform the purchasing public of the fact that said articles of wearing apparel which resemble silk in texture and appearance are not made from silk but from rayon.

The practice of the respondent in offering for sale and selling clothing manufactured, in whole or in part, of rayon and which resemble in texture and appearance fabrics manufactured from silk in commerce as aforesaid, without disclosing in words familiar to the purchasing public the fact that said articles of clothing are composed, in whole or in part, of rayon, is misleading and deceptive, and many members of the purchasing public are

thereby led to believe that said articles of clothing are composed of silk, the product of the cocoon of the silk worm.

PAR. 6. The respondent in connection with offering for sale and selling its said articles of clothing composed wholly of rayon and clothing composed in part of rayon, which clothing resembles in texture and appearance fabrics manufactured from silk, the product of the cocoon of the silk worm, in commerce as aforesaid, in advertisements circulated among the purchasing public, designates, describes and refers to certain of said clothing as "taffeta," "crepe" and "satin" and does not accompany such words with words familiar to the purchasing public which disclose the fact that said fabrics are not composed of silk, the product of the cocoon of the silk worm, but of rayon. In many instances said terms are accompanied by the word "Celanese," but this term is not sufficiently well-known and understood by the purchasing public to inform it that the fabrics designated, described and referred to as aforesaid are made from fibers other than silk, to wit, rayon. The use by the respondent of the terms "taffeta," "crepe" and "satin," either alone or when accompanied by the term or word "Celanese" in designating, describing, or referring to said fabrics resembling silk but composed of rayon, is misleading and deceptive and causes many members of the purchasing public to believe that the said fabrics are composed of silk, the product of the cocoon of the silk worm.

PAR. 7. The use by the respondent of the acts and practices hereinabove described have the capacity and tendency to and do mislead and deceive wholesalers and retailers who purchase its said clothing for resale and members of the purchasing public as to the fiber content thereof. By said acts and practices respondent also places in the hands of said purchasers of its clothing a means and instrumentality whereby they may and do mislead and deceive the purchasing public as to the fiber content of said clothing. As a result of this deception substantial quantities of respondent's products are purchased in the belief that they are composed wholly of silk.

PAR. 8. Among the products manufactured, sold and distributed by respondent in commerce as aforesaid, since July 15, 1941, are some which 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 or reused wool, as those terms are defined in said act. Said fabrics are subject to the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

The said wool products sold and distributed by respondent in commerce as aforesaid 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, sold or distributed in said commerce, by respondent, 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 the wool product, exclusive of ornamentation not exceeding 5 percentum 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 percentum 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 the manufacturer's registered identification number and the name of a subsequent seller or reseller of the

product 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 such wool product where said wool product contains a fiber other than wool.

PAR. 9. The aforesaid acts, practices and methods of the respondent, as alleged in paragraph 8 hereof, were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder and all the acts, practices and methods of the respondent, as alleged herein, are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 21st day of October, 1943, issued and subsequently served its complaint in this proceeding upon respondent, James Jebaily, Inc., a corporation, charging it 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 respondent 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, 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. Respondent, James Jebaily, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, and has its principal office and place of business at 36 East 31st Street, New York, N. Y.

PAR. 2. Respondent is now and for more than one year last past has been engaged in manufacturing women's robes, housecoats, pajamas and various other articles of wearing apparel. Some of said articles are manufactured wholly from fabrics composed of rayon, while others are manufactured from rayon fabrics and other fabrics composed of fibers other than rayon. Some of said articles of clothing are referred to and described by the respondent as "Celanese."

Respondent causes its said clothing, when sold, to be transported from its place 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. Respondent maintains and for several years last past has maintained a course and current 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. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate silk and, when so manufactured, it has the ap-

pearance and feel of silk and is by the purchasing public practically indistinguishable from silk. By reason of these qualities rayon is, when manufactured to simulate silk and not designated as rayon, readily believed to be and accepted by the purchasing public as being silk, the product of the cocoon of the silk worm.

PAR. 4. Products manufactured from silk, the product of the cocoon of the silk worm, have for many years held and still hold a great public esteem and confidence because of their outstanding qualities. Such fibers have long been woven into a variety of fabrics and distinctive terms well-known to and understood by the purchasing public have been applied to such silk fabrics as designating the different types of weaving. Among the terms well-known to and understood by the purchasing public as designating a type of fabric woven from silk are "taffeta," "crepe," and "satin." The use of these terms to designate, describe or refer to fabrics having the texture and appearance of silk is understood by the purchasing public to indicate that the fabrics are composed of silk, unless such terms are accompanied by words familiar to the purchasing public indicating clearly that such fabrics are not composed of silk but of fibers other than the product of the cocoon of the silk worm.

PAR. 5. The respondent manufactures and sells and distributes in commerce as aforesaid women's clothing composed wholly of rayon fibers and also articles of clothing the outer lining and inner lining of which are composed of rayon fibers, which linings and materials simulate in texture and appearance fabrics composed of silk, the product of the cocoon of the silk worm. The respondent does not inform the purchasing public of the fact that said articles of wearing apparel which resemble silk in texture and appearance are not made from silk but from rayon.

The practice of the respondent in offering for sale and selling clothing manufactured, in whole or in part, of rayon and which resemble in texture and appearance fabrics manufactured from silk in commerce as aforesaid, without disclosing in words familiar to the purchasing public the fact that said articles of clothing are composed, in whole or in part, of rayon, is misleading and deceptive, and many members of the purchasing public are thereby led to believe that said articles of clothing are composed of silk, the product of the cocoon of the silk worm.

PAR. 6. The respondent in connection with offering for sale and selling its said articles of clothing composed wholly of rayon and clothing composed in part of rayon, which clothing resembles in texture and appearance fabrics manufactured from silk, the product of the cocoon of the silk worm, in commerce as aforesaid, in advertisements circulated among the purchasing public designates, describes and refers to certain of said clothing as "taffeta," "crepe" and "satin" and does not accompany such words with words familiar to the purchasing public which disclose the fact that said fabrics are not composed of silk, the product of the cocoon of the silk worm, but of rayon. In many instances said terms are accompanied by the word "Celanese," but this term is not sufficiently well known and understood by the purchasing public to inform it that the fabrics designated, described and referred to as aforesaid are made from fibers other than silk, to wit, rayon. The use by the respondent of the terms "taffeta," "crepe" and "satin," either alone or when accompanied by the term or word "Celanese" in designating, describing, or referring to said fabrics resembling silk but composed of rayon, is misleading and deceptive and causes many members of the purchasing public to believe that the said

fabrics are composed of silk, the product of the cocoon of the silk worm.

PAR. 7. The use by respondent of the acts and practices hereinabove described have the capacity and tendency to and do mislead and deceive wholesalers and retailers who purchase its said clothing for resale and members of the purchasing public as to the fiber content thereof. By said acts and practices respondent also places in the hands of said purchasers of its clothing a means and instrumentality whereby they may and do mislead and deceive the purchasing public as to the fiber content of said clothing. As a result of this deception substantial quantities of respondent's products are purchased in the belief that they are composed wholly of silk.

PAR. 8. Among the products manufactured, sold and distributed by respondent in commerce as aforesaid, since July 15, 1941, are some which 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 or reused wool, as those terms are defined in said act. Said fabrics are subject to the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

The said wool products sold and distributed by respondent in commerce as aforesaid 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, sold or distributed in said commerce, by respondent, 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 the wool product, exclusive of ornamentation not exceeding 5 percentum 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 percentum 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 the manufacturer's registered identification number and the name of a subsequent seller or reseller of the product 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 such wool product where said wool product contains a fiber other than wool.

CONCLUSION

The aforesaid acts, practices and methods 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 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 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 its conclusion that said respondent has 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 respondent, James Jebaily, 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 articles of clothing or other garments in commerce as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from:

1. Using the word "taffeta," or the word "crepe," or the word "satin," or any other descriptive term indicative of silk to designate or describe any product which is not composed entirely of silk, the product of the cocoon of the silk worm; *Provided, however,* that such word or descriptive term may be used truthfully to designate or describe the type of weave, construction or finish if such word is qualified by using in immediate connection or conjunction therewith in letters of at least equal size and conspicuousness words clearly and accurately naming the fibers or materials from which such product is made.

2. Advertising, offering for sale, or selling products composed in whole or in part of rayon without clearly disclosing such rayon content; and when such products are composed in part of rayon and in part of other fibers or materials, all such fibers or materials, including the rayon, shall be clearly and accurately disclosed.

It is further ordered, That respondent, James Jebaily, Inc., a corporation, its officers, 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 articles of clothing or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products 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 five percentum 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 five percentum or more, and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool product of any non-fibrous 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

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Order

applicable provisions of said act or the rules and regulations promulgated thereunder.

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

38 F. T. C.

IN THE MATTER OF

JANNETTE B. DOWNS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*- Docket 5081. Complaint, Nov. 13, 1943—Decision, June 14, 1944*

Where an individual engaged under the trade name "National Bureau of Missing Heirs" in interstate sale and distribution of reply post cards designed for use by creditors and collection agencies in locating delinquent debtors which, headed by aforesaid trade name along with her address and words "Estate Probate Attorneys In All Principal Cities" and "Searchers of Records," advised the person addressed that said "National Bureau of Missing Heirs" was "looking for a person of your name," had reasons to believe said person might be the one, that the matter was of "distinct importance to you" in that event, and requested that, to verify this, person "please answer the questions on the attached reply card" for return to said bureau, calling, among other things, for his name and address, and that of his employer and bank, home ownership and description;

Making use of a plan under which her customers addressed the cards to the persons concerning whom information was sought at their last known addresses or in the care of others believed to have knowledge of their whereabouts, returned them to her for mailing, and the cards filled out and returned by the recipients to her, were by her sent to the customers, identified by numbers;

- (a) Falsely represented and placed in the hands of her customers means of falsely representing, directly and by implication, to those to whom said cards were sent, that the "National Bureau of Missing Heirs" had connections with attorneys in all principal cities who engage in probate matters, was engaged in the business of locating heirs to estates or to interests therein and of searching records, and that the persons concerning whom information was sought had or might have interests in estates or lands which might be of financial benefit to them; when her sole purpose was to secure information to facilitate collection of alleged delinquent accounts by her customers; and
- (b) Falsely represented, directly and by implication, through use of name "National Bureau of Missing Heirs" that her business bore some relation to estates and the locating of the heirs thereto and to interests therein; when it was merely a disguise for the true nature of the business;

With effect of misleading many persons to whom said cards were sent into the erroneous belief that the said representations were true, and by reason thereof into giving information which they would not otherwise have supplied:

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. Arthur F. Thomas*, trial examiner.

Mr. Randolph W. Branch for the Commission.

Mr. Eugene D. O'Sullivan, of Omaha, Nebr., 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 Jannette B. Downs, 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, Jannette B. Downs, is an individual, trading and doing business under the name "National Bureau of Missing Heirs," with an office and principal place of business at Keen Hotel Building, Omaha, Nebr.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the business of selling and distributing reply postcards designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Respondent causes the said cards to be transported from her aforesaid place of business in the State of Nebraska to purchasers thereof in various States of the United States and in the District of Columbia. She maintains, and at all times mentioned herein has maintained, a course of trade in the said cards in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The said cards are in the form exemplified by a photostatic copy thereof, marked Exhibit A, attached hereto, and by this reference incorporated herein and made a part hereof.¹

PAR. 4. Respondent's customers cause the said cards to be addressed to the persons concerning whom information is sought at their last known addresses or in the care of other persons who are believed to have knowledge of the whereabouts of such persons. The cards are then sent to respondent at Omaha, Nebr., who causes the individual cards to be placed in the United States mail. At the time of mailing the return portion of each card bears a number, which is respondent's code number by which she can identify the customer who is seeking the information concerning the addressee of the card. Such of the cards as are filled out and mailed by the recipients thereof are received by respondent, the customers identified by the code numbers, and the cards sent to the customers so identified.

PAR. 5. Through the use of the aforesaid cards respondent has represented, and placed in the hands of her customers means of falsely representing, directly and by implication, to those to whom said cards were sent, that the National Bureau of Missing Heirs has connections with attorneys in all principal cities who engage in probate matters, is engaged in the business of locating heirs to estates or to interests therein and of searching records, and that the persons concerning whom information is sought have or may have interests in estates or lands which may be of financial benefit to them.

The said representations were false and misleading. In truth and in fact respondent in conducting the business called National Bureau of Missing Heirs has no connection with attorneys in all principal cities who engage in probate matters. She is not engaged in the business of locating heirs to estates or to interests therein or in the business of searching records. She has no knowledge of any interests in estates or lands to which the persons concerning whom information is sought may be entitled. The sole purpose of the said cards is to secure information in order to facilitate the collection of alleged delinquent accounts by respondent's customers.

¹ Not published. For identical exhibits included with the findings, see p. 650 infra.

PAR. 6. Through the use of the name "National Bureau of Missing Heirs" respondent has represented, directly and by implication, that her business bears some relation to estates and the locating of heirs thereto or to interests therein.

Said representations were misleading and untrue. In truth and in fact respondent's business has nothing whatever to do with estates or to the locating of heirs thereto or to interests therein, and the said name is merely a disguise for the true nature of the business.

PAR. 7. The use, as hereinabove set forth, of the foregoing false and misleading statements, representations and designation, has had the capacity and tendency to mislead and has misled, many persons to whom said cards were sent into the erroneous and mistaken belief that the said statements, representations and designation were true and correct, and by reason thereof to give information which they would not otherwise have supplied.

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, November 13, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Jannette B. Downs, an individual, trading under the name National Bureau of Missing Heirs, charging her with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. No answer to the complaint was filed. Subsequent to the service of the complaint, testimony and other evidence in support of the allegations of said complaint was introduced by R. W. Branch, attorney for the Commission, and in opposition to the allegations of the complaint by Eugene D. O'Sullivan, attorney for the respondent, before Arthur F. Thomas, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. The said testimony and evidence were introduced at a hearing held at Omaha, Nebr., on February 12, 1944, and at the hearing counsel for respondent waived the filing of a report upon the evidence by the trial examiner, briefs and application for oral argument, and agreed that the case might be submitted to the Commission for final disposition on the record. Thereafter the proceeding regularly came on for final hearing on said record, 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, Jannette B. Downs, is an individual, trading and doing business under the name "National Bureau of Missing Heirs," with a place of business at Keen Hotel, Omaha, Nebr.

PAR. 2. Respondent, prior to August 1943, was engaged in the business of selling and distributing reply post cards designed and intended to be

used by creditors and collection agencies in locating the whereabouts of delinquent debtors. The business was discontinued by respondent in August 1943.

PAR. 3. The business was originated by one John Battelle in 1941, or 1942, who some six months later entered the Army. Battelle traveled and solicited the business and respondent attended to the rest of the work. After Battelle entered the Army, respondent continued the operation of the business, filled orders for cards and handled them in the appropriate manner. She sold or filled orders for about 1000 cards after Battelle's departure, taking and using the proceeds in accordance with their understanding.

PAR. 4. Respondent caused the said cards to be transported from Omaha, Nebr., to purchasers thereof in other States of the United States, and maintained a course of trade in said cards in commerce between and among the various States of the United States.

PAR. 5. The cards sold and distributed by respondent were in the form exemplified by a copy thereof attached hereto as Exhibit A, and made a part hereof.

PAR. 6. Respondent's customers caused the said cards to be addressed to the persons concerning whom information was sought at their last known addresses or in the care of other persons who were believed to have knowledge of the whereabouts of such persons. The cards were then sent to respondent at Omaha, Nebr., who caused the individual cards to be placed in the United States mail. At the time of mailing, the return portion of each card bore a number, which was respondent's code number by which she could identify the customer who was seeking the information concerning the addressee of the card. Such of the cards as were filled out and mailed by the recipients thereof were received by respondent, the customers identified by the code numbers, and the cards sent to the customers so identified.

PAR. 7. Through the use of the aforesaid cards respondent has represented, and placed in the hands of her customers means of falsely representing, directly and by implication, to those to whom said cards were sent, that the National Bureau of Missing Heirs had connections with attorneys in all principal cities who engaged in probate matters, was engaged in the business of locating heirs to estates or to interests therein and of searching records, and that the persons concerning whom information was sought had or might have interests in estates or lands which might be of financial benefit to them.

The said representations were false and misleading. In truth and in fact respondent, in conducting the business called National Bureau of Missing Heirs, had no connection with attorneys in all principal cities who engage in probate matters. She was not engaged in the business of locating heirs to estates or to interests therein or in the business of searching records. She had no knowledge of any interests in estates or lands to which the persons concerning whom information was sought might be entitled. The sole purpose of the said cards was to secure information in order to facilitate the collection of alleged delinquent accounts by respondent's customers.

PAR. 8. Through the use of the name "National Bureau of Missing Heirs" respondent represented, directly and by implication, that her business bore some relation to estates and the locating of heirs thereto or to interests therein.

NATIONAL BUREAU OF MISSING HEIRS
 Keen Hotel Bldg.
 Omaha, Nebr.

NATIONAL BUREAU OF MISSING HEIRS
 Keen Hotel Bldg.
 Omaha, Nebr.

Searchers' Records

To the party addressed:

We are looking for a person of your name and we have reasons to believe that you might be the party.

This is a matter of distinct importance to you if you are the individual in question, and that we make certain you are the one, please answer the questions on the attached card.

If the information checks with the records, you will be communicated with. Use attached card for your reply.

Yours truly,
 NATIONAL BUREAU OF MISSING HEIRS
 Research Division

Place Stamp Here

Shona
FILED *1/27/41* **EXHIBIT**
RECEIVED
ATTORNEY GENERAL
FEDERAL TRADE COMMISSION

REPLY CARD

NATIONAL BUREAU OF MISSING HEIRS
 KEEN HOTEL BUILDING
 OMAHA, NEBRASKA

FILE NO. 1210

Full Name	Age
Residence Address (present)	
Residence Address (previous)	
Nearest Relative	Relationship
Address of Nearest Relative	
If Married, Mate's Full Name	
Phone Number (if any)	Nearest Phone
Name of Your Present Employer	
Department	
Address of Employer	
Your Bank	
Own Home? _____ Rent? _____ Own Auto? _____	
General Description of Yourself	

Place Stamp Here

After 5 Days Return to
NATIONAL BUREAU OF MISSING HEIRS
 KEEN HOTEL BLDG.
 OMAHA, NEBR.
 Return and Forwarding Postage Guaranteed

Post Card

Said representations were misleading and untrue. In truth and in fact respondent's business had nothing whatever to do with estates or the locating of heirs thereto or to interests therein, and the said name was merely a disguise for the true nature of the business.

PAR. 9. The use as hereinabove set forth, of the foregoing false and misleading statements and representations, including the use of the name "National Bureau of Missing Heirs," has had the capacity and tendency

to mislead and has misled many persons to whom said cards were sent into the erroneous and mistaken belief that the said statements and representations were true, and that the said name truthfully indicated and described the character of the concern making the inquiry and requesting the information, and by reason thereof to give information which they would not otherwise have 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 testimony and other evidence taken before Arthur F. Thomas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, respondent having waived the filing of the trial examiner's report upon the evidence and briefs, 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, Jannette B. Downs, an individual, her representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of post cards or other mailable matter in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "National Bureau of Missing Heirs," 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 connections with attorneys in principal cities.

3. Representing, directly or by implication, that respondent is engaged in the business of locating heirs to estates or interests therein.

4. Representing, directly or by implication, that respondent is engaged in the business of searching records.

5. Representing, directly or by implication, that persons concerning whom information is sought through respondents' cards or other mailable matter, have or may have any interests in estates or any other property.

6. Selling or distributing post cards or other mailable matter 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 by means of such devices is for any purpose other than for use in the collection of debts.

It is further ordered, That 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 therewith.

IN THE MATTER OF

WILLIAM H. KAMPF AND EARL H. WILSON

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

Docket 4988. Complaint, June 30, 1943—Decision, June 15, 1944

Where an individual engaged in interstate sale and distribution of printed mailing cards designed and intended for use by creditors and collection agencies in obtaining information concerning debtors, including (1) cards making use of "Character Reference Bureau" which advised recipient that it was "very important that" the "subject be properly identified," and on the attached self-addressed post cards called for information as to his name, age, nationality, marriage state, address, employer and home ownership and whether "worthy of a responsible position," and (2) cards making use of name "U. S. Pencil Sales" which advised addressee "A Pencil Free To Advertise Our Pencils," that "All we ask is that you show our pencil to your friends and fellow-employees," that "To avoid duplication, name of employer must be given," counseled prompt action since only a limited number would be given away and stated "Your pencil will be sent you as soon as this card is returned," following which provision was made for name and address of the debtor and that of his employer, followed by notice that "This Advertising Offer is Not Transferable, For You Only";

Making use of a plan under which purchasers addressed said "Character Reference" cards to those believed able to furnish the desired information, purchasers of the "U. S. Pencil" cards addressed them to those concerning whom information was sought, at their last known address, and caused them to be stamped and delivered to the Chicago address made use of by said individual, who there mailed them and forwarded to the appropriate purchasers such reply cards, identified by code numbers, as were received by him or forwarded to him by an individual compensated for such services and the use of his office—

- (a) Falsely represented through said "Pencil Sales" cards and placed in the hands of purchasers thereof means of falsely representing, directly and by implication, to the addressees of said cards, that the pencils referred to were of such a character that the friends and fellow employees of the recipients of the cards might be interested in purchasing them; that the advertising offer of a free pencil was made for the purpose of introducing the pencils to prospective purchasers; and that only a limited number of pencils would be given away; and
- (b) Falsely represented through use of name "U. S. Pencil Sales" and placed in the hands of purchasers of said cards the means of representing, directly and by implication, that he was in the business of selling and distributing pencils;

The facts being that the pencils sent to those who returned said cards were not such as to be of any possible interest to persons to whom they might be exhibited and were readily obtainable in any community; the whole scheme was a subterfuge for obtaining information to facilitate the collection of alleged delinquent accounts by his customers; and the said name was merely a disguise for the true nature of the business; and

- (c) Falsely represented through said "Character Reference" cards, and placed in the hands of purchasers of said cards means of falsely representing, directly and by implication, to persons from whom information concerning others was sought, that the inquiry was for the purpose of identifying the person concerning whom it was made, and determining whether his character was such as to make him worthy

Complaint

of a responsible position; and that he was engaged in the business of obtaining information concerning the characters of individuals;

Facts being the scheme was like that preceding, a subterfuge for obtaining information to facilitate the collection of alleged delinquent accounts;

With effect of misleading and deceiving many persons to whom said cards were sent into the erroneous belief that the said representations were true, and by reason thereof 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. Arthur F. Thomas*, 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 William H. Kampf, an individual, trading as The Tracer System, and using the names Character Reference Bureau, and U. S. Pencil Sales, and Earl H. Wilson, an individual, herein-after referred to as the respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, William H. Kampf and Earl H. Wilson, are individuals, with an office and principal place of business at 330 South Wells Street, Chicago, Ill. Respondent, William H. Kampf, in the conduct of his business, has traded under the name The Tracer System, and has also used the names Character Reference Bureau and U. S. Pencil Sales.

PAR. 2. Respondent, Kampf, is now, and has been for more than three years last past, engaged in the business of selling and distributing, under the name The Tracer System, printed mailing cards designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Respondent, Kampf, causes said cards to be transported from his afore-said place of business in the State of Illinois to purchasers thereof in various States of the United States and in the District of Columbia. Said respondent maintains, and at all times mentioned herein has maintained, a course of trade in said cards in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The said cards sold and distributed by respondent Kampf when using the name Character Reference Bureau are substantially in the form exemplified by a photostatic copy thereof, marked Exhibit A, and when using the name U. S. Pencil Sales, the cards are substantially in the form exemplified by a photostatic copy thereof marked Exhibit B.

The said Exhibits A and B are attached hereto and by this reference are incorporated herein and made a part hereof.¹

Upon the said cards were placed code numbers by which the respondents were enabled to identify the different purchasers.

¹ Not published. For identical exhibits included with the findings, see pp. 657, 658 infra.

The purchasers of the Character Reference Bureau cards addressed them to persons whom they believed able to furnish the desired information concerning the persons with reference to whom the inquiry was made. The purchasers of the U. S. Pencil Sales cards addressed them to the persons concerning whom the information was sought at their last known addresses. The purchasers placed on the cards the postage necessary for their delivery to the addressees and return, and caused them to be delivered to respondents at Chicago, Ill.

At Chicago, Ill., they were received by respondent, Wilson, who deposited the individual cards in the United States mail.

Such of the reply cards as were returned were received by respondent, Wilson, the purchasers identified by the code numbers, and the reply cards sent by Wilson to the appropriate purchasers. To the persons who returned the U. S. Pencil Sales cards, respondent Wilson sent ordinary lead pencils about three and one-half inches in length, supplied by respondent, Kampf.

For the services rendered by Wilson he was compensated by Kampf.

PAR. 4. By means of the U. S. Pencil Sales cards respondents have falsely represented, and placed in the hands of purchasers of said cards means of falsely representing, directly and by implication, to the addresses of said cards, that the pencils referred to were of such a character that the friends and fellow employees of the recipients of the cards might be interested in purchasing said pencils; that the proposal of a free pencil was made as an advertising offer for the purpose of introducing the pencils to prospective purchasers, and that only a limited number of pencils would be given away.

PAR. 5. Through the use of the name "U. S. Pencil Sales" respondents have represented, and placed in the hands of purchasers of said cards the means of representing directly and by implication, that respondent, Kampf, is in the business of selling and distributing pencils.

PAR. 6. The said representations were false and misleading. In truth and in fact the pencils sent to those who returned the U. S. Pencil Sales cards were not of such a character as to be of any possible interest to persons to whom they might be exhibited, were readily obtainable in any community, and were not sent as a method of getting their merits before possible purchasers. The said cards were not sent as a means of promoting the sale of pencils, but had as their sole purpose the obtaining of information concerning the recipients. The number of pencils to be given away was not limited. Respondent, Kampf, was not engaged in the business of selling and distributing pencils. The whole scheme was merely a subterfuge for obtaining information to facilitate the collection of alleged delinquent accounts by Kampf's customers, and the said name was merely a disguise for the true nature of the business.

PAR. 7. By means of the "Character Reference Bureau" cards, respondents have falsely represented, and placed in the hands of purchasers of said cards means of falsely representing, directly and by implication to persons from whom information concerning others was sought, that the inquiry was for the purpose of identifying the person concerning whom it was made, and determining whether his character was such as to make him worthy of a responsible position.

Through the use of the name "Character Reference Bureau" respondents have represented, and placed in the hands of purchasers of said cards means of falsely representing, directly and by implication, that respondent,

Kampf, was engaged in the business of obtaining information concerning the characters of individuals.

The said representations were false and misleading. In truth and in fact respondent, Kampf, was not engaged in the business of obtaining information concerning the characters of individuals. The information sought by means of the "Character Reference Bureau" cards was not for the purpose of identifying the persons concerning whom the information was sought or of determining whether the characters of said persons were such as to render them worthy of employment in responsible positions. The sole purpose of said cards was the obtaining of information concerning the persons named therein. The whole scheme was merely a subterfuge for obtaining information to facilitate the collection of alleged delinquent accounts by Kampf's customers and the said name was merely a disguise for the true nature of the business.

PAR. 8. The use, as hereinabove set forth, of the foregoing false and misleading statements, representations and designations had had the capacity and tendency to, and has, misled and deceived many persons to whom said cards were sent into the erroneous and mistaken belief that the said statements, representations and designations were true, and by reason thereof to give information which they would not otherwise have supplied.

PAR. 9. 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 with 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 30, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, William H. Kampf and Earl H. Wilson, individuals, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the service of said complaint, and no answers thereto having been filed, testimony and the evidence in support of the allegations of said complaint were introduced by R. W. Branch, attorney for the Commission, and in opposition to the allegations of the complaint by the respondents, before Arthur F. Thomas, an examiner of the Commission theretofore duly designated by it, which was duly recorded and filed in the office of the Commission. At the said hearing respondents waived the filing of a report upon the evidence by the examiner, and thereafter waived all intervening procedure and further hearing as to the facts, and agreed that the matter might be disposed of by the Commission upon the record. Thereafter the proceeding regularly came on for final hearing upon the said complaint and testimony, 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, William H. Kampf and Earl H. Wilson, are individuals, with an office and principal place of business at 330 South Wells Street, Chicago, Ill. Respondent, William H. Kampf, in the

conduct of his business, has traded under the name The Tracer System, and has also used the names Character Reference Bureau and U. S. Pencil Sales; he resides at Clifton, Ill.

PAR. 2. Respondent, Kampf, is now, and has been for more than three years last past, engaged in the business of selling and distributing, under the name The Tracer System, printed mailing cards designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Respondent, Kampf, causes said cards to be transported from his afore-said place of business in the State of Illinois to purchasers thereof in various States of the United States and in the District of Columbia. Said respondent maintains, and at all times mentioned herein has maintained, a course of trade in said cards in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The said cards sold and distributed by respondent, Kampf, when using the name Character Reference Bureau are substantially in the form exemplified by a copy thereof, marked Exhibit A, and when using the name U. S. Pencil Sales, the cards are substantially in the form exemplified by a copy thereof marked Exhibit B.

The said Exhibits A and B are attached hereto and by this reference are incorporated herein and made a part hereof.

Upon the said cards were placed code numbers by which the said respondent was enabled to identify the different purchasers.

The purchasers of the Character Reference Bureau cards addressed them to persons whom they believed able to furnish the desired information concerning the persons with reference to whom the inquiry was made. The purchasers of the U. S. Pencil Sales cards addressed them to the persons concerning whom the information was sought at their last known addresses. The purchasers placed on the cards the postage necessary for their delivery to the addresses and return, and caused them to be delivered to 330 So. Wells St., at Chicago, Ill.

Respondent, Kampf, deposited the individual cards in the United States mail.

Such of the reply cards as were returned were received by respondent, Kampf, or forwarded to him by respondent, Wilson, the purchasers identified by the code numbers, and the reply cards sent to the appropriate purchasers. To the persons who returned the U. S. Pencil Sales cards, were sent ordinary lead pencils about three and one-half inches in length.

For the services rendered by Wilson he was compensated by Kampf. These services consisted of furnishing Kampf with an office at which mail addressed to U. S. Pencil Sales and Character Reference Bureau could be delivered, and on occasion sending to Kampf bundles of cards sent by his customers for mailing and reply cards which had been received at the office. Other than this, respondent, Wilson, had nothing to do with the conduct of the enterprise.

PAR. 4. By means of the U. S. Pencil Sales cards respondent, Kampf, has falsely represented, and placed in the hands of purchasers of said cards means of falsely representing, directly and by implication, to the addressees of said cards, that the pencils referred to were of such a character that the friends and fellow employees of the recipients of the cards might be interested in purchasing said pencils; that the proposal of a free pencil was made as an advertising offer for the purpose of introducing the pencils

**A PENCIL FREE
To Advertise Our Pencils**

We Will Send You One of Them
**ABSOLUTELY FREE — NO
OBLIGATION**

All we ask is that you show our pencil to your friends and fellow-employees where you work. To avoid duplication, name of employer must be given.

Act promptly. Only a limited number of these pencils will be given away. Your pencil will be sent you as soon as this card is returned.

**FILL OUT AND MAIL THIS CARD AT
ONCE**

Name.....
Address.....
Town.....
State.....
Phone Number.....
Employed by.....
Address.....

**THIS ADVERTISING OFFER IS NOT
TRANSFERABLE. FOR YOU ONLY.**

This is your No.....



U. S. PENCIL SALES
706 Insurance Center Bldg., Chicago, Ill.

TO.....

Copyright 1935 By U. S. Pencil Sales

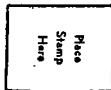
U. S. PENCIL SALES

*No Postage Required
No Obligation*

**CLIP AND
MAIL IT TO US
TODAY**

Is a Free Advertising Offer

**ATTACHED
CARD**
The



U. S. PENCIL SALES

706 Insurance Center Bldg.

CHICAGO, ILLINOIS

Findings

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WILLIAM H. KAMPE ET AL.

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Name _____

Age? _____

Nationality? _____

Married or Single? _____

Present Address? _____

Where Employed? _____

Own Home or Rent? _____

Is this party worthy of a responsible position? _____

Remarks:

CHARACTER REFERENCE BUREAU

330 SO. WELLS ST., CHICAGO, ILL.

Place
Stamp
Here

TO

CHARACTER REFERENCE BUREAU

CHICAGO, ILLINOIS

In reference to

It is very important that the above subject be properly identified.
Kindly send us by return mail, as fully as possible, the information requested on
the attached card regarding the above party (no postage required).

Your immediate attention will be appreciated.

Yours very truly,

CHARACTER REFERENCE BUREAU

Place
Stamp
Here

CHARACTER REFERENCE BUREAU

330 SO. WELLS STREET

CHICAGO, ILLINOIS

FILE No.

to prospective purchasers; and that only a limited number of pencils would be given away.

PAR. 5. Through the use of the name "U. S. Pencil Sales" respondent, Kampf, has represented, and placed in the hands of purchasers of said cards the means of representing, directly and by implication, that he is in the business of selling and distributing pencils.

PAR. 6. The said representations were false and misleading. In truth and in fact the pencils sent to those who returned the U. S. Pencil Sales cards were not of such a character as to be of any possible interest to persons to whom they might be exhibited, were readily obtainable in any community, and were not sent as a method of getting their merits before possible purchasers. The said cards were not sent as a means of promoting the sale of pencils, but had as their sole purpose the obtaining of information concerning the recipients. The number of pencils to be given away was not limited. Respondent, Kampf, was not engaged in the business of selling and distributing pencils. The whole scheme was merely a subterfuge for obtaining information to facilitate the collection of alleged delinquent accounts by Kampf's customers, and the said name was merely a disguise for the true nature of the business.

PAR. 7. By means of the "Character Reference Bureau" cards, respondent Kampf has falsely represented, and placed in the hands of purchasers of said cards means of falsely representing, directly and by implication to persons from whom information concerning others was sought, that the inquiry was for the purpose of identifying the person concerning whom it was made, and determining whether his character was such as to make him worthy of a responsible position.

Through the use of the name "Character Reference Bureau" respondent, Kampf, has represented, and placed in the hands of purchasers of said cards means of falsely representing, directly and by implication, that he was engaged in the business of obtaining information concerning the characters of individuals.

The said representations were false and misleading. In truth and in fact respondent, Kampf, was not engaged in the business of obtaining information concerning the characters of individuals. The information sought by means of the "Character Reference Bureau" cards was not for the purpose of identifying the persons concerning whom the information was sought or of determining whether the characters of said persons were such as to render them worthy of employment in responsible positions. The sole purpose of said cards was the obtaining of information concerning the persons named therein. The whole scheme was merely a subterfuge for obtaining information to facilitate the collection of alleged delinquent accounts by Kampf's customers and the said name was merely a disguise for the true nature of the business.

PAR. 8. The use, as hereinabove set forth, of the foregoing false and misleading statements, representations and designations had the capacity and tendency to, and has, misled and deceived many persons to whom said cards were sent into the erroneous and mistaken belief that the said statements, representations and designations were true, and by reason thereof to give information which they would not otherwise have supplied.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission and testimony taken before Arthur F. Thomas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint, and in opposition thereto, respondents having waived all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and its conclusion that respondent, William H. Kampf, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, William H. Kampf, an individual, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of post cards or other mailable matter in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "U. S. Pencil Sales," 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 is that of selling or distributing pencils.

2. Using the words "Character Reference Bureau," or 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 is that of obtaining information concerning the characters of individuals.

3. Representing, directly or by implication, that the giving of information requested by such post cards or mailable matter by the recipients thereof is for the acceptance of an advertising or introductory offer of free goods, or that the amount of such goods is limited.

4. Representing, directly or by implication, that the information sought from the recipients of such post cards or mailable matter is for the purpose of identifying any person and determining his fitness of character for a responsible position.

5. Selling or distributing post cards or other mailable matter 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 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.

And it is further ordered, That the proceeding be, and the same hereby is, dismissed as to respondent, Earl H. Wilson.

Complaint

IN THE MATTER OF

MOTLOID COMPANY, INC. AND WALLACE A. ERICKSON

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

Docket 5042. Complaint, Sept. 7, 1943—Decision, June 21, 1944

Where a corporation and an individual engaged in the manufacture and interstate sale and distribution of a denture base designated "Moldent"; by advertisements in trade periodicals and advertising circulars, and labels on the boxes or containers thereof—

Falsely represented to the members of the dental profession and to those engaged in dental laboratory work that the product "Moldent" was superior to all other denture bases and particularly acrylic denture bases, and complied with a certain specification set up by the American Dental Association known as Revised A.D.A. Specification No. 12 of January 1, 1942;

With effect of misleading and deceiving a substantial portion of the members of said profession and those engaged in said laboratory work into the erroneous belief that such representations were true and into the purchase of substantial quantities of such product because 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. Miles J. Furnas*, trial examiner.

Mr. Joseph Callaway for the Commission.

Mr. John R. Hackett, 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 Motloid Company, Inc., and Wallace A. Erickson, 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, Motloid Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 325 West Huron Street, Chicago, Ill. Respondent, Wallace A. Erickson, is an individual, with his place of business at 325 West Huron Street, Chicago, Ill.

PAR. 2. The respondent, Motloid Company, Inc., is now and for more than one year last past, has been engaged in the sale and distribution of a denture base designated as Moldent. Respondent, Wallace A. Erickson, was for a considerable period of time prior to January 1, 1943, vice president of said corporation. Since about January 1, 1943, he has been engaged as an individual, in the business of manufacturing the product Moldent, and selling and distributing it through Motloid Company, Inc.

Complaint

38 F. T. C.

In the course and conduct of their said business respondents cause said product, when sold, to be transported from their place of business in the State of Illinois to the purchasers thereof located 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 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 their said business and for the purpose of inducing the purchase of said product in commerce by the members of the dental profession and those engaged in dental laboratory work, respondents have made and are now making certain false, deceptive and misleading statements and representations regarding said product by means of advertisements inserted in trade periodicals, advertising circulars and labels on the boxes or containers in which said product is sold and in various other ways. Typical representations are as follows:

MOLDENT
"Truly Superior"

The
"Truly Superior"
Acrylic Denture Base

A Methyl Methacrylate Composition Guaranteed to Comply with the Revised A.D.A. Specification No. 12 of January 1, 1942.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, the respondents have represented and are now representing, among other things, to the members of the dental profession and those engaged in dental laboratory work that the product Moldent is superior to all other denture bases and particularly superior to all other acrylic denture bases, and further that it complies with a certain specification set up by the American Dental Association and known to the members of the dental profession and those engaged in dental laboratory work as Revised A.D.A. Specification No. 12 of January 1, 1942.

PAR. 5. The foregoing representations are extravagant, false, deceptive and misleading in the following respects:

The product Moldent is not superior to all other denture bases including acrylic denture bases now generally in use by the members of the dental profession and dental laboratories. It does not comply with the specification set up by the American Dental Association known as Revised A.D.A. Specification No. 12 of January 1, 1942.

PAR. 6. The use by the respondents of the foregoing extravagant, false, deceptive and misleading statements and representations, disseminated as aforesaid, in connection with the offering for sale, and sale, of said product in commerce has had and now has the capacity and the tendency to and does mislead and deceive a substantial portion of the members of the dental profession and those engaged in dental laboratory work into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of such product in commerce because of such erroneous and mistaken belief.

Findings

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 September 7, 1943, issued and thereafter served its complaint in this proceeding upon the respondents, Motloid Company, Inc., a corporation, and Wallace A. Erickson, 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' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and 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, Motloid Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 325 West Huron Street, Chicago, Ill.

Respondent, Wallace A. Erickson, is an individual, with his place of business also located at 325 West Huron Street, Chicago, Ill.

PAR. 2. Respondent, Motloid Company, Inc., is now, and for more than one year last past has been, engaged in the sale and distribution of a denture base designated as Moldent. Respondent, Wallace A. Erickson was, for a considerable period of time prior to January 1, 1943, vice president of said corporation. Since about January 1, 1943, he has been engaged as an individual in the business of manufacturing the product, Moldent, and selling and distributing it through Motloid Company, Inc. In the course and conduct of their said business, respondents cause said product, when sold, to be transported from their place of business in the State of Illinois to the purchasers thereof located 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 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 their said business, and for the purpose of inducing the purchase of said product in commerce by the members of the dental profession and those engaged in dental laboratory work, respondents have made and are now making certain false and misleading statements and representations regarding said product by means of advertisements inserted in trade periodicals, advertising circulars, and labels

Order

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on the boxes or containers in which said product is sold and in various other ways. Typical representations are as follows:

MOLDENT

"Truly Superior"

The

"Truly Superior"

Acrylic Denture Base

A Methyl Methacrylate Composition Guaranteed to Comply with the Revised A.D.A. Specification No. 12 of January 1, 1942.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, the respondents have represented and are now representing, among other things, to the members of the dental profession and to those engaged in dental laboratory work that the product Moldent is superior to all other denture bases and particularly superior to all other acrylic denture bases, and further that it complies with a certain specification set up by the American Dental Association and known to the members of the dental profession and those engaged in dental laboratory work as Revised A.D.A. Specification No. 12 of January 1, 1942.

PAR. 5. The foregoing representations are extravagant, false, deceptive and misleading in the following respects:

The product Moldent is not superior to all other denture bases including acrylic denture bases now generally in use by the members of the dental profession and dental laboratories. It does not comply with the specification set up by the American Dental Association known as Revised A.D.A. Specification No. 12 of January 1, 1942.

PAR. 6. The use by the respondents of the foregoing extravagant, false, deceptive and misleading statements and representations, with respect to their said product, disseminated as aforesaid, has had and now has the capacity and the tendency to and does mislead and deceive a substantial portion of the members of the dental profession and those engaged in dental laboratory work into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of such product in commerce 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 and the substitute answer of the respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commis-

sion having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Motloid Company, Inc., a corporation, its officers, representatives, agents, and employees, and respondent, Wallace A. Erickson, an individual, his agents, representatives, or employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of their product, Moldent, or any other product of substantially similar composition, whether sold under the same name or any other name in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that their product is superior to all other denture bases, or all other acrylic denture bases.

2. Representing that their product complies with the specification of the American Dental Association known as revised, A.D.A. Specification No. 12 of January 1, 1942.

3. Falsely representing that their product complies with any specification promulgated for the guidance or information of the dental profession.

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

IN THE MATTER OF

DETROIT SODA PRODUCTS COMPANY AND AARONS,
SILL & CARON, INC.

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

Docket 5037. Complaint, Aug. 31, 1943—Decision, June 26, 1944

Where a corporation engaged in the packing and interstate sale and distribution of its "Crystal Brand Baking Soda," and its advertising agent; through advertisements in radio continuities—

(a) Represented that said product used as dentifrice would freshen the breath, keep gums healthy, remove all teeth stains and restore dentine's natural brilliance;

The facts being that so used it would only tend to freshen the breath when bad breath arises from the accumulation of food debris and other material on or between the teeth, and would not be otherwise effective; it could not be relied upon to keep gums healthy, and while it would to some extent act as a polishing agent should a sufficient quantity be used, it would not remove all types of stain from the teeth, nor restore dentine's natural brilliance, for which the enamel of the tooth structure and not the dentine is responsible;

(b) Represented that it was an ideal remedy for indigestion, colds and coughs;

The facts being that the only condition of stomach distress which might be described as indigestion in which it could be of value is hyperacidity and it was not an effective or adequate treatment for colds and coughs; and

Where aforesaid corporation, in advertisements in newspapers, periodicals, circulars, leaflets, pamphlets and other advertising literature, directly or by implication—

(c) Falsely represented that its said product "contained innate properties which were indispensable for making food easy to digest," would "relieve inflammation and give soothing effect to the membrane of the mouth" and constituted a competent and effective treatment and remedy for indigestion and dyspepsia; and

(d) Represented that, used as recommended, it constituted a competent and effective treatment or remedy for ivy poisoning, lumbago, scalds and burns, toothache, and eczema;

The facts being that while application of sodium bicarbonate solution would have some tendency to relieve itching such as that caused by poison ivy, it would not reduce the eruption; addition thereof to a hot bath would exert no beneficial effect in cases of lumbago, any temporary benefits derived being from the heat involved; while a paste of baking soda and water is suitable for application to minor scalds and burns, it is not an appropriate treatment for severe ones; application of small pieces of cotton dipped in baking soda solution to the cavity in an aching tooth would have no significant tendency to relieve toothache; and while such a solution is suitable as a cleansing agent in removing dried exudates such as those formed in cases of seborrheic eczema, it would have no actual therapeutic effect on eczema; and

(e) Falsely represented that, used as recommended, it constituted a competent and effective treatment for acidity, colic in babies, rheumatism, colds, grippe and influenza, had tonic properties and would act as a general tonic, would break up, prevent and cure a common cold, and kill the germs responsible therefor and for grippe and influenza, and prevent them and similar diseases from becoming serious;

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With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true as a result of which erroneous belief, it purchased substantial quantities of 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. James W. Cassidy for the Commission.

Lightner, Crawford, Sweeny, Dodd & Mayer, of Detroit, Mich., for Detroit Soda Products 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 Detroit Soda Products Company, a corporation, and Aarons, Sill & Caron, 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, Detroit Soda Products Company, is a corporation, organized and existing under and by virtue of the laws of the State of Michigan with its principal place of business located at 35 Perry Place, in the city of Wyandotte, State of Michigan.

Respondent, Aarons, Sill & Caron, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Michigan with its principal place of business located at the Architects Building in the city of Detroit, State of Michigan.

PAR. 2. Respondent, Detroit Soda Products Company, is now, and for several years last past has been, continuously engaged in the business of packing, offering for sale and selling in commerce, as herein set out, a baking soda (bicarbonate of soda) which is designated "Crystal Brand Baking Soda" and recommended for use in the treatment of and as a remedy for various human ailments as well as for other purposes.

Respondent, Aarons, Sill & Caron, Inc., is now, and for several years last past has been, continuously engaged in the advertising business. During said time said respondent has been and is now employed by the respondent, Detroit Soda Products Company, and at all times herein mentioned has acted as its advertising agent in the dissemination of advertisements of Crystal Brand Baking Soda.

PAR. 3. Respondent, Detroit Soda Products Company, being engaged in business as aforesaid, caused and causes said product, when sold, to be transported from its principal place of business located in the city of Wyandotte, State of Michigan, to purchasers thereof located at points in various States of the United States other than the State from which said shipments were made and in the District of Columbia. Respondent has, at all times herein mentioned, maintained, and now maintains, a course of trade in commerce in said product so distributed and sold by it between and among various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of the aforesaid business, the respondents have disseminated and are now disseminating, and have caused

and are now causing the dissemination of, false advertisements concerning Crystal Brand Baking Soda by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase thereof 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 by the respondents, Detroit Soda Products Company and Aarons, Sill & Caron, Inc., as hereinabove referred to, by radio continuities, are the following:

What economical dentifrice will freshen the breath, keep gums healthy, remove teeth stains, restore dentine's natural brilliance?

Crystal Brand Baking Soda.

What's an ideal remedy for indigestion * * *? Crystal Brand Baking Soda.

What are Crystal Brand's medicinal advantages? Crystal Brand can be used * * * as a remedy for colds and coughs, * * * and indigestion.

Among, and typical of, the false, misleading and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, in addition thereto, by respondent, Detroit Soda Products Company, as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers and periodicals, and by circulars, leaflets, pamphlets and other advertising literature, are the following:

Bicarbonate of soda * * * contains innate properties which are indispensable for making food easy to digest.

It also relieves inflammation and gives a soothing effect to the membrane of the mouth.

TESTED HOME REMEDIES

INDIGESTION: Dissolve one-quarter teaspoon of Crystal Baking Soda in one-half glass of cold water. Drink this before meals.

DYSPEPSIA * * *: Dissolve one level teaspoonful of Crystal Baking Soda in one glass of cold water. Drink this one or two hours after meals. For a tonic form, take one-quarter teaspoon before meals.

IVY POISONING: Dissolve two teaspoons of Crystal Baking Soda in one pint of water, and bathe the affected parts frequently. This is helpful in reducing the eruption and in quieting the itching caused by Ivy Poisoning.

LUMBAGO: Dissolve one-half to one pound of Crystal Baking Soda in a bathtub of water (about 30 gallons of water). Have the water as hot as it can be borne. Lie in the water about fifteen minutes or longer, then go to bed at once to avoid exposure.

SCALDS AND BURNS: Make a paste of Crystal Baking Soda and cold water. Apply this paste to the affected surface and keep a damp or moist cloth over it. This treatment usually relieves the pain instantly.

TOOTHACHE: Dissolve two teaspoons of Crystal Baking Soda in a pint of water, dip small pieces of cotton in this solution and apply them to the cavity of the affected tooth.

Complaint

ECZEMA: Dissolve two level teaspoons of Crystal Brand Baking Soda in a pint of Water. Apply this solution to the affected parts. "Externally, in a solution, it (Bicarbonate of Soda) is a solvent for dried exudates (secretions) such as the crusts in seborrheic eczema."—Practical Therapeutics—(Birmingham).

ACIDITY: Dissolve one level teaspoon of Crystal Brand Baking Soda in one glass of cold water and take one to two hours after meals. For tonic form, take about one-quarter teaspoon before meals.

COLIC (BABY): Dissolve one level teaspoon of Crystal Brand Baking Soda in one-half ($\frac{1}{2}$) glass (two ounces) of warm water—Use this to give an enema. This treatment is for a baby from one month to six months of age. •

RHEUMATISM

Dissolve two to four teaspoons of Crystal Baking Soda in one pint of water, wet a cloth in this solution and apply to the affected parts of joints. * * *

COLDS, GRIPPE AND INFLUENZA

Our recommendation for treating or "breaking up" a common Cold is as follows: Dissolve one-half teaspoon of Crystal Baking Soda in one glass of cold water and drink it. Do this about every two hours until you have taken six doses. This is the treatment for the first day.

During the second day, take four doses about two hours apart.

During the third day, take two doses—one in the morning and one in the evening. After the third day take one dose each morning until the Cold is cured.

* * * * *

Colds, Grippe and Influenza are, as you know, due to certain germs. Thorough alkalization of the body helps to kill these germs. It is for this reason that Crystal Soda, when used as suggested above, is very helpful in "breaking up" common Colds, and also in preventing them and similar diseases from becoming serious. * * *

PAR. 5. By and through the use of the statements hereinabove set forth, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative or therapeutic properties of Crystal Brand Baking Soda, the respondents, Detroit Soda Products Company and Aarons, Sill & Caron, Inc., have represented and do now represent, that Crystal Brand Baking Soda, when used as a dentifrice, will freshen the breath, keep gums healthy, remove all teeth stains and restore dentine's natural brilliance; that said product is an ideal remedy for indigestion, colds and coughs.

The respondent, Detroit Soda Products Company, in addition thereto, has represented and does now represent, directly or by implication that Crystal Brand Baking Soda contains innate properties which are indispensable for making food easy to digest; that said product will relieve inflammation and give a soothing effect to the membrane of the mouth; that said product constitutes a competent and effective treatment and remedy for indigestion, dyspepsia, ivy poisoning, lumbago, scalds and burns, toothache, eczema, acidity, colic in babies, rheumatism, colds, grippe and influenza; that said product has tonic properties and will act as a general tonic; that said product will "break up," prevent and cure a common cold; that said product will kill the germs that cause colds, grippe and influenza and will prevent them and similar diseases from becoming serious.

PAR. 6. The aforesaid statements and representations, as hereinabove set forth, are grossly exaggerated, false, misleading and deceptive. In truth and in fact, Crystal Brand Baking Soda, when used as a dentifrice, will only tend to freshen the breath when bad breath arises from the accumulation of food, debris and other material on or between the teeth. It will not be effective in other conditions. Said product cannot be relied upon to keep gums healthy. While it will act to some extent as a cleansing and polishing agent if a sufficient quantity is used, it will not remove all types of stains from the teeth. It will not restore dentine's natural brilliance, for that portion of the tooth structure which possesses lustre and brilliance is not the dentine but the enamel. It does not possess innate properties which are indispensable for making food easy to digest nor does said product constitute an adequate treatment or an ideal remedy for indigestion. The only condition of stomach distress, which might be described as indigestion, in which this preparation could be of value is hyperacidity. Said product is not an effective or adequate treatment for coughs and when used as a mouthwash or gargle, it will not be effective in relieving inflammation of the membrane of the oral cavity.

Crystal Brand Baking Soda is not a remedy and does not constitute a competent and effective treatment for indigestion, dyspepsia, ivy poisoning, lumbago, scalds and burns, toothache, eczema, acidity, colic in babies, rheumatism, colds, grippe and influenza. While the application of a sodium bicarbonate solution will have some slight tendency to relieve itching such as that caused by poison ivy, it will not reduce the eruption of ivy poisoning. The addition of sodium bicarbonate to a hot bath will exert no beneficial effect in cases of lumbago. Any temporary benefits which are derived from such a bath arise solely from the heat involved. While a paste of baking soda and water is suitable for application to minor scalds and minor burns, it is not an appropriate treatment for severe scalds or burns. The application of small pieces of cotton dipped in baking soda solution to the cavity in an aching tooth will have no significant tendency to relieve such condition. While a baking soda solution is suitable as a cleansing agent for use in removing dried exudates such as those formed in cases of seborrheic eczema, such a solution will have no actual therapeutic effect in cases of eczema.

The aforesaid product, when taken as directed, will have no significant effect upon the acid base balance of the body. The use of sodium bicarbonate will not prevent the retention of acid in the body nor will it correct a predisposition to rheumatism and gout. The application of cloth wet with a sodium bicarbonate solution to joints affected with rheumatism will exert no remedial or significant palliative effect. Sodium bicarbonate does not possess tonic properties and will not act as a general tonic to the system. The use of sodium bicarbonate solution as an enema for babies, will have no therapeutic value in cases of colic. Sodium bicarbonate does not constitute an adequate treatment or a dependable relief for colds, grippe or influenza, nor will the taking of several doses of sodium bicarbonate daily for three days cure a cold. Alkalinization by the administration of frequently repeated doses of sodium bicarbonate will not break up, prevent or cure a common cold and will not be effective in killing the germs or other organisms which cause colds, grippe and influenza.

PAR. 7. The foregoing false, deceptive and misleading statements and representations made by the respondents in designating and describing

Crystal Brand Baking Soda and its effectiveness in use were and are calculated to have, and have had and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true. As a result of such erroneous and mistaken belief, so engendered, the purchasing public is induced to purchase, and does purchase, substantial quantities of respondent's said product.

PAR. 8. 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 August 31, 1943, issued and thereafter served its complaint in this proceeding upon respondent, Detroit Soda Products Company, a corporation, on September 3, 1943, and upon respondent, Aarons, Sill & Caron, Inc., a corporation, on September 7, 1943, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. The respondent, Aarons, Sill & Caron, Inc., filed its answer on September 17, 1943, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. The respondent, Detroit Soda Products Company, filed its answer on September 20, 1943, in which answer it denied the material allegations of fact set forth in said complaint. Subsequently the Commission, by order entered herein, granted respondent Detroit Soda Products Company's motion for permission to withdraw its 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, the answer filed by respondent, Aarons, Sill & Caron, Inc., and the substitute answer filed by respondent, Detroit Soda Products Company, 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, Detroit Soda Products Company, is a corporation, organized and existing under and by virtue of the laws of the State of Michigan with its principal place of business located at 35 Perry Place, in the city of Wyandotte, State of Michigan.

Respondent, Aarons, Sill & Caron, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Michigan with its principal place of business located at the Architects Building in the city of Detroit, State of Michigan.

PAR. 2. Respondent, Detroit Soda Products Company, is now, and for several years last past has been, continuously engaged in the business of packing, offering for sale and selling in commerce, as herein set out, a

baking soda (bicarbonate of soda) which is designated "Crystal Brand Baking Soda" and recommended for use in the treatment of and as a remedy for various human ailments as well as for other purposes.

Respondent, Aarons, Sill & Caron, Inc., is now, and for several years last past has been, continuously engaged in the advertising business. During said time said respondent has been and is now employed by the respondent, Detroit Soda Products Company, and at all times herein mentioned has acted as its advertising agent in the dissemination of advertisements of Crystal Brand Baking Soda.

PAR. 3. Respondent, Detroit Soda Products Company, being engaged in the business as aforesaid, caused and causes said product, when sold, to be transported from its principal place of business located in the city of Wyandotte, State of Michigan, to purchasers thereof located at points in various States of the United States other than the State from which said shipments were made and in the District of Columbia. Respondent has, at all times herein mentioned, maintained, and now maintains, a course of trade in commerce in said product so distributed and sold by it between and among various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of the aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning Crystal Brand Baking Soda by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase thereof 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 by the respondents, Detroit Soda Products Company and Aarons, Sill & Caron, Inc., as hereinabove referred to, by radio continuities, are the following:

What economical dentifrice will freshen the breath, keep gums healthy, remove teeth stains, restore dentine's natural brilliance?

Crystal Brand Baking Soda.

What's an ideal remedy for indigestion * * *? Crystal Brand Baking Soda.

What are Crystal Brand's medicinal advantages? Crystal Brand can be used * * * as a remedy for colds and coughs, * * * and indigestion.

Among, and typical of, the false, misleading and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, in addition thereto, by respondent, Detroit Soda Products Company, as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers and periodicals, and by circulars, leaflets, pamphlets and other advertising literature, are the following:

Bicarbonate of soda * * * contains innate properties which are indispensable for making food easy to digest.

It also relieves inflammation and gives a soothing effect to the membrane of the mouth.

TESTED HOME REMEDIES

INDIGESTION: Dissolve one-quarter teaspoon of Crystal Baking Soda in one-half glass of cold water. Drink this before meals.

DYSPEPSIA * * *: Dissolve one level teaspoonful of Crystal Baking Soda in one glass of cold water. Drink this one or two hours after meals. For a tonic form, take one-quarter teaspoon before meals.

IVY POISONING: Dissolve two teaspoons of Crystal Baking Soda in one pint of water, and bathe the affected parts frequently. This is helpful in reducing the eruption and in quieting the itching caused by Ivy Poisoning.

LUMBAGO: Dissolve one-half to one pound of Crystal Baking Soda in a bathtub of water (about 30 gallons of water). Have the water as hot as it can be borne. Lie in the water about fifteen minutes or longer, then go to bed at once to avoid exposure.

SCALDS AND BURNS: Make a paste of Crystal Baking Soda and cold water. Apply this paste to the affected surface and keep a damp or moist cloth over it. This treatment usually relieves the pain instantly.

TOOTHACHE: Dissolve two teaspoons of Crystal Baking Soda in a pint of water, dip small pieces of cotton in this solution and apply them to the cavity of the affected tooth.

ECZEMA: Dissolve two level teaspoons of Crystal Brand Baking Soda in a pint of water. Apply this solution to the affected parts. "Externally, in a solution, it (Bicarbonate of Soda) is a solvent for dried exudates (secretions) such as the crusts in seborrheic eczema."—Practical Therapeutics—(Birmingham).

ACIDITY: Dissolve one level teaspoon of Crystal Brand Baking Soda in one glass of cold water and take one to two hours after meals. For tonic form, take about one-quarter teaspoon before meals.

COLIC (BABY): Dissolve one level teaspoon of Crystal Brand Baking Soda in one-half ($\frac{1}{2}$) glass (two ounces) of warm water—use this to give an enema. This treatment is for a baby from one month to six months of age.

RHEUMATISM

Dissolve two to four teaspoons of Crystal Baking Soda in one pint of water, wet a cloth in this solution and apply to the affected parts of joints. * * *

COLDS, GRIPPE AND INFLUENZA

Our recommendation for treating or "breaking up" a common Cold is as follows: Dissolve one-half teaspoon of Crystal Baking Soda in one glass of cold water and drink it. Do this about every two hours until you have taken six doses. This is the treatment for the first day.

During the second day, take four doses about two hours apart.

During the third day, take two doses—one in the morning and one in the evening. After the third day take one dose each morning until the Cold is cured.

* * * * *

Colds, Grippe and Influenza are, as you know, due to certain germs. Thorough alkalinization of the body helps to kill these germs. It is for this reason that Crystal Soda, when used as suggested above, is very helpful in "breaking up" common Colds, and also in preventing them and similar diseases from becoming serious. * * *

PAR. 5. By and through the use of the statements hereinabove set forth, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative or therapeutic properties of Crystal Brand Baking Soda, the respondents, Detroit Soda

Products Company and Aarons, Sill & Caron, Inc., have represented and do now represent, that Crystal Brand Baking Soda, when used as a dentifrice, will freshen the breath, keep gums healthy, remove all teeth stains and restore dentine's natural brilliance; that said product is an ideal remedy for indigestion, colds and coughs.

The respondent, Detroit Soda Products Company, in addition thereto has represented and does now represent, directly or by implication that Crystal Brand Baking Soda contains innate properties which are indispensable for making food easy to digest; that said product will relieve inflammation and give a soothing effect to the membrane of the mouth; that said product constitutes a competent and effective treatment and remedy for indigestion, dyspepsia, ivy poisoning, lumbago, scalds and burns, toothache, eczema, acidity, colic in babies, rheumatism, colds, grippe and influenza; that said product has tonic properties and will act as a general tonic; that said product will "break up," prevent and cure a common cold; that said product will kill the germs that cause colds, grippe and influenza and will prevent them and similar diseases from becoming serious.

PAR. 6. The aforesaid statements and representations, as hereinabove set forth, are grossly exaggerated, false, misleading and deceptive. In truth and in fact, Crystal Brand Baking Soda, when used as a dentifrice, will only tend to freshen the breath when bad breath arises from the accumulation of food, debris and other material on or between the teeth. It will not be effective in other conditions. Said product cannot be relied upon to keep gums healthy. While it will act to some extent as a cleansing and polishing agent if a sufficient quantity is used, it will not remove all types of stains from the teeth. It will not restore dentine's natural brilliance, for that portion of the tooth structure which possesses lustre and brilliance is not the dentine but the enamel. It does not possess innate properties which are indispensable for making food easy to digest nor does said product constitute an adequate treatment or an ideal remedy for indigestion. The only condition of stomach distress, which might be described as indigestion, in which this preparation could be of value is hyperacidity. Said product is not an effective or adequate treatment for coughs and when used as a mouthwash or gargle, it will not be effective in relieving inflammation of the membrane of the oral cavity.

Crystal Brand Baking Soda is not a remedy and does not constitute a competent and effective treatment for indigestion, dyspepsia, ivy poisoning, lumbago, scalds and burns, toothache, eczema, acidity, colic in babies, rheumatism, colds, grippe and influenza. While the application of a sodium bicarbonate solution will have some slight tendency to relieve itching such as that caused by poison ivy, it will not reduce the eruption of ivy poisoning. The addition of sodium bicarbonate to a hot bath will exert no beneficial effect in cases of lumbago. Any temporary benefits which are derived from such a bath arise solely from the heat involved. While a paste of baking soda and water is suitable for application to minor scalds and minor burns, it is not an appropriate treatment for severe scalds or burns. The application of small pieces of cotton dipped in baking soda solution to the cavity in an aching tooth will have no significant tendency to relieve such condition. While a baking soda solution is suitable as a cleansing agent for use in removing dried exudates such as those formed in cases of seborrheic eczema, such a solution will have no actual therapeutic effect in cases of eczema.

The aforesaid product, when taken as directed, will have no significant effect upon the acid base balance of the body. The use of sodium bicarbonate will not prevent the retention of acid in the body nor will it correct a predisposition to rheumatism and gout. The application of cloth wet with a sodium bicarbonate solution to joints affected with rheumatism will exert no remedial or significant palliative effect. Sodium bicarbonate does not possess tonic properties and will not act as a general tonic to the system. The use of sodium bicarbonate solution as an enema for babies, will have no therapeutic value in cases of colic. Sodium bicarbonate does not constitute an adequate treatment or a dependable relief for colds, grippe or influenza, nor will the taking of several doses of sodium bicarbonate daily for three days cure a cold. Alkalinization by the administration of frequently repeated doses of sodium bicarbonate will not break up, prevent or cure a common cold and will not be effective in killing the germs or other organisms which cause colds, grippe and influenza.

PAR. 7. The foregoing false, deceptive and misleading statements and representations made by the respondents in designating and describing Crystal Brand Baking Soda and its effectiveness in use were and are calculated to have, and have had and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true. As a result of such erroneous and mistaken belief, so engendered, the purchasing public is induced to purchase, and does purchase, substantial quantities of said product.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondents, Detroit Soda Products Company, a corporation, and Aarons, Sill & Caron, Inc., a corporation, their officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of a baking soda (bicarbonate of soda) designated "Crystal Brand Baking Soda," 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, 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 "Crystal Brand Baking Soda," when used as a dentifrice, will freshen the breath, other than in cases where bad breath arises from the accumulation of food, debris and other material on or between the teeth, and which is removable by use of said product and a toothbrush.

(b) That said product, when used as a dentifrice, will keep gums healthy.

(c) That said product, when used as a dentifrice, will remove teeth stains other than that it will act to some extent as a cleansing and polishing agent if a sufficient quantity is used.

(d) That said product, when used as a dentifrice, will restore dentine's natural brilliance.

(e) That said product is a remedy or constitutes an effective treatment for indigestion other than temporary relief in cases of stomach distress, caused by hyperacidity.

(f) That said product is a remedy or constitutes a competent or effective treatment for colds or coughs.

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 respondent, Detroit Soda Products Company, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a baking soda (bicarbonate of soda) designated "Crystal Brand Baking Soda," 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 Crystal Brand Baking Soda contains properties which are indispensable for making food easy to digest.

(b) That said product relieves inflammation or gives a soothing effect to the membrane of the mouth.

(c) That said product is a remedy and constitutes a competent and effective treatment for dyspepsia.

(d) That said product is a remedy and constitutes a competent and effective treatment for ivy poisoning, other than that a solution of said product will have some slight tendency to relieve itching caused by poison ivy.

(e) That said product is a remedy and constitutes a competent and effective treatment for lumbago, or that the addition of said product to a hot bath will exert beneficial effect in cases of lumbago.

(f) That said product is a remedy and constitutes a competent and effective treatment for scalds or burns, other than that a paste of said product and water is suitable for application to minor scalds and minor burns.

(g) That said product constitutes a competent and effective treatment for toothache.

(h) That said product is a remedy and constitutes a competent and effective treatment for eczema, other than that a solution of said product

is suitable as a cleansing agent for use in removing dried exudates, such as those formed in cases of seborrheic eczema.

(i) That said product is a remedy or constitutes a competent and effective treatment for acidity.

(j) That said product is a remedy or constitutes a competent and effective treatment for rheumatism.

(k) That said product possesses tonic properties or acts as a general tonic to the system.

(l) That said product used in solution as an enema is a remedy and constitutes a competent and effective treatment for colic in babies.

(m) That said product is a remedy or constitutes a competent and effective treatment for grippe or influenza, will prevent colds, or will be effective in killing the germs or other organisms which cause colds, grippe and influenza.

2. Disseminating, or causing to be disseminated, any advertisement by 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

38 F. T. C.

IN THE MATTER OF

REX DIATHERMY CORPORATION

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

Docket 5145. Complaint, Mar. 31, 1944—Decision, June 26, 1944

Where a corporation engaged in the manufacture and rental and interstate sale and distribution of its "Rex Diathermy Machine"; by advertisements in Italian in newspapers and other advertising literature and through radio continuities—

- (a) Represented that its said device or apparatus when used by unskilled individuals in the home treatment of self-diagnosed diseases and ailments, was a competent treatment and remedy for rheumatism in its various forms in all parts of the body, sciatica, lumbago, arthritis, bronchitis and other ailments and diseases, and for the alleviation of pain resulting therefrom; and that diathermy treatments are used by all doctors and in all hospitals for the treatment of the diseases and conditions named;

The facts being said representations were grossly exaggerated, false and misleading; said device was not a competent and effective means and methods for the treatment of self-diagnosed diseases or ailments or for the alleviation of pain resulting therefrom: there are many diseases in which diathermy would be contra-indicated, while in others use or improper use thereof might seriously aggravate rather than relieve conditions; some conditions for which the device was recommended may be symptomatic of underlying systemic disorders for which such treatment would have no therapeutic value and might even be injurious, and be responsible for fatal delay for proper diagnosis of such underlying causes as tuberculosis, syphilis, cancer or diabetes; use of diathermy requires diagnosis by competent medical authority to determine if such treatment is indicated and if so, method and duration which should be prescribed; and it is not used, as claimed, by all doctors or all hospitals for treatment of the diseases represented; and

- (b) Failed to reveal that prescribed use of its device might result in serious and irreparable injury to health and that it might be safely used only after a competent medical authority had determined, as a result of diagnosis, that diathermy was indicated, and had prescribed the frequency and amount of application of such treatments, and the user had been adequately instructed in the method of operating such device by a trained technician;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby induce its purchase of said device:

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. S. F. Rose 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 Rex Diathermy 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, Rex Diathermy Corporation, is a corporation, created, organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business now at 901 First Court, Brooklyn, N. Y.

PAR. 2. The respondent is now, and for more than three years last past, has been engaged in the manufacture, rental, sale and distribution of a certain device or apparatus designated as Rex Diathermy Machine.

In the course and conduct of its business, the respondent causes and has caused said device or apparatus, when sold, to be transported from its place of business in the State of New York, to 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 device or apparatus, 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 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 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 said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers, by radio continuities and other advertising literature all in the Italian language, the English translations of which are as follows:

Those who suffer from rheumatism, sciatica, lumbago, arthritis, bronchitis and similar ails, are cordially invited to try the Rex Diathermy Machine belonging to Mr. Oliveri of 38 Park Row NY: As you may know, the diathermy is used by all doctors and in all hospitals. This machine, if you wish, will be taken to your home to give you a free trial and to show you how easy it is to obtain relief with the penetrating warmth of the Rex Diathermy. All you have to do is write or telephone at this address: Mr. Oliveri, 38 Park Row, NY. Telephone Barclay 7-3164 and almost immediately an expert italian specialist will come to your home to give you a free trial and all information you require. Do not suffer any longer. Use the Rex Diathermy Machine. The address is: Mr. Oliveri, 38 Park Row NY Telephone Barclay 7-3164.

Do you suffer from rheumatism, sciatica, lumbago, arthritis, bronchitis or other similar ails that stop you from working? * * * Many sufferers who have tried it write us letters of thanks for the magnificent results obtained, and you can read and see these same letters at Mr. Oliveri's office whenever you like. Remember that the trial is gratis, therefore do not suffer any longer, use the Rex Diathermy machine, call tomorrow. I repeat the address: Mr. Oliveri 38 Park Row New York. Telephone Barclay 7-3164.

Diathermy Machine Guarantee, \$35 full price; call noon to 3. Barclay 7-3164.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto, not specifically set out herein, respondent represents that its device or apparatus, advertised as a Diathermy Machine, when used by the unskilled public in the treatment of self-diagnosed diseases and ailments of the human body by individual application in the home, is a competent and effective means and method for the treatment of and constitutes a competent remedy for rheumatism in its various forms in all parts of the body, sciatica, lumbago, arthritis, bronchitis and other unnamed ailments and diseases of the body, and for the alleviation of pain resulting therefrom; and that diathermy treatments are used by all doctors and in all hospitals for the treatment of the diseases and conditions named in respondent's advertisements.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. Respondent's device or apparatus, designated as Rex Diathermy Machine, portable in character, is commonly known as the spark-gap type diathermy. The power is obtained from house current by the necessary connection and transmitted through said device to the patient by means of two electrical cords, each of which terminates in an insulated electrode or pad. The application to the patient is made usually by placing the electrodes in such position that the power may pass between said electrodes through the affected area, at stated intervals and for varying periods of time.

The individual self-application of said device by the unskilled lay public in the home, under the conditions prescribed in said advertisements or under such conditions as are customary or usual is not an effective method for the treatment of, nor does its use constitute a competent remedy for, rheumatism in its various forms in all parts of the body, arthritis, bronchitis, sciatica, lumbago, and similar ailments and diseases.

Said device is not a competent and effective means and method to be used in the treatment of self-diagnosed diseases and ailments of the human body, or for the alleviation of pain resulting therefrom. Its use is contraindicated and may result in serious and irreparable injury to health in all conditions involving acute inflammatory processes, in conditions involving the special senses and glandular structures, and in the treatment of conditions in close proximity to the special senses and glandular structures.

In conditions of acute inflammation of the nerves, such as neuritis, neuralgia, sciatica and lumbago, and acute inflammation of the joints, such as arthritis, lumbago or rheumatic pains associated with acute inflammatory conditions of the nerves and joints, its use may result in further swelling of inflamed tissue, thereby increasing the congestion of the inflamed part and spreading the inflammation to adjacent tissue and allowing the absorption of toxins, if present.

Furthermore, the use of said device for the relief of pain due to neuralgia or neuritis, which may be symptoms of some deeper underlying disease or cause such as tumor, tuberculosis, syphilis, cancer or diabetes, may fatally delay proper diagnosis and treatment.

The application of diathermy in conditions of acute sinus trouble may result in further increasing congestion of the mucous membrane of the sinuses, nose and throat, causing increased absorption of bacterial toxins, if present, perpetuating the congestion of the mucous membrane.

The application of said device by the unskilled layman in the treatment of pains in the knees may fatally delay proper diagnosis and treatment, in

that cancer of the spine may, and often does, evidence itself by severe pain in said areas.

Diathermy, when applied in excess dosage in the treatment of severe pains in the extremities in the presence of advanced blood vessel changes of the legs, may cause serious burns and may directly lead to gangrene and necessitate amputation of the legs.

When diathermy is applied to areas which may be affected by malignant tumors, such use may result in stimulating the growth of cancerous cells or in spreading the trouble to other tissues.

In those areas of the skin where the sense of heat has been lost, due to injury or impairment of the peripheral nerves, the application of said device may result in tissue destruction and severe burns.

There are many diseases and conditions in the treatment of which diathermy would be contra-indicated. There are other conditions in which the efficacy of diathermy is dependent upon the method and duration of its use. In both of the above classes of cases the use or improper use of diathermy might aggravate rather than relieve such conditions. Furthermore, many conditions, including some of those for which respondent recommends its device, are sometimes symptomatic or indicative of underlying systemic disorders for which treatment by diathermy would have no therapeutic value and might even be injurious. It would be impossible for a member of the lay public to correctly diagnose his ailment or condition or to determine the underlying cause of such disorder. It would also be impossible for such person to correctly determine the method and duration of the use of diathermy. Consequently, the use of diathermy requires the diagnosis of the ailment or condition by a competent medical authority in order to determine if diathermy is indicated and the method and duration of treatment which should be prescribed. Diathermy is not used by all doctors and in all hospitals for the treatment of the diseases and conditions as represented by the respondent.

PAR. 6. In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated fail to reveal all facts material in the light of such representations or material with respect to consequences which may result from the use of said device or apparatus, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, and that the use of said device may result in serious and irreparable injury to health.

The said advertisements are further false, as aforesaid, in that said advertisements also fail to conspicuously reveal that the device may be safely used only after a competent medical authority has determined, as a result of diagnosis, that diathermy is indicated and has prescribed the frequency and amount of application of such diathermy treatments and the user has been adequately instructed in the method of operating such device by a trained technician.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to its device or apparatus, 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 to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the respondent's said device or apparatus.

PAR. 8. The foregoing acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 31, A. D., 1944, issued, and subsequently served its complaint in this proceeding upon respondent, Rex Diathermy 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Rex Diathermy Corporation, is a corporation, created, organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business now at 901 First Court, Brooklyn, N. Y.

PAR. 2. The respondent is now, and for more than three years last past, has been engaged in the manufacture, rental, sale and distribution of a certain device or apparatus designated as Rex Diathermy Machine.

In the course and conduct of its business, the respondent causes and has caused said device or apparatus, when sold, to be transported from its place of business in the State of New York, to 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 device or apparatus, 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 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 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 said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers, by radio continuities and other advertising literature all in the Italian language, are the following (English translation):

Those who suffer from rheumatism, sciatica, lumbago, arthritis, bronchitis and similar ails, are cordially invited to try the Rex Diathermy Machine belonging to Mr. Oliveri of 38 Park Row NY. As you may know, the diathermy is used by all doctors and in all hospitals. This machine, if you wish, will be taken to your home to give you a free trial and to show you how easy it is to obtain relief with the penetrating warmth of the Rex Diathermy. All you have to do is write or telephone at this address: Mr. Oliveri, 38 Park Row, NY. Telephone Barclay 7-3164 and almost immediately an expert Italian specialist will come to your home to give you a free trial and all information you require. Do not suffer any longer. Use the Rex Diathermy Machine. The address is: Mr. Oliveri, 38 Park Row NY Telephone Barclay 7-3164.

Do you suffer from rheumatism, sciatica, lumbago, arthritis, bronchitis or other similar ails that stop you from working? * * * Many sufferers who have tried it write us letters of thanks for the magnificent results obtained, and you can read and see these same letters at Mr. Oliveri's office whenever you like. Remember that the trial is gratis, therefore do not suffer any longer, use the Rex Diathermy machine, call tomorrow. I repeat the address: Mr. Oliveri 38 Park Row New York. Telephone Barclay 7-3164.

Diathermy Machine Guarantee, \$35 full price; call noon to 3. Barclay 7-3164.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto, not specifically set out herein, respondent represents that its device or apparatus, advertised as a Diathermy Machine, when used by the unskilled public in the treatment of self-diagnosed diseases and ailments of the human body by individual application in the home, is a competent and effective means and method for the treatment of and constitutes a competent remedy for rheumatism in its various forms in all parts of the body, sciatica, lumbago, arthritis, bronchitis and other unnamed ailments and diseases of the body, and for the alleviation of pain resulting therefrom; and that diathermy treatments are used by all doctors and in all hospitals for the treatment of the diseases and conditions named in respondent's advertisements.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. Respondent's device or apparatus, designated as Rex Diathermy Machine, portable in character, is commonly known as the spark-gap type diathermy. The power is obtained from house current by the necessary connection and transmitted through said device to the patient by means of two electrical cords, each of which terminates in an insulated electrode or pad. The application to the patient is made usually by placing the electrodes in such position that the power may pass between said electrodes through the affected area, at stated intervals and for varying periods of time.

The individual self-application of said device by the unskilled lay public in the home, under the conditions prescribed in said advertisements or under such conditions as are customary or usual is not an effective method for the treatment of, nor does its use constitute a competent remedy for, rheumatism in its various forms in all parts of the body, arthritis, bronchitis, sciatica, lumbago, and similar ailments and diseases.

Said device is not a competent and effective means and method to be used in the treatment of self-diagnosed diseases and ailments of the human body, or for the alleviation of pain resulting therefrom. Its use is contra-indicated and may result in serious and irreparable injury to health in all conditions involving acute inflammatory processes, in conditions involving the special senses and glandular structures, and in the treatment of conditions in close proximity to the special senses and glandular structures.

In conditions of acute inflammation of the nerves, such as neuritis, neuralgia, sciatica and lumbago, and acute inflammation of the joints, such as arthritis, lumbago or rheumatic pains associated with acute inflammatory conditions of the nerves and joints, its use may result in further swelling of inflamed tissue, thereby increasing the congestion of the inflamed part and spreading the inflammation to adjacent tissue and allowing the absorption of toxins, if present.

Furthermore, the use of said device for the relief of pain due to neuralgia or neuritis, which may be symptoms of some deeper underlying disease or cause such as tumor, tuberculosis, syphilis, cancer or diabetes, may fatally delay proper diagnosis and treatment.

The application of diathermy in conditions of acute sinus trouble may result in further increasing congestion of the mucous membrane of the sinuses, nose and throat, causing increased absorption of bacterial toxins, if present, perpetuating the congestion of the mucous membrane.

The application of said device by the unskilled layman in the treatment of pains in the knees may fatally delay proper diagnosis and treatment, in that cancer of the spine may, and often does, evidence itself by severe pain in said areas.

Diathermy, when applied in excess dosage in the treatment of severe pains in the extremities in the presence of advanced blood vessel changes of the legs, may cause serious burns and may directly lead to gangrene and necessitate amputation of the legs.

When diathermy is applied to areas which may be affected by malignant tumors, such use may result in stimulating the growth of cancerous cells or in spreading the trouble to other tissues.

In those areas of the skin where the sense of heat has been lost, due to injury or impairment of the peripheral nerves, the application of said device may result in tissue destruction and severe burns.

There are many diseases and conditions in the treatment of which diathermy would be contra-indicated. There are other conditions in which the efficacy of diathermy is dependent upon the method and duration of its use. In both of the above classes of cases the use or improper use of diathermy might aggravate rather than relieve such conditions. Furthermore, many conditions, including some of those for which respondent recommends its device, are sometimes symptomatic or indicative of underlying systemic disorders for which treatment by diathermy would have no therapeutic value and might even be injurious. It would be impossible for a member of the lay public to correctly diagnose his ailment or condition or to determine the underlying cause of such disorder. It would also be impossible for such person to correctly determine the method and duration of the use of diathermy. Consequently, the use of diathermy requires the diagnosis of the ailment or condition by a competent medical authority in order to determine if diathermy is indicated and the method and duration of treatment which should be prescribed. Diathermy is

not used by all doctors and in all hospitals for the treatment of the diseases and conditions as represented by the respondent.

PAR. 6. In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated fail to reveal all facts material in the light of such representations or material with respect to consequences which may result from the use of said device or apparatus, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, and that the use of said device may result in serious and irreparable injury to health.

The said advertisements are further false, as aforesaid, in that said advertisements also fail to conspicuously reveal that the device may be safely used only after a competent medical authority has determined, as a result of diagnosis, that diathermy is indicated and has prescribed the frequency and amount of application of such diathermy treatments and the user has been adequately instructed in the method of operating such device by a trained technician.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to its device or apparatus, 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 to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the respondent's said device or apparatus.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to the 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, Rex Diathermy Corporation, 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 device designated "Rex Diathermy Machine," or any other device of substantially similar character, 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 device, when used by unskilled laymen in the treatment of self-diagnosed conditions, constitutes a competent or effective treatment of or remedy for rheumatism in its various forms in all parts of the body, arthritis, bronchitis, sciatica, lumbago or other similar diseases.

(b) That said device constitutes a competent or effective treatment for the alleviation of pain resulting from diseases and ailments of the human body unless specifically limited to conditions which do not involve acute inflammatory processes, glandular structures, or the special senses.

(c) That diathermy treatments are used by all doctors and in all hospitals for the treatment of diseases or diseased conditions.

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 clearly and conspicuously that said device is not safe for use for any condition unless and until a competent medical authority has determined, as a result of diagnosis, that the use of diathermy is indicated, has prescribed the frequency and rate of application of the treatments, and the user has been adequately instructed by a trained technician in the use of such device.

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 device, which advertisement contains any representation prohibited in paragraph 1 hereof or which fails to contain the warning in paragraph 2 hereof.

It is further ordered, That the respondent shall, within 10 days after service upon it of this order, file with the Commission an interim report in writing, stating whether it intends to comply with this order and, if so, the manner and form in which it intends to comply; and that within 60 days after service upon it of this order, the respondent shall file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Complaint

IN THE MATTER OF

C. H. STEMMONS MANUFACTURING 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 4882. Complaint, Dec. 30, 1942.—Decision, June 27, 1944

Where an individual engaged in the manufacture and interstate sale and distribution of his "Airflow Arch-Ezur" arch supports; through advertisements and depictions in newspapers and periodicals and by circulars, pamphlets, letters and other advertising media, directly and by implication—

- (a) Represented that his said device would relieve foot pains caused by weak arches, callouses, metatarsal troubles and other foot disabilities; create an air suction through the shoes sufficient to keep the feet dry, cool, healthy, and comfortable; and was adjustable for both the metatarsal and longitudinal arches of the foot and would provide proper support therefor; and
- (b) Represented that it would prevent the formation of and remove bunions on the big and little toes, and overriding the shoe by the foot and spreading feet; aid in the restoration of foot health and relieve foot and body fatigue; that use thereof made shoes fit better in the arch, exercising weak, flabby muscles and restoring their tone and rebuilding degenerated tissues; and that it stimulated and increased circulation of blood in the feet, eased and relieved tired, aching feet, and was so scientifically designed as to be adjustable to fit every individual foot;

The facts being that mechanical construction of said supports was not such as to give proper support to either arch and it was not adjustable to the extent of giving such support; while, being soft, it might give the sense of temporary comfort for tired feet, it had no corrective function; air suction created by the openings in it was not sufficient to have any effect upon the feet or keep them dry, cool, healthy or comfortable; no device so constructed could fit every individual, since foot structure varies, and other claims made therefor were likewise false and misleading;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such statements were true and thereby inducing it to purchase a substantial quantity of his said device:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Turpin, Behrendt & Searing, of Kansas City, Mo., 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 C. H. Stemmons, an individual, trading as C. H. Stemmons Manufacturing Company and AirFlow Arch-Ezur Company, 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, C. H. Stemmons, is an individual, trading as C. H. Stemmons Manufacturing Company and AirFlow Arch-Ezur Company, with his principal office and place of business located at 1024 McGee Street, Kansas City, Mo.

PAR. 2. Respondent is now, and for several years last past has been, engaged in manufacturing and offering for sale and selling arch supports designated AirFlow Arch-Ezur. Respondent causes his product when sold to be transported from his place of business in the State of Missouri to purchasers thereof located in various other States of the United States and in the District of Columbia.

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

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated, and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning his said device by United States mails, and by various 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 device by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said device 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 aforesaid, by United States mails, by advertisements inserted in newspapers, magazines and periodicals and by means of circulars, pamphlets, letters and other advertising media, are the following:

FEET HURT?

Get Relief the Proven Way.

WEAR AIRFLOW ARCH-EZURS

HERE'S THE NEW ADJUSTABLE AIRFLOW ARCH-EZUR which offers new joy and new hope to foot sufferers * * *

Helps foot sufferers to find joy and blessed relief from tortuous foot burning pains, caused by weak arches, callouses, metatarsal troubles and various forms of foot disabilities.

Outstanding AirFlow Arch-Ezur Features. * Ventilated for Health * Air Cushioned for Comfort * Adjustable Metatarsal Pillow * Flexible, Soft and Resilient * Washable and Durable * Will outwear any regular shoe * Both the Metatarsal and the Longitudinal Arches, Adjustable * Patented Arch-Wing, Scientifically Designed to Restore Tone to Flabby Muscles and Rebuild Degenerated Tissues. (Pictorial representation of a foot with a bunion on the big toe and bunion on the little toe. Pictorial representation of a foot with over-riding shoe at outside. Pictorial representation of a spready foot.)

AirFlow Arch-Ezurs will in many cases prevent these common foot ailments. In others aid in the restoration of foot health.

Relieve Foot and Body Fatigue.

The cushion Arch-Wing makes shoes fit better in Arch, exercises weak, flabby muscles, and stimulates circulation.

Ventilated For Health—Cushioned for Comfort.
 To ease tired, aching feet.
 Scientifically designed for individual foot comfort.

Revolutionizes

Mechanical

FOOT CORRECTION

AirFlow Arch-Ezurs are provided with pockets underneath, that makes the support adjustable to the peculiarities of each individual's feet, they are easily adjusted for * HIGH ARCHES * MEDIUM ARCHES * LOW ARCHES * AND FLAT ARCHES. NO SHOE OR SUPPORT, with one standard elevation, can fit them all, or take the place of AirFlow Arch-Ezurs.

PAR. 4. Through the use of the foregoing statements, representations and others of similar import and meaning, not specifically set out herein, respondent has represented and does now represent, directly and by implication, that his device AirFlow Arch-Ezur will relieve foot pains caused by weak arches, callouses, metatarsal troubles and other forms of foot disabilities; that his device creates an air suction through the shoes sufficient to keep the feet dry, cool, healthy and comfortable; that it is adjustable for both the metatarsal and longitudinal arches of the foot and will provide proper support for said arches; that it will prevent the formation of and remove bunions on the big and little toe; that its use will prevent over-riding the shoe by the foot and will prevent spready feet; that said device will aid in the restoration of foot health and relieve foot and body fatigue; that its use makes shoes fit better in the arch, exercises weak, flabby muscles, restores tone to flabby muscles and rebuilds degenerated tissues; that it stimulates and increases circulation of blood in the feet; that said device will ease and relieve tired aching feet and is so scientifically designed as to be adjustable to fit every individual foot.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's device cannot be depended upon to relieve foot pains caused by weak arches, callouses, metatarsal troubles and other forms of foot disabilities. Said device does not create an air suction through the shoes sufficient to keep the feet dry, cool, healthy and comfortable and is not adjustable for both the metatarsal and longitudinal arch of the foot. It will not provide a proper support for either the metatarsal or longitudinal arch of the foot and cannot be adjusted so as to provide such support. The use of said device will not prevent the formation of or remove bunions on the big or little toe, nor will it prevent over-riding the shoe by the foot in all cases. It will not prevent spreading of the feet in the shoe, nor aid in the restoration of foot health or relieve foot and body fatigue. It cannot be depended upon to make shoes fit better in the arch. It does not provide exercise for the foot, is not helpful to weak, flabby muscles, nor will its use restore tone to flabby muscles and rebuild degenerated tissues. It will not stimulate and increase circulation of the blood in the feet and will not ease and relieve aching and tired feet. Said device is not scientifically designed so as to fit every individual foot and cannot be adjusted so as to fit every individual foot.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to his device 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 to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said device.

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 December 30, 1942, issued and subsequently served its complaint in this proceeding on the respondent, C. H. Stemmons, an individual, trading as C. H. Stemmons Manufacturing Company and Airflow Arch-Ezur Company, 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, and brief filed 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. Respondent, C. H. Stemmons, is an individual, trading as C. H. Stemmons Manufacturing Company, with his principal office and place of business located at 1024 McGee Street, Kansas City, Mo. It does not appear from the record that said respondent, C. H. Stemmons, has ever traded as Airflow Arch-Ezur Company, as charged in the complaint.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the manufacture and in the sale and distribution of arch supports designated as "Airflow Arch-Ezur." Respondent causes his products, when sold, to be transported from his place of business in the State of Missouri 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 his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said device by the United States mails and by various 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 device by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said device 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 aforesaid, by the United States mails, by advertisements inserted in newspapers, magazines, and periodicals, and by means of circulars, pamphlets, letters, and other advertising media, are the following:

FEET HURT?

Get Relief the Proven Way.

WEAR AIRFLOW ARCH-EZURS.

HERE'S THE NEW ADJUSTABLE AIRFLOW ARCH-EZUR which offers new joy and new hope to foot sufferers * * *

Helps foot sufferers to find joy and blessed relief from tortuous, burning foot pains, caused by weak arches, callouses, metatarsal troubles and various forms of foot disabilities.

Outstanding Airflow Arch-Ezur Features.

* Ventilated for Health—Air Cushioned for Comfort * Adjustable Metatarsal Pillow * Flexible, Soft and Resilient * Washable and Durable * Will outwear any regular shoe * Both the Metatarsal and Longitudinal Arches, Adjustable * Patented Arch-Wing, Scientifically Designed to Restore Tone to Flabby Muscles and Rebuild Degenerated Tissues. (Pictorial representations of a foot with bunion on the big toe and bunion on the little toe. Pictorial representation of a foot with over-riding shoe at outside. Pictorial representation of a spready foot.)

Airflow Arch-Ezurs will in many cases prevent these common foot ailments. In others aid in the restoration of foot health.

Relieve Foot and Body Fatigue.

The Cushion Arch-Wing makes shoes fit better in Arch, exercises weak, flabby muscles, and stimulates circulation.

Ventilated For Health—Cushioned for Comfort.

To ease tired, aching feet.

Scientifically designed for individual foot comfort.

Revolutionizes

Mechanical

FOOT CORRECTION

Airflow Arch-Ezurs are provided with pockets underneath, that makes the support adjustable to the peculiarities of each individual's feet, they are easily adjusted for * HIGH ARCHES * MEDIUM ARCHES * LOW ARCHES * AND FLAT ARCHES. NO SHOE OR SUPPORT, with one standard elevation, can fit them all, or take the place of Airflow Arch-Ezurs.

PAR. 4. Through the use of the foregoing statements, representations, and others of similar import and meaning not specifically set out herein, respondent has represented, directly and by implication, that his device, Airflow Arch-Ezur, will relieve foot pains caused by weak arches, cal-

louses, metatarsal troubles and other forms of foot disabilities; that his device creates an air suction through the shoes sufficient to keep the feet dry, cool, healthy, and comfortable; that it is adjustable for both the metatarsal and longitudinal arches of the foot and will provide proper support for said arches; that it will prevent the formation of and remove bunions on the big and little toes; that its use will prevent over-riding the shoe by the foot and will prevent spready feet; that said device will aid in the restoration of foot health and relieve foot and body fatigue; that its use makes shoes fit better in the arch, exercises weak, flabby muscles, restores tone to flabby muscles, and rebuilds degenerated tissues; that it stimulates and increases circulation of blood in the feet; that said device will ease and increases circulation of blood in the feet; that said device will ease and relieve tired, aching feet, and is so scientifically designed as to be adjustable to fit every individual foot.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false, and misleading. Respondent's device is not of such mechanical construction as to give proper support to either the metatarsal or the longitudinal arch of the foot and is not adjustable to the extent of giving such support. It has no benefit of a curative nature for relieving painful conditions caused by weak arches, callouses, metatarsal troubles, and other foot disabilities. Being soft, this device might give the sense of temporary comfort for tired feet, but it has no corrective function. This device does not provide exercise for the foot or have any value in restoring weak or flabby muscles or rebuilding degenerated tissues. The use of this device will not stimulate or increase the circulation of the blood in the feet, and has no effect upon the removal of bunions or callouses on the feet. This device will not prevent spreading of the feet in the shoe nor aid in the restoration of foot health or relieve foot and body fatigue. The air suction created by the openings in said device is not sufficient to have any effect upon the feet and will not keep the feet dry, cool, healthy, or comfortable. The structure of the foot varies with individuals, as does also the causes of foot conditions, and no device of a construction such as that of respondent's device could fit every individual foot.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his device has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase a substantial quantity of respondent's said device.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the purchasing 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 allega-

tions 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 brief filed in support of the complaint (no brief having been filed by the 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, C. H. Stemmons, an individual, trading as C. H. Stemmons Manufacturing Company, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of his certain device now designated as Air-flow Arch-Ezur, or any other device of substantially similar construction or possessing substantially similar properties, whether sold under the same name or 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 advertisement represents, directly or through inference,

(a) That respondent's device performs any corrective function in the treatment of foot conditions, or that its use will relieve painful conditions caused by weak arches, callouses, metatarsal troubles or other forms of foot disabilities.

(b) That the use of respondent's device will provide exercise for the foot or have any value in exercising or restoring weak or flabby muscles.

(c) That the use of respondent's device will stimulate or increase circulation of the blood in the feet, remove bunions or callouses upon the feet, or rebuild degenerated tissue.

(d) That the use of respondent's device will prevent spreading of the foot in the shoe, aid in the restoration of foot health, or relieve foot or body fatigue.

(e) That respondent's device is so constructed that it will create an air suction through the shoes sufficient to keep the feet dry, cool, healthy, or comfortable.

(f) That respondent's device is so designed as to fit every individual foot.

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 device, 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 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

J. H. CAMP, TRADING AS J. H. CAMP AND DRUG PROFITS, INC.

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

Docket 4893. Complaint, Jan. 22, 1943—Decision, June 27, 1944

Where an individual engaged in interstate sale and distribution of his "Phalene" and "Burtone" preparation; through advertisements in radio continuities—

- (a) Represented falsely that his said products were competent and effective laxatives and that his "Burtone" could be taken with safety and without ill effects to the user under all conditions and that continued use of said product was safe and harmless;

The facts being that said latter product was an irritant laxative and potentially dangerous when taken by one suffering from abdominal pains, stomach ache, or other symptoms of appendicitis; frequent or continued use thereof might result in dependence on laxatives and continued administration thereof as recommended might result in severe gastro-intestinal irritation; and

- (b) Failed to reveal that said preparations contained the drugs aloin, cascarrin, phenolphthalein and bile salts, and were potentially dangerous as aforesaid;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false and misleading advertisements were true, and with tendency so to do and thereby induce it to purchase substantial quantities of his said preparations:

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. Jesse D. Kash for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that J. H. Camp, an individual, trading as J. H. Camp and as Drug Profits, 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. The respondent, J. H. Camp, is an individual, trading as J. H. Camp and as Drug Profits, Inc., with his office and principal place of business located at Ravenswood, W. Va.

PAR. 2. The respondent is now, and for more than one year last past has been, engaged in the sale and distribution of certain preparations containing drugs, designated by him as "Phalene" and "Burtone," and recommended by him for use in treatment of various ailments and conditions of the human body.

Respondent causes the said preparations, when sold by him, to be transported from his aforesaid place of business in the State of West

Virginia, 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 preparations 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 aforesaid business respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said products by means of radio continuities 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 products by means of radio continuities for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said products 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 by said radio continuities, are the following:

PHALENE

Reach for health with Phalene! When you feel tired, weak, worn, old * * *.

Phalene acts to restore the normal flow of vital digestive juices * * *. Helps remove poisons that make you old before your time.

When you suffer from sick headaches, nauseated stomach, loss of appetite, aching muscles and joints, restless sleep, and a tired, weak body * * * and when your condition indicates the need for anti-acid and digestive treatments give Phalene a trial.

Phalene is a guaranteed tonic for the liver.

This is an old, tried and true product * * * When you feel bad * * * when you're sluggish * * * get a bottle of Phalene tablets.

* * * was developed for use in the medical world as a laxative tonic for the liver

* * *

BURTONE

A more thorough treatment when there's Bilious Attacks, Stomach Nausea, Headaches, Indigestion, Stomach Gas, and that Weak Tired-Out Feeling. These will remain—unless you correct faulty habits of the elimination; unless there's free organic action of the liver and lower bowels.—that's why we say try Burtone... Because Burtone now contains these helps.

Treatment: Begin the cathartic dose. Then one tablet night and morning until your tongue clears and your body feels free from toxic poisons.

* * * If you always feel tired, if you feel like grumbling instead of laughing. Why don't you try Burtone? In 9 cases out of 10 your trouble is simply faulty elimination—something that can be very easily remedied. Burtone is a safe remedy.

Burtone is the safe laxative * * *.

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, the respondent represents that his product "Burtone" is a safe remedy and is safe as a laxative and can be taken without harm to the user.

PAR. 5. The foregoing representations are false, misleading and deceptive. In truth and in fact respondent's preparation Burtone is not a safe remedy or a safe laxative. Said preparation is an irritant laxative and con-

tains the drugs Aloin, Cascarin, Phenolphthalein and Bile Salts, 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 and the continued administration of this irritant cathartic, as recommended in respondent's advertising, may result in severe gastrointestinal irritation.

PAR. 6. The respondent's advertisements disseminated as aforesaid with respect to both Phalene and Burtone 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 preparations to which the advertisements relate, under the conditions prescribed in said advertisements and under such conditions as are customary and usual. In truth and in fact, both of said preparations contain the drugs Aloin, Cascarin, Phenolphthalein and Bile Salts and are potentially dangerous when taken by one suffering from abdominal pains, stomach ache, colic, cramps, nausea, vomiting or other symptoms of appendicitis. Their frequent or continued use may result in dependence on laxatives. Both of said preparations are irritant cathartics and their continued administration, as recommended by respondent may result in severe gastro-intestinal irritation.

PAR. 7. The use by the respondent of the foregoing false and misleading advertisements, disseminated as aforesaid, has the tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading advertisements and representations are true and to induce the purchasing public to purchase substantial quantities of respondent's preparations as a result of such erroneous and mistaken belief.

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 January 22, 1943, issued and served its complaint in this proceeding upon the respondent, J. H. Camp, trading as J. H. Camp and Drug Profits, Inc., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. No answer was filed by the respondent. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent, J. H. Camp, and Richard P. Whiteley, Assistant Chief Counsel of 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 said Commission may proceed upon said statement of facts, making 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, and the respondent expressly waived the filing of a report upon the evidence by the Trial Examiner. Thereafter this proceeding came on for final hearing before the Commission on said

complaint and stipulation, said stipulation having been approved, accepted and filed and the Commission having duly considered same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, J. H. Camp, is an individual, trading as J. H. Camp and as Drug Profits, Inc., with his office and principal place of business located at Ravenswood, W. Va.

PAR. 2. The respondent is now and for more than one year last past has been engaged in the sale and distribution of certain preparations containing drugs designated by him as "Phalene" and "Burtone" and recommended by him for use in treatment of various ailments and conditions of the human body.

Respondent causes the said preparations, when sold by him, to be transported from his aforesaid place of business in the State of West Virginia, 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 preparations 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 aforesaid business, respondent has disseminated and has caused the dissemination of false advertisements concerning his said products by means of radio continuities 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 his said products by means of radio continuities for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of his said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. By and through the use of said advertisements disseminated as aforesaid, all subsequent to March 31, 1938, respondent represented that his products "Phalene" and "Burtone" were competent and effective laxatives and that his product "Burtone" could be taken and used with safety and without ill effects to the user under all conditions and circumstances and that continued use of said product is safe and harmless.

PAR. 5. The representations with respect to the product "Burtone" are false, misleading and deceptive. In truth and in fact, the use of said product is not safe and harmless and may not be taken and used with safety under all conditions and circumstances and cannot be used continually without ill effects to the user. Said preparation is an irritant laxative and contains the drugs aloin, cascarrin, phenolphthalein and bile salts 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 and the continued administration of this irritant cathartic as recommended in respondent's advertising may result in severe gastro-intestinal irritation.

PAR. 6. The respondent's advertisements, disseminated as aforesaid with respect to both "Phalene" and "Burtone," constitute false adver-

tisements 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 preparations to which the advertisements relate under the conditions prescribed by said advertisements and under such conditions as are customary and usual. In truth and in fact, both the said preparations contain the drugs aloin, cascarrin, phenolphthalein and bile salts and are potentially dangerous when taken by one suffering from abdominal pains, stomach ache, colic, cramps, nausea, vomiting or other symptoms of appendicitis. Their frequent or continued use may result in dependence on laxatives. Both of said preparations are irritant cathartics and their continued administration as recommended by the respondent may result in severe gastro-intestinal irritation.

PAR. 7. The use by the respondent of the foregoing false and misleading advertisements, disseminated as aforesaid, has the tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading advertisements are true and to induce the purchasing public to purchase substantial quantities of respondent's preparations as a result of such erroneous and mistaken belief.

CONCLUSION

The foregoing 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 (no answer having been filed by the respondent) and a stipulation as to the facts entered into by the respondent, J. H. Camp, trading as J. H. Camp and Drug Profits, Inc., 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 and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, the filing of report upon the evidence by the Trial Examiner having been expressly waived, the Commission, having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, J. H. Camp, individually, and trading as J. H. Camp and Drug Profits, Inc., or trading under any other name or names, his representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of his medicinal preparations designated "Phalene" and "Burtone," or any other preparation or preparations composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same or any other name or names, 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 "com-

merce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that respondent's preparation "Burtone" is safe and harmless and may be taken continually without ill effects, or which advertisement fails to reveal that neither the preparation "Phalene" nor the preparation "Burtone" should be used by one suffering from abdominal pains, stomach ache, cramps, 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 a warning 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparations, which advertisement contains any representation prohibited in paragraph I hereof with respect to "Burtone" or which fails to comply with the affirmative requirements set forth in paragraph 1 hereof with respect to both "Burtone" and "Phalene."

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

38 F. T. C.

IN THE MATTER OF

ERNEST O. RICH AND MICHAEL SIMEONE, DOING
BUSINESS AS RICH & COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT APPROVED SEPT. 26, 1914, AND THE WOOL PRODUCTS LABELING ACT OF 1939, APPROVED OCT. 14, 1940

Docket 5144. Complaint, Mar. 29, 1944—Decision, June 27, 1944

Where two partners engaged in the manufacture, introduction into commerce, sale, transportation and distribution of wool products, as defined in the Wool Products Labeling Act of 1939, including, among others, ladies' suits and other garments; Sold such products misbranded in violation of said act and the rules and regulations thereunder by failing to affix thereto a stamp, tag, label or other means of identification showing the percentage of the total fiber weight of wool, reprocessed wool, reused wool and non-wool fiber, and maximum percentage of adulterating matter; and proper identification of the manufacturer, seller, etc. subject to the act:

Held, That said acts and practices, under the circumstances set forth, were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

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 Ernest O. Rich and Michael Simeone, individually, and as copartners, trading and doing business as Rich & Company, hereinafter referred to as respondents, have violated the provisions of 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. The respondents, Ernest O. Rich and Michael Simeone, are copartners, trading and doing business as Rich & Company and have their principal office and place of business at 270 West 39th Street, New York, N. Y.

PAR. 2. Respondents are engaged in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of wool products, as such products are defined in the Wool Products Labeling Act of 1939, in commerce, as "commerce" is defined in said Act and in the Federal Trade Commission Act. Many of respondent's said products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said Act and the Rules and Regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said act and said rules and regulations in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of said wool

products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and rules and regulations.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported and distributed in said commerce as aforesaid, were ladies' suits and other garments. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid products in violation of the provisions of said act and said rules and regulations by failing to affix to said products 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 the wool product, exclusive of ornamentation not exceeding five percentum 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 five percentum 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 percentages in words and figures plainly legible by weight of the wool contents of such wool products where said wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product 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 products.

PAR. 4. The aforesaid acts, practices and methods of the respondents, as alleged, were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, 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 29th day of March, 1944, issued and subsequently served its complaint in this proceeding upon respondents, Ernest O. Rich and Michael Simeone, individually, and as copartners, trading and doing business as Rich & Company, 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 filed 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. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Ernest O. Rich and Michael Simeone, are copartners, trading and doing business as Rich & Company and have

their principal office and place of business at 270 West 39th Street, New York, N. Y.

PAR. 2. Respondents are engaged in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of wool products, as such products are defined in the Wool Products Labeling Act of 1939, in commerce, as "commerce" is defined in said Act and in the Federal Trade Commission Act. Many of respondents' said products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said act and said rules and regulations in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and rules and regulations.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported and distributed in said commerce as aforesaid, were ladies' suits and other garments. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid products in violation of the provisions of said act and said rules and regulations by failing to affix to said products 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 the wool product, exclusive of ornamentation not exceeding five percentum 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 five percentum 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 percentages in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product 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.

CONCLUSION

The aforesaid acts, practices and methods of respondents, as herein found, were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of fact set

forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and 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 respondents, Ernest O. Rich and Michael Simeone, individually, and as copartners, trading and doing business as Rich & Company, 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 ladies' suits or other "wool products" as such products are 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 securely to 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 five per centum 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 five per centum 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
VACU-MATIC CARBURETOR COMPANY

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

Docket 3388. Complaint, June 10, 1942¹—Decision, June 29, 1944

Where a corporation engaged in the manufacture and interstate sale and distribution of its "Vacu-matic" device for attachment between the carburetor and the intake manifold of automobile engines; through advertisements in newspapers and periodicals and circulars, letters and other advertising media, and statements on the containers of said device, directly or by implication—

Represented that use thereof on automobile engines would result in a substantial reduction in gasoline consumption and increased mileage per gallon of gasoline, and in quicker starting, faster acceleration or pick-up, more power, and a smoother-running engine;

The facts being that tests by the Bureau of Standards and a leading carburetor manufacturer, supported by the testimony of a number of outstanding figures in the automotive and carburetor engineering field established that the only cases in which it would affect the consumption of gasoline were those in which the fuel mixture, due to improper adjustment of the carburetor, contained too much gasoline in proportion to the amount of air, in which cases the small amount of additional air admitted by the device might serve to "lean" the mixture;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the results which might be accomplished through the use of said device and cause it to purchase substantial quantities as a result of the erroneous belief so engendered:

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

As respects the correctness of challenged claims made in behalf of the beneficial result to be obtained from the use of a device for attachment between the carburetor and the intake manifold of an automobile engine, in which the seller relied principally upon the results of certain road tests made under the supervision of one of its expert witnesses, and other tests thereof by means of a chassis dynamometer, and in which evidence in support of the complaint consisted of tests made by the Bureau of Standards and by one of the leading carburetor manufacturers, supported by the testimony of outstanding figures in the automotive and carburetor engineering fields, as well as road tests: such road tests are recognized by engineers generally as less reliable than laboratory tests, due to the number of variables to which the former are subject such as temperature, humidity, wind resistance, road conditions, density of traffic and the human element, i.e., manner of the driver's operation, and a chassis dynamometer, while useful for testing automobiles at service stations and similar places, is not a precision instrument, comparable with the instruments and methods used by said Bureau and the manufacturer referred to; and *held*, evidence introduced as aforesaid, in behalf of said claims, was insufficient to meet that introduced in support of the complaint.

¹ Amended.

Before Mr. Arthur F. Thomas, Mr. Miles J. Furnas and Mr. Lewis C. Russell, trial examiners.

Mr. R. A. McQuat and Mr. Merle P. Lyon for the Commission.

Nash & Donnelly, Mr. Frank E. Gettleman, Mr. Arthur Gettleman and Mr. Maurice S. Cayne, of Chicago, Ill., for respondent.

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Vacu-Matic Carburetor Company, 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Vacu-Matic Carburetor Company, is a corporation, organized under the laws of the State of Wisconsin with its principal office at Wauwatosa, Wis. Respondent is engaged in the business of manufacturing for sale and selling an attachment to an automobile engine under the trade name "Vacu-matic." Respondent causes its said product, when sold, to be shipped or transported from its aforesaid place of business in the State of Wisconsin to the purchasers thereof at their respective places of location in States of the United States other than the State of Wisconsin and in the District of Columbia. Respondent maintains, and during all the times mentioned herein has maintained, a course of trade in said product so sold by it 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 as hereinabove described, and for the purpose of inducing the purchase of its product, respondent has made false, deceptive and misleading statements concerning the value, efficacy and effect of its device and the results that are achieved by using it, by means of advertisements inserted in newspapers and magazines, in radio continuities, by printed pamphlets, letters, testimonials, and statements printed on its containers. Among the false, misleading and deceptive statements and representations made by the respondent regarding its said product are the following:

To Make This UNIQUE

GAS SAVING TEST

Will you permit us to send you at our risk the Vacu-matic, a device which auto owners everywhere are praising? Install it on your car. Test it at our risk. Unless it trims dollars off your gas bills by saving up to 30% on gasoline consumption, gives more power, quicker pickup and faster acceleration, the test will cost you nothing.

AUTOMATIC SUPERCHARGE PRINCIPLE

Vacu-matic is entirely different! It operates on the supercharge principle by automatically adding a charge of extra oxygen, drawn free from the outer air into the heart of the gas mixture. It is entirely automatic and allows the motor to "breathe" at the correct time, opening and closing as required. Saves up to 30% on gas costs, with better motor performance.

AUTOMOTIVE ENGINEERS know that cars operate better and use less gasoline when the gas is properly vaporized. Thousands of motorists have learned this secret

with better vaporization and *substantial gasoline savings* with the new VACU-MATIC. Automatically, this amazing discovery instantly puts pep and increased power in any motor. It adds mileage to every gallon of gasoline—produces split-second pick-up, sensitive accelerator response, quicker starting, greater speed, and smoother running. New records are being established everywhere by Vacu-matic users!

Through the use of the aforesaid statements and representations and others of similar import and nature not specifically set out herein, all of which purport to be descriptive of the design and effectiveness of said device in use, respondent represents that said device when used on automobile engines will result in the saving of up to 30% in gasoline consumption and costs; that its use will increase mileage, result in quicker pick-up, faster acceleration, provide more power, quicker starting and a smoother running engine.

The respondent further represents that the Vacu-matic device operates on the principle of a supercharger by automatically adding a charge of extra oxygen into the heart of the gas mixture, that its device is entirely automatic and allows the motor to "breathe" at the correct time, opening and closing as required.

PAR. 3. The foregoing statements and representations are false, misleading and untrue. In truth and in fact the use of the respondent's device does not perform any useful service in carbureting gasoline or any other motor fuel used in an automobile engine. The use of the respondent's device will not result in a saving in gasoline consumption and costs of up to 30% or in any other appreciable amount. Its use will not increase mileage, result in quicker pick-up, faster acceleration, nor will its use provide more power, quicker starting or a smoother running engine. Further, the respondent's product does not operate upon the principle of a supercharger and does not add an extra charge of oxygen into the gas mixture, and the use of the respondent's device does not enable a motor to "breathe" at the correct time, as that term is generally understood.

PAR. 4. The use by the respondent of the foregoing false, misleading and deceptive statements and representations herein set forth, 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 and representations are true, and into the purchase of substantial quantities of respondent's product, as a result of the erroneous and mistaken belief so engendered.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 26, 1938, issued and subsequently served its complaint in this proceeding upon the respondent, Vacu-Matic Carburetor 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, testimony and other evidence in support of and in opposition to the allegations of 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. Thereafter, on June 10, 1942, the Commission, upon the motion of its Assistant Chief Counsel and after due notice to respondent and consideration of respondent's brief in opposition to such motion, entered an order amending the complaint so as to charge, among other things, that the acts and practices of respondent constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. The order further provided that the testimony and evidence theretofore introduced in support of and in opposition to the original complaint, insofar as the same might be competent and material, should have the same force and effect as if introduced at hearings held under the amended complaint. On the same date, June 10, 1942, an amended complaint embodying the amendments provided for in the Commission's order was issued and was subsequently served upon respondent. On July 22, 1942, respondent filed its answer to the amended complaint. Subsequently, a further hearing was held before one of the trial examiners, at which certain additional evidence was introduced on behalf of the Commission (no further evidence being offered by respondent). Thereafter, the matter came on for final hearing before the Commission on the amended complaint, the answer thereto, testimony and other evidence, original and supplemental reports of the trial examiners upon the evidence and the exceptions to such reports, briefs in support of and in opposition to the amended 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, Vacu-Matic Carburetor Company, is a corporation, organized under the laws of the State of Wisconsin, with its principal office at Wauwatosa, Wis. Respondent is now and for a number of years last past has been engaged in the manufacture and sale of a mechanical device designed to be attached to automobile engines and designated by respondent as the "Vacu-matic."

PAR. 2. Respondent causes and has caused its product, when sold, to be transported from its place of business in the State of Wisconsin 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. In the course and conduct of its business and for the purpose of inducing the purchase of its device, respondent has made various representations to prospective purchasers with respect to the value, efficacy, and effect of the device and the results which may be obtained through the use thereof, such representations being made by means of advertisements inserted in newspapers and magazines and also by means of circulars, letters and other advertising media, including the containers in which respondent's device is packaged and sold. Among and typical of these representations are the following:

Findings

38 F. T. C.

MOTORISTS Wanted!
TO MAKE THIS *UNIQUE*
GAS SAVING TEST

UP
 TO
 30%
 GAS
 SAVINGS

Car Owners: You are invited to make a gas saving road test with the Vacu-matic on your own car, with the absolute understanding that unless it proves to you that it will save you up to 30% on gas and improve your car performance, the test will cost you nothing. Investigate this remarkable discovery that trims dollars off gasoline bills—gives you worthwhile gas savings—more power—quicker starting—more miles on less gas. (Com. Ex. No. 60)

and now

It's

VACU-MATIC

* * *

for

MORE POWER

GREATER SPEED

and—*GAS SAVINGS!* (Com. Ex. No. 63)

Car owners simply marvel at this new invention. They like the automatic, compensating feature of the Vacu-matic. They like the added power—pep—quicker pick-up. They like the smoother running, quicker starting and all-around better performance. And, most important, they like to save up to 30% on their gas bills. (Com. Ex. No. 66)

GAS SAVER!

NEW INVENTION GIVES UP

TO 30% SAVING ON GAS...

Faster Pick-Up . . . More Power (Com. Ex. No. 70)

PAR. 4. Through the use of these statements and others of similar import, respondent represents, directly or by implication, that the use of its device on automobile engines will result in a substantial reduction in gasoline consumption and increased mileage per gallon of gasoline, and that the use of the device will also result in quicker starting, faster acceleration or pick-up, more power, and a smoother-running engine.

PAR. 5. Respondent's device is attached to an automobile engine between the carburetor and the intake manifold. It is made in various models to fit different types of carburetors, but all of the models operate on the same principle. Essentially, the device consists of a small cylinder containing a piston which rests on a spring. When the automobile engine is running, this piston is operated by the differential pressure between the intake manifold and the atmosphere. In the side of the cylinder is a small hole, and the operation of the piston results in the opening and closing

of this hole. The opening of the hole permits a small amount of additional air to enter the intake manifold. The theory upon which respondent bases its claims for the device is that the admission of this additional air at the proper time serves to break down to some extent the vacuum of the motor, which result is reflected in lessened suction on the carburetor, and that this in turn results in less gasoline being drawn from the carburetor into the cylinders, the amount of gasoline thus eliminated being replaced by the air taken in through the Vacu-matic. It is further insisted by respondent that the additional air is admitted by the device in such manner as to increase the "turbulence" (swirl of air) within the motor, which serves to vaporize and rarefy the gasoline more finely and bring about a more explosive and more efficient mixture of gasoline and air than is produced by the carburetor alone.

PAR. 6. At the request of the Commission, tests of respondent's device were conducted by the National Bureau of Standards and also by one of the leading carburetor manufacturers in the United States. These tests appear to have been conducted in a careful and thorough manner, and in accordance with recognized engineering principles and standards. In addition to the reports on these tests, the record contains the opinions of a number of experts who are outstanding figures in the automotive and carburetor engineering field. The results of the tests establish that, except in those cases hereinafter referred to in paragraph 7, respondent's device performs no useful service in the carburetion of gasoline in an automobile engine and has no appreciable effect upon the operation of the engine. This conclusion is supported by the testimony of the experts in question. The amount of air admitted by the device is negligible when compared with the total amount of air used by the motor, and this is equally true with respect to the purported increase in the turbulence of the air. Except in those cases referred to in paragraph 7, the device affords no reduction in gasoline consumption and is incapable of increasing the mileage obtainable from a given quantity of gasoline. The use of the device will not result in quicker starting, faster acceleration or pick-up, more power, or a smoother-running engine.

Respondent relies principally upon the results of certain road tests of the device which were made under the supervision of one of its expert witnesses. If authoritative, these tests would indicate that a substantial saving in gasoline may be effected through the use of the device. It appears very doubtful, however, whether the results of the tests can be accepted at their face value, as road tests on devices of this sort are recognized by engineers generally as being less reliable than laboratory tests. The principal reason for this is that road tests are subject to a number of variable factors which are not present in laboratory tests. Among these factors are temperature, humidity, wind resistance, road conditions, density of traffic, and the human element involved—that is, the manner in which the automobile is operated by the driver. In laboratory tests these factors can be eliminated or controlled to a much greater degree than is possible in road tests.

Moreover, the various tests made of the device at the Commission's instance by the Bureau of Standards and the carburetor manufacturer included road tests as well as laboratory tests, and the results of such road tests support the results of the laboratory tests—that is, they show that the use of respondent's device has no appreciable effect upon the operation of an automobile.

Respondent also introduced in evidence the results of certain tests made of its device by means of a chassis dynamometer. The record shows, however, that an instrument of this type, while capable of serving a useful purpose for the testing of automobiles at service stations and similar places, is not a precision instrument. It is not comparable with the instruments and methods used by the Bureau of Standards and the carburetor manufacturer referred to above.

After consideration of these road and dynamometer tests and other evidence introduced by respondent, including the testimony of certain expert witnesses and of members of the public who had used the device, the Commission is of the opinion that such evidence is insufficient to meet the evidence introduced in support of the complaint.

PAR. 7. The only cases in which respondent's device will affect the consumption of gasoline are those in which the fuel mixture, due to improper adjustment of the carburetor, is excessively rich (that is, contains too much gasoline in proportion to the amount of air). In such cases the small amount of additional air admitted by the device may serve to "lean" the mixture and thereby reduce to some extent the amount of gasoline consumed. The same result could be obtained by proper adjustment of the carburetor.

PAR. 8. The Commission therefore finds that, except insofar as they refer to those cases described in paragraph 7, the representations made by respondent with respect to its device and the results which may be accomplished through the use of the device, as set forth in paragraphs 3 and 4 hereof, are erroneous and misleading.

PAR. 9. 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 device and the results which may be accomplished through the use of the device, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of the device 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 amended complaint of the Commission, the respondent's answer thereto, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, original and supplemental reports of the trial examiners upon the evidence and the exceptions to such reports, briefs of the attorney for the Commission and the attorneys for the respondent, 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, Vacu-Matic Carburetor Company, 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 mechanical device designated "Vacu-matic," or any other device of substantially similar construction or possessing substantially similar characteristics, whether sold under the same name or under any other name, do forthwith cease and desist from representing, directly or by implication:

1. That the use of respondent's device on an automobile engine will result in quicker starting, faster acceleration or pick-up, increased power, or a smoother-running engine.

2. That the use of respondent's device on an automobile engine will result in any reduction in gasoline consumption or in any increase in mileage per unit of gasoline, unless such representation be expressly limited to those cases in which the fuel mixture, due to improper adjustment of the carburetor, is excessively rich and a small amount of additional air may serve to lean such mixture.

3. That respondent's device performs any useful service in the carburetion of gasoline in an automobile engine in excess of such effect as it may have in leaning the fuel mixture in those cases referred to in paragraph 2.

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
PREPARATORY TRAINING INSTITUTE

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

Docket 4454. Complaint, Jan. 28, 1941—Decision, June 29, 1944

Where a corporation engaged in interstate sale and distribution of correspondence courses of study and instruction for certain United States Civil Service positions—

- (a) Represented, directly or by implication, through circulars, and through an enumeration on its so-called "enrollment contracts," that during the period in question there were large numbers of positions available at all times in various branches of the United States Government, that examinations were being held frequently, that the specific positions listed were at that time available, and that examinations were then being held for such positions; and
- (b) Represented through agents designated as "Registrars," that it had positions in the United States Government to offer, which were under its control or which it could secure for students taking its courses, that it was connected with the United States Government and authorized by the United States Civil Service Commission to qualify applicants for Government jobs, that it had advance information with respect to the holding of Civil Service examinations or information concerning such examinations which was not readily available to prospective candidates therefor, that the applicants for its courses of training were especially selected, and that vacancies existed in certain branches of the United States Government which could be filled immediately after applicant had passed examination with respect thereto;

The facts being it had no such connections, no such positions to offer and no information with respect to places at or dates on which such examinations would be held which was not available to any person applying therefor to the Civil Service Commission; its representatives were merely salesmen and not officials of said commission, there were not then available a large number of positions as aforesaid, the names of eligibles on the register greatly exceeding the number of positions; examinations were not held frequently but often only at intervals of several years; in the case of certain positions, such as postal clerk, mail carrier, railway clerk and rural mail carrier, only those residing in the locality where the position was open were eligible for examinations; and several months usually, and often a year or more, elapsed after passing of the examination before appointment could reasonably be expected; and its so-called "Personal Report" for execution by the student along with the enrollment contract, calling for various personal matter and purporting to disclaim any connection of the school with Government agencies, or ability to promise or guarantee positions, was designed to mislead the student and did not, under the circumstances and tactics involved, serve its purported purpose; and

- (c) Falsely represented or implied, through the use of the word "Institute" in its corporate name and advertising literature, that it conducted an institution of learning offering instruction in philosophy, art, science, and other learned subjects, with a staff of competent, experienced, and qualified educators;

The facts being it offered only one course of study and instruction, which was substantially the same regardless of the examination for which a student wished to prepare; and it was not an institution of learning in the accepted sense of that term,

its method of instruction consisting in the mailing of previously prepared sheets and the grading of papers by its employes;

With tendency and capacity to mislead and deceive a substantial portion of the public with respect to the course of instruction and the opportunities for appointment to United States Government positions, and thereby to cause it to purchase same:

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.

As respects certain "Personal Report" forms tendered by salesmen of a correspondence course for execution by prospective students along with the school's enrollment contracts, which, in addition to covering personal information such as weight, height, sex, student's favorite subject in school, etc., included under the caption "Do you understand that," three paragraphs, purporting to disclaim connection of the school with government agencies, or ability of the school to promise or guarantee positions, and which, answered "yes," in so far as appeared, were pressed as a defense to the charge of misleading representations in the aforesaid respects in connection with solicitation of students; Where it further appeared, from the testimony of nine enrollees, that none of them was aware of the significance of said report and that the respective salesmen not only failed to call specific attention to the aforesaid three provisions dealing with the said disclaimers, but, as shown by the testimony of four, prevented a proper reading and understanding of said report by continuing to talk while the prospects attempted to read the document or by simply pointing at the blanks, reading off the questions, and having the prospects fill in the answers; that in several instances high-pressure tactics were used, the salesman urging the immediate execution of the contract on the plea that he must leave at once and was unable to return, thereby depriving the prospects of careful consideration of the contract of enrollment, although prospects requested sufficient time to read and comprehend said "Personal Report," and there was no evidence that the school referred enrollees desiring to cancel the contract because of the salesman's misrepresentations to the "Personal Report" executed by them, in which they stated in effect that they understood the true facts with respect to the school's having no connection with the Government and no ability to promise jobs; testimony and evidence showed that said form was designed to mislead prospective purchasers of the seller's courses of study into the belief that it was obtained for the purpose of securing certain statistical information, and that its execution was secured in a manner calculated to prevent a full understanding of those provisions which disclaimed the various statements resorted to by salesmen to induce prospective students to enroll.

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

Mr. William L. Pencke for the Commission.

Tobriner, Graham, Brez & Tobriner, of Washington, D. C., for respondent.

COMPLAINT ¹

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Com-

¹ Complaint is published as amended by Commission order dated October 2, 1941 granting motion to amend complaint, as follows:

This matter coming on for hearing before the Commission, upon the motion of the Commission's Chief Counsel and the trial attorney for the Commission in the above-entitled proceeding that the complaint heretofore issued be amended and supplemented in specified respects, and that all testimony and other

mission, having reason to believe that Preparatory Training Institute, 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, Preparatory Training Institute, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 55 N. Clinton Avenue in the city of Trenton, State of New Jersey.

PAR. 2. Respondent is now, and has been for more than two years last past, engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction intended for preparing students thereof for examinations for certain Civil Service positions under the United States Government, which said courses are pursued by correspondence through the medium of the United States mail. Respondent, in the course and conduct of said business during the time aforesaid, caused and does now cause its said courses of study and instruction to be transported from its said place of business in the State of New Jersey to, into and through States of the United States other than New Jersey to the purchasers thereof in such other States.

PAR. 3. In the sale of said courses of study and instruction respondent makes use of printed advertising matter mailed or distributed to prospective students throughout the United States in and by which various misleading representations are made in regard to said courses or matters and things connected therewith. Among such misleading representations are those which represent or imply that respondent has positions under the United States Government to offer which are under its control and which

evidence adduced at hearings heretofore held in this proceeding be made a part of the record relative to the complaint as amended and be received and considered in like manner, and to the same extent, as though said testimony and other evidence had been received at hearings held upon the charges stated in the complaint as amended; and the Commission, having duly considered said motion, and briefs in support of and in opposition thereto, and the record herein, and being now fully advised in the premises;

It is ordered, That said motion to amend the complaint herein in the specific respects set out in said motion be, and the same hereby is, granted to wit, that immediately following paragraph 5 of the original complaint the following paragraph be inserted as an amendment to said complaint:

"The name Preparatory Training Institute, under which respondent conducts its said business, is misleading in that it represents or implies to prospective students that respondent conducts an institution of learning, with a staff of competent, experienced and qualified educators, and that its school is an extensive institution offering training and instruction in philosophy, art, science and other learned subjects. In truth and in fact, respondent offers only one course of study and instruction, which is substantially the same, regardless of the civil service examination for which its said students wish to prepare. Respondent in the conduct of its said business does not offer training or instruction in philosophy, art, science or other learned subjects. No basic or thorough or complete instruction is given in any subject of learning and said school is not an institution of learning in the accepted sense of that term. There is no faculty engaged in teaching resident students, the method of instruction consisting in the mailing of previously prepared sheets and the grading of papers by the employees of respondent."

It is further ordered, That all testimony and other evidence heretofore received at hearings held in this proceeding be made a part of the record in connection with the complaint as amended and be considered in like manner, and to the same effect, as though said testimony and other evidence had been originally received at hearings held upon the allegations contained in said complaint as amended, saving, however, to the respondent its right to rebut said testimony or other evidence by any proper means at any such subsequent hearings as may be held herein.

It is further ordered, That the application for oral argument on said motion to amend be, and the same hereby is, denied.

It is further ordered, That the respondent shall have 20 days from the date of service of this order within which to file answer to the amended complaint.

can be secured by taking respondent's courses. Typical of such representations are the following:

Subject: Government Jobs

Federal—State—Municipal

New employees are constantly being added.

We are advising free of charge how to qualify for a Government job.

PAR. 4. By means of statements and representations made by agents and representatives of the respondent who are designated registrars and who call upon prospective students, the respondent represents to such prospective students that it has positions in the United States Government to offer which are under its control or which it can secure for students taking its courses; that it is connected with the United States Government and authorized by the United States Civil Service Commission to qualify applicants for government jobs; that it has advance information with respect to the holding of Civil Service examinations or information concerning such examinations which is not readily available to prospective candidates for Civil Service examinations; that the applicants for respondent's courses of training are specially selected; that vacancies exist in certain branches of the United States Government which can be filled immediately after an applicant has passed the examination with respect to such positions.

PAR. 5. In truth and in fact the respondent has no positions to offer and has no connection whatever with the government of the United States or any branch thereof, and therefore cannot guarantee positions or appointments of persons who have passed examinations. Respondent does not have any information with respect to the places at, or dates on, which examinations will be held. Applicants for courses of study are not specially selected, but generally all who apply for the courses of instruction are accepted by the respondent. In instances where respondent's agents have represented that vacancies exist, such positions have either been abolished by the Civil Service Commission or the vacancies have in fact been supplied. Respondent's representatives are merely salesmen and the designation of such salesmen as "registrars" further tends to mislead prospective students into the belief that they are officials of the Civil Service Commission.

The name Preparatory Training Institute, under which respondent conducts its said business, is misleading in that it represents or implies to prospective students that respondent conducts an institution of learning, with a staff of competent, experienced and qualified educators, and that its school is an extensive institution offering training and instruction in philosophy, art, science and other learned subjects. In truth and in fact, respondent offers only one course of study and instruction, which is substantially the same, regardless of the civil service examination for which its said students wish to prepare. Respondent in the conduct of its said business does not offer training or instruction in philosophy, art, science or other learned subjects. No basic or thorough or complete instruction is given in any subject of learning and said school is not an institution of learning in the accepted sense of that term. There is no faculty engaged in teaching resident students, the method of instruction consisting in the mailing of previously prepared sheets and the grading of papers by the employees of respondent.

PAR. 6. In its enrollment contract the respondent has embodied a provision for refund of tuition fees wherein it is stated that:

After completing the training and payment of fees, should I fail to become eligible for appointment as a result of the first Civil Service Examination I take, I shall receive a refund in full upon compliance with the following conditions:

1. That within 15 days after sitting for examination, I shall have informed you of its title and date.
2. That I make written request for refund within 30 days after receiving official notice of my failure.
3. That I return all text material and my Certificate of Completion, together with my request for refund.

It is distinctly understood that refund will be made under no other conditions.

PAR. 7. In truth and in fact, by concealing or failing to reveal pertinent facts, said refund provision has the tendency or capacity to mislead and deceive prospective students into the belief that the probabilities for obtaining appointments to Civil Service positions are greater than they are in fact. It is not disclosed to said prospective students that examinations for certain positions may not be called for several years; or that even if a student takes and passes an examination, his name may not be reached upon the eligible list for a number of years; nor is there any assurance that an appointment will be made although such student may have received an eligible rating.

PAR. 8. The representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that such representations are true and to induce them to purchase respondent's courses of study and instruction and pursue the same on account thereof.

PAR. 9. 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 28, 1941, issued and subsequently served its complaint in this proceeding on the respondent, Preparatory Training 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 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. Subsequent thereto, on October 2, 1941, the Commission, after hearing, granted the motion of W. T. Kelley, Chief Counsel, and William L. Pencke, trial attorney, counsel for the Commission, to amend the complaint by inserting an additional paragraph after paragraph 5 thereof. Thereafter, on October 18, 1941, the respondent filed its answer to said amendment, and testimony and other evidence in support

of and in opposition to the allegations of said complaint as amended were introduced before said trial examiner of the Commission, 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 and amendment thereto, answers filed by the respondent, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed in support of and in opposition to the complaint as amended, 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, Preparatory Training Institute, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 55 North Clinton Avenue in the city of Trenton, State of New Jersey.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction intended for preparing students thereof for examinations for certain Civil Service positions under the United States Government, which said courses were pursued by correspondence through the medium of the United States mails. Respondent, in the course and conduct of said business, has caused its said courses of study and instruction to be transported from its place of business in the State of New Jersey 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 its courses of study in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its courses of study, said respondent distributed among prospective students printed advertising matter in the form of circulars, which advertising matter contained various misleading representations in regard to said courses of study or matters and things connected therewith. Typical of such representations are the following:

SUBJECT: GOVERNMENT JOBS

Federal—State—Municipal

NEW EMPLOYEES ARE CONSTANTLY BEING ADDED.

* * * We will advise you free of charge how to qualify for a Government job.

Act at once. Francis A. Buckley

Department of Registry.

In addition, on its so-called "enrollment contracts," the respondent listed approximately thirty or more positions in various departments of the United States Government.

PAR. 4. Through the use of these representations and others of similar nature, respondent represented directly or by implication that during the period in question there were large numbers of positions available at all times in various branches of the United States Government, that examinations were being held frequently, that the specific positions listed were at that time available, and that examinations were then being held for such positions.

PAR. 5. In addition to the above advertising matter, the respondent represented through and by means of agents and representatives who were generally designated as registrars that respondent has positions in the United States Government to offer which are under its control or which it can secure for students taking its courses, that it is connected with the United States Government and authorized by the United States Civil Service Commission to qualify applicants for Government jobs, that it has advance information with respect to the holding of Civil Service examinations or information concerning such examinations which is not readily available to prospective candidates for Civil Service examinations, that the applicants for respondent's courses of training are especially selected, and that vacancies exist in certain branches of the United States Government which can be filled immediately after applicant has passed examination with respect to such positions.

PAR. 6. In truth and in fact, respondent has no Civil Service positions to offer and has no connection with the Government of the United States or any branch thereof, including the Civil Service Commission, and therefore cannot guarantee positions or appointments of persons who have passed Civil Service examinations. Respondent does not have any information with respect to the places at or dates on which Civil Service examinations will be held which is not available to any person applying to the Civil Service Commission therefor. Applicants for courses of study are not specially selected, but generally all who apply for the courses of instruction are accepted by the respondent. Respondent's representatives are merely salesmen, and the designation of such salesmen as "Registrars" further tends to mislead prospective students into the belief that they are officials of the Civil Service Commission.

During the period in question there were not large numbers of positions available in the United States Civil Service. In fact, until the period of national emergency brought on by the war, the supply of eligible persons available for Government employment and whose names appeared on the register of the United States Civil Service Commission greatly exceeded the number of positions open. Examinations were not held at frequent intervals. On the contrary, in the case of numerous positions several years frequently elapsed before new examinations were held. Moreover, in the case of certain positions, such as postal clerk, mail carrier, railway clerk, and rural mail carrier, only those persons are eligible for the examinations residing in the locality where the position is open. This fact tends to reduce greatly the opportunity of applicants generally to obtain positions.

During the years in question an appointment to a Civil Service position could not ordinarily be expected within a short time after the applicant had passed the examination. Usually several months and in many cases a year or more elapsed before an appointment could reasonably be expected.

PAR. 7. Respondent's salesmen follow substantially the same pattern in securing enrollments. By their manner and the nature of their sales

talk they convey the impression that they and the school are connected with the United States Civil Service Commission; that by enrolling for the course of instruction the subscribers are assured of a position with the Government; that the enrollment contract can be cancelled at any time by the student, and that moneys paid in would be refunded upon demand or that refund would be made if student did not obtain a position at the conclusion of the course.

Various witnesses testified that respondent's representatives stated or inferred that they were Government men working for the respondent or for the Civil Service Commission and that the respondent would guarantee them a Civil Service job immediately after graduation.

A number of witnesses read over the contract after the salesman had left and upon discovering that the provisions of the contract differed from the representations made by the salesmen they made inquiries with a view to learning to what extent the school could live up to the promises made by such salesmen and upon being advised that the school had no connection with the Government and could promise no positions, either cancelled their contracts or refused to continue payments.

PAR. 8. In the course of the trial of this proceeding, the respondent introduced in evidence as a defense to this proceeding certain printed documents entitled "Personal Report." The answers to the questions contained on said personal report and the signature of the applicant were obtained by respondent's salesmen at the time the enrollment contract was executed by the applicant. These personal reports consisted of printed forms containing inquiries, the answers to which the prospective student was required to supply in his own handwriting. The questions cover information regarding personal qualifications, such as weight, height, sex, health, occupations, etc., followed by three paragraphs as follows:

Do you understand that:

1. The Civil Service Commissions are not engaged in the business of giving instruction in preparation for examinations, and that political or any other outside influence has no bearing on appointments?-----

ANSWER

2. Application for examinations must be made with the Civil Service Commission; no one has advanced information regarding examination questions, need of employees, or dates of examinations; appointments are made from those on the eligible list according to their ratings, and therefore cannot be guaranteed; ratings are based upon the work done in the examination room and other evidence of qualifications gathered by the Commission?---

ANSWER

3. Preparatory Training Institute, its employees, or registrars, have no connection with, nor are they agents of, or claim to be selected or recommended by Civil Service Commission, or any other branch of the government; Preparatory Training Institute is a private educational institution incorporated in New Jersey?-----

ANSWER

Each of these paragraphs is followed by a blank space for an answer and all reports show that the prospects filled in the word "Yes." These three paragraphs are followed by the questions:

- What subject did you like best in school? and
- How many minutes can you study daily?

The testimony of nine enrollees with respect to the execution of said personal report shows that none of said enrollees was aware of the significance of said report and that the respective salesmen not only failed to call specific attention to the three provisions dealing with the disclaimer of the school's connection with Government agencies or its ability to promise or guarantee positions, but, as shown by the testimony of four witnesses, prevented a proper reading and understanding of said report by continuing to talk while the prospects attempted to read the document or by simply pointing at the blanks, reading off the questions, and having the prospects fill in the answers.

Several instances show the use of high-pressure tactics, the salesman urging the immediate execution of the contract on the plea that he must leave at once and is unable to return, thereby depriving the prospects of careful consideration of the contract of enrollment although prospects requested sufficient time to read and comprehend the personal report.

Several of the enrollees advised the school that they desired to cancel the contract because of the misrepresentations made by the salesman, and there is no evidence that the school referred the complaining enrollees to the personal report executed by them, in which they stated in effect that they understood the true facts with respect to the school's having no connection with the Government and no ability to promise jobs.

PAR. 9. The testimony and evidence show, and the Commission finds, that the form of personal report was designed to mislead prospective purchasers of respondent's said courses of study into the belief that it was obtained for the purpose of securing certain statistical information and that its execution was secured in a manner calculated to prevent a full understanding of those provisions which disclaimed the various statements recited to by salesmen to induce said prospective students to enroll.

PAR. 10. The Commission further finds that the respondent represents or implies to prospective students and to the public generally through the use of the word "Institute" in its corporate or trade name and in its advertising literature that respondent conducts an institution of learning, with a staff of competent, experienced, and qualified educators, and that its school is an extensive institution offering training and instruction in philosophy, art, science, and other learned subjects.

In truth and in fact, respondent offers only one course of study and instruction, which is substantially the same regardless of the Civil Service examination for which its students wish to prepare. Respondent, in the conduct of its said business, does not offer any training or instruction in philosophy, art, science, or other learned subjects. No basic, thorough, or complete instruction is given in any subject of learning, and said school is not an institution of learning in the accepted sense of that term. There is no faculty engaged in teaching resident students, the method of instruction consisting in the mailing of previously prepared sheets and the grading of papers by employees of respondent.

PAR. 11. The use by the respondent of the misleading and deceptive representations herein set forth has had and now has the tendency and capacity to mislead and deceive a substantial portion of the public with respect to the nature and status of respondent's course of instruction and the opportunities for appointment to United States Government positions, and has a tendency and capacity to cause such members of the public to purchase respondent's courses of instruction as the result of the erroneous and mistaken belief engendered by such representations.

CONCLUSION

The 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 amendment thereto, the answers of the respondent to the complaint and amendment, testimony and other evidence in support of and in opposition to the allegations of the complaint and the amendment thereto 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 and in opposition to the complaint as amended, 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, Preparatory Training Institute, a corporation, and its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study and instruction intended for preparing students thereof for examinations for Civil Service positions under the United States Government or any similar courses of study, do forthwith cease and desist from:

1. Representing directly or by implication that the number of positions available in the United States Civil Service or in any branch thereof is greater than is actually the fact.

2. Representing directly or by implication that examinations for positions in the United States Civil Service are held at more frequent intervals than is actually the fact or that appointments to positions are made within a shorter period of time after the examination than is actually the fact.

3. Representing directly or by implication that certain specified Civil Service positions are open and available to students of said respondent's courses when in fact such positions are not open and available or when positions are such that students of respondent's courses cannot properly qualify.

4. Representing directly or by implication that respondent controls or will procure Government jobs for students completing its courses of study.

5. Representing directly or by implication that respondent has any connection with the Government of the United States or any branch thereof, including the Civil Service Commission.

6. Representing directly or by implication that respondent is authorized by the Civil Service Commission to qualify applicants for Government positions.

7. Representing directly or by implication that respondent has information with respect to places at, or dates on which, Civil Service examinations will be held which are not available to any person applying to the Civil Service Commission for such information.

8. Representing directly or by implication that applicants or prospective purchasers of respondent's courses of study are especially selected.

Order

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9. Representing directly or by implication that appointment to positions in the Civil Service may or can be secured through respondent.

10. Using the term "Registrar" to designate or describe respondent's representatives and salesmen.

11. Using the word "Institute" or any abbreviation or simulation thereof as part of said respondent's trade name or as part of the name of respondent's school, or using the word "Institute" in any manner to designate, describe, or refer to respondent's business.

12. Misrepresenting in any manner the possibilities or opportunities for employment in Civil Service positions of students of respondent's courses of study.

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

ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

ARLINE F. HOFFMAN, trading as BELL'S HOMEOPATHIC PHARMACY. Complaint, September 9, 1943. Order, January 5, 1944. (Docket 5043.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results of product; in connection with the sale of a preparation designated as Bell's Liquo Garlic, advertised as a competent treatment for various ailments and conditions of dogs and cats.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that the respondent is out of business and that her present address is unknown, 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. Joseph Callaway for the Commission.

E. R. SQUIBB & SONS. Complaint, November 2, 1943. Order, January 11, 1944. (Docket 5075.)

Charge: Advertising falsely or misleadingly in neglecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the offering for sale and sale of a laxative medicinal preparation known and designated as "Granaya with Cascara."

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, including the stipulation executed by respondent herein to cease and desist from the practices charged in the complaint, and the Commission having duly considered the matter, and being now fully advised in the premises.

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Mr. Joseph Callaway for the Commission.

Mr. George H. Sibley, of New York City, and *Mr. Henry F. Butler*, of Washington, D. C., for respondent.

SCULLER SAFETY CORP. Complaint, May 4, 1943. Order, January 20, 1944. (Docket 4958.)

Charge: Misbranding or mislabeling in connection with sale and distribution of certain old and obsolete signal pistol cartridges, stamped or otherwise marked with letters, figures or symbols which falsely purported to indicate the date of manufacture thereof.

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 future facts so warrant, to reopen the case and resume trial thereof in accordance with the Commission's regular procedure.

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

Mr. William L. Pencke for the Commission.

Mr. George Knopp, of New York City, for respondent.

FRED BENIOFF CO. ET AL. Complaint, May 15, 1942. Order, February 2, 1944. (Docket 4760.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to composition and nature of product, dealer being manufacturer or producer, direct dealing advantages, time in business and size of business; in connection with the sale of furs and fur products.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the 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, dismissed without prejudice to the right of the Commission, should future facts so warrant, to reopen the case and resume trial thereof in accordance with the Commission's regular procedure.

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

Mr. Jesse D. Kash for the Commission.

Jaffa & Sumski, of San Francisco, Calif., for Fred Benioff Co.

Mr. Louis F. DiResta and *Mr. David Livingston*, of San Francisco, Calif., for Fred Benioff.

PAUL, RICE AND LEVY, INC. Complaint, May 12, 1943. Order, February 9, 1944. (Docket 4963.)

Charge: Misbranding or mislabeling in connection with sale and distribution of certain old and obsolete signal pistol cartridges, stamped or otherwise marked with letters, figures or symbols which falsely purported to indicate the date of manufacture thereof.

Record closed, after answer and trial, by the following order:

This proceeding came on to be heard by the Federal Trade Commission upon the complaint, answer, testimony and other evidence, report of the trial examiner and exceptions thereto, and briefs of opposing counsel, and the Commission having duly considered the same and being now fully advised in the premises.

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the proceeding and resume trial thereof should the facts so warrant.

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

Mr. Merle P. Lyon and *Mr. William L. Pencke* for the Commission.

Mr. Joseph F. Blasi, Jr., of New Orleans, La., for respondent.

THOMAS LEEMING & CO., INC. Complaint, January 29, 1943. Order, April 4, 1944. (Docket 4899.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results of product; in connection with the sale of a medicinal preparation known as "Baume Ben-Gay."

Dismissed, after answer and trial, by the following order:

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

mony 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 exceptions filed thereto, 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.

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

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

Mr. Merle P. Lyon for the Commission.

Mr. Isaac W. Digges, of New York City, for respondent.

IRVING M. FOGEL, ETC. trading as IRVING'S. Complaint, October 2, 1943. Order, April 29, 1944. (Docket 5057.)

Charge: Advertising falsely or misleadingly as to composition of products; in connection with the sale of wearing apparel for women.

Dismissed by the following order:

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 the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner 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.

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. Alfred M. Schwartz, of Washington D. C., for respondents.

CRANBERRY CANNERS, INC. Complaint, November 14, 1941. Order, May 1, 1944. (Docket 4637.)

Charge: Contracting to pay and paying certain competing customers varying sums for advertising services furnished in connection with the sale of the respondent's cranberry sauce, without making available such payments on proportionally equal terms to said customers, or any terms whatever to other customers competitively engaged therewith; in violation of Section 2 (d) of the Clayton Act, as amended by the Robinson-Patman Act.

Dismissed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the 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, dismissed without prejudice to the right of the Commission, should future facts so warrant, to reopen the case and resume trial thereof in accordance with the Commission's regular procedure.

Before *Mr. Edward S. Ragsdale* for the Commission.

Ropes, Gray, Best, Coolidge & Rugg, of Boston, Mass., for respondent.

Lambert Pharmacal Co. — Complaint

LAMBERT PHARMACAL CO. Complaint, August 13, 1940. Order dismissing without prejudice, May 3, 1944. (Docket 4232.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results of product, scientific or relevant facts and comparative merits; in connection with the manufacture and sale of a preparation designated as Listerine Antiseptic, and use thereof for dandruff, colds and sore throat, and halitosis or bad breath.

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 Lambert Pharmacal Company, 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. Lambert Pharmacal Company, is a corporation, created and existing under the laws of the State of Delaware with its principal office and place of business located in the city of St. Louis, State of Missouri.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture of drug preparations including a preparation designated as Listerine Antiseptic and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes said preparation when sold to be transported from its place of business in the State of Missouri to purchasers 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 drug 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 disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, by radio continuities and by circulars, leaflets, pamphlets and other advertising literature, are the following:

At last the truth about dandruff—at last a method that will cure.

Sensational new scientific research has discovered and proved that dandruff is a germ disease. It is caused by a queer microscopic bottled shaped germ—*Pityrosporum ovale*.

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When this germ is present, dandruff is in evidence—when it is killed, dandruff disappears.

This humiliating disease which defied science for so long has at last been stripped of its mystery labeled and ticketed like any other disease. Its cause is known—its treatment is established.

Listerine for the positive relief of dandruff.

Listerine the proved treatment for dandruff.

Listerine attacks the cause of dandruff—not merely its symptoms.

Listerine antiseptic treatment fights infectious dandruff—clinical tests showed a marked improvement in 76% of cases.

Dandruff is the most frequent scaly disease of the scalp. When this condition is due to germs as is often the case Listerine antiseptic is especially fitted to aid you. It gives the scalp and hair a cool, invigorating antiseptic bath—kills millions of germs associated with infectious dandruff, including *Pityrosporum Ovale*. This strange "bottle bacillus" is recognized by outstanding dandruff specialists as a causative agent of infectious dandruff.

Listerine likes nothing better than to fight infectious dandruff.

That's the kind of a case Listerine antiseptic really welcomes—the infectious type in which germs are active—in which inflammation and itching may be present—in which scales and flakes are a humiliating problem and relief seems far off. Then Listerine really goes to work, often getting amazing results which tests clearly show.

Distressing flakes and scales begin to go **inflammation and itching are alleviated.

Goodbye dandruff symptoms.

If you are plagued by dandruff so often caused by germs—don't waste any more time. Start today with the famous Listerine antiseptic treatment.

So don't let those tell-tale flakes brand you as a careless person—get out your bottle of Listerine Antiseptic.

Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent directly and by implication represents that Listerine Antiseptic is a cure or remedy for dandruff which does more than treat the symptoms of dandruff and is effective in destroying the causes of dandruff. The respondent represents directly and by implication in the manner hereinabove described that dandruff, generally, is of an infectious type which is diagnosed or recognized by the existence of scales and flakes or by inflammation and itching of the head and scalp; that the germ which causes dandruff is known as *pityrosporum ovale* and that when this germ is present dandruff is caused thereby and when it is killed dandruff disappears. The respondent further represents that Listerine Antiseptic is effective in killing the germ *pityrosporum ovale* and by so doing destroys the cause of dandruff and has a curative effect upon this condition.

The aforesaid statements and representations used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading and untrue. In truth and in fact dandruff in the adult is not recognized or considered to be of an infectious origin. The existence of scales and flakes on the scalp or even inflammation and itching of the head and scalp does not indicate the presence of an infectious type of dandruff. The germ *pityrosporum ovale* is not recognized or considered as the cause of dandruff although it might contribute to the aggravation of this condition in some cases. Listerine Antiseptic is a very mild antiseptic which under conditions of use exerts negligible inhibitory action upon germ life and is not an active germicide. Listerine Antiseptic is not a cure or

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remedy for dandruff or the causes of dandruff. Its therapeutic properties are limited to a temporary removal of dandruff scales and the mitigation of the symptoms of itching. Under conditions of use it will not kill a sufficient number of germs to have any appreciable effect upon the condition of dandruff. This preparation is not an effective treatment for dandruff and will not eliminate the causes of dandruff.

PAR. 4. Among and typical of the representations with respect to the use of Listerine Antiseptic in the prevention and cure of colds and sore throat contained in the advertisements disseminated by respondent as described in paragraph 3 hereof, are the following:

As Listerine enters the mouth it kills countless surplus bacteria. Then it reaches way back in the throat to kill millions of more threatening "secondary invaders" on the membrane. These are the germs many authorities claim which complicate the original cold—give rise to painful and distressing symptoms—and may lead to more troublesome developments.

Even fifteen minutes after the Listerine gargle tests actually show bacterial reductions ranging to 96.7%.

Those who gargled Listerine twice a day had fewer colds and milder colds than those who did not. Moreover, when Listerine users did catch cold infections were less severe and of shorter duration than with those who did not gargle. Again Listerine users had fewer sort throats.

Often its action gives nature needed help in controlling bacteria on mouth and throat surfaces in the earlier stages of a cold.

This prompt and frequent use of full strength Listerine antiseptic may keep a cold from getting serious or head it off entirely—at the same time relieving throat irritation when due to a cold.

If you have any symptoms of trouble start gargling with Listerine full strength antiseptic and keep it up. Countless people say it is a wonderful first aid and eight years of scientific research back them up.

This prompt precaution may head off a cold of which sore throat is often a symptom. Listerine Antiseptic kills millions of surface germs associated with colds—gives nature a helping hand at the time she needs it. Remember, colds are aggravated by germ infection. So why not treat them with germ killing Listerine.

At the first symptom of a cold or sore throat Listerine quick.

Actual tests show germ reductions on mouth and throat surfaces ranging from 96.7%—even 15 minutes after the Listerine Antiseptic—Listerine gargle up to 80% one hour later.

Kills germs way back on the throat.

* * * reaches deep down into the throat—far deeper than most gargles * * *

Through the use of the statements and representations hereinabove set forth, and others similar thereto but not set out herein, respondent directly and by implication has represented that Listerine Antiseptic will effectively prevent colds and sore throat; that the prompt and frequent use of Listerine Antiseptic will keep a cold from progressing; that Listerine Antiseptic is an effective treatment for all types of sore throats; that Listerine Antiseptic quickly kills all or nearly all of the germs of the mouth or throat; and that Listerine Antiseptic reaches deeper into the throat than do most gargles.

The aforesaid representations used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading and untrue. In truth and in fact, Listerine Antiseptic will not effectively prevent colds or sore throat. The use of Listerine Antiseptic will not

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have any substantial effect in keeping a cold from progressing. Listerine Antiseptic is not an effective treatment for all types of sore throats. Listerine Antiseptic does not kill all or nearly all of the germs of the mouth and throat under the conditions of use. Listerine Antiseptic does not reach deeper into the throat than do most other gargles.

The true facts are that, as has been hereinbefore stated, Listerine is a very mild antiseptic which under conditions of use exerts negligible inhibitory action upon germ life and will not kill a major portion of the pathogenic organisms in the mouth or throat. In most colds the seat of infection is in the nasal passages which are not reached by gargle. The causes of sore throat are many and Listerine Antiseptic is not a preventive, nor an effective treatment for any of these many diseases which may cause a sore throat.

PAR. 5. Among and typical of the representations with respect to the use of Listerine Antiseptic in the prevention and cure of halitosis contained in the advertisements disseminated by respondent as described in paragraph 3 hereof are the following:

Sometimes halitosis is due to systemic causes but usually and fortunately it is caused, say some authorities, from fermentation of tiny food particles in the mouth. Listerine quickly halts such food fermentation and then overcomes the odor it causes. Your breath becomes easier, purer, less likely to offend.

I am passing you a little tip, honey, use Listerine Antiseptic * * * it is a wonderful antiseptic and deodorant—makes your breath so much sweeter in no time—honest! I'd rather go to a date without my shoes than without Listerine Antiseptic, 9 times out of 10 it spells the difference between a washout and a winner.

Halitosis (bad breath) the social fault no one will excuse is the reason—and the major cause, according to some authorities is food fermentation in the mouth readily corrected by Listerine Antiseptic.

Yet it is so easy to take precautions—it is pleasant and agreeable to gargle with Listerine Antiseptic. Mouth fermentation is checked quickly and efficiently and its odors are dispelled.

If you want to put your best foot forward—if you want others to like you—never take a chance with bad breath—you can instantly make it purer, sweeter, more agreeable by the use of Listerine Antiseptic * * * your mouth feels and is delightfully fresh and clean.

Why risk offending when there is such an effective, pleasant and easy precaution against halitosis?

Through the use of the statements and representations hereinabove set forth and others similar thereto but not set out herein respondent directly and by implication has represented that halitosis or bad breath is usually caused from fermentation of food particles in the mouth; that Listerine Antiseptic quickly halts such food fermentations; that Listerine Antiseptic is an effective preventive of and cure for halitosis and is an effective treatment therefor.

The aforesaid representations used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading and untrue. In truth and in fact, halitosis or bad breath is not usually caused from fermentation of food particles in the mouth. Listerine Antiseptic does not quickly halt such food fermentation. Listerine Antiseptic is not an effective treatment, preventive or cure for halitosis or bad breath.

The true facts are that comparatively few offensive breath odors arise from decayed food particles in the mouth. The worst of offensive breath

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odors are those arising from the nasal passages and from the lungs. In these instances the source of the offending odors would in no way be affected by Listerine Antiseptic though they might temporarily be masked by the odor of Listerine Antiseptic.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to its said preparation has had and now has the capacity and tendency to and does mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and has caused a portion of the purchasing public because of such erroneous and mistaken belief to purchase substantial quantities of said preparation.

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.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE:¹

This matter came on to be heard upon the complaint, answer, 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 opposing counsel, and the Commission having 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 without prejudice to the right of the Commission to institute further proceedings should future facts so warrant.

MEMORANDUM BY CHAIRMAN FREER
REASONS FOR CONCURRING IN ORDER OF DISMISSAL WITHOUT
PREJUDICE

The complaint in this case charges violation of section 5 of the act through use of false, deceptive and misleading representations with respect to Listerine Antiseptic.

During the trial of this case 105 separate hearings were held at which the Commission's attorney offered the testimony of 28 witnesses in support of the complaint (including 20 rebuttal witnesses) while the respondent submitted 74 witnesses in opposition to the complaint (including 4 witnesses in surrebuttal). The record covers over 7800 pages and includes 303 exhibits offered in support of the complaint and 220 in opposition.

With few exceptions, the testimony both in support of and in opposition to the complaint was adduced by expert witnesses, all well qualified by study and experience; many of them of outstanding national reputation. In general, the experts testifying upon behalf of respondent expressed opinions diametrically opposed to the opinions of the experts appearing in support of the charges of the complaint.

Generally speaking also it is the implications of the advertising rather than its literal meaning which are challenged.

¹ Chairman Freer and Commissioners March and Ferguson filed explanatory memoranda; Commissioner Ayres filed a dissent; and Commissioner Davis did not participate owing to illness. Memoranda and dissent are set out following the order of dismissal.

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DANDRUFF

As background to consideration of the questioned advertising relating to dandruff, it will be noted that it is stipulated between counsel that the first 7 of the 15 excerpts quoted in paragraph 3 of the complaint (including all 3 reproduced in the Commission's brief) have not appeared in any advertisement released for publication since July 28, 1939, upon which date Lambert Pharmacal Company entered into a stipulation with the Commission, principally directed to the claims in reference to dandruff.¹

The allegations of paragraph 3 of the complaint are as follows:

(a) That dandruff in the adult is not recognized or considered to be an infectious disease.

(b) That P.O. is not recognized as the causative factor although it may contribute to the aggravation of the condition.

(c) That Listerine is not an active scalp germicide.

(d) That Listerine is not a cure. (Respondent's experts admit it is not a cure.)

(e) That the therapeutic properties are limited to a temporary removal of scales and mitigation of the symptoms of itching and that it will not kill a sufficient number of germs to appreciably affect the condition.

(f) That it will not eliminate the causes of dandruff and is not an effective treatment.

In his brief the Commission's trial attorney contends that the record shows the advertisements set forth at pages 60, 61 and 62 of the brief (disseminated May, 1937, April, 1939, and August, 1939, respectively) are false and that through them respondent has represented (a) that dandruff is an infectious condition caused by P.O. and (b) that Listerine under conditions of use kills this micro-organism, resulting in a complete cure.

In his brief the Commission's trial attorney contends that the record shows the advertisements set forth at pages 60, 61 and 62 of the brief (disseminated May, 1937, April, 1939, and August, 1939, respectively) are false and that through them respondent has represented (a) that dandruff is an infectious condition caused by P.O. and (b) that Listerine under conditions of use kills this micro-organism, resulting in a complete cure.

Respondent contends:

(1) U. S. Public Health Service recommends an antiseptic in connection with the treatment of dandruff and characterizes it as an infection not a natural condition.

(2) The consensus of medical opinion is that dandruff is an infection in which P.O. is either a causative factor or the primary infective agent and that an antiseptic is of value. (The fact that so many expert witnesses testify on behalf of respondent to the effect that their several individual opinions are that dandruff is infectious would appear to require a finding that this view is the consensus of medical opinion irrespective of their further testimony to the effect that the consensus of medical opinion is to such effect. Some measure of value as to relief of symptoms is conceded in the complaint.)

(3) That dandruff is not a mere exfoliation of the cells. (Although dandruff is a lay term, respondent's witnesses in effect seek to confine it to seborrheic dermatitis.)

(4) That it is never secondary to any other disease (therefore it is itself a disease).

(5) Inoculation of human scalps with P.O. (isolated by Dr. Moore) produces dandruff. Such tests comply with a body of medical rules for determining the causa-

¹ See 29 F.T.C. 1446.

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tive relationship of a specific organism to a particular disease and the pathogenicity of dandruff is thereby established.

(6) Listerine reduces the concentrations of the infective organisms thus attacking the infectious process not merely the visible symptoms, although it is not claimed that all P.O. organisms are killed.

(7) Clinical tests, some of which show up to 83 percent improvement or eradication of the dandruff.

(8) That Listerine kills both the P.O. isolated at Bernard Hospital under Dr. Moore's supervision and the P.O. isolated by Dr. Emmons, the Commission's witness, within 30 seconds at body temperature as well as staphylococcus albus, characterized as a secondary invader by some of respondent's witnesses.

Of the Commission dermatologists, Dr. Cole unqualifiedly testified that dandruff (except that associated with ringworm) is not an infectious disease but is only a symptom and that, although P.O. is present on practically all scalps, it lacks all pathogenic effects or significance. Dr. Cummer states the consensus of medical opinion to be that dandruff is not due to an infectious micro-organism but a symptom of some underlying disease, although he concedes there is a division of opinion as to the connection between P.O. and dandruff. Other experts called by the Commission regard the causative factors as being undetermined.

Commission rebuttal experts define all noticeable exfoliation not symptoms of specific diseases like ringworm as seborrheic dermatitis and believe its exact causation has not been demonstrated. One of the two dermatologists called on rebuttal concedes that though not so established P.O. may be a *contributing factor*. Dr. Miller states that it is not a *major cause* according to the consensus of medical opinion.

Unless there is no "public interest" requiring the inhibition of representations not made by the respondent since the date of acceptance of its 1939 *unrescinded* stipulation, I am of the opinion that the record contains "substantial evidence" to sustain an order inhibiting representations that Listerine will *cure* dandruff, or that it will do more than temporarily relieve the symptoms of infectious dandruff and exfoliation caused by other conditions. The Commission, however, in my opinion, is not impelled to issue an order forbidding these pre-stipulation representations, and I doubt that there is substantial evidence in the record upon which to base a finding to the effect that the public interest clearly requires the issuance of such an order to ensure that the presently abandoned representations will not be resumed in the future.

HALITOSIS

The questions under the halitosis issue are:

1. Is the usual or frequent causation of bad breath the fermentation of food particles in the mouth?
2. Does Listerine halt or check such fermentation?
3. Is Listerine an effective preventive or cure?

In this phase of the case three facts are not in controversy:

- (a) Listerine does not completely sterilize the oral cavity.
- (b) Bad breath is caused by many factors.
- (c) Decomposition of food may be causative of some halitosis.

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The Commission's witnesses are four physicians, two of whom are otolaryngologists; four bacteriologists, three of whom are also dentists and one other dentist. They are unanimous in stating that fermentation is a *minor* cause of halitosis.

The Commission expert, Dr. Bibby, a bacteriologist and dentist, is of the opinion that Listerine does not affect the small percentage of odors arising from the putrefaction of food, as it does not kill all organisms in food particles under normal conditions of use. Dr. Bibby impregnated bread particles and the meat in a sandwich with the type of bacteria *not ordinarily found in the mouth*. In the first test the bread was placed in cavities and spaces between the teeth where food normally accumulates, a Listerine gargle swish was administered and the bread subsequently removed. In the second test the subject ate the meat, gargled, chewed paraffin and expectorated. Cultures in all cases showed heavy growths of the impregnated organism. On direct examination (R. 6313) Dr. Bibby testified, "Listerine does not kill the organisms *contained in food particles*," and on cross-examination (R. 6370) stated, "I could say it didn't kill all the organisms. I couldn't say it didn't reduce them," although (R. 6371) there is nothing to indicate a reduction or its extent.

In the opinion of Commission witnesses the effect of Listerine on mouth odors caused by food putrefaction is limited to that of a temporary masking agent. One of this number (Dr. Crohn) holds to the view that the disturbance of fat metabolism causes chronic halitosis.

Respondent's expert witnesses testified that in their opinion food fermentation, putrefaction or decomposition is the *most frequent* cause of bad breath. Dr. Prinz, a physician and dentist testifying on behalf of respondent asserts that the *consensus of informed dental opinion* (R. 4168) regards fermentation to be the most common cause, but admits that the *majority of medical opinion* (R. 4169) does not agree. (*Well people often see the dentist; usually only the sick see the doctor.*) Respondent also relies on some of the medical literature and on certain clinical tests to support its position. These tests have limited value, separately, but afford some measure of support, cumulatively. Respondent's witnesses limit the masking action of Listerine to short periods varying from around twenty minutes to two hours, and respondent's dentist witnesses report routine termination of halitosis by the administration of a complete prophylaxis or by the administration of Listerine or other antiseptics.

A number of respondent's experts testify that bad breath is controlled when a dental prophylaxis is administered. This procedure contemplates not only the removal of all food particles from the teeth but also the tartar deposits which one witness testified also may be a source of mouth odors.

In support of their contentions that lack of oral hygiene is a frequent cause of halitosis and that Listerine is valuable as a deodorant, respondent offered the testimony, among others, of Drs. O'Brien, Eisenberg, Conlon and Haggard.

Dr. O'Brien's tests (directed to determining the effect of a single Listerine rinse) show marked reductions of odors due to smoking, morning mouth, saliva putrefaction and food debris. Water controls show reduction in one case and no reduction in the others. Dr. O'Brien testifies that these tests also are the basis for his opinion that mouth conditions are the *major* cause of halitosis.

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Dr. Eisenberg based his testimony on tests on aged persons with infirmities preventing them from caring properly for their mouths. This routine was designed to demonstrate the effect of repeated applications of the preparation and is the basis for his opinion that after use for three weeks (three times daily) 80 percent of the subjects were free from halitosis as revealed by the examination made, the subjects having discontinued its application one or two days previous to his examination.

Dr. Conlon testified to tests embracing daily use of Listerine (20 persons) or water controls (4 persons) by subjects selected at random. He reported that 75 percent of the Listerine subjects were free from halitosis and noted no appreciable changes in the water control subjects. This procedure is the basis for his opinion that fermentation is a *frequent* cause of halitosis and that Listerine is of value.

Dr. Haggard expressed the opinion that more than 90 percent of bad breath is caused by mouth conditions and that bacterial decomposition of food is the causative factor in the *majority* of persons not hospital cases. He based his views on experiments in which 127 out of 138 cases of offensive bad breath were traced to mouth odors. (These tests were not carried out at the request of respondent.)

In my opinion, the weight of opinion evidence is to the effect that decomposition of food in the mouth is a *usual or frequent* cause of bad breath, and that Listerine's action is *more* than a *mere* masking agent. I am, however, of the opinion that the weight of the opinion evidence is to the effect that Listerine, while it may be effective in eliminating (at least masking) bad breath resulting from food decomposition, does not halt or check *all* fermentation and is not an effective preventive treatment or cure for *all* bad breath.

Respondent's brief invites the Commission's attention to the testimony of Mr. Mace (R. 1168) which is to the effect that the advertising claims relating to halitosis and sore throat also were modified at the time the stipulation inhibiting dandruff representations was signed in 1939 and that this action was taken to meet questions raised by Commission representatives during conferences respecting a prior draft of the stipulation which had included such claims. The formal report of compliance to the Commission (Resp. Ex. 19 A), of course, refers only to the inhibited dandruff claims.

Illustrating the change made in respect to the halitosis claims is Commission's Exhibit 200, the post-stipulation counterpart of Commission's Exhibit 2. Commission's Exhibit 200 contains the statement of its author, Dr. Reddish, that fermentation is the major cause of unpleasant breath, according to "competent dental authority" and at another point quotes Dr. Prinz' article to the effect that 90 percent of all cases of offensive odors originate with prolonged stagnation of food debris and that the foul odor is caused by fermentation (p. 27). Commission's Exhibit 2, the similar brochure of pre-stipulation date, contained the same quotation from Dr. Prinz (p. 28) but unqualifiedly stated at another point (p. 29) that other causative factors are represented in but 10 percent of the cases. The said Exhibits 2 and 200 are elaborate brochures entitled "Listerine Antiseptic by George F. Reddish, Ph.D." While I cannot find anything in the record showing how or to whom they were disseminated, both carry the name of Lambert Pharmacal Company.

Some of respondent's advertisements are alleged to imply (Comm. Ex. 61, p. 47 of trial attorney's brief) that routine use of Listerine will pre-

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vent *all* cases of *chronic* or transient halitosis *regardless of cause*. If this advertising may be properly so interpreted, it implies too much, since it is more probable that *chronic* offensive breath would be symptomatic of a systemic disorder than that it would be the result of a complete omission of oral hygienic measures.

Counsel for respondent denies that the advertisements state or imply that Listerine constitutes a preventive, cure or treatment for halitosis, and on the contrary asserts that they import *only* that *the major* or *usual* cause of bad breath is fermentation, or that some authorities consider this to be the fact, and points out that recent halitosis advertising itself attributes some cases to systemic disorders.

COLDS AND SORE THROATS
COMMISSION'S THEORY

The theory of the trial attorney's brief is the following:

A. Prevention of colds:

1. The causative factor in colds is a virus that usually enters through the nose.

(a) Listerine won't prevent colds resulting from a virus entering in the nasal areas because it doesn't reach *all* those areas.

2. Listerine won't prevent colds in the cases where the mouth is the portal of entry as the virus fixes itself to the tissue, passes through a short incubation period and enters the tissue to promote infection beyond Listerine's zone of action. (Period of application is insignificant considering the constancy of exposure.)

B. Mitigation of colds and prevention of associated symptoms (sore throat), shortening of duration and aborting of colds and sore throat.

1. Listerine has no effect in the virus stage of infection (cold) in that it cannot reach the virus which incubates on the upper respiratory tissue, burrows into the living tissue and spreads through the lymph stream. (Part of this tract can be reached by a gargle.)

2. Apparent cold symptoms, including sore throat, caused by the secondary invaders (bacteria as distinguished from viruses) or other complications (manifestations of bacterial action such as inflammation of the ear) whether experienced concurrently with or subsequent to the virus infection are not prevented, nor mitigated nor are their durations shortened.

(a) Listerine's weak antiseptic action negligible under conditions of use attacks only the relatively few, transient, emigrating flora in the saliva which have been forced out of or floated down from the surface of throat crevices, gum recesses and tonsil crypts (normal focal incubation zones) but doesn't reach embedded resident flora, the micro-organisms causing the sore throats and associated conditions.

(b) Emigrating surface bacteria constitute possibly less than 1 percent of the bacterial total so that no agent is effective which does not lower the bacteria below that represented by the minimum infective dose, such minimum infective dose representing only a negligible number if the individual's resistance is low. Therefore, only sterilization or almost complete sterilization of the oral cavity is effective against secondary invaders.

(c) Many of the complications following colds are not at points in the throat which can be reached by gargle but distant from such zones.

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COMMISSION'S EVIDENCE

The trial attorney's position is supported by the following:

1. Probable consensus of medical opinion (Morrison and others) as to virus causation (in almost all colds); that the nose is the usual portal of entry; that the use of Listerine will not prevent infection; and that Listerine has no effect on the clinical course of true virus colds or their complications.
2. Bacteriological opinion to the effect that under conditions of use Listerine does not substantially reduce bacteria (Drs. Brewer and Welch).
3. Tests of Dr. Bibby which indicate little or no lessening in the mouth and throat of the number of germ colonies from cultures where swabs have been taken under pre and post-Listerine procedure. (Bibby tests discussed hereinafter.)
4. Rebuttal testimony to the effect that respondent's dilution tests indicate only that the number of surface bacteria may be reduced and that such tests are meaningless as their basis of comparison is only the number of germs which may be removed by pre and post-Listerine water rinses; that the procedure is not a criterion as to the number of germs on the surface of the oral cavity. (One Commission witness, Appleton, is of the opinion that bacteria removable from the mouth and throat by Listerine is under 1 percent of the total.)
5. Respondent's clinical tests (the Reddish tests) are questioned as to their validity for 10 reasons assigned at pages 40 and 41 of the Commission's brief and hereinafter discussed.

RESPONDENT'S THEORY

A. Prevention of colds and sore throats:

1. Listerine kills hosts of viruses and surface bacteria under conditions of use and lessens colds by reducing the number of potentially infective organisms.
2. Most colds are caused by viruses but bacteria may play a primary role in some cases and in any event the nose and throat are both portals of entry.
3. Regardless of the portal of entry, the initial site of infection is an area almost wholly, or in a great measure, accessible to a gargle so that both bacteria and the viruses are subjected to Listerine's action. (All Commission witnesses do not limit the zone of the virus entry into the tissue entirely to the nose but name other areas.)
4. Sterilization of the oral cavity is a theoretical goal but Listerine is of value in that many invading bacteria causing sore throat symptoms are killed by an oral antiseptic, thereby reducing the infective mass.
5. Listerine penetrates the upper layers of epithelial tissue in the area reached by a gargle and thereby comes in contact with some embedded organisms.
6. There are no data showing the time interval necessary for virus penetration in the tissue or the incubation period for viruses so that in the absence of proof of immediate penetration time may be afforded for an oral antiseptic to attack the virus on the surface.

B. Mitigation of colds, sore throats and complications of colds:

1. Listerine cuts down the mass invasion of bacteria prolonging the symptoms of an existing virus or bacterial infection and tends to lower their number below the minimum infective dose.

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2. Oral antiseptics tend to prevent the spread into the ear or sinuses of an infective process already present.

RESPONDENT'S EVIDENCE

The testimony adduced by witnesses called by the respondent consists of the following:

1. Opinions of general practitioners and throat specialists to the effect that application of Listerine or a mild antiseptic is considered to be a useful procedure in guarding against colds and sore throats and other complications; that mild antiseptics afford some comfort and are recommended in connection with the treatment of these conditions and that germicides are recognized as being of value in standard textbooks, by leaders in the medical profession and in established hospital routines.

2. Evidence to the effect that the site of the initial virus infection is usually in an area accessible to a gargle.

3. Bacteriological opinion to the effect that Listerine is a germicide under laboratory conditions, that tests show saliva dilution under conditions of use averages 7.1 percent and that such minor dilution does not impair its germicidal properties.

4. Bacteriological opinion to the effect that Listerine under conditions of use effects a corresponding reduction of more than 90 percent of the germs on throat surfaces as evidenced by the rinse tests (Hunter, Lowry and Romans tests and testimony).

5. Dr. Hunter's violet dye tests purporting to show that Listerine reaches wide areas, all of which are named by a Commission witness (Dr. Long) and Company witnesses to represent the initial infective sites, and that Listerine penetrates the upper layers of epithelial tissue.

6. Testimony as to the procedural data relating to the Reddish cold tests which are offered to demonstrate Listerine's effectiveness in preventing, mitigating and shortening the duration of colds and sore throats.

(a) Experts called by the respondent generally approve the test procedure and the results are characterized as statistically significant.

7. Testimony to the effect that the Bibby tests demonstrate only that Listerine does not sterilize the mouth and furnish no criterion as to quantitative reductions, in that the Bibby procedure would not achieve absolute repetition as to the extent of the areas swabbed in the mouth nor could there be absolute duplication of pressure in the transfer of organisms to the culture plates.

THE TESTS

The Bibby Tests. As additional support for his contention that Listerine may not reduce surface bacteria the trial attorney relies upon Dr. Bibby's tests conducted in 1942 which he interprets to demonstrate that Listerine does not kill organisms in the oral cavity or substantially reduce them.

Dr. Bibby's procedure is the swab method, smearing throat swabs over a plate and incubating the cultures, which differs from that used by respondent's Dr. Hunter, the dilution method. Dr. Bibby testifies that there is a possibility of error in any procedure followed, admits that neither the respondent's dilution nor his smearing procedure are "particularly accurate" (R. 6334) in making quantitative determinations and

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concedes that it is more difficult to duplicate results with his smear method than in the respondent's procedure.

The counting procedure is admittedly a comparative approximation which has some limitations but, as Dr. Bibby says, the error would be in the "direction of" calling the pre- and post-Listerine quantities the same (R. 6341); and he concedes (R. 6359) there is no way of insuring 100 percent uniformity of distribution of the germs over the surface of the plate but states that he did the best he could to that end by trying to duplicate both in swabbings and in transposing to the plate the extent of pressure used and the rotation arc.

While the second (post-Listerine) swab should be expected to produce normally fewer bacteria than the first (pre-Listerine) swab at the same point, no one contends that the second swab removes all organisms and additional swabs may be expected to produce pathogenic cultures from the same point.

The procedure followed in respondent's dilution method tests is not criticized in the trial attorney's brief; however, the conclusions as to removal of up to 95 percent of the bacteria even five minutes after the Listerine rinse are challenged, as stated before, on the ground that they reflect only the differences in the amounts removable.

Respondent assails Dr. Bibby's procedure (R. 7588), contending that the proportions of germs transferred to the swab and in turn transferred to the plate through manual means would vary irregularly. The method of counting (Comm. Ex. 292) under which plus 4 denotes a range of 5,000 to 20,000 and plus 3 a range of 1,000 to 5,000 is admitted (R. 6341) by Dr. Bibby on cross-examination to be an approximation and does not show whether the cultures are in the lower or upper ranges of the classification so that a variation of 80 percent might be represented on two plates showing a plus 4 growth. However, he is of the opinion that the error is compensative and cancels out. Dr. Bibby's procedure is approved by two other Commission witnesses, Drs. LeJeune and Appleton.

Dr. MacNeal (called by the respondent), doubting the correctness of Dr. Bibby's procedure, carried out similar tests. He took swabs and in transferring them to the plate merely laid the swab with attempted uniform pressure on each of ten plates, then spread the organisms, a successive plate dilution method instead of the one used by Dr. Bibby (R. 7597). The results are submitted as Respondent's Exhibits 212-219 and in the opinion of Dr. MacNeal they are meaningless, showing only that cultures can be obtained by successive streaking with the swab, no comparative criterion being afforded. It is his view that the pressure of application cannot be duplicated in other swabs. On cross-examination Dr. MacNeal explained that the method of counting colonies by comparison of plates is but a very rough approximation and this is especially true when the colonies to be counted are over 300 or 500. The reason is that the colonies are very crowded. He stated that he would not want to rely upon this type of count but admitted that Dr. Bibby might be of the opinion that he was qualified through advanced training to make an accurate tabulation under such circumstances.

Using the same technique as to mouth swabbing he secured cultures (R. 7613) from several subjects and used the water dilution method (R. 7647) of preparing material for the plates through immersion in equal quantities of liquid (Comm. Ex. 297A). In his opinion the results as to this test were similar to those obtained by the mouth rinse test testified

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to by Dr. Hunter and others. If this interpretation is accepted a 90 percent or upwards reduction of organisms on throat surfaces is demonstrated.

In my opinion considerable doubt thus is cast on the reliability of the swab method even in the hands of an outstanding expert like Dr. Bibby. Dr. MacNeal's testimony also serves to corroborate the Hunter tests and to afford some support for respondent's contention that the original mouth rinse tests not only show a reduction of 90 percent and upwards of the bacteria in the saliva but also indicate that there is a corresponding proportionate reduction on the surfaces.

The respondent's medical witnesses testify to the effect that Listerine is of value as an aid in the prevention and treatment of colds and sore throats. Through the diminution of the number of viruses and pathogenic organisms, it assists nature in *resisting* invasion and thereby also minimizes the virulence of the infection in the event nature's resistance is nevertheless overcome, and, lastly, it soothes inflamed tissue surfaces. In their opinion it is desirable to reduce the mass infection of invading organisms. Such theories parallel the public's views on hygiene generally and the views of many medical men on the very broad and general subject of infection.

Not only does respondent interpret some textbook authority as supporting this position but points to the statement of Commission witness, Dr. Cecil, in a text to the effect that susceptible folk "can reduce the chance of infection" by using a mild antiseptic *in the nose and throat* twice daily.

Dr. Dochez, one of the Commission's experts on colds, made reference to the broad subject of infection, testifying that all, almost all, organisms or a great many, must be killed to obviate complications from the secondary invaders and to bring their number below the minimum infective dose. Dr. Cecil, another of the Commission's experts, testified, "Speaking now in principles of infection," the number of organisms remaining after a theoretical reduction would tend to affect the *severity of the infection* rather than the *infectivity of the disease*.

Respondent does not contend that Listerine will prevent *all* colds from progressing, that it effectively treats *all* types of sore throats or that it will prevent *all* colds or sore throats.

Counsel for respondent argues (1) that neither directly nor by reasonable implication is it claimed in the advertising that Listerine users will not catch colds or sore throats or that the preparation *can be relied upon* to abort an *existing* infection; (2) that no promises of absolute success are extended; and (3) that the advertised references to the clinical cold tests expressly show that infections appeared in both groups. It is argued also that representations as to reductions of the organisms are directed to *surface* organisms and that it is not represented that the reductions are *permanent* since, in fact, *repeated* use of Listerine is counseled.

The Reddish Tests. In my opinion, these clinical tests conducted by doctors and nurses over a period of five winters upon more than 1400 persons warrant very careful consideration in this case, especially if it is conceded that Listerine has any degree of inhibitory action on germs. (The complaint in paragraph 3 concedes it to be a mild antiseptic but charges that under conditions of use Listerine's inhibitory effect is negligible.) Respondent contends that these Reddish tests demonstrate along with other bacteriological and voluminous medical opinion that

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Listerine has value and is beneficial as an *aid* in guarding against infection and in alleviating the conditions or symptoms mentioned in the advertising whether attributable to viruses or bacteria (Resp. brief, pp. 58-59).

A different basis was used in the Reddish tests for determining the beginning and end of a cold or sore throat experienced by subjects in the gargling group from that used in respect to the control group subjects. A member of the gargling group (p. 39, Comm. brief) was considered to have a cold or sore throat if either the subject or the nurse so adjudged and it was deemed to have ended if the nurse and subject so agreed. The procedure was reversed in respect to the control group. Both must agree as to the presence of the infection at the beginning and it was considered to have ended if either was of such opinion.

This variation tends to give the gargling subject a part in the decision as to whether he has become infected and when his infection has ceased. On the other hand, the control subject cannot be recorded as infected without his consent, and a nurse "with a prejudiced viewpoint" could adjudge his infection to have extended beyond its true duration only with his consent.

The fundamental point is that these tests, if valid, do demonstrate that the use of Listerine does reduce very materially the incidence, duration and severity of infection. In my opinion they indicate that the use of an antiseptic reduces the incidence of those symptoms which the public usually associates with colds. Due to the limitation of the diagnostic procedure, these tests are not conclusive as to the *number* of colds in the test groups as colds are defined by some Commission witnesses, that is, a pure uncomplicated *virus* infection, but even as to these they possess some value from a comparative standpoint if error becomes random.

In answer to criticisms directed to the possibility of faulty diagnosis on the subjects, variation of exposure and other variations likely to occur in either group, respondent's statistical expert cites that, under the statistical theory of inertia of large numbers, error becomes random, equally liable to occur in either group, and that the over-all significance of the statistical picture is not affected. (It is a valid theory of statistics that in a large mass of data the errors will be compensating rather than cumulative.)

Another of the ten criticisms offered by Commission witnesses is that the subjects may be deemed to have had an interest in the results. As to this, no proof was submitted beyond the fact of their employment either with respondent or with concerns with which it had business dealings.

I am of the opinion that the Reddish tests, considering the manner in which the data were gathered, afford some basis for the respondent's conclusion that the use of Listerine in practice actually mitigates or shortens colds and their complications. The method of securing these data appears to be statistically sound and in practice such method appears to have been fairly well designed to demonstrate the presence in the subjects tested of *symptoms* usually associated with a cold or at least associated with the complications experienced with and following a cold.

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CONCLUSIONS

The charges of paragraph 3 of the complaint directed to the dandruff claims are based on a different medical theory than the theory reflected in the outstanding (1939) stipulation. In the latter, P.O. was conceded by implication to be a cause of dandruff but was not to be regarded as the cause. Paragraph 3 of the complaint charges that P.O. is not the cause of dandruff and alleges that it *may contribute to the aggravation* of the condition. My interpretation of this language is that the complaint charges in effect that P.O. is not a causative factor.

In respect to this issue I am of the opinion that a medical controversy obtains as to whether P.O. may be causative of some dandruff, and I am of the opinion also, as previously stated, that no present public interest clearly requires the issuance of an order inhibiting those representations which were abandoned at the time of acceptance of the stipulation.

The testimony in respect to paragraph 5 reflects a probable disagreement between the consensus of medical opinion on the one hand and the consensus of dental opinion on the other in respect to the question of whether fermentation of food particles in the mouth is the *usual* cause of halitosis. In my opinion, one reason for this scientific controversy is that the dentists often see well people with bad breath, while those seen by the doctors are usually the sick.

In respect to the challenge in paragraph 4 of the complaint as to the claims made for the prevention of colds and sore throat, there is solid medical opinion to the effect that Listerine does not sterilize the mouth and throat and that, in the absence of outright or almost absolute sterilization of the mouth and throat, organisms are not reduced below a theoretical level called the minimum infective dose. While the experts adhering to this view may lack wide clinical experience with Listerine, as contended by respondent, they do have impressive backgrounds of clinical experience with colds and their complications.

The significance to be attributed to germ reduction on the surfaces is one of degree and the differences in opinion represent a medical or scientific controversy. It is my view that the outstanding experts testifying in support of the complaint appear to represent the consensus of so-called "enlightened" medical opinion. The Reddish tests, despite evidence of their shortcomings, however, afford some measure of clinical support to the opinion expressed by respondent's experts to the effect that the use of Listerine resulted in fewer and less severe colds and the complications thereof. In my opinion these tests do indicate that the incidence of those symptoms ordinarily associated in the public mind with colds may be lessened by the use of an oral antiseptic. Therefore, it logically follows that substantial doubt is cast on the conclusiveness (perhaps even the correctness) of the opinions expressed by the Commission experts even though their views in general may be in accord with the consensus of medical opinion. Corrective action by the Commission may resolve all doubts as to the soundness of these opposing views from a legal standpoint but it would not settle the underlying issue of their correctness from a medical or scientific standpoint.

In my opinion the issues raised by paragraphs 3, 4 and 5 of the complaint involve in their determination the adoption of one of two opposing medical or scientific opinions, in respect to which our decision would settle only the legal right of the respondent to continue to make the challenged

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representations and not the underlying controversy. Should we so resolve those issues, (both as to interpretations of the advertisements and as to the medical or scientific opinions) as to require an order to cease and desist, the respondent can, and no doubt will, appeal. In that appeal, however, the door will be closed to any weighing of the evidence by the court, since "the findings of the Commission as to the facts, if supported by evidence, shall be conclusive." Should we, on the other hand, so resolve the several issues of interpretation of language and of medical or scientific opinion in such a manner as to dictate an outright dismissal of the complaint, the respondent might, and probably would, raise the defense of *res adjudicata* to any proceeding which the Government might decide to institute at some future time when and if the medical profession learns more about and reaches a greater degree of unanimity concerning the cause of and cure for dandruff, bad breath and colds or sore throats.

Hence, while not unmindful of the forcefulness of the arguments on the one hand for an order to cease and desist and on the other for outright dismissal, I feel that a *dismissal without prejudice* is warranted by the probability (almost certainty) that neither an order to cease and desist nor an outright dismissal would settle with finality or help greatly in the final settlement of the *underlying medical and scientific controversies*, although either disposition would be interpreted as having settled these matters once and for all.

MEMORANDUM BY COMMISSIONER MARCH

The charges in the complaint issued on August 13, 1940, are that respondent has caused the dissemination of false, deceptive and misleading advertisements on behalf of its drug preparation, Listerine. The questioned claims relate to the suggested use of said preparation in the treatment of the ailments or conditions commonly known as dandruff, colds, sore throats and halitosis (bad breath). Although some advertising has been disseminated relative to the antiseptic and germicidal efficacy of the product, claims relative thereto are not specifically treated in the complaint except as they arise in direct connection with claims pertaining to the ailments or conditions aforementioned.

Considering briefly the germicidal or antiseptic effect of the product, the testimony relating to laboratory tests shows that Listerine does kill certain micro-organisms whose resistance to germicides is known. As to clinical tests conducted by witnesses for both sides, there is presented in their testimony a difference of opinion, which difference is predicated on the type of test or course pursued in making the determination, namely, the taking of cultures by swab or rinse. The findings of Commission witnesses after swab tests were that Listerine did not influence the bacterial population of the mouth whereas respondent's rinse tests showed a substantial reduction of bacteria. The testimony reveals that neither the swab or the rinse test procedures are beyond the point of error. Respondent introduced results of its tests which showed that certain strains of virus were inactivated after exposure to Listerine. Commission witness, Dr. Brewer, is of the opinion that said tests, which were made in accordance with an accepted procedure, did not establish that like results could be obtained in the human body. Commission's brief does not assert that Listerine is without germicidal and antiseptic properties. In view

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thereof, considering the testimony on this phase as a whole, Listerine does have a germicidal or antiseptic effect.

Paragraph 3 of the complaint charges that "dandruff" claims to the following effect are false: Listerine is a cure or remedy for dandruff; dandruff is of an infectious type caused by a germ identified as pityrosporum ovale which when killed removes the cause of dandruff and that Listerine effectively kills pityrosporum ovale and has a curative effect on the dandruff condition.

Prior to issuance of complaint, the Commission accepted from respondent a stipulation on July 28, 1939, wherein respondent agreed to cease and desist from making certain representations relative to the use of Listerine in the treatment of dandruff. Among the facts reported in that stipulation as the basis for the agreement made therein were those which recognized that dandruff is not necessarily a germ disease, although exfoliation (casting off or peeling of the scalp) may be accelerated by diseased conditions, the most frequent of which is seborrhea, although referred to as dandruff; that "pityrosporum ovale may be a causative agent or contributing factor in the formation of dandruff in some cases" and "is commonly associated with dandruff conditions, as are many other bacteria and fungi"; that the presence of pityrosporum ovale on the scalp "has no significant diagnostic value, except possibly when this organism is present in high concentration," and that there is no known product which will permanently mitigate or cure dandruff.

The claims made subsequent to the stipulation have been modified and are typified by the following: "Listerine kills * * * p. ovalis, the strange 'bottle bacillus' recognized by outstanding dandruff specialists as a causative agent of infectious dandruff." "Get rid of dandruff with Listerine. Combat infectious dandruff the new pleasant way with Listerine Antiseptic." These claims were directed only to cases of "infectious dandruff" and it was generally stated in these advertisements that systematic use of Listerine would produce improvement in scalps where pityrosporum ovale was found.

The Commission's brief and the testimony are silent as to any alleged violation of the stipulation. The charges in the complaint are principally predicated upon pre-stipulation advertisements and it is to those claims that the testimony is essentially directed.

Both Commission and respondent witnesses describe "dandruff" as a scaling of the scalp. Commission witnesses, among which are included leading dermatologists and mycologists, are of the belief that a peeling, casting off or scaling of the scalp may be a normal function not due to any disease, or may be a symptom of various diseases or constitutional conditions such as lack of proper lubrication of the scalp, psoriasis, syphilis, ringworm, etc. There is no doubt but that the record shows that Listerine would not be a cure for or preventive of dandruff due to these infections or diseases, and respondent does not so contend. Respondent avers, however, that there is no possibility of confusion between ordinary dandruff as known to the laity and that arising from the diseases or infections mentioned, because the latter conditions manifest themselves more clearly than the dandruff with which the laity is familiar. There is agreement among almost all witnesses that Listerine will remove the loose scales which are the symptoms of dandruff but when application to the scalp is halted the scales will reappear.

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The United States Public Health Service states that dandruff is not a natural condition but is an infection which can be acquired in barber shops, etc. Although there may be no permanent cure, it can be held in check by use of certain ointment and soap together with "some good antiseptic."

In its argument that dandruff is merely a symptom of some underlying disease, the Commission relies in part on the testimony of its dermatologists who contend that the consensus of informed medical opinion is that dandruff is not a germ disease. In further support thereof, it is contended that the organism isolated by respondent and claimed to be *p. ovale* is not *p. ovale*. This averment is based upon examination by two of Commission's experts of samples of said organism received from respondent's witnesses who claimed to have isolated same.

Commission witness, Dr. Cummer, states that it is still a debatable question as to the connection between dandruff and *p. ovale*.

Respondent contends that the primary infective agent in dandruff is *p. ovale*. Tests upon persons were made. The procedure followed in isolating the organism *p. ovale* was Koch's postulates, an accepted procedure. The test results, although not particularly conclusive, did show that the organisms taken from the artificially infected subjects were the same as those occurring naturally in infectious dandruff. Clinical tests at Barnard Hospital, St. Louis, resulted in its being shown that Listerine, when rubbed into the scalp, did clear up or improve the scalp of subjects affected with infectious dandruff.

Respondent in laboratory tests killed in from one to two minutes both its strain of *pityrosporum ovale* and that received from Commission witness, Dr. Emmons.

Respondent witness, Dr. Templeton, believes that both respondent's and Commission's witnesses' strains of *pityrosporum ovale* are identical, the only difference being in the form or structure due to use of different media.

The dermatologists called by respondent generally agreed with the tests conducted and that dandruff is an infectious disease with *pityrosporum ovale* the primary infective organism.

Although the testimony of Commission experts raises some doubt as to the accuracy of respondent's tests, particularly with regard to the true identity of the organism used therein, that testimony does not conclusively establish the inaccuracy of said tests and further, it has not been shown by other tests that contrary results were obtained.

The complaint, paragraph 4, charges that claims to the effect that Listerine is a preventive of and treatment for colds or sore throats are false in that Listerine will not prevent colds or sore throats, check the progress of a cold, act as an effective treatment for all types of sore throats, kill all or nearly all germs in the mouth, or reach deeper into the throat than most gargles.

The testimony of the many general practitioners and nose and throat specialists called by the Commission and respondent is in agreement that a "cold" or "common cold" is a mild disease or infection of the upper respiratory tract which is caused by a virus with bacteria playing a very important role. Further, bacteria known as "secondary invaders" produce the complications of the common cold, typical of which are the sore throat, bronchitis, tonsillitis and rhinitis.

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As to the pathological processes or course of colds, the testimony establishes that the virus infection or initial phase is accompanied by some discomfort in the nose and throat. The secondary phase is when the infection has progressed to the point where the bacteria (secondary invaders) have become activated and the complications above referred to arise. Both respondent and Commission witnesses acknowledge the presence of pathogenic or disease causing organisms in the throat prior to any virus infection.

Respondent's suggested method of administration of Listerine in order to obtain the claimed results is by gargle. Therefore, the situs of the initial infection by the virus must be established. On this point the testimony is not unequivocal. Commission witnesses are of the belief that in most cases the initial site of the infection is in the nose or posterior oropharynx in that virus are air-borne and enter the body through that portal since the normal way to breathe is through the nose. However, it was stated by Dr. A. R. Dochez, testifying for the Commission and admitted by respondent's witnesses as being probably one of the best informed on the subject, that virus do sometimes enter through the mouth.

The gist of respondent's medical testimony is that the site of initial infection is in the mouth and throat or the nasal passages or both. As to which of the two portals of entry, the nose or the mouth, is the more common, respondent's experts contend that as to virus it is not known definitely, but that as to bacteria, it is known that in the nose is a protective mechanism which rids it of bacteria, whereas no such protection is present in the throat.

The organism which causes the cold is described by Dr. Kneeland, Commission witness, as a "filterable virus" or "group of agents which cannot be stained and made visible under the microscope by ordinary means * * * and which are incapable of being artificially cultivated in the absence of living cells." Commission witnesses assert that there is no evidence that Listerine is effective on the virus of the common cold. It is contended that there is no established procedure for evaluating antiseptics used in contact with body fluids, and further, there is no data which shows that reduction of bacteria on mouth and throat surfaces is of significance. In support of the assertion by Commission witnesses that Listerine is ineffectual in the treatment or prevention of a common cold there is cited the results of tests conducted by Dr. Polvogt, wherein he found in comparing cultures taken from throats before and after Listerine gargle that the same organisms were present. The conclusion, as a result of these findings, was that the test subjects could still contract the secondary complications.

Relative to the possibility of contracting a cold by exposure, wet feet, draughts, etc., it is contended by Commission witnesses that where those conditions lower resistance and the cold causing organism is present, a cold may result.

Respondent's "Reddish Cold Tests" are, in the opinion of Commission witnesses, statistically inadequate, and, without enumerating the various criticisms, improperly conducted from the standpoint of supervision, recording of findings, selection of subjects, and the latter's business connection or relationship to respondent.

Respondent places particular significance in the results obtained from the "Reddish Cold Tests" which were a series of eight six month tests

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made during as many winter seasons. The subjects were among employees at respondent's factories, a subsidiary, a customer, and a State teachers college. The tests were in charge of Dr. George Reddish, respondent's Chief Chemist and Bacteriologist. A qualified physician supervised the tests at each factory with a full time registered nurse carrying on the tests. All nurses and doctors who had anything to do with the tests, and were available, were called as witnesses. Tests for three winter seasons were not admitted in evidence because the cards upon which were set forth the cold or sore throat histories of each subject were not "properly identified." The results of the tests admitted in evidence cover five winter seasons and show that of 2,322 test subjects, in both the control and Listerine groups, those who used a Listerine gargle had substantially fewer colds, days of colds, days lost from work due to colds, and substantially fewer sore throats, days of sore throats, severe colds and days of severe colds. There were only 1,439 test persons involved in the tests because some were subjects during two or more test periods. The various physicians called by respondent approved the Reddish tests and testified that they frequently prescribe antiseptic gargles.

Respondent witnesses are of the opinion that complete sterilization of mouth and throat surfaces is a theoretical goal and that to obtain such results would cause damage to the mucous membrane. They state further that Listerine when gargled kills off a large part of the bacterial flora on said surfaces and is thereby helpful in that the number of bacteria causing secondary complications is reduced.

Commission witnesses criticized, among other things, the failure of nurses to comply literally with instructions of Dr. Reddish in various instances such as not having first hand knowledge of the reasons for the absence from work of test subjects. Respondent asserts that such instances are too few in number to have an effect on the results of the tests. The "error" is equally liable to occur in either the control or gargle group.

The testimony on this phase of the matter distinguishes between colds and the secondary or more serious complications. It likewise, to a certain degree, establishes the causes. However, as to the initial site of infection of a cold there is presented a difference of opinion and a controversial issue.

The record shows that there is no "cure" for colds. As to the Reddish tests, it appears that before the same can be disregarded it must be shown by a preponderance of the evidence that the same are wholly inaccurate. This, the record does not appear to have done, nor has there been introduced into the record tests of a comparable nature which disprove the results.

The complaint, paragraph 5, charges that respondent's claims which directly and by implication represent "that halitosis or bad breath is usually caused by fermentation of food particles in the mouth; that Listerine Antiseptic quickly halts such food fermentation; that Listerine Antiseptic is an effective preventive of and cure for halitosis and is an effective treatment therefor"; are gross exaggerations, misleading and untrue.

The issues as relate to this phase of the case are simply whether or not food fermentation in the mouth causes bad breath; if so, to what degree and the effect, if any, that Listerine will have upon bad breath or halitosis caused by said fermentation.

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The procedure to be followed in administering Listerine, which the experts considered in connection with the rendering of their opinions, is the swishing of a specified quantity of Listerine in the mouth for a period of thirty seconds.

The testimony of Commission witnesses is to the effect that bad breath or halitosis in the majority of cases results from systemic conditions such as sinusitis, rhinitis, lung abscesses, tuberculosis, putrified plugs of tissue in the tonsils, etc., and that foul breath is not caused in "90% of cases" by fermentation in the mouth. These witnesses are recognized experts in the fields of internal medicine, bacteriology, dentistry, etc.

The opinion of these witnesses is predicated on experience gained and observations made in their practice. They strongly assert in light of that experience that fermentation of food particles in the mouth is only a minor cause of halitosis; that foul breath arising from that cause is only momentary and that bad breath arising therefrom is "well under ten percent."

As to the Listerine's action in inhibiting the growth of bacteria, Dr. Basil G. Bibby, Dean of Tufts College Dental School, found after tests wherein were used *Bacillus Prodigiosus*, the same bacteria as that used by respondent's witness, Dr. Hunter, that an active growth of the bacteria was observed, leaving the conclusion that Listerine does not kill bacteria present in food particles in the mouth. It is to be noted that in this witness' test as well as that of Dr. Hunter, the bacteria was placed in the food particles which were then lodged in the subject's mouth by the respective witnesses.

Dr. Basil B. Crohn, a gastrointestinal specialist, introduced* into the stomach or intestinal tract, without contaminating the mouth, strong smelling substances such as garlic. He found after a few hours that a strong odor of garlic was present on the breath, lasting for more than a day. In measuring the odors he relied on his trained sense of smell. He does not find the osmoscope "a particularly useful instrument," although he has used the same.

Commission witnesses aver that Listerine acts only as a mask in those cases where foul breath arises from fermentation, the effects wearing off in a short period of time.

Commission witnesses contend, and respondent admits, but not as to the degree or percentage of cases wherein the same arises, that foul breath can and does result from systemic disorders and causes other than fermentation in the mouth.

Respondent's witnesses on this phase of the matter included general practitioners in medicine and dentistry and specialists in bacteriology, physiology and oral surgery. These experts are of the opinion that the majority of cases of bad breath are caused by fermentation of food in the mouth, in and around the teeth, the gingival trough and sometimes on the tongue. In supporting these views from a clinical research viewpoint, witnesses Dr. Howard W. Haggard, Director of the Laboratory of Applied Physiology, Yale University, and Dr. Lane W. O'Brien, who received his degree in dental surgery in 1935, cited the results of tests which they each conducted. In both instances these two witnesses conducted their experiments or tests upon persons who definitely had halitosis or bad breath. Significant in the making of determinations as to the degree of offensiveness of the breath of the subjects in Dr. O'Brien's tests was the osmoscope, an instrument which measures odor intensity.

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One group of tests conducted by the latter did not include the use of Listerine, the food debris having been removed by a complete dental prophylaxis. His findings in this instance were that 14 of 16 subjects were relieved of bad breath for the full two hour test period. Dr. Haggard, after tests on 138 persons, stated that 127 of that group had had bad breath traceable to mouth odors, the remainder resulting from other causes. These tests, the record shows, were conducted independent of any request by respondent. Dr. Haggard makes the flat statement that “* * * in the majority of these people, some 92 to 93 percent, the odor was definitely of the mouth.”

Tests conducted by Dr. J. F. Conlon, specialist in oral surgery, wherein the osmoscope was also used both before and after washing the mouth with Listerine, resulted in the findings that 15 of 20 subjects obtained definite relief from bad breath.

Dr. O'Brien's tests and his use of the osmoscope were approved by a number of other experts testifying on behalf of respondent.

A number of respondent's experts have stated that they have had successful results from use of Listerine in the manner heretofore discussed, i.e., as a mouth wash, and that they attribute the success to the destruction of bacteria.

Dr. Oscar Hunter conducted on behalf of respondent tests using the same bacteria employed in experiments made by Dr. Basil G. Bibby, Commission witness. Hunter found substantial reduction of the bacteria at intervals of 30 seconds and five minutes after a Listerine mouth-wash was used. However, increase in bacteria was found at the 10 minute interval after use of Listerine, whereas no noticeable increase was found in the salt solution control rinses.

There is presented in the testimony of Commission and respondent, respectively, two somewhat different types of evidence. Respondent has introduced into this record evidence of a substantial number of surveys or tests made upon persons having halitosis and shows thereby that in a majority of instances bad breath was traceable to the mouth. It is also shown by tests that in those cases where odors were traceable as above indicated, Listerine was effective in giving temporary relief.

The greater number of experts expressing views in support of the Commission's contention predicate the same on experiences and observations made in the course of their practice. Those instances of tests cited by Commission witnesses, although proving that bad breath can originate in parts of the body other than the mouth, hardly reaches the probative value of the more practical tests of respondent in that they must of necessity rely on the theoretical proposition that once established that halitosis can originate in the stomach, lungs, etc., the majority of bad breaths do so originate. It does not appear that the Commission's testimony preponderantly shows that respondent's claims on this phase are false.

It is to be noted that in addition to those instances, where respondent's experts subscribe to the use of Listerine for germicidal and antiseptic purposes, the record shows that in some 34 hospitals in various parts of the country Listerine or its equivalent, Liquor Antisepticus, is used as a gargle, mouthwash or prophylactic.

Considering as a whole the testimony of the numerous experts called in this matter, in some instances it is supported by clinical or laboratory tests and where not so borne out is based upon experience acquired by

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those experts during the practice of their particular professions, such as dentistry, dermatology, oral surgery or the general practice of medicine. Before the results of any test can be disregarded, it must be clearly shown that the basic procedure used is unacceptable in the particular scientific field or that other tests made on similar or otherwise acceptable basic principles present contrary findings beyond any question. The phase of the testimony predicated upon experience gained in the practice of a profession is one to be decided wholly on basis of merit.

The record presents, in some instances, differing opinions among the experts as to the acceptability of various test procedures and in other instances contrary findings as between tests conducted on somewhat similar basic principles. In finding that the results of one particular test are controlling there is an approval of that test procedure and a denial of the scientific authenticity of the opposing test.

The evidence under consideration is not believed to be such as warrants the conclusion that respondent's tests and the testimony of its experts are incorrect and untenable.

I feel that the allegations in the complaint are not sustained by the greater weight of the evidence and therefore recommend that the complaint be dismissed without prejudice.

MEMORANDUM BY COMMISSIONER FERGUSON

I concur in the opinions expressed by Chairman Freer and Commissioner March in their respective memoranda that the complaint should be dismissed without prejudice.

It is the duty of the Commission to decide issues of fact, whether or not medical or scientific questions are involved, by the greater weight of the evidence — the burden of proof being on the Commission. In my opinion, with the exception of certain charges challenging the respondent's claims as to the efficacy of Listerine as a treatment for dandruff, the allegations of the complaint have not been sustained by the greater weight of the evidence. There is no proof that these claims were repeated after the respondent in its stipulation agreed to discontinue them.

DISSENT BY COMMISSIONER AYRES

In this case the respondent is engaged in the manufacture of drug preparations, including a preparation designated Listerine Antiseptic, and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

The respondent is charged by the Commission in its complaint among other things with disseminating false advertisements concerning its preparation, making false, misleading, and deceptive statements and representations as to its preparation Listerine being a cure for such complaints as dandruff, colds, halitosis, etc.

It is also charged that such acts and practices of the respondent 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.

The respondent filed an answer to the complaint in which certain admissions were made, namely: That the respondent is a corporation and manufactures and sells in interstate commerce its product Listerine.

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It denies the false and deceptive allegations of the complaint. This answer, consisting of eight or nine pages, was filed October 5, 1940. Thus the issues were joined. Soon thereafter trial of these issues was started and proceeded up to August, 1943, at which time the case was presented to the Commission on briefs and oral argument by counsel for the Commission and counsel for the respondent. The record in the case consists of 7,821 pages. One hundred five hearings were held in various cities in the several States. The record shows that eleven witnesses were offered by the Commission's attorneys in support of the complaint. The respondent offered seventy-three witnesses in opposition. The Commission called twenty witnesses in rebuttal. Respondent called four witnesses in surrebuttal. In addition to the foregoing the Commission's attorneys offered 303 exhibits, and the respondent offered 220 exhibits.

Attention is called to this record to show that without question the case was tried fully on the merits, and to a final conclusion.

The respondent in its advertising made innumerable claims and representations of Listerine being an effective germicide, using this as a basis on which it made representations and claims as to its efficacy in treatment of such ailments as dandruff, colds, sore throat, and halitosis.

The pertinent evidence in the record is for the most part the testimony of expert witnesses, called by the Commission and the respondent. As usual in such cases, there is considerable conflicting evidence to be considered in arriving at a fair and just conclusion.

At first glance it might seem that the respondent has smothered the charges of the complaint by sheer weight of numbers when comparison is made between the number of witnesses called by the Commission and by the respondent. This fact alone calls upon the Commission to exercise judicial judgment and to weigh the evidence to determine the facts. Such weighing of the evidence promptly discloses the weakness of the testimony introduced by the respondent and its lack of probative value in establishing the truth of the various advertising claims made.

Much testimony has been taken relative to the germicidal and antiseptic properties of Listerine under conditions of laboratory tests. At best, even under such conditions, Listerine has only mild germicidal and antiseptic properties and under conditions of use it has little or no value as a germicide or antiseptic. The evidence is conclusive that this product does not have sufficient antiseptic or germicidal properties to have any appreciable effect in the treatment of dandruff, colds, sore throat, or halitosis.

In their brief the attorneys for the respondent have made considerable point of the fact that a stipulation was entered into with the Commission on July 20, 1939, relative to claims being made with reference to Listerine as being a cure for dandruff. It is contended that this proceeding improperly included advertising claims made prior to the execution of the stipulation as well as subsequent thereto. A careful examination of the advertising claims made subsequent to the stipulation indicates a careful and deliberate attempt to circumvent the express provisions of the stipulation, and while the respondent may not categorically violate the inhibitions of the stipulation it certainly disregards the intent and spirit of the document. The execution of a stipulation is a privilege extended to a respondent for the purpose of clearing up unfair and deceptive practices where possible. Where the Commission issues a complaint charging that the practices of a respondent violate the Federal Trade Commission Act the prior execution of a stipulation does not preclude the Commission

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from incorporating all of the practices considered to be objectionable and particularly where the practices are such as indicate a clear attempt to evade the specific terms of a stipulation. Having incorporated such charges in the present proceeding, it must be considered that they have been litigated, and if the Commission now dismisses this proceeding it, in effect, gives its approval to advertising claims which are admitted to be false. The Commission cannot leave the way open for the respondent to resume such admittedly false advertising.

In its advertising concerning the use of Listerine in the treatment of dandruff the respondent, both before and after the execution of the stipulation in this case, has represented directly and by inference that Listerine will cure dandruff. Both the witnesses called by the Commission and those called by the respondent are in accord that there is no permanent cure for dandruff.

In making its various claims concerning the efficacy of Listerine in the treatment of dandruff, the respondent has followed the common practice of setting up a fictitious condition and then advancing a cure or treatment for such condition. In this instance the respondent has attributed to dandruff the qualities of a disease alleged to be caused by a germ *pityrosporum ovale*, which the respondent claims to have isolated and destroyed under test-tube conditions with Listerine. The evidence in this case is that the organism *pityrosporum ovale* is present on all normal scalps and skin. There is no evidence that it is the causative factor of dandruff, infectious or otherwise. Furthermore, there is competent evidence that the organism *pityrosporum ovale* alleged to have been isolated by respondent's witness was not in fact that organism.

In considering the effect of Listerine on dandruff it is difficult for me to see how the Commission can disregard the proven consensus of medical opinion in this case that dandruff is not a germ disease and is present to some extent on all normal scalps and that its presence in abnormal amounts may be caused by many underlying causes upon which Listerine could have no effect whatsoever in excess of the temporary removal of the dandruff scales.

Respondent's representations as to the efficacy of Listerine in the treatment of colds are such as to preclude any conclusion other than that they are false and misleading in their entirety. It is uncontradicted in this record that colds generally start in the nasal cavity, which is out of reach of any gargle, and consequently respondent's preparation is useless in either the prevention or treatment of such colds or the complications resulting therefrom. In its earlier advertising the respondent overstepped the bounds of ordinary reasoning in discussing the effect of its preparation in preventing complications resulting from colds by specifically mentioning tuberculosis, mastoid infections, sinus, influenza, and other conditions, thereby implying that the use of Listerine would be beneficial in preventing such diseases. Later advertising carries the same implications without specific reference to these serious diseases.

The mild antiseptic or germicidal value of Listerine under conditions of use will not be adequate to kill or inhibit sufficient quantities of bacteria in the oral cavity to have any appreciable effect on halitosis other than masking bad breath. The rinse tests conducted by the witness for the respondent have been thoroughly discredited as having any probative value to show the efficacy of Listerine in the oral cavity. Even in the absence of testimony relative to the inaccuracies of these tests a common-

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sense consideration will cause them to fall of their own weight. It is admitted that the use of Listerine can have no effect upon halitosis resulting from various systemic conditions.

This case does not involve any medical controversy of a nature other than that met in any contested medical case. The ingredients of respondent's preparation are very well known, and the medical profession generally is familiar with their effectiveness in use. Nothing has been advanced in this case which indicates a present advance in medical science, nor does this case indicate that future medical discovery or advancement will in any way affect the present judgment of respondent's preparation.

Based upon the record as a whole, the consensus of medical opinion is that respondent's preparation is nothing more than a mild antiseptic with little or no value in the prevention of colds generally or effective in treating or preventing any complications resulting from colds; that its value in the treatment of dandruff is limited to the temporary removal of the dandruff scales; and that under conditions of use it will not kill sufficient quantities of bacteria in the oral cavity to have any appreciable effect upon halitosis, other than masking bad breath, and has no value whatsoever upon halitosis or bad breath resulting from various systemic conditions.

There is every indication that the future development of medical science will sustain the present consensus of opinion of the medical profession. The record in this case is such that I can reach only one conclusion — that respondent's representations are false and should be prohibited by an order to cease and desist issued by the Commission. In the unlikely event medical science should later develop facts contrary to such findings and order of the Commission, the statute fully protects the respondent in its right to obtain a modification of the findings and order of the Commission under such circumstances.

Aside from the merits of this case, it is my opinion that the Commission is making an improper disposition of this matter. The order of dismissal contains the statement "without prejudice to the right of the Commission to institute further proceedings should future facts so warrant." Such an order is in my opinion meaningless so far as this proceeding is concerned, as nothing has been decided. If it is the opinion of the majority of the Commission that the charges in the complaint have not been sustained, final disposition of this matter should be made, or if there is any feeling that additional testimony is necessary to permit a final adjudication, the case should be reopened for that purpose. If it is the opinion of the majority that by the entry of such order this case can later be reopened or be considered not to be *res judicata* as to any future proceeding against this respondent, I seriously doubt that such results have been obtained.

The Supreme Court has held that the Federal Trade Commission is a quasijudicial body (*Schechter Corp. v. United States*, 295 U.S. 495; *Humphrey's Executor v. United States*, 295 U.S. 602), and, as stated by the Court in the Humphrey case, "Its members are called upon to exercise the trained judgment of a body of experts appointed by law and informed by experience." The issues in this case have been squarely placed before the Commission, and the large amount of testimony taken, while it may not be exhaustive of the subject, certainly presents a cross section which not only permits but requires a final adjudication of this case.

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When a complaint issued by the Commission has proceeded through full hearing before a trial examiner and the matter has been submitted to the Commission upon the record and briefs, it is my opinion that a dismissal of the action by the Commission is *res judicata* as to any further proceeding before the Commission regarding the same subject matter and the same parties.

Whether, after full hearing, a matter is disposed of by the Commission by either a finding and order to cease and desist or by an order of dismissal of the proceeding, the action of the Commission is a final disposition of the matter. In either case the issues of fact have been tried by the Commission and an order of dismissal constitutes a judicial determination by the Commission that the acts or practices charged in the complaint are not in violation of the Act; otherwise, a cease and desist order must follow.

In the event the courts should construe the action of the Commission as an adjudication of the matter and a dismissal of the proceeding, I am concerned about the effect such a decision might have in other matters pending before the Commission involving similar questions and also its effect upon matters pending in other jurisdictions.

There is authority to the effect that the doctrine of *res judicata* is applicable in administrative proceedings. In a recent decision of the Circuit Court of Appeals for the 7th Circuit, dated March 7, 1944, in the case of *United States of America v. Willard Tablet Company*, 141 F. (2d) 141, 38 F. T. C. 863, the Court held that a finding and order issued by the Federal Trade Commission is *res judicata* and binding upon the District Court in an action involving false labeling in violation of the Food, Drug and Cosmetic Act and determinative of the issues involved therein.

If the view expressed by the Circuit Court of Appeals for the 7th Circuit is sound, I am of the opinion that the dismissal of the complaint here, whether with or without prejudice, will operate as *res judicata* with respect to the issue of the truth or falsity of respondent's advertising claims.

Aside from the possibility that *res judicata* or estoppel by judgment might be raised in any future proceeding brought by the Commission after dismissal where the same parties are involved, there is a further possibility that if the Commission, after prolonged hearings and consideration of the case upon briefs, should dismiss without prejudice and later file another action involving the same controversy, the courts might look upon this as an arbitrary or capricious action on the part of the Commission in again involving the respondent in a relitigation of the same matter previously tried before the Commission.

Because of the foregoing reasons, I respectfully dissent from the majority decision in this case.

Before Mr. Charles A. Vilas, trial examiner.

Mr. Gerard A. Rault and Mr. William M. King for the Commission.

Root, Clark, Buckner & Ballantine, of New York City, and Mr. Simon Michelet and Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for respondent.

H. M. MANHEIM & Co., INC. Complaint, April 6, 1942. Order, May 10, 1944. (Docket 4743.)

Charge: Advertising falsely or misleadingly as to dealer being distributor or wholesaler and misrepresenting prices as being wholesale; in connection with the sale of merchandise of the kind usually and cus-

tomarily sold by retail jewelers consisting of jewelry, silverware, luggage, giftware and other merchandise of like character.

Dismissed, after answer, by the following order:

This matter coming on for consideration by the Commission upon the application of the respondent for dismissal of the complaint, and it appearing to the Commission that the respondent has expressed its intention, in writing, to be bound by the Trade Practice Conference Rules promulgated for the Catalog and Giftware Industry on December 23, 1943, and has furnished satisfactory evidence of such intention, and the Commission having duly considered said application and the record herein and being now fully advised in the premises.

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should future facts so warrant.

Mr. W. T. Chantland for the Commission.

Mr. Thomas Epstein, of New York City, for respondent.

THE ROYAL TAILORS, INC. Complaint, October 8, 1941. Order, May 17, 1944. (Docket 4609.)

Charge: Using lottery schemes in merchandising through supplying to and placing in the hands of others such schemes for selling merchandise by the use of suit "clubs"; in connection with the sale of suits, overcoats and other articles of merchandise.

Dismissed by the following order:

Whereas, this proceeding having been heard upon the complaint of the Commission, the answer of respondent, 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, briefs filed herein, and oral arguments of counsel; and

Whereas, Being now fully advised in the premises and being of the opinion that the charges of the complaint are not sustained by the evidence.

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Before *Mr. John W. Addison* and *Mr. Lewis C. Russell*, trial examiners.

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

Sonnenschein, Berkson, Lautmann, Levinson & Morse, of Chicago, Ill., for respondent.

BLUE RIDGE COAL CO., INC. Complaint, July 23, 1942. Order, May 23, 1944. (Docket 4787.)

Charge: Advertising falsely or misleadingly as to type of product; in connection with the sale of coal.

Dismissed by the following order:

This matter came on to be heard upon the complaint of the Commission, the answer of respondent, testimony and other evidence in support of and in opposition to the complaint, report of the trial examiner, briefs of opposing counsel, and the oral arguments of said counsel, 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. Lewis C. Russell*, trial examiner.

Mr. B. G. Wilson for the Commission.

Norman, Quirk & Graham, of Washington, D. C., for respondent.

MARY BOOTH POWELL, trading as SUPERIOR HATCHERY. Complaint, February 12, 1943. Order, May 23, 1944. (Docket 4909.)

Charge: Advertising falsely or misleadingly as to government indorsement, and being Record of Performance poultry breeder, and as to qualities, properties or results, economy or saving, productivity and price of product; in connection with the hatching and sale of chickens and baby chicks.

Dismissed by the following order:

This matter coming on to be considered by the Commission, and it having been made known to the Commission that the respondent, Mary Booth Powell, died on January 22, 1944.

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Mr. Jesse D. Kash for the Commission.

Mr. E. C. Booth, of Pleasant Hill, Mo., for respondent.

EVER-FLO Co. Complaint, May 14, 1943. Order, May 31, 1944. (Docket 4965.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results and safety of product; in connection with the manufacture and sale of a so-called anti-freeze solution designated "Ever-Flo" recommended for use in the cooling systems of automobile and other combustion type engines.

Dismissed by the following order:

This matter coming on to be considered by the Commission, and it appearing that the respondent has been adjudicated a bankrupt, that its assets have been disposed of and that its corporate charter has been formally dissolved, and the the Commission having duly considered the matter.

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Mr. Jesse D. Kash for the Commission.

McConnell, Blackmore, Cory & Burke, of Cleveland, Ohio, for respondent.

BENJAMIN D. RITHOLZ ET AL. trading as NATIONAL OPTICAL STORES Co. and DR. RITHOLZ OPTICAL Co.¹ Complaint, June 4, 1937. Order, June 8, 1944. (Docket 3143.)

Charge: Misrepresenting pretended regular and special prices and free services and trial incident to sale, and misrepresenting customer needs and quality and value of product offered and sold in response thereto, and business status; in connection with the sale of spectacles and other optical devices and supplies.

Dismissal, after answers and trial, by the following order:

This matter coming on to be heard by the Commission on the record, and the Commission having duly considered the matter and being now fully advised in the premises.

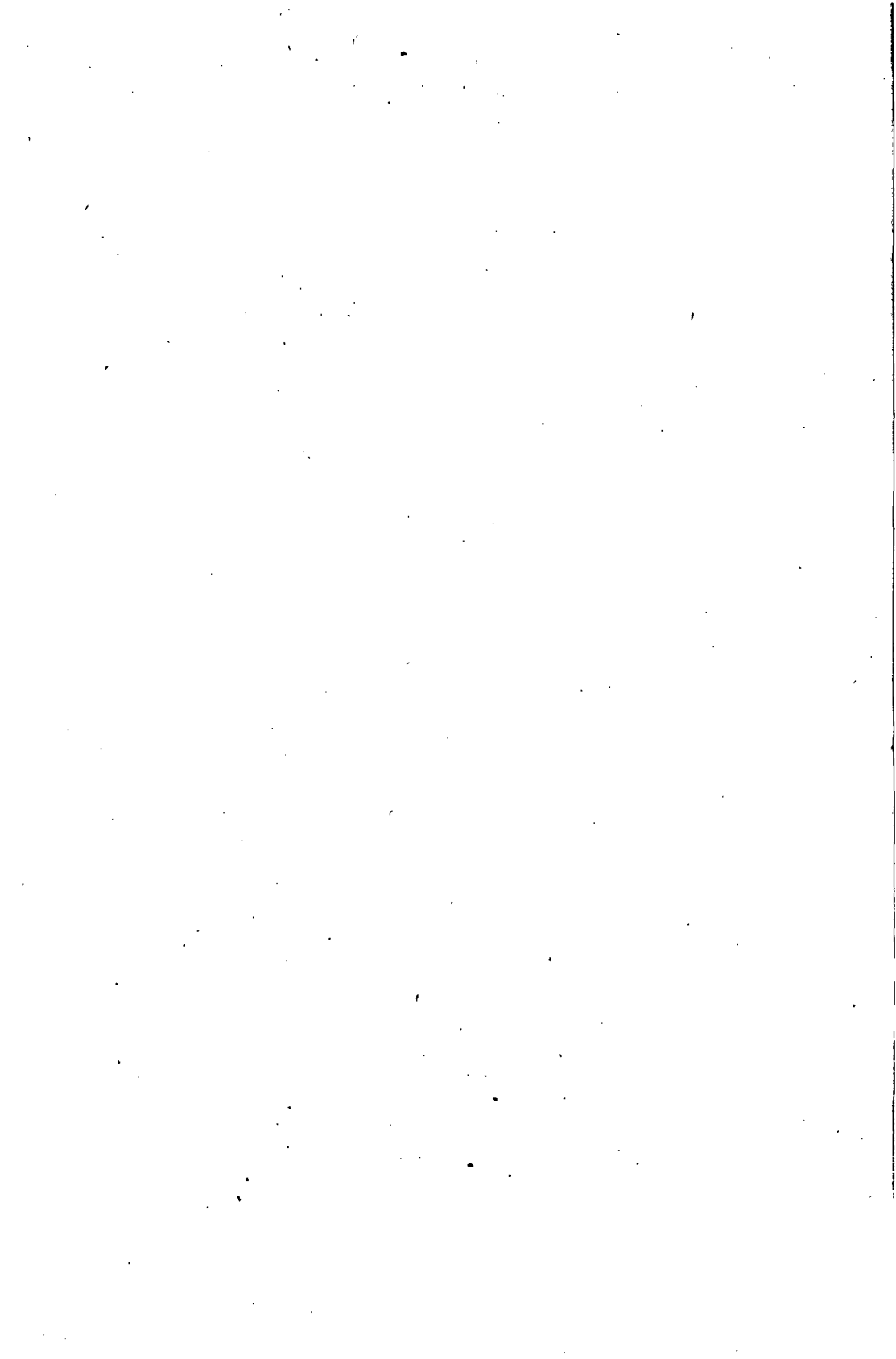
It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice.

Before Mr. W. W. Sheppard and Mr. Arthur F. Thomas, trial examiners.

Mr. S. Brogdyne Teu, II, for the Commission.

Mr. B. D. Ritholz, of Chicago, Ill., for respondents.

¹ The proceeding in question was reopened for further consideration following order closing the case without prejudice, August 5, 1941, 33 F. T. C. 1635.



STIPULATIONS¹

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST²

3131. **Coal Tar Hair Dye Products—Safety.**—A. Rhodes Co., Inc., a Massachusetts corporation, having its principal place of business at Lowell, Mass., engaged in the business of manufacturing two coal tar hair dye products, one called "Rhodes' Quick Color for Gray Hair" in A and B solutions, the other "Rhodes' Shampoo Tint for Gray Hair" in the form of tablets and a peroxide to be used as a bleach, 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.

A. Rhodes Co., Inc., in connection with the dissemination of advertising by the means and in the manner above set out of the said coal tar hair dye preparations designated "Rhodes' Quick Color for Gray Hair" and "Rhodes' Shampoo Tint for Gray Hair," or any other preparation of substantially the same composition, or possessing substantially the same properties, whether sold under such names or any other name, agreed it will forthwith 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 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 advertisement 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. (Apr. 14, 1944.)

3366.³ **Women's Coats—Composition.**—Lane Bryant, Inc., a Delaware corporation, engaged in the sale and distribution in interstate commerce, of merchandise including women's coats, 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.

¹ For false and misleading advertising stipulations effected through the Commission's radio and periodical division, see p. 807 et seq.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely January 1, 1944, to June 30, 1944, inclusive. Digests of previous stipulations of this character accepted by the Commission may be found in vols. 10 to 37 of the Commission's decisions.

² 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.

³ Supplemental.

Lane Bryant, Inc., in connection with the sale and distribution of its textile fabric garments in commerce as defined by the Federal Trade Commission Act, agreed that it will 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 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 or terms "Persian," "Bokaharalam" or "Arabakurl" or any other word or term 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 or indicated; 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 an animal, the true name of said animal 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."

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 was further understood and agreed that no provision of this agreement should be construed as relieving the said Lane Bryant, 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. (Apr. 11, 1944.)

3789. **Mirrors—Foreign Product Being "Made in U.S.A."**—Grand Gaslight, Inc., trading also as Eveready Trading Co., engaged in the sale and distribution of merchandise, including mirrors, 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.

Grand Gaslight, Inc., whether trading under such name, as Eveready Trading Co. 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:

1. The use of the words and initials "Manufactured in U. S. A." or other words or terms of like meaning as descriptive of or in connection with merchandise made in Japan or other foreign country; or from representing in any manner whatsoever that merchandise or products manufactured in whole or in part in Japan or other foreign country are manufactured or made in the United States of America;

2. Concealing, obliterating or removing from imported mirrors or other imported products the legend "Made in Japan" or other marking showing the country of origin thereof; *Provided, however,* that if processing, assembling or packaging of such products necessarily results in the concealment, obliteration or removal of markings showing the country of origin, legends or markings disclosing such country of origin shall

nevertheless be conspicuously displayed on the products or the packaging thereof. (Jan. 5, 1944.)

3790. **Hosiery—"Mills."**—Albert Solomon and James G. Rice, co-partners, trading under the firm name and style "The Hosiery Mills Company," engaged in the sale and distribution of hosiery in interstate commerce, in competition with other partnerships and with 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.

Albert Solomon and James G. Rice agreed that they and each of them, will cease and desist from the use of the word "Mills" as part of or in connection or conjunction with the trade name under which they advertise, offer for sale or sell their merchandise in commerce as commerce is defined by the Federal Trade Commission Act; and from the use of the word "Mills," or of any other word or words of similar meaning or connotation, either alone or in connection or conjunction with any other word or words, or in any way, so as to import or imply or the effect of which tends or may tend to cause or convey the impression or belief that they make the merchandise offered for sale and sold by them or that they actually own and operate or directly and absolutely control the plant, mill or factory in which the merchandise offered for sale and sold by them is made or manufactured. (Jan. 6, 1944.)

3791. **Riding and Cowboy Boots—"Tooled."**—Kirkendall Boot Co., a Nebraska corporation, engaged in the manufacture of riding and cowboy boots, and in the sale thereof 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.

Kirkendall Boot Co., in connection with the advertisement, offering for sale or sale of its riding or cowboy boots, leather products, 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 "tooled," as descriptive of the ornamentations appearing on its leather products that are not accomplished by hand-tooling, or the use of hand tools; and from the use of the word "tooled," or of any other word or words of similar meaning or implication, either alone or in connection or conjunction with any other word or words, or in any way, so as to import or imply, or the effect of which tends or may tend to cause or convey the impression or belief that the ornamentations or designs appearing on said products have been produced by hand or the use of hand-operated tools, as distinguished from machine embossing or stamping. (Jan. 7, 1944.)

3792. **Cowboy Boots—"Hand-Tooled."**—Wilbert J. Olson, engaged for some time past at his place of business in the city of Cleveland, State of Ohio, in the sale and distribution of cowboy boots 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.

Wilbert J. Olson, in connection with the advertisement, offering for sale or sale of his cowboy boots, leather 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 term "hand-tooled" or the word "tooled," as descriptive of the ornamentations appearing on

his leather products that are not accomplished by hand-tooling, or the use of hand tools; and from the use of the word "tooled," or of any other word or words of similar meaning or implication, either alone or in connection with any other word or words or in any way, the effect of which tends or may tend to cause or convey the impression or belief that the ornamentations appearing on said products have been produced by hand or by the use of hand-operated tools, as distinguished from machine embossing or stamping. (Jan. 7, 1944.)

3793. Shoelaces, Tapes and Braids—Composition.—Mitchellace, Inc., an Ohio corporation, engaged in the manufacture of shoelaces, tapes and braids 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.

Mitchellace, 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 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. (Jan. 7, 1944.)

3794. Radiator and Motor Sealing Compound—Qualities, Properties or Results and "Weld."—R. C. Meneray, a sole trader, operating as Radiator Seal Co., engaged in the sale and distribution of a radiator and motor sealing compound 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.

R. C. Meneray, in connection with the offering for sale, sale and distribution of his products in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from the use of the word "weld" or term or expression of similar import, as a part of the trade designation for or as descriptive of his radiator and motor block sealing compound; and from representing that said product welds motors, leaks or radiators, or repairs the same by means of welding, or otherwise that it causes the union, consolidation or fusion of metals as in the case of a welding process. (Jan. 7, 1944.)

3795. "Roman Meal Bread"—Qualities, Properties or Results and Composition.—Kilpatrick Bakeries, is a California corporation, engaged in the sale and distribution of a food product designated Roman Meal Bread. Emil Reinhardt, is an individual, trading as Emil Reinhardt Advertising Agency, engaged in the business of conducting an advertising agency, and in preparing, distributing or causing to be distributed, advertisements and sales promotional material for vendors of various commodities, including the aforesaid Kilpatrick Bakeries. Kilpatrick Bakeries and Emil Reinhardt have disseminated or caused to be disseminated in interstate commerce advertisements and advertising matter for the purpose of promoting the sale of said food product. The aforesaid Kilpatrick Bakeries, in competition with corporations, firms and individuals likewise engaged, and Emil Reinhardt, entered into the following

agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Kilpatrick Bakeries, and Emil Reinhardt, whether trading under such name, as Emil Reinhardt Advertising Agency, or under any other trade name or style, in connection with the advertising by the means and in the manner hereinabove set forth of the product designated Roman Meal Bread or any other product composed of substantially the same properties, whether sold or advertised under such name or any other name or names, agreed that they and each of them will forthwith cease and desist:

1. Representing, directly or inferentially, that the use of said product will effectuate any reduction in weight; that its use in connection with a reducing diet will result in any weight reduction other than such as would result from the reducing diet; or that it provides food elements necessary to burn up fats or that it has any catabolic effect upon body fat.

2. The use of any statement or representation that tends or may tend to convey the belief or impression that said product contains minerals and/or vitamins in excess of the actual mineral or vitamin content thereof, or that the vitamin and/or mineral content of said product is substantially, if any, greater than that of bread products generally.

3. That the caloric food values of said product are substantially, if any, less than those of bread products generally. (Jan. 10, 1944.)

3796. "Roman Meal Bread"—Qualities, Properties or Results and Composition.—Basil T. Williams and Mary Ellen Williams, are co-partners, trading as Williams' Bakery, engaged in the sale and distribution of a food product designated "Roman Meal Bread." Emil Reinhardt, is an individual, trading as Emil Reinhardt Advertising Agency, engaged in the business of conducting an advertising agency, and in preparing, distributing or causing to be distributed, advertisements and sales promotional material for vendors of various commodities, including the aforesaid Basil T. Williams and Mary Ellen Williams. Basil T. Williams, Mary Ellen Williams and Emil Reinhardt have disseminated or caused to be disseminated in interstate commerce advertisements and advertising matter for the purpose of promoting the sale of said food product. The aforesaid Basil T. Williams, and Mary Ellen Williams, in competition with individuals, firms and corporations likewise engaged, and Emil Reinhardt, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Basil T. Williams and Mary Ellen Williams, whether trading under such names, as Williams' Bakery or under any other trade name or style, and Emil Reinhardt, whether trading under such name, as Emil Reinhardt Advertising Agency or under any other trade name or style, in connection with the advertising by the means and in the manner hereinabove set forth of the product designated "Roman Meal Bread" or any other product composed of substantially the same properties, whether sold or advertised under such name or any other name or names, agreed that they and each of them will forthwith cease and desist:

1. Representing, directly or inferentially, that the use of said product will effectuate any reduction in weight; that its use in connection with a reducing diet will result in any weight reduction other than such as would result from the reducing diet; or that it provides food elements necessary to burn up fats or that it has any catabolic effect upon body fat.

2. The use of any statement or representation that tends or may tend to convey the belief or impression that said product contains minerals and/or vitamins in excess of the actual mineral or vitamin content thereof,

or that the vitamin and/or mineral content of said product is substantially, if any, greater than that of bread products generally.

3. That said product, due to its mineral and/or vitamin or other content can be depended upon to protect health.

4. That the calorific food values of said product are substantially, if any, less than those of bread products generally. (Jan. 10, 1944.)

3797. Powdered Soap Product—Qualities, Properties or Results and Comparative Merits.—Sugar Beet Products Co., a Michigan corporation, engaged in the manufacture of chemical products, including a powdered soap product called Formula SBS-11, and in the sale of such merchandise 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.

Sugar Beet Products Co., in connection with the offering for sale, sale or distribution in commerce, as commerce is defined by the Federal Trade Commission Act, of its product called Formula SBS-11, or in the advertising thereof by the means or in the manner above set forth, agreed that it will cease and desist forthwith from representing, directly or inferentially:

1. That said product would be effective in the prevention of or as a treatment for skin irritations, dermatitis, chapping or soreness.

2. That the use of said product would remove all bacteria from the skin, or that it could be depended upon to prevent infections or to act as an antiseptic under the conditions of use.

3. That all commercial liquid soaps contain alcohol;

4. That said product will "remove 21.3% more bacteria than any other product available," or from making any other representation or claim attributing to said product an effectiveness, either in the removal of bacteria from the surface of the skin or in the prevention of skin infections, which is exaggerated or for which there is no proper support based upon any recognized or accepted scientific test. (Jan. 17, 1944.)

3798. Hair Preparation—Qualities, Properties or Results and Imported Products.—Wilfred Scott, a sole trader operating as Decco Barber Supply Co., engaged in the sale and distribution of hair preparations and face creams and powders 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.

Wilfred Scott, in connection with the offering for sale, sale and distribution of his preparations in commerce, as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from:

(a) Representing that the hair dressing heretofore sold as Kulver's East Indian Hair Dressing, or any preparation of similar composition, is a hair grower, produces long hair, makes the hair grow longer or in any way facilitates the growth of hair.

(b) Designating such domestic preparation as "East Indian Hair Dressing," or otherwise representing that it is a product of or contains ingredients imported from East India or any other foreign country. (Jan. 17, 1944.)

3799. Men's Clothing—"Money Back Guarantee."—Jim Foster Clothes, Inc., trading also as John C. Mason & Co., an Illinois corporation, engaged in the sale and distribution in interstate commerce of men's suits or other garments, 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.

Jim Foster Clothes, Inc., whether trading under such name, as John C. Mason & Co., 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 the use of a "Money Back Guarantee" or other agreement containing any statement or representation to the effect that it will refund to customers the amounts paid by them for merchandise, unless and until it actually does refund to such customers the full amounts paid by them whether paid to said corporation's sales agents, paid for collect on delivery shipments, or paid in any other manner; and from the use of any guarantee unless strict and complete performance be made with all the terms and conditions thereof. (Jan. 17, 1944.)

3800. Upholstery Fabric—Guarantee.—Wissahickon Plush Mills, Inc., a Pennsylvania corporation, engaged in the sale of upholstery fabric or material, including a fabric designated "Wissahickon Mohair," 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.

Wissahickon Plush Mills, 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. Representing, by the use of so-called guarantee certificates or in any other manner, either directly or inferentially, that its upholstery fabrics are mothproof for five years or any other period of time, unless and until said fabrics have been so treated or processed as to be rendered mothproof for the period of time indicated.

2. The use of any so-called guarantee or other document, writing or representation of like nature which provides that said corporation will replace or pay the cost of replacing any material, unless and until it actually does replace such material, that is, assumes or pays the total material and labor cost incident to such replacement; and from the use of any guarantee, unless strict and complete performance be made with all the terms and conditions thereof. (Jan. 17, 1944.)

3801. Cosmetics—Earnings or Profits, Opportunities, Etc.—Raymond W. Appleton, a sole trader operating as Parker Bouldin Co., engaged in the sale and distribution of a line of cosmetics under the trade designation Priscilla Parker, 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.

Raymond W. Appleton, whether operating as Parker Bouldin Co., or by any other name or style, or whether operating directly or through the instrumentality of agents or representatives, agreed that, in connection with the sale and distribution of his merchandise in commerce as defined by the Federal Trade Commission Act, he will forthwith cease and desist from

(a) Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives or distributors for any given period of time, which is not a true representation of the average net earnings consistently made by his active full-time agents, salesmen, representatives or distributors in the ordinary course of business under normal conditions and circumstances.

(b) Representing any specified sum of money as earnings or profits of any specified agent, salesman, representative or distributor for any given period of time which has not in fact been consistently earned by such agent, salesman, representative or distributor in the ordinary course of business and under normal conditions and circumstances.

(c) Soliciting "managers," offering a "life time connection," a "permanent position" either with or without salary, or in any way whatsoever representing that employment is offered or that the status of the person accepting such offer is to be other than that of an independent dealer who must pay for his merchandise before receiving same.

(d) Representing that he will cooperate with his dealers by advertising his merchandise in the local moving picture houses of their communities, by providing liberal financial assistance for the living expenses of his dealers or for expansion of their business, or in any other way, unless and until such cooperation actually is rendered exactly in the manner represented.

(e) By the use of expressions such as "no selling" or words or terms of similar import, representing that the prospective dealer will not have a selling problem or that the nature of his operations will not be primarily and essentially the selling of merchandise. (Jan. 20, 1944.)

3802. Paint Products—Free and Mildew-Resistant.—Western Auto Supply Co., a Missouri corporation, owns and operates a number of retail stores within the District of Columbia, from which stores it is engaged in selling an extensive line of merchandise, including house paints, in interstate commerce. Western Auto Supply Company, engaged at all times herein referred to 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.

Western Auto Supply Co., in connection with the advertisement, offering for sale or sale of its paint products 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 word "Free," or of any other word or words of similar meaning or import, as descriptive of said products, when such products are not a gratuity, and the prospective recipient thereof is required, as a consideration to obtain the same, to purchase some other article or articles.

2. The use of the words "Mildew-Resistant," in any way, as descriptive of a compound to be used in connection with a paint or other product offered for sale and sold by the said corporation, so as to import or imply or which tends or may tend to cause or convey the impression or belief that the use or admixture of said compound with said paint or product will have the effect of increasing or enhancing the mildew-resistant properties of said paint. (Jan. 25, 1944.)

3803. Cement Curing Compound—Qualities, Properties or Results.—Federal Waterproofing Co., Inc., an Indiana corporation, engaged in the sale and distribution in interstate commerce of a cement curing compound or preparation designated "Preservakure" which allegedly seals the surface and provides for the retention of the original mixing water within the concrete; 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.

Federal Waterproofing Co., Inc., in connection with the sale and distribution in commerce as defined by the Federal Trade Commission

Act, of its preparation designated "Preservakure" or any other preparation 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 representing, directly or inferentially, that said preparation will not stain, mottle or discolor surfaces to which it is applied, or that the ingredients thereof are chemically inert or nonsaponifiable. (Jan. 25, 1944.)

3804. Clocks and Watches—Manufacturer.—Max J. Raff, Isadore A. Raff, Lillian Raff and Henrietta B. Raff, copartners, trading as Aristocrat Clock Co., engaged in the sale and distribution of clocks and watches 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.

Max J. Raff, Isadore A. Raff, Lillian Raff and Henrietta B. Raff, whether trading under such name or names, as Aristocrat Clock Co., or under any other trade name or style, in connection with the sale and distribution of clocks and watches in commerce as defined by the Federal Trade Commission Act, agreed that they and each of them will forthwith cease and desist from representing, directly or inferentially, that they manufacture such products, unless and until they actually own and operate or directly and absolutely control the plant or factory wherein are made any and all products offered for sale or sold by them under such representation. (Jan. 25, 1944.)

3805. Photographs—"Gold Toner" and Sample Conformance.—James C. Wilson, an individual, trading as James Studio, engaged in the sale and distribution of photographs 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.

James C. Wilson, whether trading under such name, as James Studio, or under any other trade name or style, in connection with the sale and distribution of his photographs in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from:

1. The use of the words "Gold Tone Oil Painted Photo" as a designation for or as descriptive of photographs which are not in fact gold tone photographs, that is, photographs produced by the "gold toner" process which involves the use of gold chloride; and from the use of the words "gold tone" or other word or words of like meaning, either alone or in conjunction with any other word or words, in any manner so as to import or imply that such photographs are produced by the "gold toner" process.

2. Using or providing others with a means to use any alleged samples of photographs in any manner which tends or may tend to convey the belief or impression that such so-called samples are representative of or actually are samples of the photographs to be delivered to purchasers when, in fact, the photographs as delivered are not comparable with or are inferior to such alleged samples in quality, workmanship, appearance or other features. (Jan. 26, 1944.)

3806. Dresses—Composition.—Della Weltman, a sole trader operating as Maxine Dress Co., engaged in the manufacture of ladies' rayon dresses 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.

Della Weltman, in connection with the offering for 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 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. (Jan. 26, 1944.)

3807. Safety Razor Blade Sharpener—Qualities, Properties or Results and New.—Food Display Machine Corporation, operating as Razoroll Co., an Illinois corporation, engaged in the sale and distribution of a safety razor blade sharpener designated "Razoroll" 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.

Food Display Machine Corporation, in connection with the offering for sale, sale and distribution of its "Razoroll" sharpener, or any device of similar construction, agreed that it will forthwith cease and desist from representing:

(a) That a razor blade sharpened by such device can be made to serve for months of time or may be used for hundreds of shaves; or representing as possible or probable effects of said sharpening, any number of shaves or any span of service for a razor blade which are not true representations of the average number of shaves afforded or the average service time per blade consistently realized by the purchasers of said razor sharpener.

(b) That the blade is held automatically by said device at the correct angle or the proper pressure, that dropping in of the blade is all that is required, or that no guesswork is involved in the operation.

(c) That said sharpening device is either new or different, by reason of its stropping on leather or otherwise. (Jan. 27, 1944.)

3808. Textile Fabrics—Composition—Barri Fabrics Corporation, a New York corporation, engaged in the sale and distribution of textile fabrics 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.

Barri Fabrics Corporation, in connection with the sale and distribution of its textile fabrics in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. The use of the term "butcher linen" as a designation for a fabric not composed of linen, and from the use of the word "linen" or other word or term of like meaning, either alone or in conjunction with any other word or words, so as to import or imply that such fabric is linen.

2. Advertising, branding, labeling, invoicing, selling or offering for sale any fiber, yarn, thread, strands, fabric, garment or other article not containing linen, but which has been manufactured or processed in such manner as to simulate linen or which purports to contain linen in whole or in part, or which has been or is represented as having a linen finish, unless full and nondeceptive disclosure be made of the fiber content of such product and of the fact that it does not contain any linen.

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. (Jan. 27, 1944.)

3809. "Printing Press"—Qualities, Properties or Results and Order Conformance.—Alfred Johnson Smith, Paul Smith and Arthur Smith, copartners, trading as Johnson Smith & Co., engaged in the business of selling and distributing merchandise, primarily of the novelty type, in interstate commerce, in competition with other copartnerships and with 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.

Alfred Johnson Smith, Paul Smith and Arthur Smith, in connection with the advertisement, offering for sale and distribution of its aforesaid merchandise, in commerce; as commerce is defined by the Federal Trade Commission Act, agreed that they, and each of them, will cease and desist forthwith from:

1. Representing, as through the use in said advertising of what purports to be a picturization or language descriptive of a printing press offered for sale, that orders therefor will be filled with merchandise such as is depicted or described in said advertising, unless such orders actually are filled with merchandise of the kind and type depicted and described.

2. The use of the words "A Real Printing Press" or the words "Does Real Job Work," or of any other word or words, as descriptive of said device 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 device is capable of doing any type of commercial or job work, or that the said device is other than a toy printing press.

3. The use of the statement "will turn out many hundreds of copies per hour" as descriptive of the printing capacity of said device, and from the use of said statement, or of any other statement that, either directly or by inference, attributes an exaggerated printing capacity to said device or a printing capacity that is in excess of what normally can be accomplished through the use of said device. (Jan. 27, 1944.)

3810. Shoes—"Health" and "Nature's Last."—Philip Trachtenberg, Edward Trachtenberg and Benjamin Trachtenberg, copartners, trading as Hill Shoe Co., engaged in the sale and distribution of 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.

Philip Trachtenberg, Edward Trachtenberg and Benjamin Trachtenberg, whether trading under such names, as Hill Shoe Co., or under any other trade name or style, in connection with the sale and distribution of their shoes 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 word "Health" or other word or words of like meaning to designate, describe or refer to shoes that have no special scientific or orthopedic features; or otherwise from representing, directly or by

implication, that shoes of customary and usual construction have special health or corrective features.

2. The use of the term "Nature's Last" or other term or word of like meaning to designate, describe or refer to a shoe or to a last on which a shoe is formed, unless such shoe is formed or modeled to the foot of the person for whom it is being made, or unless the last on which the shoe is formed is made from an accurate mold of the foot for which the shoe is to be made. (Feb. 1, 1944.)

3811. "Othine Face Bleach"—**Safety.**—The Othine Corporation, a New York corporation, engaged in the sale and distribution in interstate commerce, of a cosmetic preparation designated "Othine Face Bleach," 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.

The Othine 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 preparation designated "Othine Face Bleach" or any other preparation composed of substantially the same ingredients or possessing substantially the same properties, whether sold or advertised under such name or any other name or names, agreed that it will forthwith cease and desist from disseminating any advertisement pertaining to such preparation which fails to reveal that it should not be applied to an area of skin larger than that of 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. (Feb. 1, 1944.)

3812. "Automotive Specialties"—**Manufacturer, "Sure-Weld" and Guaranteed.**—Bessie Haisfield and Samuel Haisfield, copartners, trading as Sure-Rite Products Co., engaged in the sale and distribution in interstate commerce of various "automotive specialties" or products, 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.

Bessie Haisfield and Samuel Haisfield, whether trading under such names, as Sure-Rite Products Co., or under any other trade name or style, in connection with the sale and distribution of their products 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 that they manufacture any product unless and until they actually own and operate or directly and absolutely control a plant or factory wherein is made any and all products by them sold, offered for sale or advertised under such representation.

2. The use of the words "Sure-Weld" as a designation for a product that does not effect a weld or fusion of metal parts; representing, directly or inferentially, that such product is a welding agent or that it welds cracked valve ports, cast iron or aluminum, cylinder heads, cracks inside cylinders, water jackets or other metal parts, or that welding may be

effected by the use thereof; and from representing that any sealing or other repair effected through or by the use of such product is permanent or of a degree of endurance comparable to that of a weld.

3. The use of the word "Guaranteed" or other word or words of like meaning in connection with the advertising, offering for sale or sale of their products unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith, of exactly what is offered by way of security. (Feb. 1, 1944.)

3813. Nursery Stock—Guarantee, Quantity and Variety.—Forrest E. Lamb, an individual, trading as Lamb Nurseries, engaged in the sale and distribution of nursery stock 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.

Forrest E. Lamb, whether trading under such name, as Lamb Nurseries, or under any other trade name or style, in connection with the sale and distribution of his nursery stock in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from:

1. The use of a guarantee that stock will reach purchasers in live, growing condition or will be true to name, unless he satisfactorily complies with such guarantee by promptly adjusting complaints pertaining to stock sold thereunder; and from the use of any guarantee unless strict and complete performance be made therewith.

2. Representing that he has available practically all of the stock listed in his 1942 catalog, until such time as he shall, in fact, have such stock; or otherwise from misrepresenting the quantity, variety or quality of his nursery stock. (Feb. 8, 1944.)

3814. Hennafoam Shampoo—Tested and Approved.—Alfred Horowitz, an individual, trading as Hennafoam Shampoo Co., engaged in the sale and distribution in interstate commerce of a cosmetic preparation designated "Hennafoam Shampoo," 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.

Alfred Horowitz, whether trading under such name, as Hennafoam Shampoo 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 the means and in the manner above set forth, of the preparation designated "Hennafoam Shampoo" or any other preparation composed of substantially the same ingredients or possessing substantially the same properties, whether sold or advertised under such name or any other name or names, agreed that he will forthwith cease and desist from representing, directly or inferentially, that said preparation has been tested, or tested and approved by the Good Housekeeping magazine or by any organization owned or controlled by it, unless and until said preparation has been adequately and thoroughly tested by such magazine or an agency thereof in such manner as reasonably to assure, at the time the preparation is sold to the consuming public, the quality, nature and properties thereof in relation to the intended usage thereof and the fulfilment of the claims made therefor in connection with the representation. (Feb. 8, 1944.)

3815. "Convert-O-Grate"—Qualities, Properties or Results.—Nils Fauchald, an individual, trading as St. Paul Packaged Fuel, engaged in the sale and distribution of a device designated "Convert-O-Grate" 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.

Nils Fauchald, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of devices designated Convert-O-Grate, or any other device of similar construction, whether sold under such name or any other name or names, agreed that he will forthwith cease and desist from representing, directly or inferentially, that said devices can be installed in eight to ten minutes; that furnaces in which the devices have been installed can be converted from oil to coal or from coal to oil in eight minutes; or that the time required to install such devices, or to convert furnaces equipped therewith from oil to coal or from coal to oil, is less than is actually the fact. (Feb. 17, 1944.)

3816. **Meat Curing Preparations—Corporation, “Manufacturing Chemists,” “Laboratories,” Unique and Qualities, Properties or Results.**—John L. Magic, an individual, who, since about April 1942, has been engaged in the conduct of a business under the trade name “Barton Laboratories”; said business consisting of the sale and distribution of meat curing preparations 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.

John L. Magic, in connection with the offering for sale, sale or distribution of his meat curing preparations in commerce, as commerce is defined by the Federal Trade Commission Act, or the advertising of said preparations by the means and in the manner above set forth, agreed that he will cease and desist forthwith from:

1. The use of the abbreviation “Inc.” as part of or in connection or conjunction with his trade name, and from the use of the said abbreviation or of any term or words indicating that the business conducted under said trade name is that of a corporate entity.

2. The use of the words “manufacturing chemists,” or the word “chemists,” or of any other word or words of similar import, as descriptive of the business conducted by him, and from the use of the said word or words in any way so as to import or imply that he is a chemist or that such business is conducted by or under the supervision of a chemist or chemists in his employ.

3. The use of the word “Laboratories” as part of or in connection or conjunction with his trade name, and from the use of the said word or of any other word or words of like connotation in his advertising, or in any way, the effect of which tends or may tend to cause or convey the impression or belief that said preparations are made in laboratories actually owned and operated or directly and absolutely controlled by him, or in a place maintained by him and which is devoted to experimental study in a branch of science or to the application of scientific principles in testing or analysis, or in the preparation of drugs, chemicals, and the like.

4. The use of the term “exclusive process,” or of any other word or words of similar implication, so as to import or imply that said preparations are made by a process that is used solely by him, or that he alone is entitled to use.

5. The use of representations such as “Barton’s Quality Fines is a tenderizing preparation” and “Barton’s Quality Fines produce tender hams,” or of any other representation of similar import, the effect of

which tends or may tend to cause or convey the impression or belief that the use of said Fines on meat products will have the effect, per se, of making such meat products tender or of increasing the tenderness of such products. (Feb. 23, 1944.)

3817. Mineral Waters—Qualities, Properties or Results, Safety and Testimonials.—E. A. Stevens, an individual, engaged in the sale and distribution in interstate commerce, of mineral waters designated as "Stevens' Mineral Water," "Stevens' Concentrated Mineral Water" and "Stevens' 50-50 Water," 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. A. Stevens, in connection with the sale and distribution in commerce, or the advertising by the means and in the manner above set forth, of the preparations designated "Stevens' Mineral Water," "Stevens' Concentrated Mineral Water" or "Stevens' 50-50 Water," 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 he will forthwith cease and desist from:

1. Representing, directly or inferentially, that said preparations or any thereof constitute an effective treatment or relief for stomach trouble, acute or chronic nephritis, oedema, dyspnoea, anasarca, uremia, engorged condition of the liver or kidneys, rheumatism, gout, uric acid diathesis, gall stones, gall bladder trouble, jaundice, malarial effects, chronic gastric or intestinal derangements, anemia chlorosis, sluggish portal circulation, sallow complexion, sleeplessness, leg pains, nerve trouble, nervousness, kidney trouble, dropsical trouble, appendicitis, prostate trouble, splenic leukemia or run down condition.

2. Representing, directly or inferentially, that said preparations or any thereof constitute a cure for chronic constipation; constitute a treatment for constipation in excess of temporarily relieving such condition; or that the physiological effects thereof are other than those of a saline laxative and a very weak antacid.

3. Disseminating or causing to be disseminated any advertisement pertaining to said preparations which represents, directly or inferentially, that the use thereof is safe, or which fails to reveal the potential danger in their use in the presence of abdominal pains, nausea, vomiting or other symptoms of appendicitis; provided, however, that if and when the directions for use, wherever they appear, on the label, in the labeling, or both on the label and labeling, contain adequate warning of their potential danger to health as aforesaid, said advertisement need contain only the statement: "CAUTION: Use Only as Directed."

The said E. A. Stevens further agreed not to publish any testimonials containing statements of assertions contrary to the terms of the foregoing agreement. (Feb. 23, 1944.)

3818. Shoes—"Doctor" Supervision, "Health" and Manufacturers.—A. J. Schoenecker and Margaret Wehse, copartners, trading as A. J. Schoenecker Shoe Co., engaged in the sale and distribution of shoes in interstate commerce, in competition with other partnerships and with 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.

A. J. Schoenecker and Margaret Wehse, in connection with the offering for sale, sale or distribution of their shoe products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that they

and each of them will cease and desist forthwith from the use of the slogan "Dr. Edgar Health Shoes" or "Dr. Edgar Health Cushion Shoes" in connection with the advertisement or the marking, stamping, branding or labeling of their said products; and from the use of the word "Doctor," or the abbreviation "Dr.," either alone or in connection with a name or with the word "Health," or with any other word or words, as a trade name, brand, labeling or designation for their products, 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 to purchasers or prospective purchasers that the said products have been made in accordance with the design or under the supervision of a physician and/or that they contain special scientific, orthopedic or health features which are the result of medical determination or services. The said copartners also agree to cease and desist from representing, as through the use of the word "Manufacturers" or of any other word or words of similar meaning, that they, the said copartners, make or manufacture the products offered for sale and sold by them, or that they actually own and operate or directly and absolutely control the plant or factory in which said products are made or manufactured. (Feb. 9, 1944.)

3819. Veterinary Preparations—Qualities, Properties or Results and Testimonials.—General Veterinary Laboratory, a Nebraska corporation, engaged in the sale and distribution in interstate commerce of veterinary preparations, including products designated "General Hog-Liquid," "General Hog Medicine 'F'," "General Lime-Sulphur Dip," "General One-Shot," "General Lump Jaw Remedy," "General Fly-Shy," "General Chick-Liquid," "General Poultry-Liquid," "General Poultry Worm Tablets," "Sulpho-Carb Antiseptic Tablets," and "General Super Dry Yeast," 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.

General Veterinary Laboratory, 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 its preparations designated "General Hog-Liquid," "General Hog Medicine 'F'," "General Lime-Sulphur Dip," "General One-Shot," "General Lump Jaw Remedy," "General Fly-Shy," "General Chick-Liquid," "General Poultry-Liquid," "General Poultry Worm Tablets," "Sulpho-Carb Antiseptic Tablets," and "General Super Dry Yeast," 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 it will forthwith cease and desist from representing, directly or inferentially:

1. That "General Hog-Liquid" is a competent treatment for sick, wormy or runty hogs; that it will serve to drive out worms or eradicate disease from hogs; that it is effective in the prevention or treatment of Necro (necrotic enteritis), flu (influenza) or swine plague; that it will produce bigger litters of pigs or keep them free from worms or disease; or that it will correct or relieve hogs of coughing, running off of the bowels or vomiting.

2. That "General Hog-Liquid" will ward off any of the usual ailments that affect sows or pigs; or that it will serve to "straighten up" hogs that are infected with Necro or other intestinal troubles or with diseases of the air passages or that are suffering from the poisonous effect of worms.

3. That "General Hog-Liquid" or any ingredient thereof is effective against intestinal worms in hogs; acts as an intestinal antiseptic, as a

bronchial or lung antiseptic, or allays reflex nausea; will help break down "hard-to-digest" proteins or facilitate the assimilation of minerals contained in a sow's feed; aids digestion, stimulates gland secretions, acts as a laxative, increases temperature, or increases metabolism, has any value in connection with the treatment of necrotic enteritis; increases the flow of gastric juices or neutralizes the acidity in the tissues of animals; acts as a general tonic or stimulant or as a sedative in fevers; or destroys disease germs or purifies the blood.

4. That "General Hog Medicine 'F'" is a specific treatment for hog flu (influenza); that, when administered as directed on the label, it has any value in the prevention of, or as a treatment for, swine influenza; or that it will relieve coughing and thumping, reduce fever, restore appetite, or stop weight losses in swine.

5. That "General Lime-Sulphur Dip" is effective as a treatment for all types of mange, scurvy and scab on hogs or other livestock, including the demodectic variety.

6. That "General One-Shot" will remove all worms from swine, or will remove all large roundworms (ascarids) infesting swine at a single dose or "shot"; and from the use of the words "One-Shot" or "single dose" as a designation for or as descriptive of such preparation.

7. That "General Lump Jaw Remedy" is an effective treatment or remedy for lump jaw in cattle, for lumps on pigs following castration, or for tumors, warts, deep-seated lameness or ringbone of horses.

8. That "General Fly-Shy" is effective in repelling all types of flies, including horseflies and deer flies.

9. That "General Fly-Shy" will not stain or blister, will not contaminate milk or will not aid in repelling flies without danger of pore clogging, unless any such representation wherever used be immediately accompanied in equally conspicuous type by adequate directions as to the use thereof or by a statement that such results depend upon the use thereof in accordance with the directions packaged with the preparation.

10. That either "General Chick-Liquid" or "General Poultry Liquid" is of any dependable therapeutic effect or value in the treatment of any disease condition of poultry; or is effective as a preventative of or treatment for simple diarrhea, bowel trouble, roundworms or sickness of poultry.

11. That "General Poultry-Liquid" will prevent or correct common intestinal ailments, mineral deficiencies or unthriftiness in poultry; that it will help prevent and treat any common poultry ailments; or that it contains a roundworm destroyer in effective quantities or is an intestinal antiseptic or a tonic.

12. That "General Poultry Worm Tablets" are effective in removing or controlling tapeworms or pinworms; or that they contain any ingredient that would act as an intestinal antiseptic.

13. That either "General Poultry-Liquid" or "General Poultry Worm Tablets" administered to poultry will help promote good health, thriftiness or vigor; will aid digestion or the assimilation of important food elements; or will build up resistance to sickness or ward off disease.

14. That "Sulpho-Carb Antiseptic Tablets" are a valuable aid in the treatment of coccidiosis, typhoid or cholera in poultry.

15. That "General Super Dry Yeast" is all pure yeast or that it contains no filler; that, when added to hog, poultry or cattle feeds, it aids the digestive process of such livestock; or that it can be depended upon to improve the health of poultry or animals.

The said General Veterinary Laboratory further agreed not to publish any testimonials containing statements or assertions contrary to the terms of the foregoing agreement. (Feb. 25, 1944.)

3820. Vitamelk Bread—Qualities, Properties or Results, Comparative Merits, Scientific or Relevant Facts, Etc.—Vitamelk Bread, Inc., is a Louisiana corporation, with its principal place of business in New Orleans, La.; Dawe's Vitamelk Laboratories, Inc., is an Illinois corporation with its principal place of business in Chicago, Ill. The stockholders and officers of both corporations are the same. Vitamelk Bread, Inc., is now and has been for some time past engaged in the baking of bread enriched with a vitamin powder concentrate manufactured by Dawe's Vitamelk Laboratories, Inc. and in the sale and distribution thereof in interstate commerce. The two corporations, cooperatively engaged in promoting such sale and distribution, the advertising copy therefor being prepared by Dawe's Vitamelk Laboratories, Inc., being placed and paid for by Vitamelk Bread, Inc., 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.

Vitamelk Bread, Inc., and Dawe's Vitamelk Laboratories, Inc., 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, and each of them, will forthwith cease and desist from:

(a) Representing that Vitamelk Bread, or any other bread of similar composition, by reason of its impregnation with Vitamelk concentrate of like compound, or otherwise, provides a competent treatment or an efficient remedy for bodily conditions revealed by such symptoms as nervousness, sluggishness, loss of youthful appearance, the feeling of age, digestive disturbances, poor complexion, pallor, anemia, low vitality, poor teeth, tooth decay, muscle soreness, hyperirritability, rough leathery skin, mouth and gum inflammations, depression, insomnia, loss of weight and strength, cramping pains, muscular dystrophy, or any other ailment or infirmity of the human body unrelated to deficiencies of the vitamins and minerals contained in bread.

(b) Representing by statements such as "2 $\frac{2}{3}$ more vitamins food minerals than usual enriched bread," by featuring vitamins in the Vitamelk concentrate which are not essential to human nutrition, or by other implication, that the vitamin and mineral enrichment of Vitamelk Bread exceeds that of standard enriched bread.

(c) Designating or describing Vitamin B₁ as the "calm nerve" vitamin, PP as the "skin" vitamin, B₆ as the "coordination" vitamin, E as the "muscle-tone" vitamin, iron as the "red-blood" mineral, or calcium as the "good teeth" mineral in any manner so as to import or imply that the presence of these substances as they appear in Vitamelk Bread will ensure or provide for the consumer courage and composure, a healthy skin, smooth orderly functioning of the body's muscular system, healthy and normal muscle structure, good red blood or sound teeth.

(d) Representing, by assertion that the ordinary diet is very apt to be short in the necessary amounts of essential vitamins, or in any other way, that it is usually not possible to obtain the requisite quantities of vitamins from ordinary articles of diet.

(e) Representing that, for the maintenance of bountiful health—connoting thereby the optimum degree of nutrition—"only a reasonable amount," that is to say, an inconsiderable or slight amount, of additional vitamins would be required, for consumers of Vitamelk Bread; or other-

wise, that such bread may be relied upon to provide even the minimum daily requirements of the essential vitamins and minerals when consumed in customary quantities. (Mar. 2, 1944.)

3821. Chicks—Government R. O. P., Tests, Quality, Unique, Comparative Merits, Hatchery, Etc.—Dixie Poultry Farm & Hatchery, is a Texas corporation, with principal place of business in Brenham, Tex.; Heber H. Drumm, also of Brenham, Tex., is the principal stockholder, president and general manager of said corporation, and as such controls its business and directs its policies. The said Dixie Poultry Farm & Hatchery and Heber H. Drumm, engaged in the sale and distribution of chicks and other poultry products 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.

Dixie Poultry Farm & Hatchery and Heber H. Drumm, whether trading under such names or under any other trade name or style, agreed that in connection with the sale and distribution of chicks in commerce as defined by the Federal Trade Commission Act they, and each of them, will forthwith cease and desist from:

(a) The use of terms, legends, expressions or statements such as "U.S.R.O.P.," "R.O.P." "R.O.P. sires," "U.S.R.O.P. males," "R.O.P. Pedigreed Male Birds," "R.O.P. Pen Mated Cockerels," "R.O.P. sired chicks," "Sired by Official R.O.P. males," "Official R.O.P. blood in Dixie Chicks," "All Dixie chicks carry R.O.P. Mating blood," or of any other terminology or nomenclature of like import or meaning; and from any advertising representation whatsoever, either direct or inferential, having the capacity, tendency or effect of conveying the impression or belief that said corporation is an R.O.P. breeder, that chicks sold by it are produced in U.S. Approved hatcheries, or that any males or cockerels in its flocks or in the flocks producing chicks sold by it are U.S.R.O.P. males, until and unless such males comply fully with the requirements for U.S.R.O.P. males as provided by The National Poultry Improvement Plan.

(b) Designating or referring to birds hatched from candidate eggs as "cockerels from R.O.P. matings," either "certified" or otherwise; or in any other way so as to import or imply that both sire and dam thereof were officially registered R.O.P. fowls.

(c) Representing that the flocks producing chicks offered for sale and sold by said corporation have the largest, or any, production of R.O.P. sired chicks in the Southwest, or that its "Dixie" chicks constitute the largest concentration of official R.O.P. blood of any plant in the Southwest, or any concentration thereof.

(d) Representing that said corporation has led Texas contests time and time again, or that its flocks ever have led or won any such contests; that its hens have time and time again, or at any time, won championships or awards at Texas official egg-laying contests; by statement or connotation, that the chicks which it offers for sale and sells are the progeny of, descended from, or contain the blood of fine contest-winning hens; or in any other way, representing such chicks to be of championship or near-championship quality.

(e) By statements or expressions such as "Sired by 232-300 Egg Official R.O.P. Males," "They are from . . . cockerels from R.O.P. matings in which the hens have certified trapnest records of from 250 to 300 eggs yearly," or in any other way representing or connoting that the chicks offered for sale are the progeny of pedigreed males having a record for

transmitting high egg production quality, or that said chicks possess egg production capabilities comparable to those attributed to such purported sires.

(f) Representing, by statements such as "Wonderful trapnest-pedigree blood," "in which the hens have certified trapnest records," "the finest breeding, trapnesting and pedigreing ever offered in this popular breed," or expression of like meaning or import; that the chicks offered for sale and sold by said corporation have been produced by trapnested stock, unless and until all of the eggs from which such chicks are hatched are produced by approved trapnesting methods and the egg laying records of the females producing such eggs have been adequately established by daily trapnesting for a period of at least one year.

(g) By statements such as "Under R.O.P. only hens laying 200 or more eggs are used as breeders," "all records official," "only eggs weighing 24 ounces or more per dozen are counted in the records," "sires are from dams with records of 200 (or more) per year," "matings in which the hens have 225-250 egg records," or otherwise, representing that said corporation either keeps official records as an R.O.P. breeder or unofficially keeps individual records of all breeding hens producing the chicks offered for sale.

(h) Representing, by statement or implication, that the foundation stock for each breed of the chicks advertised and sold by it was purchased direct from the specialists in that breed, that all its mating pens are headed by cockerels from R.O.P. matings, or that such purported better breeding plan is exclusive with said corporation.

(i) The use of any depiction, representation or statement that tends or may tend to cause the impression or belief that the chicks offered for sale and sold by it are the progeny of a fowl so pictured or described when in fact such chicks are not descended therefrom.

(j) Representations to the effect that said corporation uses only eggs from flocks that have been carefully blood tested; that it knows such eggs to be uninfected and free from disease; that over a period of 15 years or for any other extended time every bird in all its flocks has been blood tested, as a part of its regular farm routine or of any regular program; that its method of testing takes the guesswork out of blood testing or assures definite, dependable or adequate tests; or that Dixie chicks may be depended upon to be always in healthy condition and entirely free from disease.

(k) Assertion that bacillary white diarrhea can be carried from infected to non-infected eggs while in an incubator; that such is a well-known fact; or the making of like statements, implications or insinuations tending to disparage competitors or discredit or cast doubt upon their products.

(l) Reference to the farms from which it buys chicks offered for sale as "co-operative breeding farms," "our famed co-operative system," "our own co-operative flocks," or in any other manner importing a business enterprise whose object is to enable its participants or members to buy or sell to better advantage by eliminating middlemen's profits, as such term "co-operative" is commonly understood when applied to a commercial undertaking.

(m) The use of the word "hatchery" as part of its corporate or trade name unless and until it owns and operates or directly and absolutely controls a hatchery or hatcheries wherein are hatched or incubated any and all chicks sold under a corporate or trade name containing said word "hatchery"; and from the use of such word or a similar term in any way

so as to import or imply that chickens hatched by other concerns are hatched or incubated on premises actually owned and operated or wholly controlled by said corporation. (Mar. 27, 1944.)

3822. Photographs—Prices, Exhibited and Gallery.—Joe Reich, an individual, trading as Columbia Galleries of New York with his place of business in San Francisco, Calif., engaged in the sale and distribution of photographs 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.

Joe Reich, whether trading under such name or under any other name or style, in connection with the sale and distribution of photographs in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from:

1. Representing that the regular or customary price of such photographs is \$75.00; or otherwise from representing that the regular or customary price of any photographs or miniature is or has been other than the price usually or customarily and recently charged therefor.

2. The use of the statement "this fine reproduction at the greatly reduced price of \$13.25," or of any other statement or representation that tends or may tend to convey the belief or impression that the usual and customary price at which said products are sold is a special price or is other than his usual or customary price.

3. Representing, directly or by implication, that the price at which he offers for sale or sells his miniatures or photographs constitutes an introductory, reduced, special or sacrifice price, when in fact such price is the usual and customary price at which he sells said products in the normal and usual course of business.

4. Representing, directly or inferentially, that any miniature or photograph has been included in or made a part of an exhibit or an exhibition of photographs when, in fact, such miniature or photograph has not been exhibited as represented.

5. Representing by the use of the trade name "Columbia Galleries of New York," or in any other manner, that he conducts or operates a photographic gallery or galleries in the city and State of New York, unless and until he actually owns and operates or directly and absolutely controls a photographic gallery or galleries wherein is made or produced any and all photographs sold under such representation. (Mar. 27, 1944.)

3823. Welding Product—Branch Offices, Factory and Qualities, Properties or Results.—Radiator Specialty Co., a North Carolina corporation, engaged in the sale and distribution in interstate commerce, of so-called radiator specialties, including a product designated "Block Weld," 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.

Radiator Specialty Co., in connection with the sale and distribution of its commodities in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. Representing that it has a branch office in Toronto, Canada, or in any other city or locality, unless and until it actually does have a branch office as represented; and from representing that it has a factory in Toronto, Canada, or any other city or locality, unless and until it actually owns and operates or directly and absolutely controls a factory or plant

as represented wherein is made or produced any and all products offered for sale or sold under such representation.

2. The use of the term "Block Weld" as a designation for a product that does not effect a weld, or fusion, of metal parts; and from representing, directly or inferentially, that such a product welds cracked blocks, cylinder heads, valve ports, water jackets, or other metals or metal parts, or that it is a welding agent or that welding may be effected by the use thereof.

3. Representing, directly or inferentially, that the product heretofore designated "Block Weld" or any other product of substantially the same composition or possessing substantially the same properties will effect a "permanent repair" of metal parts, or that any sealing or other repair effected through or by the use thereof is permanent or is of a degree of endurance comparable to that of a weld. (Mar. 29, 1944.)

3824. Welding Product—Qualities, Properties or Results.—"X" Laboratories, Inc., a New York corporation, engaged in the sale and distribution in interstate commerce of various commodities including a product designated "X WELDER," 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.

"X" Laboratories, Inc., in connection with the sale and distribution of its commodities in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from the use of the term "X WELDER" as a designation for a product that does not effect a weld, or fusion, of metal parts; from representing, directly or inferentially, that such product welds aluminum, cast iron, cylinder heads, water jackets, cracked valve ports, cylinders, or other metals or metal parts, or that it is a welding agent or that welding may be effected by the use thereof; and from representing, directly or inferentially, that said product will "permanently repair" metal parts or that any sealing or other repair effected through or by the use thereof is permanent or is of a degree of endurance comparable to that of a weld. (Mar. 29, 1944.)

3825. Root Beer Concentrate—Qualities, Properties or Results.—Dr. Swett's Root Beer Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal place of business located in New York, N. Y., engaged in the business of offering for sale, selling and distributing a concentrate designated "Dr. Swett's Root Beer Concentrate," in interstate commerce, causing said product when sold, to be shipped from its place of business in the State of New York to licensed dealers located in various other States of the United States and in the District of Columbia, and which dealers have made and now make use of the said concentrate in the preparation of a root beer beverage that they have sold and now sell to the purchasing public, and to others who sell to the purchasing public, under the name of "Dr. Swett's Root Beer" or "Dr. Swett's Original Root Beer." Said corporation, 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.

Dr. Swett's Root Beer Co., Inc., in connection with the sale or distribution in commerce, as commerce is defined by the Federal Trade Commission Act, of its commodity designated "Dr. Swett's Root Beer Concentrate," or of beverages made therefrom, however designated, or in connection with the advertising of said concentrate or beverage, by the

means of or in the manner above set forth, agreed that it will cease and desist forthwith from the use of any statement that imports or implies or that tends or may tend to cause or convey the impression or belief that a beverage made from the said concentrate contains any ingredient or ingredients that would make it a tonic for the nerves or be of value in the treatment of dyspepsia, or that it would act as a stimulant, stomachic, carminative or diuretic or that would be of value in any form of kidney affections, or that any ingredient or ingredients contained in said beverage would impart any therapeutic value thereto. (Apr. 3, 1944.)

3826. **Knitting Yarns—Composition and Source or Origin.**—Wool Novelty Co., Inc., engaged in the sale and distribution of knitting yarns 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.

Wool Novelty Co., Inc., in connection with the offering for sale, sale and distribution of its yarns or other merchandise in commerce as defined by the Federal Trade Commission Act, agreed it will forthwith cease and desist from:

(a) The use of the word "Shetland," the term "Shetland Style" or any other word or term 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 adjacent 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 be 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.

(b) The use of the words "Scotch," "Saxony," "Saxony Style," "Persianit," "Burma," "Spanish" or other word or term 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.

(c) The use of the words "Cashmere," "Kashmir" or any other word or term of similar import as a designation for or as descriptive of a product which is not composed entirely of the hair of the Cashmere goat; *provided, however*, that in the case of a product composed in substantial part of the hair of the Cashmere goat and in part of other fibers or materials, the word "Cashmere" may be used as descriptive of the Cashmere fiber content if there be 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.

(d) The use of the word "Angora" or any other word or term 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 be 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.

(e) 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.

(f) Using the words "all silk," "silk" or other word or term connoting silk, to designate or describe a product which is not composed entirely of silk. If the fill or surface of a chenille fabric is composed of silk and the base or core of other material, then any fiber designation of said product shall be made in segregated form showing the fiber content of its face or filling and, in direct connection therewith and in equally conspicuous type, the fiber content of its base or core. (Apr. 6, 1944.)

3827. "Laxrid" Treatment and Preparation—Nature, Qualities, Properties or Results and Safety.—Lawrence Mack, Inc. is a Michigan corporation, engaged in compounding, bottling and packaging a preparation composed of ingredients obtained from several different sources and in the sale and distribution thereof under the trade name "Laxrid," in interstate commerce, causing said preparation to be placed in bottles that were shipped in cartons from its place of business in the State of Michigan across State lines to purchasing distributors located in other States and there engaged in the sale of said preparation to retail outlets, as drug stores. Lawrence B. Silverstein, an individual, was one of the aforesaid distributors. He had and now has a place of business located in Portland, Oreg., where he was engaged, for some time past, in the sale of the preparation, Laxrid, furnished him by the Lawrence Mack, Inc., of Detroit, Mich., to wholesale and retail drug houses located in Oregon and other States. The said Lawrence Mack, Inc. and the said Lawrence B. Silverstein, engaged 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.

Lawrence Mack, Inc., a corporation, and Lawrence B. Silverstein, an individual, in connection with the sale and distribution in commerce, or the advertising, by the means and in the manner above set forth, of the so-called "Laxrid Method" and the preparation designated "Laxrid," or any other preparation composed of substantially the same ingredients or possessing substantially the same properties, whether sold under such designation or any other name, agreed that it and he will cease and desist forthwith from:

1. The use of the words "fat reducing treatment" as descriptive of the so-called "Laxrid Method," and from the use of the said words, or any other words, statement or representation, the effect of which tends or may tend to cause or convey the impression or belief that the said method is or constitutes a weight reducing treatment.

2. Stating or representing, in any way, that the so-called "Laxrid" preparation, when used either alone or in combination with the aforesaid dietary regimes, will effectively correct obesity or result in any over-all loss of weight by the user thereof, or that any reduction or loss in weight

following the use of said preparation will be of a permanent nature or is attributable to the effects of the use of said preparation.

3. Disseminating or causing to be disseminated any advertising pertaining to said preparation which represents, directly or inferentially, that the use thereof is safe, or which advertising fails to reveal the potential danger of the use of said preparation, that is to say, that it is contra-indicated in the presence of abdominal pain, nausea, vomiting, or other symptoms of appendicitis, that its continued use may result in dependence upon laxatives, and also that it may cause severe irritation of the intestinal tract and lead to colitis or other serious conditions; *provided, however*, that if and when the directions for use, wherever they appear, on the label, in the labeling, or both on the label and labeling, contain adequate warning of its potential danger to health as aforesaid, said advertising need contain only the statement: "CAUTION: Use Only as Directed." (Apr. 10, 1944.)

3828. Chicks—Government R.O.P., Prizes Awarded, "Champions," Quality, Prices, Earnings and Profits, Etc.—James W. E. Drew, an individual, trading as Jim Drew's Hatchery & Poultry Farm, engaged in the sale and distribution of chicks 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.

James W. E. Drew, whether trading under such name, as Jim Drew's Hatchery & Poultry Farm, 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 he will forthwith cease and desist from:

1. The use of the statement "R.O.P. Males Heading Our Finest Pens," or from representing, directly or inferentially that any cockerels or males in his flocks or in the flocks producing chicks sold by him are U.S.R.O.P. males, unless and until such males comply fully with the requirements for U.S.R.O.P. males as provided by the National Poultry Improvement Plan; and from the use of any statement or representation that tends or may tend to convey the belief or impression that his hatchery is a U.S. approved hatchery, that he is a U.S.R.O.P. poultry dealer, or that chicks sold by him are produced in U. S. approved hatcheries.

2. The use of any statement, depiction or other representation which tends or may tend to convey the belief or impression that chicks offered for sale or sold by him to the consuming public are hatched from eggs produced at his hatchery when, in fact, such chicks are hatched from eggs obtained from supplying farmers or poultry raisers.

3. Representing, directly or inferentially, that he has been awarded 278 Grand Champion First Prize Blue Ribbons and other prizes in State and county fairs, or any number of prizes in excess of the number actually received by him; or from representing that his chicks have won more Grand Championships or first prizes in any specified year or years than any other hatchery in the Southwest or elsewhere, unless and until such chicks shall in fact have won awards and prizes as indicated.

4. Representing, directly or inferentially, that any prizes awarded to him or to the suppliers of his hatching eggs were awarded for egg production when, in fact, such prizes were awarded in other than egg-laying contests.

5. Representing, directly or by implication, that chicks offered for sale or sold by him are closely related to stock entered in egg-laying contests or poultry shows when, in fact, the relationship is not as represented.

6. The use of the words "Champions," "Champions of Champions," "Grand Champion," "World Championship," "Blue Ribbon Champions" or other word or words of like meaning to designate generally the flocks or breeds maintained at his hatchery or at the hatcheries of his supplying farmers or poultry raisers; and from the use of such word or words as a designation for or in connection with any fowl or pen of fowls, unless such fowl or pen has been awarded first place in a generally recognized official contest and the contest and the year thereof are disclosed in immediate connection with such word or words in equally conspicuous type.

7. The use of any representation, statement or depiction that tends or may tend to cause the impression or belief that chicks offered for sale and sold by him are the progeny of or are descended from a "World's Egg Champion" or other champion or prize winning fowl when, in fact, such chicks are not descended from the fowl so indicated.

8. The use of the statement "All 100% B. W. D. Tested" or other statement or representation of like meaning, unless and until all the chickens used for breeders in each and every flock producing chicks offered for sale and sold under such representation shall have been adequately tested for bacillary white diarrhea, or pullorum disease.

9. Representing, by the use of the statement "Direct from trap-nested stock" or other statement or representation of like meaning or import that the chicks offered for sale and sold by him have been produced by trap-nested stock, unless and until all of the eggs from which such chicks are hatched are produced by trap-nesting methods and the egg laying records of the females producing such eggs have been definitely established by daily trap-nesting for an adequate period of time.

10. Representing, directly or inferentially, that chicks offered for sale and sold by him are produced by hens that have egg laying records of 349, 300 or any other number of eggs annually, unless and until the egg laying records of such hens have been definitely established by daily trap-nesting for an adequate period of time.

11. Representing, directly or inferentially, that the prices at which he actually offers for sale or sells his chicks constitute a discount to purchasers when, in fact, such prices are the regular and customary prices at which he sells his chicks in the normal or usual course of business.

12. Representing any specified sum of money as possible earnings or profits of poultry raisers purchasing his chicks, which is not a true representation of the average net earnings consistently made and which has not, in fact, been consistently earned by purchasers of his chicks in the ordinary course of business and under normal conditions and circumstances; or from representing, by the use of words such as "make up to" or other words or terms of like import, that purchasers of his chicks can make earnings or profits within any specified period of time of any amount or amounts which are in excess of the net average earnings or profits made within any like periods of time by a substantial number of purchasers of such chicks. (Apr. 14, 1944.)

3829. Mattress Ticking—Qualities, Properties or Results and "Anti-sep-Tick."—Simmons Co., is a Delaware corporation, with its principal executive offices in New York, N. Y., engaged in the manufacture of general bedding equipment, including mattresses, and in the sale and distribution thereof in interstate commerce. Its sales division for textile goods has been known as the Rosemary Sales Division. Rosemary Manufacturing Co. and Roanoke Mills Co., are North Carolina corporations, with principal place of business in Roanoke Rapids, N. Car.; both

are subsidiaries of Simmons Co. and are engaged in the manufacture and sale of textiles, including mattress ticking, which products are sold and distributed in commerce by the parent corporation, Simmons Co. Said corporations causing their products, when sold, to be shipped from the States of origin thereof to purchasers in other States 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.

Simmons Co., Rosemary Manufacturing Co. and Roanoke Mills Co., whether trading under their own names or operating under any other name or style, in connection with the offering for sale and distribution, in commerce as defined by the Federal Trade Commission Act, of mattress ticking or other fabrics treated with the solution above mentioned, or with preparations of substantially the same ingredients, agreed that they and each of them will forthwith cease and desist from:

(a) Representing, directly or inferentially, or placing in the hands of others a means to represent that bed tickings or other fabrics treated with the process heretofore designated "Antisep-Tick" are thereby rendered sanitary, safe or non-toxic to the extent that one's health or rest is guarded or his rest secured against all types of disease germs or against the possibility of skin irritation; that such treatment is capable of retarding the growth of all types of harmful bacteria, in the presence of moisture or otherwise; that the chemicals in said process may be depended upon or relied upon to eliminate perspiration or body odors from the mattress, or that under conditions of use such ticking will not retain offensive body and perspiration odors.

(b) Representing, by statement or inference, that such process affords a lasting finish to the extent that its sanitary properties remain in the tick during the life of the mattress, or that neither brushing, airing, sunning nor sponging will in any wise lessen the effectiveness thereof.

(c) Use of the words or legend "Antisep-Tick" as a trade appellation for the process heretofore so designated, or as a brand, label or description for mattress tickings so processed; or the use of any other word, term or expression connoting that textile products which have undergone such treatment are antiseptic, germ free, or resistant to or immune from perspiration or body odors under conditions of use. (Apr. 17, 1944.)

3830. **Textile Fabrics—Nature and "Jerrissettes."**—Jerry Goldwasser and Seaman Friedner, copartners, trading as Goldwasser & Friedner, 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.

Jerry Goldwasser and Seaman Friedner, individually, and as copartners, whether trading under their own names, as Goldwasser & Friedner, 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 the term "Jerrissettes" either alone or in connection with the word "Printed" as a designation for or as descriptive of fabrics other than jersey fabrics; and from the use of such term or other term or word simulating or connoting the word "Jersey" in any manner so as to import or imply that such fabrics are jersey fabrics. (Apr. 17, 1944.)

3831. **Macaroni, Noodles, Etc.—Composition or Ingredients.**—National Foods, Inc., a Pennsylvania corporation, engaged for some time past in the manufacture of macaroni, noodles and related products and in the sale thereof 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.

National Foods, Inc., in connection with the advertisement, offering for sale or sale of its food product designated "Oodles" or "Gioconda," or otherwise, 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 words "Plain Noodles" to represent or designate said product, when in fact it contains egg and/or egg yolk, or any other ingredient which is not an ingredient in the product known as Plain Noodles. The said corporation also agreed to cease and desist from the use of the words Egg Noodles or, in connection with the word Noodles, any representation or statement such as "Made of Eggs," or any other statement or representation, pictorial or otherwise, which indicates or tends to cause or convey the impression or belief that said product contains egg and/or egg yolk in such substantial quantity so as to be properly and accurately represented, designated or referred to as that product known as Egg Noodles. (Mar. 15, 1944.)

3832. **Macaroni, Noodles, Etc.—Composition or Ingredients.**—St. Louis Macaroni Manufacturing Co., Inc., a Missouri corporation, engaged in the manufacture of macaroni, spaghetti, noodles and related products, and in the sale thereof 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.

St. Louis Macaroni Manufacturing Co., Inc., in connection with the advertisement, offering for sale or sale of its food products, 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 words "Plain Noodles" to represent or designate said products, when in fact they contain egg and/or egg yolk, or any other ingredient which is not an ingredient in the product known as Plain Noodles. Said corporation also agrees to cease and desist from the use of the words "Egg Noodles" or, in connection with the word Noodles, any representation or statement, such as "Made with Egg Yolks," or any other statement or representation, which indicates or tends to cause or convey the impression or belief that said products contain egg and/or egg yolk in such substantial quantity so as to be properly and accurately represented, designated or referred to as that product known as Egg Noodles. (Apr. 3, 1944.)

3833. **Storage Battery Preparation—Qualities, Properties or Results, Safety and Manufacturer.**—Arthur Alexander and Charles Clark, are individuals, trading as The Recuperator Long Life Battery Service, with place of business in Willowbrook, Calif. W. E. Simmons, is an individual, trading as Alpha Distributing Co., with place of business in Hollywood, Calif., and is the exclusive distributor in the United States for The Recuperator Long Life Battery Service. Said individuals, engaged in the sale and distribution in interstate commerce of a preparation designated as "Recuperator" for use in automobile storage batteries, 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.

Arthur Alexander, Charles Clark and W. E. Simmons, whether trading under their own names, or under any trade name or style, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of the preparation heretofore designated "Recuperator," or any other preparation of substantially the same composition, agreed that they and each of them will forthwith cease and desist from:

1. Representing, directly or inferentially, that said preparation preserves, protects or prolongs the life of storage batteries; that it preserves battery separators or plates; that it increases battery capacity; that it provides whiter or brighter lights, better ignition or spark, greater power, better car performance or cleaner or more distinct radio reception; or that it decreases battery charging time, provides unlimited battery use, or eliminates the source of most or any battery troubles.

2. Representing, directly or inferentially, that said preparation contains no ingredients harmful to storage batteries or that it is harmless to batteries.

3. The use of the word or term "Recuperator," either alone or in connection with the words "Long Life Battery Service," as a designation for or as descriptive of such preparation; and from the use of said term or terms or other terms or words of like meaning or implication in any way so as to import or imply that said preparation will cause storage batteries to recuperate, recover or regain their former power or strength.

W. E. Simmons also agreed that he will forthwith cease and desist from representing that he manufactures such preparation, unless and until he actually owns and operates or directly and absolutely controls a plant or factory wherein the preparation is made or manufactured. (Apr. 19, 1944.)

3834. "Moth Proofing" Preparation—Qualities, Properties or Results.—C. J. Geisler, E. H. Pratt and P. V. Eakin, copartners, trading as Arzone Products Co., engaged in the sale and distribution in interstate commerce of a preparation designated "Guardex" which they offer as a "moth-proofing" agent, 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.

C. J. Geisler, E. H. Pratt and P. V. Eakin, individually and as copartners, whether trading under their own names, as Arzone Products Co., or under any other trade name or style, in connection with the sale and distribution in commerce as commerce is defined by the Federal Trade Commission Act, of the preparation heretofore designated "Guardex" or any other preparation of substantially the same composition, whether sold under such name or under any other name or names, agreed that they, and each of them, will forthwith cease and desist from representing, directly or inferentially, that said preparation affords permanent protection against damage by moths or stops moth damage forever, or that moth vulnerable products treated therewith can be depended upon to be immune to damage by moths for their entire existence. (Apr. 28, 1944.)

3835. Umbrellas—Used, Rebuilt or Second-Hand as New.—Abraham M. Warren, an individual, trading as A. M. Warren & Co., engaged in the manufacture of umbrellas 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.

Abraham M. Warren, in connection with the sale and distribution of said umbrellas in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from offering for sale or selling any rebuilt or second-hand umbrellas or umbrellas containing rebuilt or second-hand parts unless there be securely attached to such umbrellas on an exposed and conspicuous place, with sufficient permanency to remain thereon in a clear, distinct and plainly legible condition throughout the sale or resale, distribution and handling incident thereto, tags or labels bearing full and nondeceptive disclosure of the fact that such umbrellas or parts are not new but are used, rebuilt or second-hand as the case may be; or from offering for sale, selling, invoicing or advertising any rebuilt or second-hand umbrellas or umbrellas containing rebuilt or second-hand parts without clearly disclosing the fact that such umbrellas or parts are not new but are used, rebuilt or second-hand as the case may be. (May 1, 1944.)

3836. Carpets—Source or Origin and Patents or Trade-Marks.—Firth Carpet Co., a New York corporation, with principal place of business in New York, N. Y., and with mills in the cities of Auburn, Firthcliffe and Newburgh, State of New York, engaged in the manufacture of carpets 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.

Firth Carpet Co., in connection with the sale and distribution of carpets in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. The use of the word "Swedish" 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.

2. The use of any statement or representation that tends or may tend to convey the belief or impression that there is a type or style of carpeting commonly known and recognized as "Swedish primitive."

3. Representing, directly or inferentially, that it has exclusive or sole right to the use of any word or words, design, weave or structure by reason of United States Patents and/or trade-marks, unless it actually is entitled to the exclusive use thereof by a patent or patents and/or trademark or trade-marks, as the case may be. (May 2, 1944.)

3837. Umbrellas—Used, Rebuilt or Second-Hand as New and Composition.—L. Krongold, Inc., a New York corporation, engaged in the manufacture of umbrellas 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. Krongold, Inc., in connection with the sale and distribution of umbrellas in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. Offering for sale or selling any rebuilt or second-hand umbrellas or umbrellas containing rebuilt or second-hand parts unless there be securely attached to such umbrellas on an exposed and conspicuous place, with sufficient permanency to remain thereon in a clear, distinct and plainly

legible condition throughout the sale or resale, distribution and handling incident thereto, tags or labels bearing full and nondeceptive disclosure of the fact that such umbrellas or parts are not new but are used, rebuilt or second-hand as the case may be; or from offering for sale, selling, invoicing or advertising any rebuilt or second-hand umbrellas or umbrellas containing rebuilt or second-hand parts without clearly disclosing the fact that such umbrellas or parts are not new but are used, rebuilt or second-hand as the case may be.

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. (May 2, 1944.)

3838. Women's Hats—Used, Old or Second-Hand as New.—Del-Ruth Hat Co., an Illinois corporation, engaged in the manufacture of women's hats 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.

Del-Ruth Hat Co., in connection with the sale and distribution of hats in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. Representing that hats composed in whole or in part of used or second-hand 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 second-hand 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 second-hand materials are new or are composed of new materials.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said Del-Ruth Hat Company 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. (May 2, 1944.)

3839. Women's Hats—Used, Old or Second-Hand as New.—Ben Adelman and Louis Adelman, copartners, trading as Original Hat Co., 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.

Ben Adelman and Louis Adelman, in connection with the sale and distribution of hats 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 that hats composed in whole or in part of used or second-hand 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 second-hand 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 second-hand materials are new or are composed of new materials.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said Ben Adelman and Louis Adelman 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. (May 5, 1944.)

3840. Cosmetic Preparations and Beauty Culture Course—Scientific or Relevant Facts, Qualities, Properties or Results, Safety, Testimonials, Etc.—Richard Hudnut, engaged in the sale and distribution, in interstate commerce, of cosmetic preparations and, in connection with the sale of said preparations, has engaged in the sale and distribution in commerce, as aforesaid, of a correspondence course of instruction in beauty culture designated as the "DuBarry Success Course" which includes a supply of cosmetics or toiletries for use in connection therewith; 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.

Richard Hudnut, 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 its cosmetic preparations and correspondence course of instruction in beauty culture heretofore designated as "DuBarry Success Course," agreed that it will forthwith cease and desist from representing directly or inferentially:

1. That a reduction in weight can be depended upon to relieve or correct high blood pressure, arthritis or chronic fatigue.

2. That a program of posture and exercise can be depended upon to correct crooked spines or bodily deformities.

3. That assuming the position described as the "beauty angle position" or any other position of the body will brighten the brain or increase the intelligence quotient.

4. That the regime of diet and exercise recommended in said course of instruction is of value in the treatment of arthritis or asthma.

5. That the diet recommended in said course of instruction will cleanse the bloodstream or put the whole system in condition; or that the use of lemon juice corrects anemia.

6. That the regime recommended for skin eruptions and pimples in said course of instruction constitutes a competent treatment for pimples

generally, or is effective in correcting all types of skin eruptions or all conditions made manifest by the appearance of pimples.

7. That overweight is 100 percent traceable to overeating; that eighty percent of all disease originates in bad posture; or that women generally, over 35 years of age or of any age, accumulate twenty pounds or any other quantity of mucous or body poisons.

8. That the "7-Day Special Elimination (Cleansing) Diet" provides the calories required by a person engaged in strenuous physical labor.

9. That a lack or deficiency of calcium in the diet usually causes brittle or ragged nails.

10. That vitamins A and D can be depended upon to increase general resistance to infection of the nose or throat; that vitamin A can be depended upon to maintain the health and lustre of tooth enamel or keeps the skin from becoming dry and scaly; that vitamin B can be depended upon to improve the muscular tone or to nourish nerve or brain tissue; that vitamin C can be depended upon to maintain the health of teeth, prevent pyorrhea, prevent gums from bleeding or receding, or prevent fatigue or general weakness; that vitamin D prevents teeth from decaying or can be depended upon to aid the nervous system; or that vitamin G can be depended upon to prevent dermatitis or assist in preventing lesions of the skin.

11. That the ordinary articles of diet that form an acid ash are poisonous or toxic.

12. That the consumption of articles of diet that form an alkaline ash can be depended upon to increase energy, vitality, beauty or well being, or to result in absence of stomach distress.

13. That individual or special instruction is given to purchasers of such course, unless such individual or special instruction is actually given.

14. That the "Special Elimination Diet" or any other diet will free the body of all accumulated poisons or toxins.

Said corporation also agreed that it will cease and desist from:

15. Representing, by the use of the statement "Six Weeks from Tonight" in connection with an illustration, or depiction, that the slenderness or other characteristic indicated by such depiction has been achieved within a time or period of six weeks when, in fact, the characteristic indicated was not achieved in the time indicated; or otherwise from representing that the time in which application to such course of instruction will effectuate any indicated result is less than is actually the fact.

16. The use of any statement or representation, the effect of which tends or may tend to convey the belief or impression that the continued administration of laxative drugs is indicated for any condition, unless such statement or representation, whenever made, be immediately accompanied in equally conspicuous type by a warning to the effect that the continued use of laxatives may create a dependence upon such drugs; *provided, however*, that if such statement or representation definitely refers to a laxative product or preparation the label and/or labeling of which bears or contains directions for the use thereof, and which directions for use include an adequate warning that its continued use may create a dependence upon such drug, then in that case the statement or representation first referred to in this paragraph need contain or include only the statement: **CAUTION: Use Only as Directed.**

17. Representing, directly or inferentially, that the use of laxative drugs is indicated for any condition unless such representation, whenever made, be immediately accompanied in equally conspicuous type by a warning to the effect that laxatives should not be taken in the presence

of abdominal pain, nausea, vomiting or other symptoms of appendicitis; *provided, however*, that if such representation definitely refers to a laxative product or preparation the label and/or labeling of which bears or contains directions for the use thereof, and which directions for use include an adequate warning of the potential danger to health, as aforesaid, then in that case such representation need contain or include only the statement: CAUTION: Use Only as Directed.

The said Richard Hudnut further agreed not to publish or disseminate any testimonials containing statements or assertions contrary to the terms of the foregoing agreement. (Mar. 27, 1944.)

3841. Furs and Fur Garments—Nature and Composition.—S. Oldman, Inc., a New York corporation, engaged in the business of manufacturing furrier and in the wholesale distribution of furs and 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.

S. Oldman, Inc., in connection with its sale and distribution of furs or fur garment products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist, in its advertisements, invoices or labeling, from:

(a) The use of the word "Mouton" to designate, describe or refer to products made from lamb peltries unless compounded with the true common English name of the fur; for example, "Mouton—Dyed Lamb."

(b) The use of the word "Lapin" to designate, describe or refer to products made from rabbit peltries unless compounded with the true common English name of the fur; for example, "Lapin—Dyed Rabbit."

(c) The use of the word "Beaver" or any word or term of like meaning, either alone or in connection or combination with other words, to designate, describe or refer to furs or fur garments made from rabbit peltries or any peltries other than beaver, unless such word or term is compounded with the word "dyed" and is immediately followed in equally conspicuous type by the true name of the fur. (May 12, 1944.)

3842. Furs and Fur Garments—Nature, Composition and Source or Origin.—Lansburgh & Brother, a District of Columbia corporation, conducting a general retail merchandise business, selling and distributing such merchandise in commerce as defined by the Federal Trade Commission Act, within the District of Columbia, 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.

Lansburgh & Brother, in connection with its sale and distribution of fur garments or any fur products in commerce as defined by said Act, agreed that it will forthwith cease and desist from:

(a) Using the terms "Leopard Cat," "Natural Leopard Cat," "Leopard Cat Paws" or other words denoting leopard to designate or describe furs or fur garments made from the peltries of South American spotted cats or of any animals or species other than the true leopard (*felis pardus*).

(b) Designating as "Russian," furs or fur garments the peltries of which did not come from Russia; or the use of any other words or terms connoting or suggesting geographical origin to designate, describe or refer to a coat or garment which is not produced in or made of materials imported from the locality indicated or implied by such words or terms.

(c) Using the word "Mink," the word "Beaver," or any word or term of like meaning, either alone or in connection or combination with other

words, to designate, describe or refer to furs or fur garments made from rabbit peltries or any peltries other than mink or beaver, respectively, unless such word or term is compounded with the word "dyed" and is immediately followed in equally conspicuous type by the true name of the fur.

(d) Using the word "Lapin" to designate, describe or refer to products made from rabbit peltries unless compounded with the true common English name of the fur; for example, "Lapin—Dyed Rabbit." (May 12, 1944.)

3843. Ladies' Coats—Used, Worn or Second-Hand as New.—Junior-Deb Coat & Suit Co., Inc., a New York corporation, engaged in the sale and distribution of ladies' coats 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.

Junior-Deb Coat & Suit Co., Inc., in connection with the sale and distribution of wearing apparel in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from offering for sale or selling any coat or garment containing or lined with used or worn fur, including fur which has been renovated, unless there be securely attached to such coats or garments on an exposed and conspicuous place, with sufficient permanency to remain thereon in a clear, distinct and plainly legible condition throughout the sale or resale, distribution and handling incident thereto, tags or labels bearing full and nondeceptive disclosure of the fact that the fur content thereof is not new but is used, worn, second-hand or has been made over as the case may be; or from offering for sale, invoicing or advertising such garments without clearly disclosing the fact that said fur is not new but is used, worn, second-hand or has been made over as the case may be. (May 12, 1944.)

3844. Insect and Rodent Poison Preparations—Qualities, Properties or Results.—Oscar S. Schaffer, an individual, trading as Per-Mo Mothproof Co. with principal place of business in Kansas City, Mo., engaged in the sale and distribution in interstate commerce of certain insect and rodent poison preparations, one being designated "X-365" and the other, "Per-Mo Rat and Mice Exterminator," 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.

Oscar S. Schaffer, in connection with the advertisement, offering for sale, sale or distribution in commerce as commerce is defined by the Federal Trade Commission Act, of his insect poison and his rodent poison, or of any other preparations composed of substantially the same properties, agreed that he will cease and desist forthwith from:

1. The use of the word "Exterminator" as part of or in connection with the trade name of either of said preparations; and from the use of the said word, or of any other word or words of like meaning or similar implication, the effect of which tends or may tend to cause the impression or belief that the said preparation, when exposed in premises that are infested with the aforesaid pests, would effectively attract or lure them to feed upon the product to their extermination.

2. From representing, or placing in the hands of others a means to represent, directly or inferentially, by means of statements or in any manner:

(a) That the use of the product called X-365 will kill or completely rid premises of roaches, waterbugs or ants, or will effectively control such insects within ten days or any other period of time.

(b) That the use of the so-called Per-Mo Rat and Mice product can be depended upon to cause sure death to all types of rats and mice, or to rats and mice generally, or to be so attractive and fatal to such rodents that their eradication will follow or be accomplished overnight or at all. (May 12, 1944.)

3845. Window Shades—Size or Dimensions.—Columbia Mills, Inc., a New York corporation, with principal place of business in New York, N. Y., also operating factories and maintaining branches in a number of other States, engaged in the manufacture of window shades 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.

Columbia Mills, Inc. agreed that, in connection with the sale and distribution of its window shades in commerce as defined by the Federal Trade Commission Act, it will forthwith cease and desist from the use of any label, brand, tag, advertisement, writing or representation purporting to designate or indicate the size or dimensions of any such products that does not clearly, definitely and unambiguously set forth the finished size, that is, the dimensions of the product as offered for sale and, in addition thereto, in equally conspicuous type and in immediate connection or conjunction therewith, the so-called cut-size, that is, the dimensions of the fabric of which the product was made. (May 15, 1944.)

3846. Hair and Scalp Preparations—Composition, Comparative Merits, Qualities, Properties or Results, Etc.—Middlebrooke Lancaster, Inc., a New York corporation, with principal place of business located in Brooklyn, New York, engaged in the business of compounding, bottling and packaging a line of so-called "Nitrine" hair and scalp preparations and in the sale thereof in interstate commerce principally to jobbers engaged in reselling said products to operators of beauty shops and barber shops, 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.

Middlebrooke Lancaster, Inc., in connection with the offering for sale, sale and distribution in commerce as defined by the Federal Trade Commission Act, and of the advertising by the means and in the manner above set forth, of the aforesaid Nitrine products, or of any other products composed of substantially the same ingredients, or possessing substantially the same properties, whether sold under the same, or any other name or names, agreed that it will cease and desist forthwith from:

1. The use of the word "oil" as part of the trade designation of the Nitrine Shampoo, and from the use of the word "oil" 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 said Shampoo is an oil shampoo, that is to say, a shampoo that contains free oil.

2. Representing, directly or inferentially, that the disparity in either the alkaline content or the caustic content of the Nitrine Shampoo and Castile soap is sufficiently material to be of any practical consequence.

3. Stating or representing that the Nitrine Shampoo "is 10 times safer or milder" — or any safer or milder — than Castile soap, or otherwise

to represent the said Shampoo in connection with another product in any manner that tends to unwarrantably disparage the latter product.

4. Stating or representing that there are no other shampoos on the market that are as pure and safe as Nutrine Shampoo.

5. The use of the statement that Nutrine Shampoo is especially recommended for thinning or falling hair, or of any other statement of similar meaning or implication, the effect of which tends or may tend to cause or convey the impression or belief that the use of said shampoo would prevent, correct or be a competent treatment for those conditions.

6. Stating or representing that the preparations composing the Nutrine Hair Treatment Assortment, when externally applied, either alone or in combination, would constitute an adequate treatment for all the common ills that beset the hair and scalp, would be an effective preventive of or competent treatment for falling hair, would correct the underlying cause of dry dandruff or oily dandruff, or would do more than cause the removal of loose scales of dandruff.

7. Stating or representing that the preparations composing the Nutrine Oak Tree Hair and Scalp Treatment are offered as means "for the correction of premature grayness and falling hair," when in fact, none of said preparations, nor any other known preparations that are externally applied, will correct or prevent either of such conditions.

8. Stating or representing that Nutrine Rinse "is not a dye," when, in fact, said preparation is a dye.

9. Stating or representing that the preparations composing the Nutrine Hair and Scalp Application Assortment will alleviate or act as a palliative for all disorders of the hair and scalp, or that they would have any beneficial effect on the underlying cause of many of such conditions. (May 17, 1944.)

3847. **Table Tennis Balls and Equipment—Manufacturer.**—Nathan Moskowitz, an individual, operating under the trade designation Ace Specialty Co. with place of business in New York, N. Y., engaged in the sale and distribution of table tennis balls and equipment 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 Moskowitz, whether trading under his own name, as Ace Specialty Co., or by any other designation, in connection with the offering for sale, 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 the use of the word "manufacturers," or terms of like meaning, in his advertising, trade literature or in any other manner so as to import or imply that he manufactures table tennis balls and equipment, or any other product not made by him, unless and until he actually owns and operates or directly and absolutely controls an establishment wherein are made any and all products sold under such representation. (May 22, 1944.)

3848. **Chicks—Government R.O.P., Tested, Etc.**—Walter E. Schultz, an individual, trading as Pioneer Hatchery with place of business in Boone, Iowa, engaged in the sale and distribution of chicks 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.

Walter E. Schultz, whether trading under his own name, as Pioneer Hatchery 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 he will forthwith cease and desist from:

1. The use of the statements "Enriched with ROP Blood," "improved with U.S.R.O.P. male birds" or any other statement or representation of like meaning that tends or may tend to convey the belief or impression that such chicks are sired by U.S.R.O.P. males; and from the use of any statement or representation that tends or may tend to convey the belief or impression that he participates in the National Poultry Improvement Plan, that his hatchery is a U. S. Approved hatchery, or that chicks offered for sale and sold by him are produced in U. S. Approved hatcheries, unless and until his operations actually are conducted under such plan, meeting all its requirements.

2. The use of the words "Pullorum clean, ROP-enriched"; and from the use of the words "Pullorum clean" in any manner that tends or may tend to convey the belief or impression that the flocks producing such chicks have been tested for pullorum disease under the supervision of an official State agency in accord with the National Poultry Improvement Plan.

3. The use of any representation that tends or may tend to convey the belief or impression that the bloodtesting of breeders or flocks for fowl typhoid and the removal of reactors to such tests is effective in determining that chicks produced by such breeders or flocks are or will be free of fowl typhoid. (May 22, 1944.)

3849. Matches—"Safety."—Berst-Forster-Dixfield Co., a Maine corporation, with its executive offices and principal place of business in New York, N. Y., and with its manufacturing plants in the States of Maine and Minnesota, and America's Own Match Co., a Delaware corporation, a wholly owned subsidiary of the aforesaid Berst-Forster-Dixfield Co., with its principal place of business in New York, N. Y., at the same address as that of the said Berst-Forster-Dixfield Co., engaged in the sale and distribution of various commodities including matches, 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.

Berst-Forster-Dixfield Co., and America's Own Match Co. agreed, in connection with the sale and distribution of matches in commerce as defined by the Federal Trade Commission Act, that they and each of them will forthwith cease and desist from using the word "safety," either alone or in connection or conjunction with the word "matches" to designate, describe or refer to any type of matches other than strike-on-the-box matches, that is, matches which readily ignite only when the heads thereof are drawn across a specially prepared coating on the box in which said matches are sold; and from the use of any statement or representation that tends or may tend to convey the belief or impression that the aforesaid matches are safety matches. (June 1, 1944.)

3850. Chicks—Government R.O.P., Tested, Etc.—Amstutz Hatcheries, trade designation of a group of partnerships, all operating under such name, engaged in hatching chicks and in the sale and distribution thereof in interstate commerce. The business locations of Amstutz Hatcheries and the partnership set-up for each hatchery are as follows: At Celina, Ohio, Coldwater, Ohio, New Bremen, Ohio and Minster, Ohio, the co-

partners are Henry Amstutz, Emma A. Amstutz and Reuben Amstutz; at Orrville, Ohio, and Kidrin, Ohio — Henry Amstutz, Emma A. Amstutz, Ezra Amstutz and Loren Amstutz; at Canton, Ohio—Henry Amstutz, Emma A. Amstutz, Loren Amstutz and T. F. Roth; at Medina, Ohio—Henry Amstutz, Emma A. Amstutz, Ezra Amstutz, Loren Amstutz and V. M. Neuenschwander; and at Frankenmuth, Mich.,—Henry Amstutz, Emma A. Amstutz, Loren Amstutz and Don O. Neuenschwander. The aforesaid respondents engaged 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.

Henry Amstutz, Emma A. Amstutz, Reuben Amstutz, Loren Amstutz, Ezra Amstutz, Don O. Neuenschwander, V. M. Neuenschwander and T. F. Roth agreed, whether trading under their own names as Amstutz Hatcheries or any other trade designation or style, in connection with the sale and distribution of chicks in commerce as defined by the Federal Trade Commission Act that they and each of them will forthwith cease and desist from:

(a) The use, in their advertising or trade literature, of statements, terms or expressions such as "Baby Chicks from R.O.P. Pedigreed Males," "R.O.P. Pedigree Sired," "Individually Pedigreed 200 to 341 Egg Record R.O.P. Males," "R.O.P. males," "260 to 350 Egg R.O.P. Sired," "R.O.P. Sired Chicks," "R.O.P. Sired Flocks," "R.O.P. Enriched Baby Chicks," or any other terminology of like import or meaning that tends or may tend to convey the impression or belief that such chicks are sired by U.S.R.O.P. males.

(b) Representing, directly or inferentially, by the use of "R.O.P." terminology, by the slogan "R.O.P. Breeding Makes a Big Difference," by setting out the "Requirements of R.O.P." by stating that their males used for mating are "individually banded," or by other connotation or implication, that they participate in the National Poultry Improvement Plan, that their hatcheries are U. S. Approved hatcheries, or that chicks offered for sale and sold by them are produced in U. S. Approved hatcheries—unless and until such time as their operations actually are conducted under such Plan, meeting all its requirements.

(c) Representing that the Amstutz sires are one step above U. S. Certified in stage or grade, or that chicks the offspring of non-officially inspected and selected sires and dams are the equivalent of U. S. Certified.

(d) The use of the words "Pullorum Clean" in any manner that tends or may tend to convey the belief or impression that their flocks have been tested for pullorum disease under the supervision of an official State agency and in accord with the National Poultry Improvement Plan; or representing that all their breeding stock is tested until no reactors remain, or that the unofficial tests made by them are the equivalent of U. S. Pullorum Clean. (June 1, 1944.)

3851. **Furs or Fur Products—Nature.**—T. Richter's Sons, an Iowa corporation, with its principal place of business in Davenport, Iowa, engaged in the sale and distribution of merchandise including 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.

T. Richter's Sons agreed in connection with the sale and distribution of its fur garments in commerce as defined by the Federal Trade Commission Act, that it will forthwith cease and desist from:

1. Using the words "American Broadtail," "Krimmer Lamb," "Mendoza Beaver," "Sable Coney," "Northern Seal" or "French Seal" either alone or in connection, combination or conjunction with any other word or words to designate, describe or refer to furs or fur products made from any peltries other than broadtail, krimmer, beaver, sable or seal, respectively, unless such word or words be compounded with the word "Dyed" or the word "Processed," as the case may be, and when so compounded are immediately followed in equally conspicuous type by the true name of the fur as, for example, "American Broadtail—Processed Lamb," "Krimmer—Processed Lamb," "Beaver-Dyed Rabbit," "Sable-Dyed Rabbit" and "Seal-Dyed Rabbit."

2. Using the words "Hudson Seal" either alone or in connection, combination or conjunction with any other word or words to designate, describe or refer to furs or fur products made from any peltries other than seal; provided, however, that when muskrat peltries (only) are dyed to simulate seal and the words "Hudson Seal" are used to indicate such simulation, then such words shall be compounded with the word "Dyed" and upon being so compounded shall be immediately followed in equally conspicuous type by the true name of the fur as, for example, "Hudson Seal-Dyed Muskrat;"

3. Designating or describing furs or fur products in any way other than by the use of the true name of the fur as the last word of the designation or description thereof; and from designating or describing furs or fur products wherein the fur has been dyed or processed to simulate another fur, without using the true name of the fur as the last word of the designation or description thereof immediately preceded, in equally conspicuous type, by the word "Dyed" or the word "Processed," as the case may be, compounded with the true name of the fur simulated. (June 1, 1944.)

3852. **Chicks—Government R.O.P.**—R. H. Fechtel, an individual, trading as Southeastern Hatcheries, Southeastern Hatchery, Satilla Hatchery, Peach State Hatchery, Cumming Hatchery and Hall Hatchery with his principal place of business in Atlanta, Georgia, engaged in the sale and distribution of chicks 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.

R. H. Fechtel agreed, whether trading under his own name, as Southeastern Hatcheries, Southeastern Hatchery, Satilla Hatchery, Peach State Hatchery, Cumming Hatchery or Hall Hatchery, 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 that he will forthwith cease and desist from:

The use of the terms "R.O.P. Chicks," "R.O.P. Mated," "sired by R.O.P." or other term or terms of like meaning as designations for or as descriptive of his chicks; and from the use of any term, expression or representation that tends or may tend to convey the belief or impression that chicks offered for sale and sold by him are U.S.R.O.P. chicks, that such chicks are the progeny of U.S.R.O.P. matings or are adequately identified as having been sired by U.S.R.O.P. males, that he operates a U.S.R.O.P. breeding farm or any poultry breeding farm, that his hatchery or hatcheries are U. S. approved, or that he participates in the National Poultry Improvement Plan. (June 1, 1944.)

3853. **Chicks—Government R.O.P.**—J. Harry Miller, a sole trader, operating as Poultry Exchange, and also as J. H. Miller, Sr., with place

of business near Chambersburg, Pa., engaged in a mail order business consisting of the sale and distribution of poultry 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.

J. Harry Miller agreed whether trading under his own name as Poultry Exchange, 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 that he will forthwith cease and desist from representing that the chicks sold by or through him are from U. S. approved R.O.P. parent stock; or from the use of any other statement or expression which tends or may tend to convey the impression or belief that said chicks are of U.S.R.O.P. stock or that either they or their parents were produced in U. S. approved hatcheries. (June 1, 1944.)

3854. Chicks—Quality and Tested—Monroe C. Babcock, an individual, trading as Babcock's Hatchery, with his place of business at R.D. 3, Ithaca, N.Y., engaged in the sale and distribution of chicks 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.

Monroe C. Babcock, in connection with the sale and distribution of his chicks in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from the use of the terms "100% Pullorum Clean" or "Pullorum Clean"; and from the use of any similar term or representation that tends or may tend to convey the belief or impression that the flocks producing such chicks have been tested for pullorum diseases and approved by an official State agency having responsibility under the National Poultry Improvement Plan for the accuracy of such testing. (June 6, 1944.)

3855. Hats—Old, Used or Second-hand as New.—A. C. Trading Co., Inc., a New York corporation with its principal place of business in New York, N.Y., engaged in the sale and distribution of general merchandise, including hats, 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. Trading Co., Inc., in connection with the sale and distribution of its hats in commerce as defined by the Federal Trade Commission Act agreed that it 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 on the exposed surfaces of the sweatbands thereof, in conspicuous and legible terms which cannot be removed or obliterated without mutilating the sweatbands, a statement that such products are composed of secondhand or used materials; provided, that if sweatbands are not affixed to such hats, then such stamping must appear on the exposed surface of the inside of the bodies of such hats in conspicuous and legible terms which cannot be removed or obliterated without mutilating said hat bodies.

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.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said A. C. Trading Company, 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. (June 6, 1944.)

3856. Novelty Jewelry—Special Prices, “Replica Diamonds,” Guaranteed, Nature, Qualities and Properties, Etc.—A. Isaacson, an individual, trading as Fashion Jewelry Sales, with its principal place of business located in Denver, Colo., engaged in the sale and distribution in interstate commerce of novelty jewelry, 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.

A. Isaacson, in connection with the advertising, sale and distribution in commerce as commerce is defined by the Federal Trade Commission Act, agreed that he will cease and desist forthwith from:

1. The use of the statement “Astonishing ring values priced to you at a fraction of their worth” or of any other statement or representation of similar import or meaning, the effect of which tends or may tend to cause or convey the impression or belief that the sales price of said articles is substantially less than that for which articles of like value are customarily sold on the market.

2. Representing by any means or in any manner that the sale price asked for said articles of jewelry is maintained because of ceiling prices set on such articles of jewelry by the Office of Price Administration, when in fact there is no such ceiling price.

3. The use of the words “Replica Diamond Rings,” “Replica Diamonds,” or other words of like meaning, as descriptive of or in connection with any ring inset, or other product, which is not in fact a true reproduction of the gem named, that is to say, an article having the essential hardness, properties and other characteristics of the named gem.

4. Representing that an article of jewelry offered for sale or sold by him, the said A. Isaacson, is guaranteed not to tarnish, so as to import or imply, contrary to fact, that said article is proof against tarnishing—will not tarnish.

5. The use of the word “stone” or “stones,” either alone or in connection with any other word or words, as descriptive of or in referring to the insets of jewelry which are not, in fact, stones, as that term is commonly understood in the jewelry trade.

6. The use of the statement “These * * * represent the utmost skill of modern science,” or of any other statement or phrase of the same or similar meaning as descriptive of or in referring to articles of jewelry so as to import or imply that said articles have properties, characteristics and values in excess of what is a fact.

7. Representing that said articles of jewelry are of such quality as will withstand tests by acid or fire, or that they are acidproof or fireproof.

8. Representing, as through the use of the statement “Social leaders, millionaires, and our finest people wear these and keep their high-priced diamonds in safety vaults,” that the said articles of jewelry are of such quality as to satisfy the whims, fads, requirements or needs of such socialites or the fastidious, to the end that such persons frequently substitute the said articles of jewelry for and wear the same in place of their expensive jewelry. (June 6, 1944.)

3857. “Konver-To-Kol” Device—Qualities, Properties or Results, Comparative Merits, Economy and New.—Albert Lea Foundry Co. is a Minnesota corporation, with its principal place of business in the city of Albert Lea, Minn., and Jack K. Heimann, an individual, trading as The Heimann Co., with its principal place of business in the city of Min-

neapolis, Minn., engaged cooperatively in the sale and distribution in interstate commerce of a device designated "Konver-To-Kol" for use in converting oil burning heating units to coal burning units, in competition with corporations, firms and individuals likewise engaged, entered into the following agreement to cease and desist from the unfair methods of competition as set forth therein.

Albert Lea Foundry Co. and Jack K. Heimann agreed, whether trading under his own name, as The Heimann 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 device designated "Konver-To-Kol," or any other device of similar construction, whether sold under such name or any other name or names, that they, and each of them, will forthwith cease and desist from:

1. Representing, directly or inferentially, that such device will burn all types and sizes of coal efficiently or that it will operate efficiently in any type of heating plant.

2. The use of any statement or representation that tends or may tend to convey the belief or impression that all types of coal may be burned by using such device without producing "bulky ashes" or ashes.

3. Representing, by the use of the statement "increased operating efficiency reduces tonnage of comparative hand-fired consumption" or other statement of like implication, that oil burning furnaces equipped with such devices are more efficient than are conventional coal burning furnaces equipped with shaker grates.

4. Representing, directly or inferentially, that the use of such devices in oil heating units will reduce fuel bills, afford heating in excess of that afforded by oil, or result in the complete combustion or utilization of all fuel or fuel gases.

5. Representing that said device is an "amazing wartime" product or that it is an amazing new invention. (June 6, 1944.)

3858. Furs or Fur Garments—Nature.—Samuel G. Henig, an individual, trading as General Fur Manufacturing Co., with his place of business in New York, N.Y., engaged in the sale and distribution of fur garments in interstate commerce in competition with individuals, firms and corporations also 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.

Samuel G. Henig, whether trading under his own name, under the trade name, General Fur Manufacturing Co., or any other trade name or style agreed in connection with the sale and distribution of his merchandise in commerce as defined by the Federal Trade Commission Act, that he will forthwith cease and desist from:

1. Using the words "Seal," "Beaver," "Mink" or "Sable" either alone or in connection, combination or conjunction with any other word or words to designate, describe or refer to furs or fur products made from any peltries other than seal, beaver, mink or sable, respectively, unless such word or words be compounded with the word "Dyed" or the word "Processed," as the case may be, and when so compounded are immediately followed in equally conspicuous type by the true name of the fur as, for example, "Seal-Dyed Rabbit."

2. Designating or describing furs or fur products in any way other than by the use of the true name of the fur as the last word of the designation or description thereof; and from designating or describing furs or fur products wherein the fur has been dyed or processed to simulate another fur, without using the true name of the fur as the last word of the

designation or description thereof, immediately preceded, in equally conspicuous type, by the word "Dyed" or the word "Processed," as the case may be, compounded with the true name of the fur simulated. (June 14, 1944.)

3859. Vacuum Cleaners—Size of Business, Offer Conformance, "Rebuilt," Reduced Price, Guaranteed, Etc.—Clean-Rite Vacuum Stores of Washington, a Maryland corporation, with its principal place of business in Washington, D. C., and Samuel Berenson and Etta Berenson, also of Washington, D. C., officers, stockholders and operators thereof engaged in the sale, repair and servicing of new and second-hand vacuum cleaners in interstate commerce, in competition with corporations, individuals and firms engaged in the sale and distribution of similar merchandise, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Clean-Rite Vacuum Stores of Washington and Samuel Berenson and Etta Berenson, respectively, in their individual capacities, and as officers, stockholders and operators of said corporation agreed, in connection with the offering for sale, sale and distribution of vacuum cleaners or other commodities in commerce as defined by the Federal Trade Commission Act, that they and each of them will forthwith cease and desist from:

(a) Representing that the business conducted by them is one of America's largest vacuum chains or is a merchandising chain of any kind; by words or expressions of like import, that they operate a number of retail outlets under a central management, selling uniform merchandise and following a uniform policy; or that they carry for sale every well-known make of vacuum cleaner.

(b) Advertising as purportedly for sale, merchandise which is not in good faith offered for sale as represented; or using any other bait advertisement; that is, a fallacious presentation which conceals the commodity actually offered for sale and/or which serves or may serve to mislead, confuse, or deceptively allure prospective customers.

(c) Designating or describing as "rebuilt," "beautifully rebuilt," "completely rebuilt throughout" or "rebuilt to perfection," any vacuum cleaner or other mechanism which has not been actually disassembled, reconstructed and refinished in the manner connoted by the use of such terms; or in any other way, referring to a machine as "rebuilt," which in fact has been merely reconditioned, repaired, or does not contain replacements of the same make or type as the parts removed.

(d) Representing that they install all new essential parts where needed, unless and until all such installations are in fact new; or that they carry a complete stock of parts for any named or pictured machine for which they do not actually have all such parts.

(e) Representing that an advertised machine comes equipped with new, full or complete attachments, when in fact such attachments are either old, misfits, unusable or missing.

(f) Denominating as "expert mechanics," craftsmen who have not in fact attained masterly proficiency in the details of mechanics and mechanisms.

(g) Representing as a reduction in price, a figure which is greater than or equal to the regular or standard price of the article offered for sale.

(h) Advertising as the price to be charged for specified items of service and replacement, an amount less than the charges actually made therefor; use of the word "guaranteed" in connection therewith; or use of the word "guarantee" or term of similar meaning unless, whenever used, clear and

unequivocal disclosure be made in direct connection therewith of exactly what is offered by way of security.

(i) Promising a so-called guarantee bond, or similar binding agreement or covenant, to purchasers for their protection against defects in workmanship, material, replacement, repairs or otherwise, unless and until such written undertaking actually is given and its terms are fully and faithfully met in the manner stated or implied. (June 19, 1944.)

3860. Diamond Rings or Other Jewelry—Distress Sale and Excessive Value.—Charles Brough, an individual trader, with his place of business in West Philadelphia, Pa., engaged in the sale and distribution of diamonds and other jewelry in interstate commerce, in competition with individuals, firms and corporations likewise engaged, has entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Charles Brough agreed, in connection with the advertising for sale, sale and distribution of his diamond rings or other jewelry in commerce as defined by the Federal Trade Commission Act, that he will forthwith cease and desist from:

(a) The use of words or terms, such as "sacrifice," "must sell," or other expressions indicating that his rings are being offered for sale by individual owners impelled to do so by distressed circumstances or financial straits; and from the use of any other bait advertising or spurious methods presenting a fallacious aspect concerning the nature of his sales offer.

(b) The use of fictitious or excessive figures as the purported cost or value of articles of merchandise offered for sale by him. (June 19, 1944.)

3861. Books—Opportunities and Results.—Noble and Noble, Publishers, Inc., a New York corporation, with its principal place of business in New York, N. Y., engaged in the sale and distribution of books and printed matter 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 as set forth therein.

Noble and Noble, Publishers, Inc., agreed, in connection with the sale and distribution of its aforesaid "QUESTIONS and ANSWERS" books in commerce as defined by the Federal Trade Commission Act, that it will forthwith cease and desist from:

1. Representing, directly or inferentially, that by reading or studying said books or by the use of any of such books alone, prospective applicants for Civil Service examinations will be assured of passing such examinations or tests; that applicants will be eligible for any Civil Service position, unless and until they actually have all the qualifications necessary for such position; or that they will be assured of an appointment to a Civil Service position or of receiving employment by any department or agency of the United States Government.

2. The use of any statement or representation that tends or may tend to convey the belief or impression that said books are up to date or contain all information presently needed by or required of persons taking a Civil Service examination or examinations. (June 20, 1944.)

3862. Scalp and Hair Preparations—Qualities, Properties or Results.—Hannah May Powell, a sole trader, operating as Powell Distributing Co. and also as La-Nu Distributing Co. with its place of business in Philadelphia, Pa., engaged in the sale and distribution of cosmetic preparations for the scalp and hair in interstate commerce, in competition with individuals, firms and corporations likewise engaged, entered into the fol-

lowing agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Hannah May Powell and Maurice W. Aaron and Elinor L. Brown, whether operating in their own names as Powell Distributing Co., La-Nu Distributing Co. or Aaron & Brown, respectively, or under any other trade designation or style, agreed in connection with the sale and distribution of the aforesaid 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 that they and each of them will forthwith cease and desist from representing directly or inferentially:

(a) That La-Nu Liquid Shampoo, or any other preparation of substantially the same composition, gives new life to the hair; or by expressions of like import, that it gives the hair added vitality.

(b) That La-Nu Medicated Ointment, or similar preparation, assures a healthy scalp; or otherwise, that it is a competent treatment or an effective remedy for unhealthy scalps, or that it may be relied upon to relieve such conditions generally. (June 20, 1944.)

3863. Nursery Stock—Quality, New, Qualities, Properties or Results, Special or Introductory Price or Offer, Etc.—Asbury Reed and Roland Reed, trading as Alameda County Nursery, with place of business in Oakland, Calif., engaged in the sale and distribution of nursery stock, including seeds and plants, 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.

Asbury Reed and Roland Reed, whether trading under their own names, as Alameda County Nursery, or any other trade name or style, in connection with the sale and distribution of their nursery stock 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 phrases "amazing new strawberries," "amazing new vegetables," "amazing new seeds," "amazing strawberry plants," "brand-new type" or other phrases or statements of like connotation as designations for, as descriptive of or in connection with any plants or seeds that are not, in fact, new, a new type and/or amazing, as the case may be.

2. Representing that Roland Reed has spent "more than twenty years" or any period of time in developing the strawberry plants referred to herein; or that they, or either of them, have devoted to the development of any plant or plants any number of years or other period of time in excess of that actually so devoted.

3. The use of any statement or representation that tends or may tend to convey the belief or impression that their strawberry plants may be depended upon to produce satisfactory fruit when grown in the home.

4. Representing, directly or inferentially, that the regular and customary price charged for their products or an assortment thereof is a special or introductory price; or that an offer is a special or introductory offer when, in fact, it is a regular or customary offer.

5. Representing by the use of statements such as "no special attention needed—no plant food, no fertilizer" or "needs no culture—just plant and forget" that plants or seeds purchased from them require no care, cultivation, plant food or fertilization.

6. Representing that seeds or plants such as are offered for sale by them cannot be purchased from stores, unless and until said products are not obtainable from stores or supply houses dealing in seeds and plants.

7. The use of the term "sensational seed bargain" or other term or expression of similar meaning in connection with seeds or plants that are not sold at bargain prices, that is, at prices that are substantially less than the prevailing prices for like products.

8. The use of the statement "Tuberchokes * * * 10 for \$1.00" or other statement or representation of like meaning, unless and until they actually supply the number of complete tubers indicated when filling orders for such products. (June 23, 1944.)

3864. **Livestock and Poultry Feed Products—Composition, Comparative Merits and Qualities, Properties or Results**—Lapp Laboratories, Inc., an Iowa corporation, with its principal place of business in Nevada, Iowa, and H. Earl DeLapp, a sole trader, operating as DeLapp & Co., with place of business in Waseca, Minn., engaged in the sale and distribution of certain animal and poultry feed products designated Mo-Lactas, Poultry Blocketts and Flavex, 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.

Lapp Laboratories, Inc., and H. Earl DeLapp, in connection with the sale and distribution of livestock and poultry feed in commerce, as defined by the Federal Trade Commission Act, or the advertising thereof by means or in the manner above set forth, agreed that they and each of them will forthwith cease and desist from representing directly or inferentially:

(a) That the product designated Mo-Lactas is a distiller's molasses soluble in concentrated form, contains approximately 30 percent of organic water soluble minerals, or contains any "organic minerals."

(b) That one part Mo-Lactas is equal to three or four parts of ordinary black strap or sorghum; is used efficaciously to replace either bulk molasses or dried buttermilk; or otherwise by statement or connotation that, pound for pound, it can replace bulk molasses as a source of carbohydrate or dried buttermilk as a source of protein.

(c) That Mo-Lactas aids in preventing mycosis or coccidiosis; that by its use it is possible to increase hatchability; or otherwise, that it has any value for such purposes.

(d) That the product referred to as Poultry Blockett, when given to properly fed chickens, is excellent or even effective as a worm prevention, builds up disease resistance, or stimulates growth and/or egg production.

(e) That the product Flavex is an ideal substitute, or a competent or adequate substitute, for dried buttermilk; offers nutritive ingredients in excess of those found in buttermilk; or, where added to a properly balanced diet, will stimulate feather growth or improve hatches. (June 29, 1944.)

3865. **Composition Roofings or Other Building Materials—Composition.**—Marshall-Wells Co., a New Jersey corporation, with its principal place of business in Duluth, Minn., with branch offices in other cities and States, engaged in the sale and distribution of hardware and building materials in interstate commerce, in competition with corporations, firms and individuals likewise engaged, entered into an agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Marshall-Wells Co. in connection with its sale and distribution of composition roofings or other building materials in commerce, as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from the use of the word "Trinidad" on brands, labels or in designa-

tions of any such products, the asphaltic content of which is not from the Island of Trinidad, British West Indies, or in any other way directly or inferentially representing that Trinidad Asphalt is included in the composition thereof. (June 29, 1944.)

3866. Furs or Fur Garments—Nature.—David Silberman, Jules Rendelman and Joseph Andelman, copartners, operating under the firm name of Jandel Furs, with place of business in Washington, D. C., engaged in the sale and distribution of furs and fur garments in commerce within the District of Columbia in competition with firms, corporations 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.

David Silberman, Jules Rendelman and Joseph Andelman, whether operating individually as copartners under the firm name of Jandel Furs or by any other trade designation in connection with the sale and distribution of furs or fur garments in commerce as defined by the Federal Trade Commission Act, agreed that they and each of them will forthwith cease and desist in their advertisements, invoices or labeling from:

(a) The use of the term "Leopard Cat" or other words denoting leopard to designate or describe furs or fur garments made from peltries of South American spotted cats or of any animals or species other than the true leopard (*felis pardus*).

(b) The use of the word "Mouton" to designate, describe or refer to products made from lamb peltries unless compounded with the true common English name of the fur; for example, "Mouton—Dyed Lamb."

(c) The use of the word "Lapin" to designate, describe or refer to products made from rabbit peltries unless compounded with the true common English name of the fur; for example, "Lapin—Dyed Rabbit."

(d) The use of the word "Caracul," either with or without the word "Kid" or similar term, to designate or denominate products made from goat peltries or from any peltries other than those authoritatively recognized as caracul. (May 17, 1944.)

3867. Furs or Fur Garments—Nature.—Charles Miller and Sol Weisman, copartners, operating under the firm name of Miller & Weisman, with place of business in New York, N. Y., engaged in the manufacture of fur garments and in the sale and distribution thereof in interstate commerce in competition with firms, corporations 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.

Charles Miller and Sol Weisman, whether operating individually as copartners under the firm name, Miller & Weisman, or any other trade designation in connection with their sale and distribution of furs or fur garments in commerce as defined by the Federal Trade Commission Act agreed that they and each of them will forthwith cease and desist in their trade publicity, invoices or labeling, from the use of the term "Leopard Cat" or other words denoting leopard to designate or describe furs or fur garments made from the peltries of South American spotted cats or any animals or species other than the true leopard (*felis pardus*). (May 17, 1944.)

3868. Fur Products—Nature.—Feldbaum Fur Corporation, a New York corporation, with its principal place of business in New York, N. Y., engaged in the manufacture of 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 agree-

ment to cease and desist from the alleged unfair methods of competition as set forth therein.

Feldbaum Fur Corporation, in connection with the sale and distribution of its fur products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist, in its trade publicity, invoices or labeling, from the use of the word "Lapin" to designate, describe or refer to products made from rabbit peltries unless compounded with the true common English name of the fur; for example "Lapin—Dyed Rabbit." (May 17, 1944.)

3869. Radios and Equipment—Stock on Hand, Terms and Conditions, Etc.—Sun Radio and Service Supply Corporation, a Maryland corporation, with its place of business in Washington, D. C., engaged in the sale, repair and servicing of radios in commerce as defined by the Federal Trade Commission Act, within the District of Columbia, 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.

Sun Radio and Service Supply Corporation, in connection with its offering for sale, sale and distribution of merchandise in commerce as defined by said Act, agreed that it will forthwith cease and desist from:

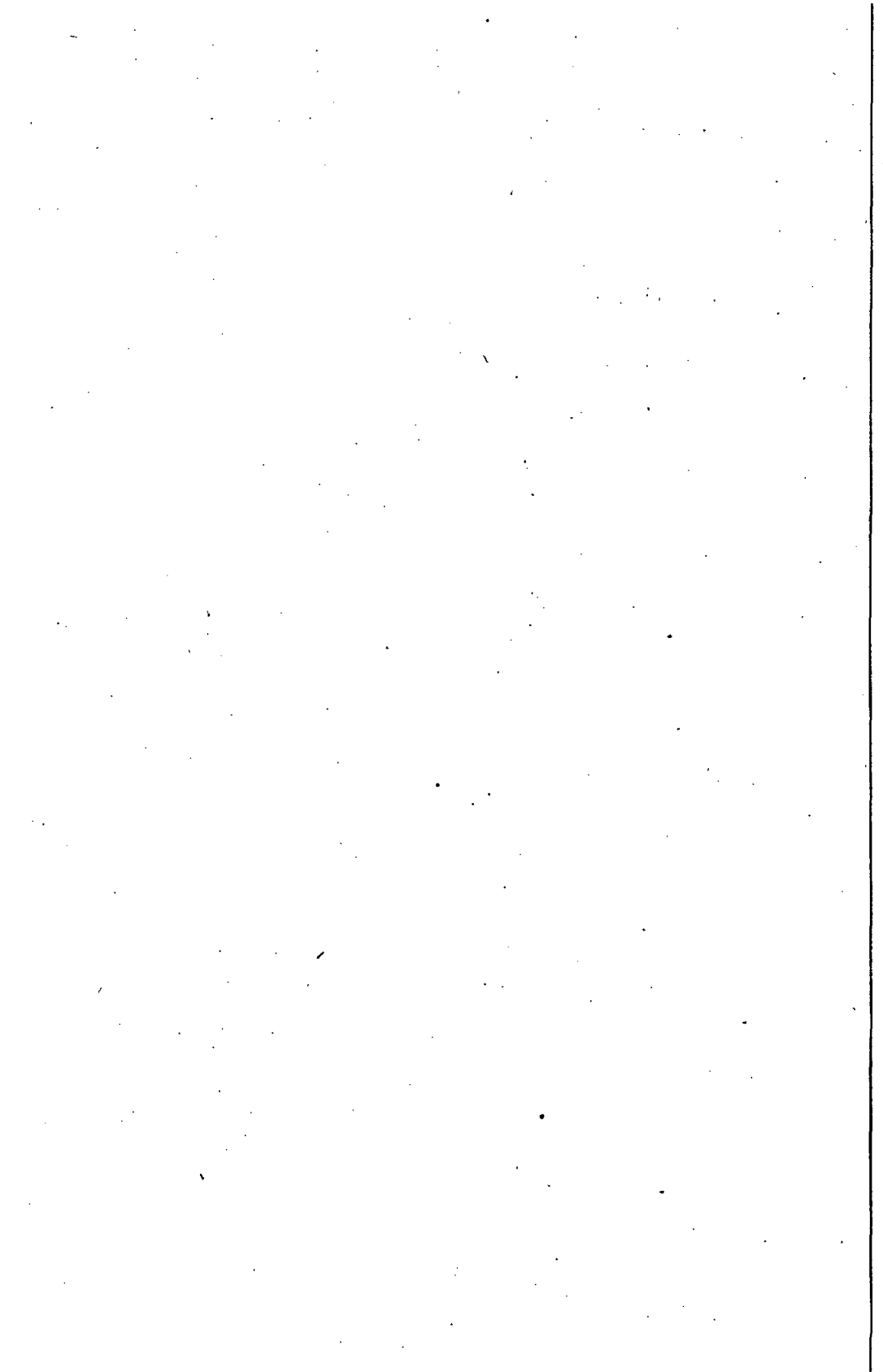
(a) Representing that it has radio batteries for sale, or any other kind of merchandise, which it does not actually have in stock and available for delivery to purchasers.

(b) Representing, by statements such as "Bring Your Old Batteries in When Purchasing New Ones" or words of like import, that old batteries will be received in part payment for new ones when in fact no such arrangement or deal is to be negotiated.

(c) The use of bait advertising or fallacious presentation of any kind which conceals the true nature of the commodity offered and/or serves or may serve to confuse or beguile prospective customers. (May 30, 1944.)

3870. Chicks—Tested and Certified.—Michal A. Nathan, a sole trader, operating as Nathan Breeding Farm, with place of business in Cuddebackville, N. Y., conducts a poultry breeding farm for production of baby chicks which he sells and distributes 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.

Michal A. Nathan, whether operating in his own name as Nathan Breeding Farm or under any other trade designation or style, in connection with the offering for sale, sale and distribution of his chicks in commerce as defined by the Federal Trade Commission Act, agrees that he will forthwith cease and desist from the use of the term "pullorum clean"; and from the use of any similar term or representation that tends or may tend to convey the impression or belief that the flocks producing such chicks have been tested for pullorum disease and certified by an official State agency having responsibility under the National Poultry Improvement Plan for the accuracy of such testing. (June 14, 1944.)



DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS¹

0954.² **Medicinal Preparation—Qualities, Properties or Results.**
—Goldban Pharmacal Co., a corporation, 216 Federal St., Camden, N.J., advertiser-vendor, was engaged in selling a medicinal preparation designated Tarpinod and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That said preparation will be helpful in loosening or expelling or otherwise relieving congestion; or

(b) That said preparation will have any effect in soothing or healing inflamed bronchial mucous membranes or inflamed bronchial tubes.

The said Goldban Pharmacal Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement.

It is further agreed that Stipulation No. 0954 executed by the said Goldban Pharmacal Co. and accepted by the Commission on October 3, 1935, is to remain in full force and effect and that the terms and agreements therein are not to be considered modified or altered in any way by this supplemental stipulation. (June 23, 1944.)

03187. **Hair and Scalp Preparations—Qualities, Properties or Results, Comparative Merits, Laboratory, Testimonials and Composition.**
HQZ Laboratories, Inc., a corporation, 718 Mission St., San Francisco, Calif., vendor-advertiser, engaged in selling certain products designated "HQZ Hair and Scalp Oil," "HQZ Shampoo" and "HQZ Lustre"; and Rufus Rhoades and Robert O. Davis, co-partners, doing business under the trade names Rufus Rhoades and Co., and Rhoades & Davis, Market at Kearny St., San Francisco, Calif., advertising agents, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named products on behalf of HQZ Laboratories, Inc. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That HQZ Hair and Scalp Oil:

1. Penetrates into the scalp pores or hair follicles.
2. Loosens or helps to loosen dust, dirt, grease, dandruff, or any other foreign substances imbedded in the scalp pores or hair follicles.
3. Contributes to the normal functioning of clogged pores or opens them.

(b) That irradiation of HQZ Hair and Scalp Oil with ultra-violet light augments its value for use in connection with the care or treatment of the hair or scalp.

(c) That the use of HQZ Hair and Scalp Oil and HQZ Shampoo, either singly or in combination with one another, will:

1. Recondition or rejuvenate the hair.

¹ 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, January 1, 1944, to June 30, 1944, inclusive. For digests of previous stipulations, see vols. 14 to 37 of Commission's decisions.

² Supplemental.

2. Clean the scalp pores or bring grease, dust or any other foreign substance therein lodged to the surface.

3. Solve the dandruff or other "hair trouble" problems.

4. Prevent dandruff or falling hair.

5. Impart any therapeutic benefit to the hair or scalp.

(d) That the presence of alcohol, alkaline soap or heavy oil in competitive products causes such products to be harmful or deleterious if used in connection with the care or treatment of the hair or scalp.

(e) That irradiation of HQZ Hair and Scalp Oil with ultra-violet light augments its value for use in connection with the care or treatment of the hair or scalp.

(f) That HQZ Hair and Scalp Oil will provide "Sunshine for your hair."

(g) That HQZ Laboratories, Inc. owns, operates or controls a laboratory.

The said HQZ Laboratories, Inc. and Rufus Rhoades and Robert O. Davis, 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 and the vendor-advertiser agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(h) That ultra-violet light is emitted when irradiated HQZ Hair and Scalp Oil is brought into contact with the hair or scalp.

(i) That HQZ Hair and Scalp Oil bestows to the hair, scalp, blood stream, nerves or glands any of the benefits which might be expected by direct exposure of the head or other parts of the body to the sun's rays.

(j) That HQZ Hair and Scalp Oil contains herbal medications of stimulative or antiseptic value.

(k) That use of HQZ Hair and Scalp Oil, HQZ Shampoo and HQZ Lustre, either singly or in combination with each other, will:

1. Provide any stimulation or nourishment to the hair or scalp from the blood stream.

2. Prevent falling hair or dandruff.

3. Have any therapeutic effect on the hair or scalp.

The said HQZ Laboratories, Inc. further agreed not to publish or disseminate any testimonial containing any representation contrary to the foregoing agreement. (Jan. 1, 1944.)

03188. **Drug Products—Safety.**—The E. L. Patch Co., a Massachusetts corporation, Stoneham Post Office, Boston, Mass., vendor-advertiser, engaged in selling drug products called "Kondremul with non-bitter Extract of Cascara" and "Kondremul with Phenolphthalein"; and Harry C. Pibbs Advertising Co., an Illinois corporation, 43 East Ohio St., Chicago 11, Ill., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named products on behalf of The E. L. Patch Co. agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisement which fails to reveal that the products 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 labels, in the labeling, or in both labels and labeling, contain a caution or warning to the same effect. (Jan. 8, 1944.)

03189. **Dry Dog Food Preparation—Composition.**—Central Soya Co., Inc., a corporation, trading as McMillen Feed Mills, 300 Old First Bank

Building, Fort Wayne, Ind., vendor-advertiser, was engaged in selling a dry dog food preparation designated "Dogburger" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that such product contains meat.

Central Soya Co., Inc. further agreed not to publish, disseminate or cause to be published or disseminated any testimonial containing any representation contrary to the foregoing agreement. (Jan. 8, 1944.)

03190. **Medicinal Preparation—Safety.**—Leo J. Dunn, Trustee, trading under the name of Mason Drug Co., 22 Thayer St., Boston, Mass., advertiser-vendor, was engaged in selling a medicinal preparation designated Casafru 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. (Feb. 1, 1944.)

03191. **Medicinal Preparation—Qualities, Properties or Results.**—Bond Pharmacy Co., a corporation, Little Rock, Ark., advertiser-vendor, was engaged in selling a medicinal preparation designated Bondease and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that said preparation will:

- (a) Stop ring worm.
- (b) End athlete's foot.
- (c) Relieve swollen feet.
- (d) Relieve itching or burning skin, or tired or sore feet unless limited to such conditions when due to fungus infection.

The said Bond Pharmacy Co. further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Feb. 8, 1944.)

03192. **Medicinal Preparation—Qualities, Properties or Results.**—Beatrice Kornstein, an individual, trading under the name Avalon Lane Co., 175 East Broadway, New York, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated "Lashgro" 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 trade name "Lashgro," or otherwise, that the preparation will cause the eyelashes to grow longer or thicker, or will promote or in any way affect the growth of the eyelashes.
- (b) That the preparation will correct or remedy red, scaly eyelids.

The said Beatrice Kornstein further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 14, 1944.)

03193. **Medicinal Preparation—Safety.**—E. A. "Billy" Hamburg, an individual doing business under the trade name of Vegetrates Co., 7807 Melrose Ave., Los Angeles, Calif., vendor-advertiser, was engaged in selling a laxative designated Laxatrate 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 pains, 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. (Feb. 22, 1944.)

03194. **Medicinal Preparation—Qualities, Properties or Results and Safety.**—Isaac Masarsky, an individual, doing business under the trade name Hillcrest Laboratories, Spring Valley, N. Y., vendor-advertiser, engaged in selling a medicinal preparation recommended for the treatment of Psoriasis, Eczema and other skin irritations designated "Sabetal"; and Otto Kleppner and Leon Balsam, copartners, doing business under the firm name The Kleppner Co., 551 Fifth Ave., New York, N. Y., advertising agents, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Hillcrest Laboratories agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That Sabetal, when used in connection with Psoriasis, Eczema or any other external skin irritation, has any therapeutic effect except to extent that its use may temporarily relieve the itching incident thereto or aid in the removal of loose epidermic scales caused thereby.

The said Isaac Masarsky and Otto Kleppner and Leon Balsam, and each of them, further agreed to cease and desist from disseminating any advertisement concerning Sabetal which fails clearly to reveal that Sabetal contains Coal Tar (Sol) and Oxyquinoline Sulfate; that its use may cause irritation; and that, in those instances where irritation is produced, its use should be discontinued; *Provided, however*, that if 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, said advertisement need contain only the statement: "CAUTION, Use Only as Directed."

The said Isaac Masarsky and Otto Kleppner and Leon Balsam, 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. (Feb. 25, 1944.)

03195. **Food Product—Qualities, Properties or Results.**—S. Leila Hoover, an individual, Post Office Box 127, Redwood City, Calif., vendor-advertiser, was engaged in selling a food product recommended for the treatment of various ills and designated "Shasta Armenian Culture" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that "Shasta Armenian Culture," 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 rebuild blood, nerves and glands.
- (b) Is nature's own balanced food.
- (c) Has destructive action on putrefactive bacteria in the intestinal tract.
- (d) Is a life-prolonging item of diet.

The said S. Leila Hoover further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 25, 1944.)

03196. **Medicinal Preparation—Safety.**—The Wm. S. Merrell Co., a Delaware corporation, Lockland Station, Cincinnati 15, Ohio, vendor-advertiser, engaged in selling a drug preparation called "Bassoran with Cascara"; and Harry C. Phipps Advertising Co., an Illinois corporation, 43 East Ohio St., Chicago, Ill., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of The Wm. S. Merrell Co. 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. (Feb. 25, 1944.)

03197. **Hair Dye Preparation—Qualities, Properties or Results and Safety.**—A. J. Green, an individual trading as Green's Hair Hospital, 318 West Pike St., Clarksburg, W. Va., vendor-advertiser, was engaged in selling a hair dye preparation designated Green's Reliable Restorer and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That his preparation is not a dye or stain.
- (b) That gray hair is corrected by using his preparation.
- (c) By the use of the term "Restorer" as a part of the designation or brand name or by any other means that his preparation restores the original color to the hair or restores the growth of the hair.
- (d) That his preparation grows hair, or promotes the growth of the hair.
- (e) That his preparation stops the hair from falling out.
- (f) That his preparation constitutes a cure or remedy for, or has therapeutic value in treating dandruff or contagious eruptions, in excess of the removal of dandruff scales.
- (g) That his preparation is harmless.

The said A. J. Green further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 25, 1944.)

03198. **Hair Dye Preparation—Qualities, Properties or Results.**—Katherine E. Martin, an individual, trading as Naturaltone Co., 1424 North Clark St., Chicago, Ill., vendor-advertiser, was engaged in selling a hair dye preparation designated Naturaltone and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That her preparation is not a dye.
- (b) That her preparation is a gray hair corrective.
- (c) That her preparation banishes gray hair.
- (d) By the use of the word "restores" or by any other means that her preparation restores the original color to the hair.
- (e) That her preparation makes the hair soft.
- (f) That her preparation is beneficial to the scalp.
- (g) That her preparation constitutes a cure or remedy for, or has therapeutic value in treating dandruff, in excess of the removal of dandruff scales.

The said Katherine E. Martin further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 29, 1944.)

03199. Formulae for Hair Preparations—Qualities, Properties or Results and Laboratory.—H. S. Cobb, an individual, trading under the name The Cobb Laboratories, Post Office Box 161, Philadelphia, Pa., vendor-advertiser, was engaged in selling a preparation designated Gro-Fas Hair Treatment and two formulae for hair preparations designated "Gro-Fas Hair Balm Formula" and "Formula for Treating Gray Hair" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing with regard to Formula for Treating Gray Hair:

(a) That a preparation compounded according to such formula will restore hair that has become gray to its former or natural color, or in any way affect the shade of gray hair.

and with regard to Gro-Fas Hair Balm Formula and Gro-Fas Hair Treatment:

(b) That such preparation or one compounded in accordance with such formula will nourish or feed the scalp, or will remedy or clear the scalp of sore rash or tetter itch.

(c) By the use of the term "Gro-Fas" in the brand names of the formula designated "Gro-Fas Hair Balm Formula" and the preparation designated "Gro-Fas Hair Treatment," or otherwise, that such preparation or one compounded according to such formula will cause the hair to grow longer or will in any way affect the growth of the hair.

The said H. S. Cobb further agreed to cease and desist from:

(d) Using the word "Laboratory" or any other word or term of similar import or meaning in his trade name or in connection with his business, when he does not own, operate and control an appropriately equipped laboratory where research work in connection with said business is conducted by trained technicians.

The said H. S. Cobb further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 29, 1944.)

03200. Photographic Enlargements—Qualities, Properties or Results, Free, and Limited Offers.—Reliable Home Equipment Co., Inc., a corporation, 623 East Main St., Richmond, Va., vendor-advertiser, engaged in selling certain photographic enlargements designated War Photographs, and Henry J. Kaufman, an individual doing business as Henry J. Kaufman Advertising, Homer Building, Washington, D. C., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above mentioned product on behalf of Reliable Home Equipment Co., Inc. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That the colors in the photographic enlargements will not deteriorate or are permanent.

(b) That articles of merchandise, the cost of which is included in the purchase price of photographic enlargements, are free, either by the use of the term "free" or any other term of similar import or meaning.

(c) That the photographic enlargements are of a size greater than actually is the fact.

(d) That any offer to sell the photographic enlargements is limited as to time.

The said Reliable Home Equipment Co., Inc. and Henry J. Kaufman, 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. (Mar. 2, 1944.)

03201. Hair Dye Preparation—Qualities, Properties or Results and Safety.—Anthony Worzalla, Rose Worzalla Imber, Evelyn Worzalla Witkowski, and Walter S. Worzalla, trading as Imico, Box No. 309, Stevens Point, Wisc., vendor-advertisers, were engaged in selling a certain hair dye preparation designated Woda Polska and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That their preparation rids the user of gray hair or does away with or eliminates gray hair.

(b) That their preparation corrects gray hair or is a gray hair corrective.

(c) By the use of the word "restores" or by any other means that their preparation restores the original color to the hair.

(d) That their preparation is noninjurious or harmless.

The said Anthony Worzalla, Rose Worzalla Imbers, Evelyn Worzalla Witkowski, and Walter S. Worzalla, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 13, 1944.)

03202. Vitamin Preparation—Qualities, Properties or Results and Scientific or Relevant Facts.—Cerophyl Laboratories, Inc., a corporation, 2438 Broadway, Kansas City, Mo., vendor-advertiser, engaged in selling a vitamin preparation designated Viet; and The Potts-Turnbull Advertising Co., a corporation, 912 Baltimore Ave., Kansas City, Mo., and Campbell-Ewald Co., a corporation, General Motors Building, Detroit 2, Mich., advertising agents, engaged in the business of conducting advertising agencies which disseminated advertisements for the above named product on behalf of Cerophyl Laboratories, Inc. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Viet will relieve or correct such conditions as loss of beauty in skin or eyes, nervousness, undue fatigue, stomach or intestinal trouble.

(b) That the use of Viet will be beneficial in the treatment of nervous irritability or run down condition;

and Cerophyl Laboratories, Inc., and Campbell-Ewald Co. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(c) That the use of Viet will help tone or benefit the nervous system.

(d) That the use of Viet will help regulate or normalize elimination.

(e) That the "Grass Juice Factor" contained in Viet is essential in the nutrition of man.

(f) That Chlorophyll is beneficial or essential in the human diet.

(g) That the administration of Viet will build up the resistance of the body or tend to reduce susceptibility to colds.

(h) That the use of Viet will be beneficial in the treatment of poor appetite, or will build up one's resistance to illness or disease, or will tone or benefit one's nervous system.

(i) That the use of Viet will be beneficial for listlessness or for building up one's resistance to fatigue except to the extent and in those cases where such conditions may be due to minor vitamin deficiencies which Viet supplies.

(j) That the use of Viet will be therapeutically beneficial for all conditions resulting from vitamin deficiency.

The said Cerophyl Laboratories, Inc., the Potts-Turnbull Advertising Co. and Campbell-Ewald Co., and each of them, further agreed not to publish, or cause to be published, any testimonial containing any representations contrary to the foregoing agreement. (Mar. 13, 1944.)

03203. Hair Dye Preparation and Cosmetics—Qualities, Properties or Results and Safety.—Walter Gutheim, an individual, trading as Mrs. E. Vilches, 554 West 181st St., New York, N. Y., vendor-advertiser, was engaged in selling a hair dye preparation and cosmetics designated "Vilches Hair Restoro," "Vilches Special Hair Tonic," "Vilches Excellent Skin Food," "Vilches Pore Cleansing Cream," "Vilches Cleansing Cream," "Vilches Freckle Remover," "Vilches Pimple and Blackhead Cream," and "Vilches Burdock Root Ointment" (Vilches Ointment with Burdock Root) and Vilches Creams, Lotions, Astringents and Powders 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 "Restoro" or "Restorer" in the brand name of his preparation now designated "Vilches Hair Restoro," or in any other manner or by any other means or device, that the said preparation will restore the original color to the hair.

(b) By the use of the phrase "Skin Food" in the brand name of his preparation now designated "Vilches Excellent Skin Food," or in any other manner or by any other means or device, that said preparation will nourish the skin.

(c) By the use of the phrase "Pore Cleansing" in the brand name of his preparation now designated "Vilches Pore Cleansing Cream," or in any other manner or by any other means or device, that said preparation will cleanse the pores.

(d) By the use of the phrase "Freckle Remover" in the brand name of his preparation now designated "Vilches Freckle Remover," or in any other manner or by any other means or device, that said preparation will remove freckles.

(e) By the use of the phrase "Pimple and Blackhead Cream" in the brand name of his preparation now designated "Vilches Pimple and Blackhead Cream," or in any other manner or by any other means or device, that said preparation will clear the skin of pimples and blackheads.

(f) That the preparation now designated "Vilches Hair Restoro" is not a dye; is harmless; or that it will nourish or strengthen the hair roots; will give life to or promote the growth of the hair, make the hair healthy, or prevent falling hair and dandruff.

(g) That Vilches Special Hair Tonic will check falling hair.

(h) That Vilches Cleansing Cream will cleanse the skin more thoroughly than soap and water.

(i) That Vilches Burdock Root Ointment (Vilches Ointment with Burdock Root) constitutes a cure or remedy for or has therapeutic value in the treatment of dandruff, itching scalp, falling hair, eczema, and other scalp diseases, or will promote the growth of the hair.

(j) That Vilches Creams, Lotions, Astringents and Powders will nourish the skin, give the skin a youthful appearance or rid the skin of wrinkles.

The said Walter Gutheim further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 15, 1944.)

03204. Books—Comparative Merits, Nature, Qualities, Properties or Results and Special Price.—E. Haldeman-Julius, an individual doing business under the trade name of Haldeman-Julius Publications, Girard, Kans., vendor-advertiser, engaged in selling Little Blue Books; and John Hoge, Cecil Hoge, Barbara Hoge, Mrs. Huber Hoge, and Hamilton Hoge, copartners, doing business under the trade name of Huber Hoge and

Sons, 699 Madison Ave., New York, N. Y., advertising agency, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named products on behalf of E. Haldeman-Julius agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That a collection of twelve (12) Haldeman-Julius Little Blue Books known as "OFFER 300" is one of the greatest collections of information on money, law, religion, medicine, self-improvement, or other general information.

(b) That said collection of books is an encyclopedia of knowledge.

(c) That said collection of books will answer every possible kind of question.

(d) That said collection of books is offered at a special price or for a limited period of time.

The said E. Haldeman-Julius and John Hoge, Cecil Hoge, Barbara Hoge, Mrs. Huber Hoge, and Hamilton Hoge, and each of them, agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 21, 1944.)

03205. Skin Bleach—Qualities, Properties or Results and Safety.—Charles D. Murray, Sr., and Lillie P. Murray, copartners, doing business under the firm name Murray's Superior Products Co., 3610-16 Cottage Grove Ave., Chicago, Ill., vendor-advertisers, were engaged in selling a product recommended for whitening dark complexions, removing blotches, pimples and clearing up the skin, which product is designated "Murray's Skin Bleach" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That such preparation whitens normally dark skin, aids in the removal of blotches or pimples, or clears up the skin.

The said Charles D. Murray, Sr. and Lillie P. Murray, and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement.

The said Charles D. Murray, Sr. and Lillie P. Murray further agreed that in the dissemination of advertising, by the means and in the manner above set out, of the preparation now designated "Murray's Skin Bleach," 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 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 person to use the preparation is allergic or sensitive to it; *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 in both label and labeling, contain a caution or warning to the same effect. (Mar. 21, 1944.)

03206. Drug Preparation—Safety.—Nature's Herb Co., a California corporation, 1260 Market St., San Francisco, Calif., vendor-advertiser, was engaged in selling a drug product called "Plantlax" and agreed, in connection with the dissemination of future advertising, to cease and de-

sist 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. (Mar. 22, 1944.)

03207. **Drug Preparation—Safety.**—Gattis Chemical Co., a Tennessee corporation, 214–216 Woodland St., Nashville 6, Tenn., vendor-advertiser, was engaged in selling a drug product called "Gattis' Crack Shot Pills" 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. (Mar. 29, 1944.)

03208. **Poultry Food Product—Qualities, Properties or Results and Scientific or Relevant Facts.**—Allied Minerals, Inc., a corporation, West Chelmsford, Mass., vendor-advertiser, engaged in selling a poultry food product designated "Limeroll"; and Byron H. Clark, and Harriet B. Clark, copartners trading as The Yankee Writing Service, Guilford, Conn., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Allied Minerals, Inc. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that said product will:

- (a) Always insure proper grinding of the feed.
- (b) Provide the exact insoluble grit or calcium carbonate requirements of birds, when the exact "insoluble grit requirements" are unknown.
- (c) Afford the right amount of calcium carbonate to effect a correct balance, when the "right amount" is unknown.

The said Allied Minerals, Inc., Byron H. Clark and Harriet B. Clark, and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 5, 1944.)

03209. **Salad Oil—Comparative Merits, Qualities, Properties or Results and Scientific or Relevant Facts.**—Corn Products Refining Co., a corporation, 17 Battery Place, New York, N. Y., vendor-advertiser, engaged in selling a salad oil designated "Mazola"; and C. L. Miller and G. V. Carhart, individuals and copartners trading as C. L. Miller Co., a partnership, 521 Fifth Avenue, New York 17, N. Y., advertising agents, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Corn Products Refining Co. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That very few foods yield a food factor which Mazola supplies.
- (b) That linoleic acid occurs in Mazola in a form which needs no digestion.
- (c) That the linoleic acid in Mazola helps to keep the brain active, nerve or body cells fortified, the skin soft or hair lustrous.

- (d) That a dressing prepared from Mazola overshadows a fresh salad in food value.
- (e) That 2% or any other definitely stated percentage or amount of linoleic acid is indispensable in the daily diet.
- (f) That without linoleic acid one cannot think, act or look his best.
- (g) That the linolate in Mazola is effective in regulating normal body functions.

The said Corn Products Refining Co., C. L. Miller and G. V. Carhart, 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. (Apr. 11, 1944.)

03210. Medicinal Preparation—Qualities, Properties or Results.—Consolidated Royal Chemical Corporation, a corporation operating under the trade name of Consolidated Drug Trade Products, 544 South Wells St., Chicago, Ill., vendor-advertiser, engaged in selling a medicinal preparation designated New Peruna Tonic; and Benson & Dall, Inc., a corporation, 327 South LaSalle St., Chicago, Ill., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Consolidated Royal Chemical Corporation agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That the product will prevent or cure colds or shorten the duration of colds.
- (b) That this preparation will relieve colds or is of value for the treatment of symptoms of colds other than what effect it may have as an expectorant.
- (c) That this product will build resistance to colds or will help or aid resistance to colds or that it will ward off colds or keep one free from colds.
- (d) That this preparation will restore energy or increase weight, strength or vigor or have any effect upon such conditions except insofar as it may act as a tonic.
- (e) That this product will stimulate vital functions or act as a conditioner.
- (f) That this preparation will stimulate digestion or is of benefit to those whose digestive power has been diminished.

The said Consolidated Royal Chemical Corporation and Benson & Dall, 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. (Apr. 11, 1944.)

03211. Jewelry—Nature of Business and Product, Success, Use or Standing, Hand Made, Lifetime and Price.—N. J. McMahon, Edward Larson, and B. A. Ecker, copartners, trading as The Diamond Man, 205 North Michigan Ave., Chicago, Ill., vendor-advertisers, were engaged in selling finger rings and agreed, in connection with the dissemination of future advertising, to cease and desist from:

- (a) The use of the word "diamond" as a part of their trade name until such time as a substantial part of the business in which they are engaged shall consist of the buying or selling of genuine diamonds.
- (b) Using the words "solitaire replica diamond ring," or "Replica diamond solitaire," or other word or words of like meaning as descriptive of or in connection with any ring inset or other product which is not in fact an exact reproduction of a diamond with the essential hardness, properties and characteristics thereof.
- (c) Representing that Hollywood stars, social leaders, stage stars, celebrities, and millionaires wear their rings.
- (d) Representing that any of their rings are set with diamonds or gems.
- (e) That machine-made rings are made by hand.

(f) By use of the word "Lifetime," or otherwise, that their rings will last for a lifetime, or will be serviceable for any period of time greater than can reasonably be estimated as the approximate usable existence thereof.

(g) That any quoted price is the C.O.D. or delivery price of their rings when such price does not include all charges a purchaser is required to pay in order to obtain delivery.

The said N. J. McMahon, Edward Larson and B. A. Ecker, and each of them, agreed not to publish or cause to be published any testimonials containing any representations contrary to the foregoing agreement. (Apr. 11, 1944.)

03212. Dry Dog Food Preparation—Composition.—Newell H. Schooley, an individual, doing business as Schooley & Son, Luzerne, Pa., and Cargill, Inc., a corporation, 761 Chamber of Commerce, Minneapolis, Minn., vendor-advertisers, were engaged in selling a dry dog food preparation designated "Blue Streak Dog Ration," sometimes referred to as "Blue Streak Dog Food" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that such product contains meat.

Newell H. Schooley and Cargill, 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. (Apr. 11, 1944.)

03213. Cosmetic and Food—Qualities, Properties or Results, Composition, Etc.—Howard Inches Products, Inc., a corporation, doing business under its corporate name and under the trade names Inches Laboratories, and Assisto Foods, Chalfont, Pa., vendor-advertiser, was engaged in selling a cosmetic variously known as "Howard Inches Nite Caps," "Nite Caps Cream" or "Nite Caps," and a food which is known as "Papaya Preparation" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

A. That the said preparation:

- (a) Is of any value in the treatment of acne or any other skin ailment.
- (b) Cleanses the skin pores of dirt or any other foreign substance.
- (c) Does not make the skin greasy.
- (d) Relieves pain incident to any type of burn.
- (e) Produces an exfoliation of the skin.
- (f) Enhances the appearance of a user's complexion after one or more applications.
- (g) Is not a cosmetic.
- (h) Contains nutritional factors favorable to proper care of the skin,

B. Furthermore, that cosmetics are harsh or irritating to the skin.

It is further agreed by Howard Inches Products, Inc. that in connection with the dissemination of advertising, by the means and in the manner above set out, of a preparation now designated "Papaya Preparation," 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 and from representing, directly or by implication:

C. That there is any correlation between the results obtained in laboratory experiments relative to the digestive properties of papain and the results which may be expected by ingestion of Papaya Preparation.

D. That the said preparation:

- (i) Is or contains the most powerful digestive known.
- (j) Is capable of cleansing the intestinal tract.
- (k) Is capable of soothing the stomach.
- (l) Contains any effective or significant amounts of Vitamins B, D, or G.

The said Howard Inches Products, Inc. further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representation contrary to the foregoing agreement. (Apr. 21, 1944.)

03214. Medicinal Preparation—Qualities, Properties or Results.—Sears, Roebuck and Co., a corporation, 925 South Homan Ave., Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation designated "Super-Kaps" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that Super-Kaps will:

- (a) Beneficially affect the processes of digestion except where and to the extent that faulty digestion may be known to be due to an insufficient intake of Vitamin B₁.
- (b) Prevent infection or help build up resistance to colds, coughs or other similar infections unless expressly limited to those instances in which bodily resistance has been or is being lowered due to an insufficient intake of Vitamin A.
- (c) Correct nervous conditions or be of any value for nervousness except where and to the extent that much nervousness may be known to be due to a lack of Vitamin B₁ in the diet.
- (d) Beautify the user.

The said Sears, Roebuck and Co. further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (May 8, 1944.)

03215. Gasoline Additive Agent—Qualities, Properties or Results and Comparative Merits.—Radiator Specialty Co., a corporation, 1700-1900 Dowd Road, Charlotte, N. Car., vendor-advertiser, was engaged in selling a certain gasoline additive agent designated Nu-Power and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) By use of the words "builds up your gasoline," or otherwise, that the mixture of Nu-Power with gasoline has any effect upon the normal fuel value or energy of such gasoline.
- (b) That the results which may be expected through use of Nu-Power with gasoline amount to a 25% increase in mileage or to any other definitely stated percentage of increase in mileage.
- (c) That Nu-Power differs in any material respect from other products popularly known as "tune-up" oils except to the extent that its intended use may differ from the use generally ascribed to such other popularly known products.
- (d) That Nu-Power keeps spark plugs clean.
- (e) That Nu-Power eliminates gas knocks or motor "ping."

The said Radiator Specialty Co. agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (May 12, 1944.)

03216. Dry Dog Food Preparation—Composition.—Flag Pet Food Corporation, a corporation, 108 South St., New York, N. Y., vendor-advertiser, was engaged in selling a certain dry dog food preparation designated "Flag Dog Food" and agreed, in connection with the dissem-

ination of future advertising, to cease and desist from representing directly or by implication, that Flag Dog Food contains meat.

The Flag Pet Food Corporation further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representations contrary to the foregoing agreement. (Apr. 17, 1944.)

03217. Dry Dog Food Preparation—Composition.—Peck Advertising Agency, Inc., a corporation, 400 Madison Ave., New York, N. Y., advertising agent, was engaged in the business of conducting an advertising agency which disseminated advertisements for Flag Dog Food on behalf of Flag Pet Food Corporation and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that Flag Dog Food contains meat.

Peck Advertising Agency, Inc., further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representations contrary to the foregoing agreement. (Apr. 17, 1944.)

03218. Medicinal Preparation—Qualities, Properties or Results.—Eugénie Genier Widmer, and Roger Aujard-Katot, copartners doing business as Eugénie-Roger, 512 Fifth Ave., New York, N. Y., vendor-advertisers, were engaged in selling a medicinal preparation designated No. 625, 625 Lotion Base and No. 625 Astringent Lotion Base, and formerly known as No. 511 Lotion and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That the said preparation will have any effect in reducing the measurement of any part of the body to which it is applied or in causing a reduction in body weight.

The said Eugénie Genier Widmer and Roger Aujard-Katot, and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 17, 1944.)

03219. Drug Preparation—Qualities, Properties or Results and Safety.—Jesse McDaniel, an individual trading under the name of Jesse McDaniel, Pharmacist, 939 East Euclid, Detroit 11, Mich., vendor-advertiser, was engaged in selling a drug preparation called "Sal-Vi" 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 or cure rheumatism.
- (b) That it will prevent or cure pains in the back, legs, muscles, joints, or rheumatic pains or gas pains.

It is further agreed by Jesse McDaniel that he will forthwith 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.

The said Jesse McDaniel further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 24, 1944.)

03220. Medicinal Preparations—Qualities, Properties or Results and Professional Indorsement.—Interstate Laboratories, Inc., a corporation,

411 West Market St., Louisville, Ky., vendor-advertiser, was engaged in selling five medicinal preparations designated "Vitawine," "Oculine Eye Pads," "Oculine Eye Salve," "Oculine Eye Bath" and "Oculine Eye Drops" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Vitawine:

1. Will guard the prime of life, enable one to be normally energetic at all times, or will increase strength or energy.
2. Will have a beneficial therapeutic effect in the treatment of muscular pains or stiffness.
3. Will replace liver extract in the treatment of all types of anemia.
4. Will improve nutrition, unless qualified to refer only to those cases where the diet is deficient in Vitamin B₁, Vitamin B₂, nicotinic acid or iron.
5. Will improve the assimilation of food or cause digestive regularity.
6. Will be of value in the treatment of anemias, unless qualified to refer only to those simple anemias which may arise solely from a deficiency of iron.
7. Or some other concentrated form of vitamins is the only source which will provide normal requirements of vitamins.
8. Will cure conditions caused by a deficiency of Vitamin B₂.
9. Is necessary for perfect health or growth.
10. Will be of aid in the prevention of skin disorders of the acne type.
11. Will furnish a catalyst in energy metabolism.
12. Will aid in the prevention of premature onset of senility or in the maintenance of normal libido.
13. Will aid in the sustaining of normal heart action in all instances.
14. Will aid in the prevention of headaches or dizziness.
15. Has some unique property in connection with the nourishment of brain tissues not possessed by ordinary foodstuffs containing appropriate quantities of vitamins.
16. Will aid in the prevention of worry or forgetfulness.
17. Will have a beneficial therapeutic effect in the treatment of constipation, flatulence or indigestion.
18. Will correct underweight conditions.
19. Is prescribed by physicians in all geographic sections of the United States.
20. Will cure debility.
21. Will enable the aged to feel youthful.
22. Will reenergize or tone up the system causing it to function normally.

(b) That Oculine Eye Pads, Oculine Eye Salve, Oculine Eye Bath or Oculine Eye Drops

1. Will have a beneficial therapeutic effect in the treatment of eye disorders.
2. Will have value in effecting or maintaining a healthy condition of the eyes.

(c) That Oculine Eye Pads

1. Will correct conditions of the eyes caused by overstrain.
2. Will restore brilliance or sparkle to eyes lacking such characteristics.

(d) That Oculine Eye Salve will cure disorders of the eyes.

The Interstate Laboratories, Inc. further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (May 29, 1944.)

03221. Drug Preparation—Qualities, Properties or Results and Safety.—Ted I. Edelman, an individual trading as Edelman Drug Co., 22 South Main St., Sheridan, Wyoming, vendor-advertiser, was engaged in selling a drug preparation called "Trim Tablets" 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 reduce the body weight.
- (b) That the said product is safe to use.
- (c) That the said product will enable one to regain one's normal weight or that it will repropotion the figure.

It is further agreed by the said Ted I. Edelman that he will forthwith 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.

The said Ted I. Edelman further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 30, 1944.)

03222. Bread—Qualities, Properties or Results and Composition.—The Kroger Grocery & Baking Co., a corporation, 35 East Seventh St., Cincinnati, Ohio, vendor-advertiser, engaged in selling a certain bakery product designated "Kroger's Clock Bread"; and The Ralph H. Jones Co., a corporation, 3100 Carew Tower, Cincinnati 2, Ohio, advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of The Kroger Grocery & Baking Co. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That Kroger's Clock Bread has a tonic effect upon the nerves.
- (b) That this bread will correct dietary deficiencies or supply all the necessary body-building food elements.
- (c) That this bread contains any "super-charge" health factor.

The said The Kroger Grocery & Baking Co. and The Ralph H. Jones 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. (June 6, 1944.)

03223. Dog Food—Composition.—Arcady Farms Milling Co., a corporation, 223 West Jackson Boulevard, Chicago, Ill., advertiser-vendor, was engaged in selling a dog food designated Arcady Dog Ration and agreed that in the dissemination of advertising of "Arcady Dog Ration," it will forthwith cease from representing, directly or by implication, that Arcady Dog Ration contains meat. (June 6, 1944.)

03224. Medicinal Preparation—Composition and Safety.—W. T. Durban, an individual trading as The Prunol Co., 450 Houston St. N. E., Atlanta, Ga., vendor-advertiser, was engaged in selling a medicinal preparation designated Prunol and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisement in which the brand name Prunol is used without disclosing in type of equal size and conspicuousness that the said product contains phenolphthalein and from representing, directly or by implication:

That the laxative action of Prunol arises solely or principally from its prune concentrate and mineral oil content.

It is further agreed by W. T. Durban that in the dissemination of advertising, by the means and in the manner above set out, of a medicinal preparation now designated "Prunol," or any other preparation of substantially the same composition and possessing substantially the same properties, whether sold under that name or any other name, he will forthwith cease and desist from disseminating any advertisements which fail 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 W. T. Durban further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representation contrary to the foregoing agreement. (June 14, 1944.)

03225. Dog Food—Composition.—Staley Milling Co., a corporation, 1717 Armour Road, Kansas City 16, Mo., vendor-advertiser, engaged in selling a dog food designated "Staley Dog Food" and Potts-Turnbull Co., a corporation, 912 Baltimore Avenue, Kansas City 6, Mo., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named product on behalf of Staley Milling Co. agreed, in connection with the dissemination of future advertising, to cease and desist from using the term "meat," or any other term of similar import or meaning to designate or describe meat meal, or any product which is not meat in fact.

Staley Milling Co. and 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. (June 19, 1944.)

03226. Chicks, Eggs, Pullets and Cockerels—Comparative Merits and Qualities, Properties or Results.—Wallace J. Tibbals and Rose A. Tibbals, copartners doing business under the trade name of Roselawn Poultry Farm, Rural Route 10, Dayton, Ohio, advertiser-vendor, was engaged in selling chicks, eggs, pullets and cockerels and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That respondents' hens were first in official egg-laying production when the records made by them in official contests were not better than those of all other entries.

(b) That respondents' hens were first in official livability when in official contests they did not have a lower mortality record than all other entries.

(c) That respondents' hens attained any record for egg-laying or livability in any class in any contest when such class was not officially established by the organization sponsoring such contest.

The said Wallace J. Tibbals and Rose A. Tibbals, and each of them, further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (June 20, 1944.)

03227. Medicinal Preparation—Qualities, Properties or Results and Composition.—Chrisalty Laboratories, a corporation, 49 Dickerson St., Newark, N. J., vendor-advertiser, engaged in selling a medicinal preparation designated "B's" and Chambers & Wiswell, Inc., a corporation, 38 Newbury St., Boston, Mass., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named product on behalf of Chrisalty Laboratories agreed,

in connection with the dissemination of future advertising, to cease and desist from representing, directly or by implication, that the preparation:

(a) Will have a beneficial therapeutic effect in the treatment of fatigue, nervous irritation, nervousness, nervous fatigue, nervous exhaustion, jittery nerves, run-down —, over-worked —, all fagged out —, all tired out —, cranky —, lazy —, weary —, lopy —, dispirited —, under par feeling, lack of pep, loss of appetite, or lack of energy.

(b) Will prevent nervous conditions without confining such representations to those conditions which would be caused by a deficiency of Vitamin B₁ in the diet.

The said Chrisalty Laboratories and Chambers & Wiswell, Inc., and each of them, further agreed that they will cease and desist from representing through the use of the brand name "B₁'s," in the dissemination of description of such preparation, that said preparation contains that factor of the Vitamin B Complex which has been designated Vitamin B₁ and that said preparation contains four of the factors which are known to make up the Vitamin B Complex.

The said Chrisalty Laboratories and the said Chambers & Wiswell, 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. (June 23, 1944.)

DECISIONS OF THE COURTS

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION

AMERICAN CHAIN & CABLE CO., INC. ET AL. v. FEDERAL TRADE COMMISSION¹

No. 5062—F. T. C. Dock. 4443

(Circuit Court of Appeals, Fourth Circuit. Jan. 1, 1944)

CEASE AND DESIST ORDERS—AMBIGUITY.

A cease and desist order issued by Federal Trade Commission must be unambiguous in its prohibitive terms. Federal Trade Commission Act Sec. 5, as amended, 15 U. S. C. A. sec. 45.

CEASE AND DESIST ORDERS—METHODS, ACTS, and PRACTICES—CONCERT OF ACTION—PROHIBITIONS—“CONTINUING OR COOPERATING IN ANY AGREED OR PLANNED COMMON COURSE OF ACTION”—WHETHER AMBIGUOUS OR PROHIBITIVE OF CONTINUED INDEPENDENT COURSE OF ACTION BY SEPARATE MANUFACTURERS.

Where Federal Trade Commission found that manufacturers of wire rope had established illegal restraints, Commission's order directing respondent manufacturers to cease and desist from continuing or cooperating in any agreed or planned common course of action was unambiguous and would not be amended by insertion of a declaration that nothing in order was intended to prohibit any manufacturer from independently continuing to engage in any course of action.

(The syllabus, with substituted captions, is taken from 139 F. (2d) 622)

On petition for review of order of Commission, order affirmed.

Mr. Sumner S. Kittelle, of Washington, D. C. (*Feldman, Kittelle, Campbell & Ewing*, of Washington, D. C., on the brief), for petitioners.

Mr. Walter B. Wooden, assistant chief counsel, Federal Trade Commission, of Washington, D. C. (*W. T. Kelley*, chief counsel, Federal Trade Commission, of Washington, D. C., on the brief), for respondent.

Before PARKER, SOPER, and DOBIE, *Circuit Judges*.

SOPER, *Circuit Judge*:

The petition of the American Chain and Cable Company, Inc. and other manufacturers of wire rope seeks to review a modified order of the Federal Trade Commission passed on May 25, 1943 whereby it was directed that the petitioners, who were then respondents to a complaint issued by the Commission “do forthwith cease and desist from continuing, entering into, or carrying out any agreement, understanding, combination or conspiracy, and from continuing or co-operating in any agreed or planned common course of action, between or among any two or more of said respondents, or be-

¹ Reported in 139 F. (2d) 622. For case before Commission, see 36 F. T. C. 790. For petition in nature of mandamus, see *infra* at p. 896.

tween any one or more of said respondents and any person, association or corporation not a party to this order, to do or perform any of the following acts or things:" (Italics supplied). The acts prohibited by the order include fixing the prices or conditions of sale of wire rope to dealers, distributors and users thereof, establishing and maintaining territorial delivered price zones, and making sales upon a delivered price basis under a zone system whereby the cost to all customers of any particular class is made identical to all destinations within a particular zone.

The Commission found that the petitioners control the production and sale of 85 per cent of the wire rope produced in the United States. They are members of the Wire Rope & Strand Manufacturers Association which was organized under a Code of Fair Competition pursuant to the National Industrial Recovery Act of 1933. Under the Code, list prices, discounts and classifications became uniform amongst the petitioners and a system of delivered prices was adopted on the basis of zones into which the country was divided. After the National Industrial Recovery Act was declared unconstitutional by the Supreme Court the petitioners agreed amongst themselves to cooperate in maintaining the standards set out in the Code. [623] The Commission concluded that these practices unreasonably restrained trade and constituted unfair competition to the prejudice of the public and of competitors in violation of § 5 of the Federal Trade Commission Act, 52 Stat. 111, 15 U. S. C. A. 45. The findings and conclusions of the Commission are not disputed; and the order of the Commission was designed to put an end to the illegal practices in which the petitioners were engaged.

The petitioners challenge only the terms of the Commission's order, particularly the words italicized in the foregoing quotation. The original order, which was passed on December 4, 1942, differed in that the preamble directed that the manufacturers "do forthwith cease and desist from entering into, continuing, co-operating in, or carrying out *any 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." (Italics supplied).

The order was recast in its present form after the court pointed out in *Salt Producers' Assn. v. Federal Trade Commission*, 7 Cir., 134 F. (2d) 354 [36 F. T. C. 1110], that the phrase "common course of action" may be used to denote either a course of action which is adopted independently and coincidentally by two or more persons as the natural result of competition, or a course of conduct adopted pursuant to an agreement or conspiracy. To correct this ambiguity the court directed that the word "planned" be inserted before the phrase "common course of action" so as to make clear that only cooperative or concerted action was intended to be condemned. After this decision the Commission amended its order in the instant case and inserted the words "agreed or planned" before the phrase whose meaning had been found to be uncertain.

Notwithstanding this modification the petitioners fear that violation of the provisions of the order may be charged if, in the future, two or more of them, acting independently and without concert, offer the same prices to customers or engage in the same trade practices; or if one or more of them, acting independently and without concert to meet competition, offer to the trade the same terms which their competitors offer pursuant to a course of action which the latter have agreed to maintain. It is said that under the order as now phrased any course of action taken in concert in the

past will be forever banned in the future, no matter how distant, even if it is adopted independently by two or more of the petitioners in order to meet competition, and that the mere continuance by any petitioner of his previous prices and practices will subject him to condemnation if they are also employed by any other petitioner or by two or more individuals other than the petitioners in the same line of business. These dangers, it is said, are greatly increased under business conditions prevailing in the present war emergency, particularly the critical scarcity of metal products which exists and the price ceilings which have been imposed by the Office of Price Administration, which tend to produce uniformity of price at the highest lawful level entirely irrespective of agreement or understanding between competitors in the trade.

Consequently the petitioners suggested to the Commission, without success, that the order be further clarified by inserting a declaration that nothing therein is intended to prohibit any manufacturer from independently continuing to engage in any course of action. The Commission on its part takes the position that the order in its present form lawfully effectuates the purpose of the statute and is free from ambiguity, while the additional modification proposed might seem to justify a manufacturer in continuing a course of conduct in violation of the law.

It does not seem to us that the order needs further clarification. It is of course true that a cease and desist order must be certain and unambiguous in its prohibitive terms because business men must operate under it at their peril. *Salt Producers' Assn. v. Federal Trade Commission*, 7 Cir., 134 F. (2d) 354 [36 F. T. C. 1110]. *Labor Rel. Bd. v. Express Publishing Co.*, 312 U. S. 426, 433; *Cream of Wheat Co. v. Federal Trade Commission*, 8 Cir., 14 F. (2d) 40, 50 [10 F. T. C. 724]. *Educators Assn. v. Federal Trade Commission*, 2 Cir., 108 F. (2d) 470-3 [30 F. T. C. 1614]; *Shakespeare Co. v. Federal Trade Commission*, 6 Cir., 50 F. (2d) 758, 760 [15 F. T. C. 609]; *Dr. W. B. Caldwell v. Federal Trade Commission*, 7 Cir., 111 F. (2d) 889, 891 [30 F. T. C. 1670]. But, there can be no [624] doubt that to sustain a charge of violation of the order in this case it must be shown that the prohibited acts have been performed as the result of an agreement or conspiracy, or as the result of a common course of action, that has been agreed upon or planned between two or more persons. If, as the result of such agreement or plan, the petitioners continue to cooperate in a common course of action which has been found to violate the statute, they make themselves liable to the prescribed penalties; and they have no just cause for complaint if in appraising the evidence in any case the triers of fact seek to determine whether there is any relation or connection between their past illegal acts and the conduct under examination. If such a relation or connection is found it may properly be condemned as a continuance of an unlawful conspiracy. Of course the influence of changed business conditions must be taken into account in reaching a decision; but there is no reason to believe that the Federal Trade Commission will fail in its duty in this respect or that the courts will hesitate to modify or reverse an order that is based on inferences not supported by the evidence.

Affirmed.

PHILIP R. PARK, INC., ET AL. v. FEDERAL
TRADE COMMISSION¹

No. 10482—F. T. C. Dock. 4504

(Circuit Court of Appeals, Ninth Circuit. Jan. 6, 1944)

Per curiam order modifying, pursuant to stipulation of counsel, cease and desist order issued by the Federal Trade Commission in Docket 4504, 36 F. T. C. 541, requiring respondents, their representatives, etc., in connection with the offer and sale of livestock feeds or feed supplements for cattle and other livestock known as "Man-Amar" or "Cattle ManAmar," to cease and desist from disseminating any advertisements which represent that said feeds have any therapeutic value in the treatment of any germ or infectious disease of cattle, or in the treatment or prevention of any breeding disorder of cattle or of retained placenta; and from representing that said product has any therapeutic value in the treatment or prevention of mastitis, any germ or infectious disease, any breeding disorder, retained placenta, infectious abortion or Bang's disease; that it constitutes a better supplement to feeds or a better feed for cattle than all others on the market; or that use thereof will eliminate the necessity of veterinary treatment.

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

Mr. W. T. Kelley, Chief Counsel, and *Mr. Joseph J. Smith*, Asst. Chief Counsel, both of Washington, D. C., for the Commission.

Before *WILBUR*, *GARRECHT*, and *HEALY*, *Circuit Judges*.

PER CURIAM.

Upon consideration of the stipulation of counsel for respective parties for modification of the order to cease and desist issued by the Federal Trade Commission herein under date of April 27, 1943, it is ordered that the order to cease and desist of the Federal Trade Commission herein be modified as stipulated to, and that a decree of this Court be filed and entered affirming and enforcing said order as so modified and that the petition of Philip R. Park, Inc., et al., for review of said order be dismissed.

NOTE.—Said decree, entered on May 12, 1944, is set forth below:

FINAL DECREE MODIFYING, AFFIRMING AND ENFORCING
ORDER TO CEASE AND DESIST

The petitioners herein, having filed with this Court on July 1, 1943, their petition to review and set aside an order to cease and desist issued by the Federal Trade Commission, respondent herein, on April 27, 1943, under the provisions of the Federal Trade Commission 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 executed a stipulation dated December 24, 1943, agreeing that Subparagraph 5 of the second part of said order shall be modified by substituting the word "all" for the word "any," and by adding the letter "s" to the word "feed" immediately following the word "other" and to the word "supple-

¹ Reported in 142 F. (2d) 460. For case before the Commission, see 36 F. T. C. 541, and, as modified, 38 F. T. C. 279.

ment" immediately following the word "feed," so that, as so modified, said paragraph shall read as follows:

"5. That respondents' product is a better supplement to feeds or constitutes a better feed for cattle than all other feeds or feed supplements on the market"; that said petition for review shall be dismissed; and that this Court shall enter its decree modifying said order as hereinabove set forth, and affirming and enforcing said order as so modified—

Now, therefore, it is hereby ordered, adjudged and decreed that the petition for review filed by the petitioners herein under date of July 1, 1943, be, and the same hereby is, dismissed.

And it is hereby further ordered, adjudged and decreed that Subparagraph 5 of the second part of the aforesaid order to cease and desist issued by the Federal Trade Commission, respondent herein, on April 27, 1943, be, and the same hereby is, modified by substituting the word "all" for the word "any," and by adding the letter "s" to the word "feed" immediately following the word "other" and to the word "supplement" immediately following the word "feed," and that said order to cease and desist, as so modified, be, and the same hereby is, affirmed.

And it is hereby further ordered, adjudged and decreed that petitioner Philip R. Park, Inc., a corporation, its officers, representatives, agents, and employees, and petitioners Philip R. Park, John S. Hunt, Philip E. Iversen, and Harrison H. Havner, individually and as officers and directors of Philip R. Park, Inc., a corporation, and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of livestock feeds or feed supplements for cattle and other livestock known as "ManAmar" or "Cattle ManAmar," 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 petitioners' product has any therapeutic value in the treatment of any germ or infectious disease of cattle or that its use is of any value in the prevention of any such disease or condition.

b. That petitioners' product has any therapeutic value or beneficial effect in the treatment of any breeding disorder of cattle or is of any value in preventing such disorder.

c. That petitioners' product has any therapeutic value or beneficial effect in the treatment of retained placenta or that its use will have any value in preventing such condition.

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 petitioners' product, which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions thereof.

And it is hereby further ordered, adjudged and decreed that petitioner Philip R. Park, Inc., a corporation, its officers, representatives, agents, and employees, and petitioners Philip R. Park, John S. Hunt, Philip E. Iversen, and Harrison H. Havner, individually and as officers of Philip R. Park, Inc., a corporation, 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 livestock feeds or feed supplements for cattle and other livestock known as "ManAmar" or "Cattle ManAmar," or any other product of substantially similar composition or possessing substantially similar properties, 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:

1. That petitioners' product will have any therapeutic value in the treatment of mastitis or that its use is of any value in the prevention of such condition.

2. That petitioners' product has any therapeutic value in the treatment of any germ or infectious disease of cattle or that its use is of any value in the prevention of any such disease or condition.

3. That petitioners' product has any therapeutic value or beneficial effect in the treatment of any breeding disorder of cattle or that its use is of any value in preventing such disorder.

4. That petitioners' product has any therapeutic value in the treatment of retained placenta, infectious abortion, or Bang's disease, or that its use will have any beneficial effect upon such conditions or any value in preventing such conditions.

5. That petitioners' product is a better supplement to feeds or constitutes a better feed for cattle than all other feeds or feed supplements on the market.

6. That the use of petitioners' product will eliminate the necessity of veterinary treatment.

And it is hereby further ordered, adjudged and decreed that, within 90 days after the entry of this decree, 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.

It is hereby stipulated and agreed that the above and foregoing decree shall be entered in this case.

WARNER'S RENOWNED REMEDIES CO. v. FEDERAL
TRADE COMMISSION¹

No. 8268—F. T. C. Dock. 4063

(United States Court of Appeals, District of Columbia. Jan. 17, 1944)

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—
QUALITIES OR PROPERTIES OF PRODUCT.

Evidence supported findings of Federal Trade Commission that manufacturer had represented its preparations to be valuable in the treatment of functional sterility in women and that the preparations possesses no therapeutic value for that purpose, and justified order compelling manufacturer to cease and desist advertising its preparations as valuable for that purpose.

(The syllabus, with substituted caption, is taken from 140 F. (2d) 18)

On petition for review of order of Commission, order affirmed.

Mr. John A. Nash, of Washington, D. C., with whom *Mr. Horace J. Donnelly*, of Washington, D. C., was on the brief, for petitioner.

Mr. Joseph J. Smith, Jr., assistant chief counsel, Federal Trade Commission, of Washington, D. C., with whom *Mr. W. T. Kelley*, chief counsel, of Washington, D. C., was on the brief, for respondent. *Mr. James W. Nichol*, of Washington, D. C., also entered an appearance for respondent.

Before GRONER, Chief Justice, and DOBIE* and ARNOLD, Associate Justices.

PER CURIAM:

Petitioner asks for a review of an order of the Federal Trade Commission compelling it to cease and desist advertising its preparations as valuable in the treatment of sterility in women. The order was based on findings by the Commission that petitioner had represented its preparations to be valuable in the treatment of functional sterility and that these preparations possessed no therapeutic value for that purpose. These findings are amply supported by the evidence.

The order of the Commission is, therefore, affirmed.

¹ Reported in 140 F. (2d) 18. For case before Commission, see 34 F. T. C. 891. Certiorari denied May 29, 1944, 64 S. Ct. 1267.

* Sitting by assignment of the Chief Justice of the United States, pursuant to the provisions of the Act of December 29, 1942, entitled "An Act to amend the Judicial Code to authorize the Chief Justice of the United States to assign circuit judges to temporary duty in circuits other than their own."

HOUBIGANT, INC. ET AL. v. FEDERAL TRADE
COMMISSION¹

No. 101—F. T. C. Dock. 3343

(Circuit Court of Appeals, Second Circuit. Jan. 27, 1944)

JURISDICTION OF COMMISSION—MISBRANDING OR MISLABELING OF PERFUMES—FOOD,
DRUG AND COSMETIC ACT—EFFECT.

The Federal Food, Drug and Cosmetic Act of 1938 did not vest in Federal Security Administration exclusive jurisdiction over labeling of perfumes. Federal Food, Drug and Cosmetic Act Sec. 1 et seq., 21 U. S. C. A. Sec. 301 et seq.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—
TRADE NAMES—SOURCE OR ORIGIN OF PRODUCT—PLACE.

The Federal Trade Commission could order distributor of perfumes to desist from using French or other foreign words as trade-names for toilet preparations compounded in United States without also stating that such preparations were compounded in United States. Federal Trade Commission Act Sec. 5, as amended, 15 U. S. C. A. Sec. 45; Federal Food, Drug and Cosmetic Act Sec. 1 et seq., 21 U. S. C. A. Sec. 301 et seq.

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—STAY—IF
NO APPLICATION THEREFORE TO COMMISSION, AND RECORD BARE OF JUSTIFICATION FOR.

Where no application was made to Federal Trade Commission to stay Commission's order requiring distributors of perfumes to desist from using in trade-names for their products certain words indicative of French or foreign origin of toilet preparations compounded in United States without stating products were compounded in United States, and record contained no facts justifying Circuit Court of Appeals in giving distributors two years in which to make necessary adjustments in their markings even if court had such power, it would refuse to exercise it.

(The syllabus, with substituted captions, is taken from 139 F. (2d) 1019)

On petition to review order of Commission, order affirmed.

Mock & Blum, of New York City, for petitioners.

Mr. W. T. Kelley, chief counsel, *Mr. Joseph S. Smith, Jr.*, assistant chief counsel, and *Mr. Donovan R. Divet*, special attorney, all of Washington, D. C., for respondent.

Before SWAN, CLARK, and FRANK, *Circuit Judges*.

PER CURIAM:

In March 1938 the Federal Trade Commission issued its complaint against the petitioners charging them with the use of unfair methods of competition in commerce in violation of section 5 of the Act of September 26, 1914, 15 U. S. C. A. § 45. After hearings the Commission on April 16, 1942 made findings of fact and issued its order requiring the petitioners to desist (1) from using upon their products the words "Paris" or "Paris, France" or other terms indicative of foreign origin, and (2) from using the terms "Houbigant," "Cheramy" or any other French or foreign words as

¹ Reported in 139 F. (2d) 1019. For case before Commission, see 34 F. T. C. 1073. Certiorari denied Nov. 6, 1944, 65 S. Ct. 116.

trade names for toilet preparations compounded in the United States¹ without also stating that such products were compounded in the United States. The petitioners object only to (2) of the restraining order.

[1020] The contention that the Federal Food, Drug and Cosmetic Act of June 25, 1938, 21 U. S. C. A. § 301 *et seq.*, vested in the Federal Security Administration exclusive jurisdiction over the labeling of perfumes has been rejected by this court. *Fresh Grown Preserve Corp. v. Federal Trade Comm.*, 125 F. (2d) 917, 919 [34 F. T. C. 1827]; *Justin Haynes & Co. v. Federal Trade Comm.*, 105 F. (2d) 988, 989 [29 F. T. C. 1578], cert. den. 308 U. S. 616. The restraint which the Commission's order imposes is substantially the same as in other cases which we have approved. *Etablissemments Rigaud v. Federal Trade Comm.*, 125 F. (2d) 590, 591 [34 F. T. C. 1811]; *Parfums Corday v. Federal Trade Comm.*, 120 F. (2d) 808 [33 F. T. C. 1797]; *Fioret Sales Co. v. Federal Trade Comm.*, 100 F. (2d) 358 [27 F. T. C. 1702].

The petitioners urge that if required to change their markings they should be given a period of at least two years in which to make the necessary adjustments. No application for a stay of enforcement of the order was made to the Commission. Whether this court has power to stay enforcement we need not now decide. See *El Moro Cigar Co. v. Federal Trade Comm.*, 107 F. (2d) 429, 432 (C. C. A. 4) [29 F. T. C. 1616]; *cf. H. N. Heusner & Son v. Federal Trade Comm.*, 106 F. (2d) 596, 598 (C. C. A. 3) [29 F. T. C. 1580]. Assuming that the power exists the record is barren of facts to justify its exercise.

The order is affirmed.

HERZFELD ET AL. v. FEDERAL TRADE COMMISSION¹

No. 151—F. T. C. Dock. 4222

(Circuit Court of Appeals, Second Circuit. Feb. 1, 1944)

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—BUSINESS STATUS—TRADE OR CORPORATE NAMES—"MILLS"—IF LEGEND "IMPORTERS AND WHOLESALERS," ETC., ADDED.

An order of Federal Trade Commission forbidding petitioners to use "Mills" as part of their title, or otherwise to represent that they manufactured the rugs which they sold, was justified by findings that a substantial number of retailers were misled by petitioners' title, even with the legend "Importers and Wholesalers of Floor Coverings" added, and that the title gave an opportunity to retailers to represent to buyers that petitioners manufactured rugs and so to make buyers believe that they were not paying a middleman's profit.

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—BUSINESS STATUS—TRADE OR CORPORATE NAMES—CONSUMER'S DECEPTION—IF RETAILER OPPORTUNITY FOR, THEREBY AFFORDED—WHETHER FINDING ACTUAL DECEPTION BY, RELIEF PRE-REQUISITE.

If there was a fair probability that ultimate consumer would be deceived by petitioners' title, in that title gave retailers an opportunity to represent to buyers

¹ Reported in 140 F. (2d) 207. For case before Commission, see 34 F. T. C. 958.

that petitioners manufactured rugs and that buyers were not paying a middleman's profit, Federal Trade Commission was authorized to prescribe some measure of relief without any finding that any retailers had ever in fact so deceived any buyers.

APPELLATE PROCEDURE AND PROCEEDINGS—METHODS, ACTS AND PRACTICES—UNFAIR METHODS OF COMPETITION—RELIEF—EXTENT AFFORDED—COMMISSION COMPETENCE IN DETERMINATION OF AS NOT DISTURBED BY COURT.

The Federal Trade Commission possesses competence in its special field which forbids court to disturb measure of relief which Commission thinks necessary to protect against unfair methods of competition.

(The syllabus, with substituted captions, is taken from 140 F. (2d) 207)

[208] On petition to review an order of Commission, order affirmed.

Mr. Ira M. Belfer, of New York City, for petitioner.

Mr. Eugene W. Burr, of Washington, D. C., for respondent.

Before L. HAND, AUGUSTUS N. HAND, and CHASE, *Circuit Judges*.

L. HAND, *Circuit Judge*:

This case comes before us on a petition to review that part of an order of the Federal Trade Commission which forbade petitioners to use the word, "Mills," as part of their title, or otherwise to represent that they manufactured the rugs which they sold. The only questions are whether the evidence was sufficient to justify the Commission's action, and whether the remedy provided was within its powers. The case was tried upon a stipulation of facts, which, so far as relevant to the appeal before us were as follows. The petitioners do business under the title "Stephen Rug Mills"; for nine years or more they had been engaged in the business of importing, distributing and selling cheap rugs to wholesale and retail dealers; they do not sell directly to customers. Before April, 1940, they controlled mills in Europe which manufactured rugs for them according to their designs, whose size, quantity and quality they determined, the whole output of the mills being made expressly for them. Since June, 1940, they have similarly controlled a rug mill in the United States: that is to say, they purchase and pay for all the raw material, which is made up only for them and upon their order; and they determine the size, color, weight, quality, and quantity of the rugs. They have a mortgage on much, if not all, of the property of the mill, and lease the premises on which it is situated; they own a majority of the shares, and one of them is a director, of a company which we assume to be identical with this mill. Since November, 1940, they have operated and controlled about twenty-two rug mills in China in the same way that they operate and control the mill just mentioned.

In all their sales they use their title, "Stephen Rug Mills," accompanied by a legend, in substantially smaller letters: "Importers and Wholesalers of Floor Coverings." The Commission polled a number of retail rug dealers taken at random from classified directories, and ascertained that a substantial portion of them prefer to purchase from manufacturers rather than from wholesalers; and that somewhat more than one fifth of them would assume from the petitioners' title and legend that they are not exclusively importers and wholesalers. The Commission found, among other matters that the title and legend had a tendency to mislead a substantial number of dealers and members of the purchasing public by mak-

ing them think that the petitioners were manufacturers of rugs; and particularly by placing in the hands of retail dealers a means by which "such dealers may be enabled to mislead and deceive a substantial portion of the purchasing public." Based upon this finding, it entered the order absolutely forbidding the use of the word, "Mills," in the title.

Obviously the stipulation justified the Commission in finding that a substantial number of retailers were misled by the title, even with the legend added; and the Commission was also right in finding that the title gave an opportunity to retailers to represent to buyers that the petitioners manufactured rugs, and so to make the buyers believe that they were not paying a middleman's profit. On the other hand, the stipulation did not say that any retailers had ever in fact so deceived any buyers, nor was it certain that they would do so. However, such a finding was not essential for some measure of relief, provided that there is a fair probability that the ultimate consumer would be deceived. *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483, 494 [4 F. T. C. 610]; *Federal Trade Commission v. Raladam Co.*, 316 U. S. 149, 152; *Federal Trade Commission v. Balme*, 23 F. (2d) 615 (C. C. A. 2) [34 F. T. C. 1843]; *Brown Fence & Wire Co. v. Federal Trade Commission*, 64 F. (2d) 934, 936 (C. C. A. 6) [17 F. T. C. 680]; *Pep Boys-Manny, Moe & Jack v. Federal Trade Commission*, 122 F. (2d) 158, 161 (C. C. A. 3) [33 F. T. C. 1807]; *Bockenstette v. Federal Trade Commission*, 134 F. (2d) 369 (C. C. A. 10) [36 F. T. C. 1106]. It does not follow that the relief granted should extend to an entire suppression of the word, "Mills"; and, if we thought ourselves free to control the remedy, we might be satisfied to modify the order by merely adding some such suffix as the Supreme Court thought adequate in *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212, 218; [209] and as we imposed in *Bear Mill Mfg. Co. v. Federal Trade Commission*, 98 F. (2d) 67 [27 F. T. C. 85]. Assuming that the distinction taken by the Court of Appeals of the District of Columbia in *Federal Trade Commission v. Army & Navy Trading Co.*, 88 F. (2d) 776 [24 F. T. C. 1601], is valid, it would not apply to the situation here; the petitioners are near enough to being manufacturers to justify their use of the title as it stands, provided all chance of deception were removed.

However, since *Federal Trade Commission v. Royal Milling Company*, *supra* (288 U. S. 212) [17 F. T. C. 664], was decided, the Supreme Court has as much circumscribed our powers to review the decisions of administrative tribunals in point of remedy, as they have always been circumscribed in the review of facts. Such tribunals possess competence in their special fields which forbids us to disturb that measure of relief which they think necessary. In striking that balance between the conflicting interests involved which the remedy measures, they are for all practical purposes supreme. *International Association of Machinists v. National Labor Relations Board*, 311 U. S. 72, 82; *Phelps Dodge Corp. v. National Labor Relations Board*, 313 U. S. 177, 198-200; *Virginia Electric & Power Co. v. National Labor Relations Board*, 319 U. S. 533, 541-543; *Williams Motor Co. v. National Labor Relations Board*, 128 F. (2d) 960, 965 (C. C. A. 8). It is true that all these decisions concerned the Labor Board, but that tribunal does not enjoy a position of peculiar authority, as the court has indicated in other connections. *Gray v. Powell*, 314 U. S. 402, 412, 413; *Dobson v. Commissioner*, 320 U. S. 489; *Commissioner v. Heininger*, 320 U. S. 467. In controversies about trade-marks, and particularly about trade-names and make-up, the question is almost always one of degree: i. e., how far the chance of deception outweighs the inconvenience, or worse, to the merchant inevitable in compelling him to change his mark,

his name, or his package. The decree marks the compromise which the court thinks adequate and necessary; it is the resultant of those unexpressed determinants which collectively we conceal under the term, "discretion." We do not forget that from time immemorial this duty has been entrusted to courts, but that is irrelevant. Congress having now created an organ endowed with the skill which comes of long experience and penetrating study, its conclusions inevitably supersede those of courts, which are not similarly endowed.

Order affirmed.

MILES LABORATORIES, INC. v. FEDERAL TRADE
COMMISSION, ET AL.¹

No. 8595—F. T. C. Docket 4993

(United States Court of Appeals, District of Columbia. Feb. 7, 1944)

COMMISSION PROCEDURE AND PROCEEDINGS—STIPULATIONS—AS ALTERNATIVE TO
COMPLAINTS.

Where Federal Trade Commission reached tentative conclusion that manufacturer's advertising of drugs failed to reveal sufficient facts and requested stipulation that manufacturer conform its advertising to Commission's construction of Federal Trade Commission Act, as an alternative to proceeding by Commission to seek to accomplish the same end through issuance of a complaint, the procedure was not objectionable. Federal Trade Commission Act, Secs. 1 et seq., 5 (b, d), 12 (a, b), 14 (a), 15 (a), 15 U. S. C. A. Secs. 46 (b, d), 52 (a, b), 54 (a), 55 (a).

COMMISSION PROCEDURE AND PROCEEDINGS—JUDICIAL INTERVENTION—DISTRICT
COURT—INTERLOCUTORY DECISIONS.

Whether, having issued a complaint and held a hearing, decision of Federal Trade Commission on fact or on law is correct is a question which cannot be challenged in federal district court, but an appeal to appropriate court of appeals is the exclusive remedy. Federal Trade Commission Act, Sec. 5 (d), 15 U. S. C. A. Sec. 45 (d).

COMMISSION PROCEDURE AND PROCEEDINGS—JUDICIAL INTERVENTION—DISTRICT
COURT—DECLARATORY JUDGMENT ACTION—LABELING AND ADVERTISING POWERS.

Where manufacturer of drugs contended that its advertisements were lawful and that Federal Trade Commission had no lawful right to issue complaint, federal District Court did not have jurisdiction of manufacturer's action for declaratory judgment regarding limits of the Commission's authority to control contents of manufacturer's labeling and advertising. Federal Trade Commission Act, Secs. 1 et seq., 5 (b, d), 12 (a, b), 14 (a), 15 (a), 15 U. S. C. A. Secs. 45 (b, d), 52 (a, b), 54 (a), 55 (a); Jud. Code Sec. 274d, 28 U. S. C. A. Sec. 400.

COMMISSION PROCEDURE AND PROCEEDINGS—JUDICIAL INTERVENTION—IN GENERAL.

Under Federal Trade Commission Act, administrative remedy must be exhausted before resort can be had to courts. Federal Trade Commission Act, Sec. 5 (d), 15 U. S. C. A. Sec. 45 (d).

¹ Reported in 140 F. (2d) 683. Certiorari denied May 29, 1944, 64 S. Ct. 1263.

COMMISSION PROCEDURE AND PROCEEDINGS—DECISIONS OF COMMISSION—METHODS, ACTS AND PRACTICES—FALSE AND MISLEADING ADVERTISING—DRUGS.

Questions whether manufacturer's advertising of drugs is false or misleading are in the first instance within exclusive jurisdiction of Federal Trade Commission. Federal Trade Commission Act, Secs. 1 et seq., 5 (b, d), 12 (a, b), 14 (a), 15 (a), 15 U. S. C. A. Secs. 45 (b, d), 52 (a, b), 54 (a), 55 (a).

DECLARATORY JUDGMENT ACT—JURISDICTION OF COURTS—EFFECT.

The Declaratory Judgment Act does not create new rights or increase or extend jurisdiction of courts. Jud. Code, Sec. 274d, 28 U. S. C. A. Sec. 400.

(The syllabus, with substituted captions, is taken from 140 F. (2d) 683)

On appeal from the District Court of the United States for the District of Columbia, 50 F. Supp. 434, 36 F. T. C. 1148, dismissing action for a declaratory judgment as to the limits of the Commission's authority to dictate and control the contents of plaintiff's labeling and advertising, judgment affirmed.

Mr. James F. Hoge, of New York City, with whom *Mr. Preston B. Kavanaugh* and *Mr. Preston C. King, Jr.*, both of Washington, D. C., were on the brief, for appellant.

Mr. Cyrus B. Austin, of Washington, D. C., member of the Bar of the Court of Appeals of the State of New York, *pro hac vice*, by special leave of Court, with whom *Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, and *Mr. Edward M. Curran*, United States Attorney, both of Washington, D. C., were on the brief, for appellees.

Before GRONER, *Chief Justice*, and EDGERTON and ARNOLD, *Associate Justices*.

GRONER, C. J.:

Appellant is an Indiana corporation and is engaged in the sale and distribution in interstate commerce of certain medical preparations described as "Dr. Miles' Nervine," "Dr. Miles' Nervine Tablets," and "Dr. Miles' Anti-Pain Pills." The sales of these products amount to around a million dollars annually.

[684] Stated in general terms, the present controversy grows out of the fact that some two or three years ago the Federal Trade Commission, after an investigation, reached the tentative conclusion that appellant's advertising material failed fully to reveal that these preparations, if used by individuals in excess of the dosage recommended, might result in harm to the users. In consequence the Commission addressed a communication to appellant, notifying it of this finding, and suggesting the disposition of the matter by stipulation. This contemplated an agreement on the part of appellant to revise its advertising matter to include a warning to the public in line with the conclusions of the Commission; or, stated in the language of the Commission, so as to reveal to purchasers that its preparations, if used in excess of the dosage recommended on its labels, would be dangerous to health and cause mental derangement, skin eruptions or collapse or dependence upon the drug. The Commission offered as an alternative, that if the directions for the use of the preparations appearing on the labels were changed to contain warnings, in similar language to that just used, of dangers of excessive use, the advertisements need contain only the cautionary statement "Caution, Use Only As Directed."

Appellant declined the Commission's offer to stipulate and brought this suit in the District Court under the Federal Declaratory Judgment Act,

seeking a declaration as to the limits of the Commission's authority to dictate and control the contents of appellant's labeling and advertising. The suit was dismissed on the Commission's motion upon the ground that the court was without jurisdiction of the subject matter.¹ An appeal to this court followed.

The Federal Trade Commission Act defines unlawful advertising as that which is misleading in a material respect, or which induces the purchase of drugs injurious to health under the conditions prescribed in the advertisement or under such conditions as are customary or usual, and which fails to reveal material facts with respect to the consequences which may result from the use under the conditions advertised.² Appellant says that nothing appears in any of its advertising or labeling contrary to these provisions; that all of its labels, as well as its advertisements, contain accurate statements of the active ingredients in its medicines, the purposes for which they are to be used, as well as the safe and proper doses to be taken; and all of this is admitted on the motion to dismiss. Appellant, therefore, insists that the action of the Commission in demanding that it include in its advertisements, or at its option on its labels, a statement to the effect that the excessive use of any of the medicines may result in mental derangement or cause collapse or dependence upon the drug, is wholly beyond the power of the Commission. But appellant admits, as of course it must, that the Act does give the Commission power, after notice and hearing, to prohibit false advertising of drugs, as that term is defined in the Act; and that is the provision on which the Commission based its right to request a stipulation that appellant conform its advertising to the Commission's construction of the statute, as an alternative to a proceeding by the Commission to seek to accomplish the same end through the issuance of a "complaint." We see no objection to this procedure. Certainly, there can be no contention that the Commission is without statutory authority to issue a complaint when it "has reason to believe" that someone is using misleading matter in the advertising and sale of its medicinal products—for the Act specifically so provides.³ Whether, having issued a complaint and held a hearing, its decision on the facts or on the law is correct is a question which cannot be challenged in a District Court, either before or after the event, for in [685] such case an appeal to an appropriate court of appeals is made the exclusive remedy.⁴ Here, as we have seen, appellant's contention is that its advertisements are lawful and hence do not offend the Act, and that its labels are matters not within the scope of the Act, as the result of which the Commission has no lawful right to issue its complaint in the one case or the other, and that accordingly it ought to be saved the expense and embarrassment of a long and useless Commission proceeding. The Commission denies, and we think correctly, that it is attempting to regulate appellant's labels. All that it said on that subject was to offer that means of correction as a choice which appellant could take or leave as it pleased. However desirable it may be thought that

¹ *Miles Laboratories v. Federal Trade Com.*, 50 F. Supp. 434.

² 15 U. S. C. A., §§ 52(a), 54(a), 55(a). § 55(a) provides: "The term 'false advertisement' means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combinations thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual."

³ 15 U. S. C. A. §§ 45(b), 52(b).

⁴ 15 U. S. C. A. § 45(d).

appellant, when challenged as to its methods of business, should have recourse to a court of equity to construe the extent of the Commission's power in a case in which it is made to appear that a public hearing will result in irreparable injury, nevertheless, it has been held so often as not to require citation of authority, that for a Federal Court to assume the right to suspend the Commission's investigation, while it determines controversial questions of law or fact, would be a clear assumption of power it does not possess. The administrative remedy which Congress has provided must be first exhausted. To hold otherwise, the Supreme Court has recently and explicitly said,⁵

"* * * would * * * in effect substitute the District Court for the Board as the tribunal to hear and determine what Congress declared the Board exclusively should hear and determine in the first instance."

That the Supreme Court will change or modify its views in this respect is an "iridescent dream," for the trend is decidedly the other way. On no subject is the opinion of that Court, as I view it, more definitely fixed than it is on the lack of power of the courts to inject themselves or be injected into proceedings which Congress has committed to the primary jurisdiction of administrative agencies. Indeed, it has been held in some cases that even a right of review, if not provided in the statute, may not be supplied by the courts;⁶ and this doctrine was recently extended to a case in which the claim was that the action of the Board was arbitrary and unreasonable. See *Per Curiam*, December 6, 1943 *in re Brotherhood of Ry. & S. Clerks v. United T. S. E. of America*.⁷

In the present case and on the present record—if the question were open—it might very well be argued that appellant's advertising is neither false nor misleading, when considered in the light of the statutory provision requiring no more than a revelation of all material consequences which may result from the use of the product in the customary way or under the conditions prescribed in the advertisement. But since the matter is not open, we have no occasion to examine or weigh questions of fact or law, since they are in the first instance within the exclusive jurisdiction of the Commission and its decision when made is subject to challenge only as provided in the Act; nor is there anything in the Declaratory Judgment Act which changes this result or creates new rights or increases or extends the jurisdiction of the courts. *Doehler Metal Furniture Co. v. Warren*, 76 U. S. App. D. C. 60, 129 F. (2d) 43, 45.

We are, therefore, of opinion that the District Court was in all respects correct in holding that it lacked jurisdiction of the subject matter of the complaint.

Affirmed.

⁵ *Myers v. Bethlehem Corp.*, 303 U. S. 41, 50.

⁶ *Louisiana v. McAdoo*, 234 U. S. 627, 633.

⁷ In this case we had held, on appeal from the National Mediation Board, that its certificate forcing some forty-five "Red Caps" employed in the Union Station in St. Paul, against their will and desire, to be represented as to hours of work, rates of pay and redress of grievances by the Brotherhood of Railway Clerks, which they were not permitted to join because of their race, was arbitrary and in the teeth of both the word and spirit of the Act. The reversal by the Supreme Court on the authority of *Switchmen's Union etc., v. Nat. Mediation Board*, decided November 22, 1943, determined that Congress had created a "right" which it had delegated authority to the Board alone to apply and which no court could review.

EUGENE DIETZGEN CO. v. FEDERAL TRADE
COMMISSION¹

KEUFFEL & ESSER CO. ET AL. v. SAME
CHARLES BRUNING CO., INC. ET AL. v. SAME
C. F. PEASE CO. ET AL. v. SAME

Nos. 7791, 7820, 7821, 7828—F. T. C. Dock. 3092

(Circuit Court of Appeals, Seventh Circuit. Feb. 29, 1944.
As Modified on Denial of Rehearing May 3, 1944)

METHODS, ACTS AND PRACTICES—UNFAIR METHODS OF COMPETITION—CONCERT OF
ACTION—PRICE FIXING SCHEMES—IF SUBJECT TO CRIMINAL PROSECUTION UNDER
SHERMAN ACT.

The fact that a price-fixing scheme is subject to criminal prosecution under Sherman Act does not prevent such scheme from being an "unfair method of competition," within jurisdiction of Federal Trade Commission. Sherman Anti-Trust Act, 15 U. S. C. A. Secs. 1-7, 15 note; Federal Trade Commission Act, 15 U. S. C. A. Sec. 41 et seq.

METHODS, ACTS AND PRACTICES—UNFAIR METHODS OF COMPETITION—CONCERT OF
ACTION—PRICE FIXING SCHEMES—IF NO COMPETITOR SHOWN TO BE HURT BY.

The fact that no competitor was shown to be hurt by price-fixing agreement did not deprive Federal Trade Commission of jurisdiction to deal with the agreement by a *cèase and desist* order. Federal Trade Commission Act, 15 U. S. C. A. Sec. 41 et seq.

METHODS, ACTS AND PRACTICES—UNFAIR METHODS OF COMPETITION—CONCERT OF
ACTION—PRICE FIXING SCHEMES—DESTRUCTION OF FAIR OPPORTUNITY FOR COM-
PETITION AMONG COMPETITORS AS VICE OF PRACTICE.

The harm which results from destroying fair opportunity for competition among competitors by means of a price-fixing agreement makes the combination an "unfair method of competition," within meaning of Federal Trade Commission Act authorizing the Commission to issue a *cèase and desist* order.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—UNFAIR METHODS OF
COMPETITION—CONCERT OF ACTION—PRICE FIXING SCHEMES—AS MONOPOLISTIC
PRICE FIXING CONSPIRACY.

Evidence supported Federal Trade Commission's findings of a monopolistic price-fixing conspiracy constituting an unfair method of competition, and authorized a *cèase and desist* order.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—UNFAIR METHODS OF
COMPETITION—CONCERT OF ACTION—PRICE FIXING SCHEMES—IF EFFORT TO
CARRY OUT N. R. A. CODE IN ACCORDANCE WITH PRESIDENT'S ALLEGED REQUEST.

[322]. The fact that parties to price-fixing agreement were endeavoring to carry out the N. R. A. Code in accordance with President's alleged request was not a defense to *cèase and desist* order of Federal Trade Commission, since liability for price-fixing cannot be avoided because of request by some public official, but only Congress can lift the restrictions. Sherman Anti-Trust Act, 15 U. S. C. A. Secs. 1-7, 15 note; Federal Trade Commission Act, 15 U. S. C. A. Sec. 41 et seq.

¹ Reported in 142 F. (2d) 321. For case before Commission, see 33 F. T. C. 1130. Certiorari denied Oct. 9, 1944, 65 S. Ct. 66.

CEASE AND DESIST ORDERS—SCOPE—PRICE FIXING SCHEMES—WHEN ITEMS OTHER THAN THOSE CHIEFLY CONCERNED IN EVIDENCE ALSO CUSTOMARILY SOLD BY PARTIES TO AGREEMENT AND INCORPORATED IN N. R. A. CODE.

Mere fact that evidence of price-fixing before Federal Trade Commission chiefly concerned blueprint paper and other reproduction papers and cloths did not prevent cease and desist order from covering other items customarily sold by parties to price-fixing agreement and by them incorporated in N. R. A. Code.

CEASE AND DESIST ORDERS—SCOPE—WHERE ROLE OF PARTIES LEADS TO CONVICTION THEY WILL CONTINUE TO VIOLATE COMMISSION AND SHERMAN ACTS.

Where parties to proceedings before Federal Trade Commission have assumed a role which leads to conviction that they will continue to violate Federal Trade Commission Act and Sherman Act, and are doing so, cease and desist order should be broad and inclusive enough to stop practices for all time.

CEASE AND DESIST ORDERS—PROPRIETY—PARTIES—FACTS GENERALLY AND PETITIONER'S ATTITUDE, ETC.

The propriety of a cease and desist order by Federal Trade Commission and inclusion of petitioner therein is dependent upon all the facts, including attitude of petitioner toward proceeding, sincerity of petitioner's practices, and professions of desire to respect the law in future. Federal Trade Commission Act, 15 U. S. C. A. Sec. 41 et seq.

CEASE AND DESIST ORDERS—SCOPE—IF UNFAIR PRACTICE DISCONTINUED, ETC.

Ordinarily, Federal Trade Commission should enter no order where none is necessary, including cases where unfair practice has been discontinued, since object of proceeding is to stop the unfair practice.

CEASE AND DESIST ORDERS—SCOPE—WHERE DISCONTINUANCE REFUSED, UNTIL AFTER PROCEEDINGS BEGUN, AND PROOF OF WRONGDOING OBTAINED.

Where petitioner refused to discontinue unfair trade practice until proceedings were begun against petitioner and proof of wrongdoing obtained, petitioner, by discontinuing practice, could not demand a dismissal on ground that no order was necessary.

CEASE AND DESIST ORDERS—SCOPE—IF UNFAIR PRACTICE DISCONTINUED—ISSUE AS WITHIN COMMISSION DISCRETION.

Whether a cease and desist order directed at an unfair trade practice should issue after practice has been discontinued rests within sound discretion of Federal Trade Commission.

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—IF SUBJECT IN WHOLE OR PART TO ACTION UNDER EMERGENCY PRICE CONTROL ACT.

Where Federal Trade Commission's cease and desist order directed against unfair trade practice is subject to any valid order or action under Emergency Price Control Act, there can be no prosecution for violation of cease and desist order in such respect. Federal Trade Commission Act, 15 U. S. C. A. Sec. 41 et seq.; Emergency Price Control Act of 1942, Sec. 205 et seq., U. S. C. A. Appendix, Sec. 925 et seq.

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—IF SUBJECT IN WHOLE OR PART TO ACTION UNDER EMERGENCY PRICE CONTROL ACT—MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE—METHODS, ACTS AND PRACTICES—CONCERT OF ACTION—PRICE FIXING SCHEMES.

Where cease and desist order of Federal Trade Commission was directed against conspiracy to fix minimum prices, motion for leave to adduce additional evidence

to show conflict between cease and desist order and Emergency Price Control Act, which was designed to foster competition, was denied for want of real basis of conflict.

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—PROPRIETY—PARTIES—METHODS, ACTS AND PRACTICES—CONCERT OF ACTION—PRICE FIXING SCHEMES—IF CERTAIN PETITIONERS DID NOT JOIN COMBINATION WHEN OTHERS FIRST ACTED.

In proceedings to review cease and desist order of Federal Trade Commission directed against combination to restrain trade, fix prices, and eliminate competition, fact that certain petitioners did not join combination when others first acted did not [323] relieve petitioners of liability, if in fact they subsequently joined with others and helped effectuate unfair trade practices. Federal Trade Commission Act, 15 U. S. C. A. Sec. 41 et seq.

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—PROPRIETY—PARTIES—METHODS, ACTS AND PRACTICES—CONCERT OF ACTION—PRICE FIXING SCHEMES—IF CERTAIN PETITIONERS DID NOT JOIN COMBINATION WHEN OTHERS FIRST ACTED—WHERE FORMER THEREAFTER ADHERED TO PRICES FIXED IN CONCERT BY COMPETITORS.

Evidence that petitioners adhered to prices which their competitors fixed pursuant to a combination to fix prices justified finding by Federal Trade Commission that petitioners participated in illegal practices and authorized cease and desist order, notwithstanding that petitioners did not participate when others first acted and did not expressly agree to maintain such prices.

EVIDENCE—METHODS, ACTS AND PRACTICES—CONCERT OF ACTION—PRICE FIXING SCHEMES—ARTIFICIAL PRICE LEVEL AS.

Under rule that, in determining existence of unfair trade practice in form of conspiracy to fix prices, substance and not form of conspirators' conduct will be regarded, an affirmative, positive express agreement to maintain prices is not essential to establish unfair trade practices, and an artificial price level, not related to supply and demand in a given commodity, may evidence concerted action of sellers operating to restrain commerce.

METHODS, ACTS AND PRACTICES—UNFAIR METHODS OF COMPETITION—CONCERT OF ACTION—PRICE FIXING SCHEMES—COMPETITORS' ACCEPTANCE OF INVITATION TO PARTICIPATE.

Acceptance by competitors without previous agreement of an invitation to participate in a plan, the necessary consequence of which, if carried out, is restraint of interstate commerce, is sufficient to establish unfair method of competition prohibited by Federal Trade Commission Act.

(The syllabus, with substituted captions, is taken from 142 F. (2d) 321)

On petitions to review order of Commission by the Eugene Dietzgen Company, by Keuffel & Esser Company and Karl Keller, by Charles Bruning Co., Inc., and others, and by C. F. Pease Company, and others, directing named petitioners and others to cease and desist from an alleged conspiracy to fix and maintain prices, order approved.

Mr. Arthur M. Cox, of Chicago, Ill., and *Mr. Wm. E. Lamb*, of Washington, D. C. (*Pam, Hurd & Reichmann*, of Chicago, Ill., of counsel), for petitioner Eugene Dietzgen Co.

Mr. W. Randolph Montgomery, of New York City, for petitioners Keuffel & Esser Co., et al.

Mr. Howard P. Beckett and Mr. Richard W. Thorington, both of Philadelphia, Pa., for petitioners Charles Bruning Co., Inc., et al.

Mr. Herbert Pope, of Chicago, Ill., and Mr. Karl D. Loos and Mr. P. C. King, Jr., both of Washington, D. C., for petitioners C. F. Pease Co. et al.

Mr. W. T. Kelley, chief counsel, and Mr. Cyrus B. Austin and Mr. J. B. Truly, special attorneys, Mr. Martin A. Morrison, Mr. Edw. W. Thomerson, and Mr. James W. Nichol, all of Washington, D. C., Federal Trade Commission, for respondent.

Before EVANS and MAJOR, *Circuit Judges*, and LINDLEY, *District Judge*.

EVANS, *Circuit Judge*

Petitioners, Eugene Dietzgen Co., Keuffel & Esser Co. and Karl Keller, Charles Bruning Co., and C. F. Pease Co., seek a review of an order of the Federal Trade Commission directing them and others to cease and desist from an alleged conspiracy to fix and maintain prices. Petitioners manufacture and sell scientific drafting and related instruments and materials.

The chief controversies are over: (1) The sufficiency of the evidence to support the findings of the Commission that there existed a conspiracy to fix prices; (2) The insufficiency of the evidence to support the order as entered, in view of the contention that most of the evidence had to do solely with blue print paper, whereas the order extends to many other products; (3) The jurisdiction of the Federal Trade Commission to enter a cease and desist order where the alleged illegal practice is a violation of the Sherman Act and cognizable thereunder. Such action is allegedly not cognizable under the F. T. C. Act as an "unfair practice"; (4) The failure of evidence to show any injury to any competitor, allegedly a prerequisite to F. T. C. jurisdiction.

[324] Respondent contends that the conspiracy as charged, began in the summer of 1932 and continued thereafter, save for the period of June 16, 1933 to May 27, 1935 when the N. R. A. Codes were in force. When the N. R. A. was declared unconstitutional in part, the agreement of these competitors again became illegal. This was in 1935 and the unlawful agreement or conspiracy continued thereafter. For sake of clarity, the important dates of this case are set forth chronologically in the margin.*

Some of the competitors engaged in this business, first associated together in a trade organization in April, 1919. This same organization incorporated in January, 1936, and was known as the Scientific Apparatus Makers of America, hereinafter referred to as SAMA. Its members manufactured or sold so many products that sub-associations, called sections,

* April, 1919 SAMA organized (not incorporated).

June or July, 1932 Representatives of seven manufacturers met at Hotel Statler in Detroit and allegedly agreed to adhere to certain price lists (beginning first conspiracy).

June 16, 1933 N. R. A. enacted.

June, 1933 S. D. C. Section of SAMA formed and SAMA enlarged membership and scope of activities.

July 28, 1933 Entered into reemployment agreement with President (Code prices under N.R.A.).

August 1, 1933 Code under N. R. A. submitted.

November 14, 1933 Code under N. R. A. approved by President.

Jan. 3, 1935 Schedule of prices filed with SAMA.

May 27, 1935 Supreme Court held N. R. A. partially unconstitutional and President immediately asked for voluntary compliance.

June 3, 1935 Meeting at Atlantic City (beginning of alleged second conspiracy).

Oct 29, 1935 Meeting at Cleveland.

Jan. 20, 1936 SAMA incorporated in Illinois.

May 18, 1936 Identical bids to New York State.

June 1, 1936 Chicago meeting.

March 29, 1937 F. T. C. Complaint.

March 4, 1938 Dietzgen resigned from SAMA.

August 25, 1941 F. T. C. cease and desist order.

were formed, one being the Surveying-Drafting-Coaters Section, hereafter called the SDC Section, which section had forty members, among them the petitioners here involved. Most of the acts complained of were fostered and effected through this organization, with whom price lists were filed and at whose meetings the alleged agreements were reached for adherence to the prices filed.

The Federal Trade Commission filed its complaint against petitioners and many others, March 29, 1937, after which answers and motions to dismiss were filed. An extended hearing was had, stipulations between three of petitioners and the F. T. C. were filed, the F. T. C. made findings and a conclusion, and entered the cease and desist order here complained of, August 25, 1941.

The Federal Trade Commission found that representatives of seven to ten manufacturers met at Detroit in June or July, 1932, and agreed on a price list to become effective July 10, 1932, which price list Dietzgen had prepared, and which was "substantially higher than the demoralized prices at which sales were being made in Detroit at the time of this meeting." It also found that petitioners complied with the N. R. A. Code prices from November, 1933, to May 27, 1935, when the Supreme Court declared the pertinent part of the Act unconstitutional. In June of that year, the petitioners' representatives again met and agreed to keep the N. R. A. Code prices in effect, and in late October, 1935, they again met at Cleveland and concluded it was unfair to sell for less than the lowest published price of any member.** A Chicago meeting of June 1, 1936 came to the same agreement.*** The Commission found that prior to the Detroit meeting all petitioners were in substantial competition with each other, but such competition then ceased. The findings cite the fact that a majority of the eleven SDC section members submitted identical governmental bids in 19 instances, in sums varying from \$3,441.20 to \$34,095.50, and that mere coincidence or happenstance could not account for such constantly recurring and universality of identity.

The bids (by many members of the SDC Section) were made:

(1) To the State of New York, on May 18, 1936, in the sum of \$18,721.48*, the members including Dietzgen, Keuffel, Bruning, and Keystone;

** "At this meeting rules of fair competition were adopted by unanimous vote of the members present, which, among other things, makes it unfair practice to:

"Sell, or offer to sell, products on which price information has been filed and published, at less than the lowest net price filed and published by any member on such product or products: nor sell, or offer to sell, special products, which are covered by his filed and published price lists, at net prices more favorable to the purchaser than the lowest filed and published net prices for a similar item of comparable grade."

"To offer to consumers more favorable to them than "Net 30 days," nor more favorable terms to dealers than "2% cash discount on the 10th prox."

"To take contracts for a period of more than one year, or allow options for an additional period or additional quantity of merchandise."

*** "The practices described below were declared to be unfair and destructive to Industry welfare:

"Sell, or offer to sell, directly or indirectly, any product of the Section on which price information had been published, at less than the lowest net price published by any member on such product or products; nor sell, or offer to sell, products which are not covered by such price lists but which are similar to listed products, at net prices more favorable to the purchaser than the lowest published net price."

"These rules also provide that:

"No member shall quote a lump-sum price on any schedule of products of this Industry which does not itemize, or which is lower than, the sum of such member's unit selling prices of the articles comprising the schedule; and when quoting a combined bid, including purchased materials, no member shall quote prices for such purchased material less than the published resale price of the manufacturer thereof applicable to the trade factor making the purchase. Any adjustment for units withdrawn must be at quoted prices."

* Keystone bid, \$18,722.23.

(2) To the Navy, in May, 1936, on nine separate lots, in which the bids were for thousands of dollars, and in which Dietzen submitted identical bids with other members, on all nine lots; Keuffel and Pease, on eight of the nine lots; and Bruning on six of the lots;

(3) To the Navy, on July 1, 1937, there were eight lots in which identical bids of thousands of dollars were submitted by members, including Dietzgen's bid on all eight lots, Keuffel's bid on two lots, and Bruning on seven lots.

The conclusions which the F. T. C. drew from these identical bids were:

"While the illustrations above set out relate to reproduction papers only, the evidence establishes the same uniformity of prices on the other items sold by the respondents.

"Bids substantially identical in all instances and identical to the penny in most instances on various types of reproduction paper, where the quantity involved in the several lots ranges from \$3,441.20 to \$34,095.50, are not the result of a uniformity of the cost of production as contended by respondents but are the result of concerted action on the part of the respondents, as hereinabove found."

The F. T. C. reached the conclusion that a conspiracy was formulated (and later carried out) at the four meetings of the SDC Section and SAMA, held first in June, 1932, at Detroit, the second meeting at Atlantic City, in June, 1935, the third, in Cleveland, October, 1935, and the fourth, at Chicago, in June, 1936. Petitioners Bruning and Dietzgen attended all four of these meetings, Keuffel attended the second and fourth meetings, and Pease attended all but the first meeting.

Additional defenses to those outlined in the issues above stated are raised: *i. e.*, the agreements as to price fixing, reached at the meetings of the Association never became effective and binding because never approved in accordance with the Association's rules. Dietzgen states it merely submitted its price list, in the first instance, somewhat like a declaration of policy that it was not participating in the then existing price war, and that it would not sell at prices which were below cost. Dietzgen also contends that since it resigned from SAMA on March 4, 1938, there was no need, as to it, for a cease and desist order, promulgated some three years after its resignation. Finally it is argued by petitioners that there was no injury to other competitors alleged or shown.

At the conclusion of the hearing before the Trial Examiner, extended and specific findings of fact were made which were assailed before the Commission and that body also made findings of fact and a conclusion which read

"Said understandings, agreements, combinations and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove found, constitute unfair methods of competition in commerce within the intent and [326] meaning of the Federal Trade Commission Act."

The order which was entered directed the respondents to cease and desist from "fixing and maintaining, or agreeing to fix and maintain the prices at which said products will be sold by them." It directed Section SDC and certain members of the Executive Committee to cease and desist from "Directly or indirectly, jointly or severally entering into or carrying out any understanding * * to * * suppress competition * *" or "aiding and assisting the members of said respondent association in carrying out or engaging in any of the acts and practices hereinbefore set forth * *."

It dismissed the complaint as to the respondents Scientific Apparatus Makers of America, its officer and directors, and respondents Carl S.

Hallauer, R. E. Gillmor and John M. Roberts for want of evidence sufficient to establish the charges set forth in the complaint.

There were many respondents who were either members of the Association or particular individuals who opposed this relief, but all acquiesced in the order save only the petitioners here.

Jurisdiction of the F. T. C. to Issue Cease and Desist Order against Activity within Purview of Sherman Act. The contention most seriously pressed by some, though not all petitioners, to avoid the cease and desist order is the lack of power in the Federal Trade Commission to control a conspiracy to fix prices and create a monopoly, which admittedly could be reached under the Sherman Act. Or, stated differently, since this is a monopolistic conspiracy and within the scope of the Sherman Act, it should not be deemed to be an "unfair method of competition" and within the scope of the F. T. C.'s jurisdiction.

This argument is not a new one. It has been frequently advanced and text writers have dealt with and rejected it.*

We are satisfied that the F. T. C. was clearly within its jurisdiction in entering this order to cease price restrictions, provided the evidence sustained the charge. The Supreme Court has held that a method of price fixing, subject to criminal prosecution, under the Sherman Act, is also prohibitable under the F. T. C. Act. Likewise, its holding is unequivocal, that where parties dominate an industry and effect a price fixing agreement, such price fixing agreement is an "unfair method of competition." In the margin we quote from several of its decisions.**

* Federal Trade Law and Practice, Henry Ward Beer, published in 1942, page 93, *et seq.*; Henderson, Federal Trade Commission, Chapter I.

** "If the purpose and practice of the combination of garment manufacturers and their affiliates runs counter to the public policy declared in the Sherman and Clayton Acts, the Federal Trade Commission has the power to suppress it as an unfair method of competition. From its findings the Commission concluded that the petitioners, 'pursuant to understandings, arrangements, agreements, combinations and conspiracies entered into jointly and severally' had prevented sales in interstate commerce, had 'substantially lessened, hindered and suppressed' competition, and had tended 'to create in themselves a monopoly.' ** it was the object of the Federal Trade Commission Act to reach not merely in their fruition but also in their incipency combinations which could lead to these (price fixing combinations) and other trade restraints and practices deemed undesirable. ** While a conspiracy to fix prices is illegal, an intent to increase prices is not an ever-present essential of conduct amounting to a violation of the policy of the Sherman and Clayton Acts; a monopoly contrary to their policies can exist even though a combination may temporarily or even permanently reduce the price of the articles manufactured or sold." *Fashion Guild v. Trade Commission*, 312 U. S. 457.

"The Sherman Act is not involved here except in so far as it shows a declaration of public policy to be considered in determining what are unfair methods of competition, which the Federal Trade Commission is empowered to condemn and suppress. **." *F. T. C. v. Beech-Nut Co.*, 257 U. S. 441.

"The members of the associations dominate the paper trade in question. They are organized to further common purposes ** . Suggested prices for Idaho and Montana were sent out with the Spokane lists. There was an understanding that such prices would be followed. **

"The fact that there is no established rule that the lists shall be followed in taking orders for interstate shipments or that the quoting of lower prices is an infraction for which complaint may be made is not controlling in favor of respondents. An understanding, express or tacit, that the agreed prices will be followed is enough to constitute a transgression of the law. No provision to compel adherence is necessary. **

"The use of the association prices by all the salesmen in making sales in interstate territories is not necessarily to be regarded as coincidence. There is ample ground for saying that such use results from the admitted combination. **

"Its (the Commission's) conclusion that the habitual use of the established list lessens competition and fixes prices in interstate territory cannot be said to be without sufficient support." *Federal Trade Commission v. Pacific Paper Assn.*, 273 U. S. 52.

See also: *Millinery Creators' Guild v. F. T. C.*, 109 F.(2d) 175; *Standard Oil Co. v. F. T. C.*, 282 Fed. 81, 87; *Silver Co. v. F. T. C.*, 289 Fed. 985; *So. Hardware Jobbers Assn. v. F. T. C.*, 290 Fed. 773, 779; *Standard Container Mfg. Assn. v. F. T. C.*, 119 F.(2d) 262; *Nat. Harness Mfg. Assn. v. F. T. C.*, 268 Fed. 705; *Chamber of Commerce v. F. T. C.*, 13 F.(2d) 673; *Ark. Growers Assn. v. F. T. C.*, 18 F.(2d) 866; *Armand Co. v. F. T. C.*, 78 F.(2d) 707.

[For citation of the foregoing Commission court cases in the published volumes of Commission's Decisions see Table of Court Cases at p. XIX *et seq.* of this volume]

Our conclusion is that instead of its being a ground for denying jurisdiction of the F. T. C., the fact that the acts complained of, violate the criminal section of the Sherman Anti-Trust Act, affords a legitimate basis of action by the said Commission.

No Competitor Was Hurt. Hardly worthy of serious or extended consideration is petitioners' urge that the order should be set aside because no competitor was hurt by the practices and agreements. To carry this contention to its logical conclusion would necessitate denial to the Commission of jurisdiction to deal with any price fixing agreement to which all in the industry have subscribed. In other words, if this contention were accepted, it would only be when one or more competitors are left out or refuse to subscribe to the price-fixing agreement that the Federal Trade Commission could intervene. This would defeat the purpose of the Act. Price fixing usually results in price raising. That, and the elimination of price cutting, are the objects of such agreements. It is not often that any competitor in the industry is hurt by an agreement which raises the prices or an agreement which prevented the cutting of prices. The ordinary and necessary result would be financial advantage, at least temporary advantage to all in the industry. But it would not be to the advantage of the public or to the users of the commodities whose prices are fixed.

"Unfair methods of competition" are not determined by so narrow or one-sided a test. It is the harm, which results from destroying the "fair opportunity" for competition among competitors which results from a price fixing agreement, created and established by such combination, that makes the action unfair as that term is used in the Act. It is the restriction on the play of competition under normal conditions that presents a case of "unfair method of competition." (*F. T. C. v. Pacific Paper Assn.*, 273 U. S. 52 [11 F. T. C. 636]; *Cal. Rice Industry v. F. T. C.*, 102 F. (2d) 716, 722 [28 F. T. C. 1912].)

Sufficiency of the Evidence to Support the Commission's Findings. The evidence not only supports the fact findings of the Commission as to the suppression of competition agreements, but it made any other finding impossible. No rational or satisfactory explanation is made of the testimony which showed that petitioners repeatedly made identical bids ranging from \$3,441.20 to \$34,095.50. To illustrate the similarity of such bids it may be said that on one occasion twelve bids of \$23,211.76 were submitted on one lot, at another time, \$23,488.11 was the bid submitted by each of thirteen bidders; at another, ten competitors each bid \$5,767.74, while at still another time, thirteen bids, each for \$3,441.20 were made; and on two other occasions twelve separate bids were, one for \$6,692.75, and the other, for \$6,112.44. These were but a few of the instances appearing in the record.

Equally conclusive was the record which showed the language of the rules of fair competition. The following is illustrative of practices condemned:

"Sell, or offer to sell, products on which price information has been filed and published at less than the lowest net price filed and published by any member on such product or products; nor sell, or offer to sell, special products which are not covered by his filed and published price list, at net prices more favorable to the purchaser than the lowest filed and published net price of a similar item of comparable grade."

[328] Addressing a section of the S. A. M. A. the Chairman of the Executive Committee, Mr. Keller said:

"Another benefit which our Section enjoyed under the N. R. A. is the Open Sales Price Policy. According to legal advice obtained by the Code Authority there is a way to maintain this system.

"Gentlemen, if you judge the future by your past experiences, I believe there is only one conclusion you can reach full-heartedly and that is to keep up our trade organization. There is only one way to do it, and I believe you will agree with me: We can work together only by living up to our present trade provisions as we have done in the past. In fact, every one of us will have to go a step further and take special precautions that no errors or mistakes slip through his organization. * * If you want to continue our trade cooperation, you must take the necessary precaution to avoid all and any mistakes. Either we live up to our present Code—if I may still use this word—100%—voluntarily—or we shall slide back to the old destructive competition. There is no half way.

"My final plea to you is: Let us voluntarily uphold our Code provisions 100%, and continue to compete on a friendly and fair basis. There is no agreement to this effect between us, either openly or implied, but under present conditions strong trade cooperation is essential to the interest of each and every member."

Another interesting and pertinent piece of evidence is a letter dated February 24, 1936, from Mr. Keller to the manager of S. A. M. A. concerning a member of the Association. This letter read:

"Information has reached us that the B. K. Elliott Co. of Pittsburgh are furnishing a 35% rag blueprint paper in 25 lb. weight. The tests we have made on their paper confirm that information.

"According to our trade Code and blueprint standards, such paper should not be sold as our trade standardized on a 24 lb. paper, either 25% rag or 50% rag.

"Furthermore, the B. K. Elliott Co. is selling the 35% rag paper at their standard price for a 25% rag paper.

"Please write to them, giving them the above information and ask them for an explanation."

Also supporting this conclusion is an occurrence quite unusual in proceedings of this nature.

When the time came to answer the complaint, S. A. M. A. and several individual respondents employed a Mr. Fisher, of Chicago, who filed answers for them wherein it was admitted that the allegations of the complaint filed by the F. T. C. were true. Mr. Fisher's statement is on file and in that statement he states he consulted with each respondent before he filed "confessing" answers and that said answers were all filed with the full and adequate authorization and consent of the said respondents. These answers were, however, later all withdrawn and "denial" answers substituted.

For the purpose of this review we ignore these admissions thus made, but observe that it is contrary to our experience to find counsel admitting charges of the kind here set forth in the complaint for divers defendants when such admissions are contrary to the facts or clients' instruction.

Carrying Out the N. R. A. Code. It is also argued with some emotion that petitioners were endeavoring to carry out the President's wishes and maintain prices and avoid competition of the cut-throat variety, so rampant in 1932 and 1933. This was the object of the N. R. A. and although the vital parts of the N. R. A. were stricken down* by the decision in *Schechter Poultry Corp. v. U. S.*, 295 U. S. 495, it was still a patriotic duty of all the competitors in this industry, so petitioners say, to do voluntarily what they could not be compelled to do legally.

* By presidential order promulgated December 31, 1935, and effective January 1, 1936, the National Recovery Administration and the office of the Administrator were terminated. All activities relating to the National Recovery Administration were to terminate not later than April 1, 1936.

There are at least three reasons why this argument must be rejected. First, and foremost, are the Sherman Anti-Trust Act and the Federal Trade Commission Act. The teeth of the Sherman Act were drawn by the operation of the N. R. A. What was before illegal and criminal misconduct was not so under the N. R. A. The prohibitions against combinations in restraint of trade were lifted. When the N. R. A. was invalidated by judicial pronouncement of the Supreme Court, the Sherman Act and the F. T. C. Act again became unrestrainedly operative and their restrictions against combinations again governed industries engaged in interstate commerce.**

What was won by killing the N. R. A. was a reawakened or reborn Sherman Act and the F. T. C. Act. The Sherman anti-trust and the F. T. C. Act arose from the same grave in which the N. R. A. was buried.

Second, the N. R. A. permitted price fixing. In fact, it decreed price fixing. It is true, it was allegedly enacted to meet a temporary condition, an emergency, but even so, price stabilization was its objective and its result.

There was, however, one feature of the Act which must not be overlooked,—the public was represented in price fixing. By successfully assailing the N. R. A. the *government supervision* of the price fixing was eliminated. This result followed when the Act was stricken down. Then competitors proclaimed their willingness to abide by price fixing agreements, with public participation in the price fixing eliminated. Such a practice made the competitors the uncontrolled arbiters of their own prices. It was not a carrying out of the N. R. A. practice for an important part of the practice was eliminated.

Third. The defense must fail for the added reason that no official, whether he be the President or any other official, could lift the bar of either the Sherman Act or the F. T. C. Act. If the President made the request to maintain prices, they were wasted words, idle and impotent.*

The Sherman Act and the Federal Trade Act were the law of the land and governed petitioners and all others like them. No government official could suspend them. Only through legislative enactment such as the N. R. A. could they be superseded. In short, petitioners cannot avoid liability for their actions because requested by some public official so to do. If such request could be shown it would have been of no more force than if spoken by a private citizen. Only Congress can lift the restrictions which find expression in the Sherman Act. (*U. S. v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 227, 228.)

Breadth of the Order. Complaint is made that the *evidence* chiefly concerned itself with blue print paper and other reproduction papers and cloths, whereas the *order* covers a multitude of items † as to some of which

** It may be argued that the N. R. A., being unconstitutional, never lifted the restrictions found in either anti-monopoly act. In other words the N. R. A. was ineffective for all purposes. We are convinced that notwithstanding this fact, the Government was estopped to prosecute citizens who complied with N. R. A. codes, for violations of either the Sherman Antitrust or the F. T. C. Acts, because the N. R. A. was presumably valid until by judicial pronouncement it was declared to be invalid, and in this case invalidity was not determined until its unconstitutionality was decreed by the Supreme Court.

* The fact that the President terminated the functions of all N. R. A. officials and Codes, negatives the idea that the Act was extended by executive order.

† *** prepared tracing paper, tracing cloths, blueprint papers and cloths, other reproduction papers and cloths, profile and cross-section papers and cloths in sheets and rolls, coordinate papers—graph sheets (except ruled sheets) for engineering and drafting purposes, field books for engineers, drawing instruments, drawing tools (scales, triangles, T-squares, curves), draft machines, blueprinting machines and equipment, drawing boards and tables, filing cabinets for drawings and blueprints, lettering devices and lettering pens for the drafting profession, slide rules, plainimeters and integrators, surveying instruments, surveying barometers, forestry instruments such as tree calipers, hypsometers, increment borers, current meters and water-stage registers, rods and poles for surveyors' use, tapes, chains and plumb bobs."

there was little or no evidence. These items were all those enumerated in the complaint, except for two differences probably due to printing errors.

The Commission points out that the long list of products was incorporated in the Code approved under the N. R. A., and it is stipulated that the members of the Section distribute those products. The Commission also points out that "It is stipulated that the manager of the SDC Section determined, pursuant to the provisions of the Code, that it was the general practice of the members of the Section to sell their products on the basis of a published net-price list or price list with discount sheets. This determination was not restricted to reproduction papers and cloths, but was in terms applicable to all Section products." These products were all listed in the Rules of Fair Competition adopted by the Section, in 1936, and the Rules (3.1) provided that it shall be an unfair practice to "sell, [330] or offer to sell, directly or indirectly, any product of the Section on which price information has been published, at less than the lowest net price published by any member on such product or products."

The resolution adopted at the June, 1936, meeting provided for the filing of price terms of the products each member manufactured. It was not necessary to prove that the members followed the practice as to each product sold, when the general scheme is shown, and as here proof was presented as to some of the items. We can well assume, as the Commission did, that the scheme was meant to encompass all the products of this nature manufactured by the members of the section, without detailed proof as to each item affected.**

Moreover, in view of the showing of general policy, of unwillingness of petitioners here, to correct their practices, save under compulsion of an effective order, it was appropriate if not compulsory for petitioners to propose to the F. T. C. that they would not fix prices in respect to other articles which they sell.

It is never proper or appropriate for the Commission to enjoin acts which were never committed nor threatened by the industry involved. Where, however, as here, the parties assume a role which leads to the conviction that they will continue to violate the provisions of the Federal Trade Commission Act and the Sherman Act and are doing so, the order to cease and desist should be broad and inclusive enough to stop the practices once and for all time.

Effect of Cessation of Practice Condemned by Order, Before Entry of Order. Dietzgen Co. contends, separately and especially, that the order should not have been entered as to it because it resigned from SAMA on March 4, 1938.

A petitioner's discontinuance of acts which are subsequently found to be illegal, has been held not to bar the issuance of a cease and desist order.*

** *U. S. v. Trenton Potteries*, 273 U. S. 392; *U. S. v. Socony-Vacuum Co.*, *Supra*; *N. L. R. B. v. Express Co.*, 312 U. S. 426; *Fashion Guild v. F. T. C.*, *supra*.

* "But mere discontinuance of unfair competitive methods, however, is no defense. *Fed. Trade Comm. v. Wallace*, 75 F.(2d) 733, 738; *Buttrick Co. v. Fed. Trade Comm.*, 4 F.(2d) 910; *Fox Film Corp. v. Fed. Trade Comm.*, 296 Fed. 353; *Guarantee Veterinary Co. v. Fed. Trade Comm.*, 286 Fed. 853." *Armond Co. v. F. T. C.*, 78 F. (2d) 707 (CCA 2).

"The discontinuance of the practice claimed by the Commission to be illegal, even though it is not a bar to a Commission proceeding, might well be and has on some occasions been, considered by the Commission as sufficient reason to dismiss a complaint especially where there is no reason to believe the practice will be resumed." *Federal Trade Law and Practice*, Beer, page 198.

See also *Bunte Bros. v. F. T. C.*, 104 F.(2d) 996; *F. T. C. v. McLean & Son*, 84 F.(2d) 910; *Holloway Co. v. F. T. C.*, 299 U. S. 590; *Fairfoot Products Co. v. F. T. C.*, 80 F.(2d) 684; *Ark. Grocers Assn. v. F. T. C.*, 18 F.(2d) 866; *Chamber of Commerce v. F. T. C.*, 13 F.(2d) 673; *Fox Film Corp. v. F. T. C.*, 296 Fed. 353; *Sears, Roebuck Co. v. F. T. C.*, 358 Fed. 307; *Hershey Corp. v. F. T. C.*, 121 F. (2d) 968; *Perma-Maid Co. v. F. T. C.*, 121 F.(2d) 282; *Nat. Silver Co. v. F. T. C.*, 88 F.(2d) 425.

It has also been so held in the analogous field of the National Labor Relations Act.**

The propriety of the order to cease and desist, and the inclusion of a respondent therein must depend on all the facts which include the attitude of respondent towards the proceedings, the sincerity of its practices and professions of desire to respect the law in the future and all other facts. Ordinarily the Commission should enter no order where none is necessary. This practice should include cases where the unfair practice has been discontinued.

On the other hand, parties who refused to discontinue the practice until proceedings are begun against them and proof of their wrongdoing obtained, occupy no position where they can demand a dismissal. The order to desist deals with the future, and we think it is somewhat a matter of sound discretion to be exercised [331] wisely by the Commission—when it comes to entering its order.

The object of the proceeding is to stop the unfair practice. If the practice has been surely stopped and by the act of the party offending, the object of the proceedings having been attained, no order is necessary, nor should one be entered. If, however, the action of the wrongdoer does not insure a cessation of the practice in the future, the order to desist is appropriate. We are not satisfied that the Commission abused that discretion in the instant case.

In Re Motion for Leave to Adduce Additional Evidence Before Commission. There was filed by petitioner Bruning, a motion for leave to adduce additional evidence before the Commission, which motion was denied without prejudice to renew the same. The motion was renewed at the time of the oral argument. In brief, the motion states that petitioner, if the cease and desist order be approved by us, will be placed in the dilemma of violating the Emergency Price Control Act of 1942 (50 U. S. C. A. App. Sec. 925, et seq.).

The Commission argues that this court takes judicial notice that the Emergency Price Control Act was enacted after the Commission's order was entered and therefore can have no effect upon its finding of the existence of a conspiracy.

The Commission goes further, and in a commendable effort to iron out this superficial conflict of jurisdiction, wrote to the General Counsel of the Office of Price Administration and specifically presented all the facts to him, and received a definite and specific reply that there was no conflict between the two Acts, or the administrative practice thereunder. In other words, under the Price Control Act a maximum is set for each seller and not for the industry at large, and that it was the purpose of the latter Act to foster competition in the hope that inflation would be avoided or deterred.

Petitioners may not be successfully prosecuted for a violation of the F. T. C.'s cease and desist order, where the Commission's order is subject to any valid order or action under the Emergency Price Control Act.

The motion for leave to adduce additional evidence is denied.

Other questions raised by petitioners we have considered but do not deem them of such importance as to require special consideration.

Petitioners, Keuffel & Esser Company and Karl Keller, insist that their position differs from that of the other petitioners and we have not given it

** *Pueblo Co. v. N. L. R. B.*, 118 F.(2d) 304; *N. L. R. B. v. Gerling Co.*, 103 F.(2d) 663; *N. L. R. B. v. Burke Mach. Tool Co.*, 133 F.(2d) 618.

[For citation of the foregoing Commission court cases in the published volumes of Commission's Decisions see Table of Court Cases at p. XIX et seq. of this volume]

proper consideration. They say they did not take the legal positions which the other petitioners took and they assert that the evidence, as against them, fails to show any guilty participation in unfair trade practices such as are charged by the Federal Trade Commission.

We agree that their position differs from that taken by the others, both as to facts and as to the legal questions they raise. We have given their argument further consideration but are unable to change our conclusions.

The fact that these petitioners did not join the combination to restrain trade and fix prices and eliminate competition, when the others first acted, does not relieve them of liability, if in fact they subsequently joined with the others and helped effectuate the unfair trade practices by eliminating competition. *Allen v. United States*, 4 F. (2d) 688.

The evidence justifies the finding that these petitioners participated in the illegal practices by adhering to the prices which their competitors fixed and agreed upon. One may be liable regardless of when he joins the unlawful trade practices.

Where numerous competitors fixed the prices which they agree to maintain, and another competitor, not a party to the agreement originally, adopts the schedule and makes his prices agree, to the last penny, as the petitioners did, with the prices which the competitors fixed and charged, he can not avoid responsibility for his action even though he be less active in the first instance, or because his subsequent action was without affirmative, express agreement on his part to maintain the prices fixed by the others.

We must look to the substance and not to the form of the conspirators' conduct. We do not think that affirmative, positive, express agreement to maintain prices is essential to establish unfair trade practices. If the parties clearly and intentionally maintain the prices, even though without express agreement, they are liable. In such a situation their action may fall within the prohibition of the Federal Trade Commission Act. An artificial price level not related to the supply and demand in a given commodity, [332] may evidence concerted action of sellers operating to restrain commerce. That is what the evidence here shows.

The rule stated in *Interstate Circuit v. United States*, 306 U. S. 227, and *U. S. v. Masonite*, 316 U. S. 265, applies here. "Acceptance by competitors, without previous agreement, of an invitation to participate in a plan, the necessary consequence of which, if carried out, is restraint of interstate commerce, is sufficient to establish unlawful conspiracy under the Sherman Act." It is also sufficient to establish unfair methods of competition under the F. T. C. act.

The order of the Commission is approved. Counsel for respondent will draw a proposed order and submit it to petitioners, pursuant to the rule of this court respecting the drafting of orders in cases where appeal is taken from a ruling of an Administrative Board. In such order, respondent is directed to modify its order and make it clear that the cease and desist order enjoins petitioners from doing any of the acts or things condemned pursuant to any agreement, combination or conspiracy here found to exist.

Note: Pursuant to the foregoing the court on May 22 entered four final decrees modifying, affirming, and enforcing the order to cease and desist directed respectively against—(1) petitioner Eugene Dietzgen Co.; (2) petitioners Keuffel & Esser Co. and Karl Keller; (3) petitioners Charles Bruning Co., Inc., The Frederick Post Co., Chas. W. Speidel & Co., J. H. Weil & Co., Paul J. Bruning W. A. Berger, Arthur L. Parker; and the Charles Bruning Co. Inc., The Frederick Post Co. and J. H. Weil & Co.,

as members of the Scientific Apparatus Makers of America; and (4) petitioner The C. F. Pease Co.

The decree against Eugene Dietzgen Co., which filed petition for certiorari in the Supreme Court on July 29 to review the aforesaid decision of the court against it, is similar to the other three decrees entered against the respective petitioners with the single exception that the decree against petitioners Bruning, et al. also denied, in accordance with the decision of the court, said petitioners' motion for leave to adduce additional evidence before the Commission.

Said decree, and the original cease and desist order, which as therein noted was affirmed as to said various petitioners, their officers, etc. and obedience therewith as modified, commanded, follow:

FINAL DECREE MODIFYING, AFFIRMING AND ENFORCING
ORDER TO CEASE AND DESIST

The petitioner herein, having filed with this Court on September 22, 1941, its petition to review and set aside, insofar as it related to it, an order to cease and desist issued by the Federal Trade Commission, respondent herein, on August 25, 1941, in a proceeding before the said respondent entitled "In the Matter of Scientific Apparatus Makers of America, a corporation, Its Officers and Directors and certain of Its Members, separately and as representative of certain others of its members; Carl S. Hallauer, R. E. Gillmor, John M. Roberts and Karl L. Keller, individually, as officers and directors of, and as representative of other officers and directors of Scientific Apparatus Makers of America; Surveying-Drafting-Coaters Section of the Scientific Apparatus Makers of America, an Association, its officers and certain members, separately and as representative of the other members; Arthur L. Parker, Manager, Paul J. Bruning, Chairman Executive Committee, Karl L. Keller, Member Executive Committee, W. A. Berger, Member Executive Committee, and R. Fred Allin, individually and as Manager, Chairman and Members of the Executive Committee of the Surveying-Drafting-Coaters Section of the Scientific Apparatus Makers of America; Charles Bruning Company, Inc., a corporation; The Huey Company, a corporation; The Frederick Post Company, a corporation; Eugene Dietzgen Company, a corporation; Economy Blue Print Products, Inc., a corporation; Keuffel & Esser Company, a corporation; Alphonse A. Brunner, trading as Keystone Blue Paper Company; The C. F. Pease Company a corporation; Charles W. Speidel and Walter A. Kohn, trading as Chas. W. Speidel & Company; United States Blue Print Paper Company, a corporation; Jacob H. Weil, Edwin H. Weil, and Manfred R. Krauskopf, trading as J. H. Weil & Company—separately and as members and representatives of Surveying-Drafting-Coaters Section of Scientific Apparatus Makers of America, Docket No. 3092"; and a copy of said petition having been served upon the respondent; and respondent having thereafter certified and filed herein, as required by the Federal Trade Commission Act a transcript of the entire record in said proceeding; and the matter having been submitted to this Court on briefs and oral argument; and this Court having thereafter, on February 29, 1944, rendered its decision modifying said order to cease and desist as to petitioner and certain other parties to said order, and affirming and enforcing said order as so modified —

Now, therefore, it is hereby ordered, adjudged and decreed that the paragraph of said order to cease and desist reading:

Directly or indirectly, jointly or severally, entering into or carrying out any understanding, agreement, arrangement, combination or conspiracy, with each other or with any other person or persons, association or corporation, to restrict, restrain, monopolize or to hinder or suppress competition in the sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act of prepared tracing papers, tracing cloths, blueprint papers and cloths, other reproduction papers and cloths, profile and cross-section papers and cloths in sheets and rolls, coordinate papers—graph sheets (except rolled sheets) for engineering and drafting purposes, field books for engineers, drawing instruments, drawing tools (scales, triangles, T-squares, curves) drawing machines, blueprinting machines and equipment, drawing boards and tables, filing cabinets for drawings and blueprints, lettering devices and lettering pens for the drafting profession, slide rules, planimeters and integrators, surveying instruments, surveying barometers, forestry instruments such as tree calipers, hypsometers, increment borers, current meters and water-stage registers, rods and poles for surveyors' use, tapes, chains and plumb bobs and particularly in pursuance of any such understanding, agreement, arrangement, combination or conspiracy, from directly or indirectly:

be, and it hereby is, modified to read as follows, the modification being indicated by the underscoring:

Directly or indirectly, jointly or severally, entering into or carrying out any understanding, agreement, arrangement, combination or conspiracy, with each other or with any other person or persons, association or corporation, to restrict, restrain, monopolize, or to hinder or suppress, competition in the sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of prepared tracing papers, tracing cloths, blueprint papers and cloths, other reproduction papers and cloths, profile and cross-section papers and cloths in sheets and rolls, coordinate papers—graph sheets (except rolled sheets) for engineering and drafting purposes, field books for engineers, drawing instruments drawing tools (scales, triangles, T-squares, curves), drawing machines, blueprinting machines and equipment, drawing boards and tables, filing cabinets for drawings and blueprints, lettering devices and lettering pens for the drafting profession, slide rules, planimeters and integrators, surveying instruments, surveying barometers, forestry instruments such as tree calipers, hypsometers, increment borers, current meters and water-stage registers, rods and poles for surveyors' use, tapes, chains and plumb bobs, by doing any of the following acts or things, and from doing any of the following acts or things pursuant to any such understanding, agreement, arrangement, combination or conspiracy:

And it is hereby further ordered, adjudged and decreed that the said order to cease and desist, issued by the respondent, Federal Trade Commission, on August 25, 1941 as hereby modified be, and the same hereby is, affirmed as to petitioner Eugene Dietzgen Company; and that the said petitioner and its officers, directors, representatives, agents and employees, be, and they hereby are, ordered and commanded to obey and comply with the said order to cease and desist as modified by this decree.

And it is hereby further ordered, adjudged and decreed that, within 90 days after the entry of this decree, the petitioner, Eugene Dietzgen Company, shall file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has 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 modified and 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.

ORDER TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, the testimony and other evidence taken before duly appointed trial examiners of the Commission theretofore designated by it to serve in this proceeding, the report of the trial examiners thereon and the exceptions to said report, briefs filed herein by the attorney for the Commission and attorneys for the respondents, and the oral arguments by the respective attorneys, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent members of the respondent Association, Surveying-Drafting-Coaters Section of Scientific Apparatus Makers of America, Charles Bruning Company, Inc. The Frederick Post Company, The Huey Company, Eugene Dietzgen Company, Economy Blue Print Products, Inc., Keuffel & Esser Company, The C. F. Pease Company, Charles W. Speidel and Walter A. Kohn, trading as Chas. W. Speidel & Company, United States Blue Print Paper Company, Jacob H. Weil, Edwin H. Weil and Manfred Krauskopf, trading as J. H. Weil & Company, Alphonse A. Brunner, trading as Keystone Blue Paper Company, and all other present and future members of respondent Association, of which members the aforementioned respondents are representative, their officers, directors, representatives, agents and employees, forthwith cease and desist from:

Directly or indirectly, jointly or severally, entering into or carrying out any understanding, agreement, arrangement, combination or conspiracy, with each other or with any other person or persons, association or corporation, to restrict, restrain, monopolize or to hinder or suppress, competition in the sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act of prepared tracing papers, tracing cloths, blueprint papers and cloths, other reproduction papers and cloths, profile and cross-section papers and cloths in sheets and rolls, coordinate papers—graph sheets (except rolled sheets) for engineering and drafting purposes, field books for engineers, drawing instruments, drawing tools (scales, triangles, T-squares, curves), drawing machines, blueprinting machines and equipment, drawing boards and tables, filing cabinets for drawings and blueprints, lettering devices and lettering pens for the drafting profession, slide rules, planimeters and integrators, surveying instruments, surveying barometers, forestry instruments such as tree calipers, hypsometers, increment borers, current meters and water-stage registers, rods and poles for surveyors' use, tapes, chains and plumb bobs, and particularly in pursuance of any such understanding, agreement, arrangement, combination or conspiracy, from directly or indirectly:

1. Fixing and maintaining, or agreeing to fix and maintain the prices at which said products will be sold by them.

¹ Made as of Aug. 26, 1941 and reported in 33 F. T. C. 1130.

2. Fixing and maintaining, or agreeing to fix and maintain the terms and conditions, including the classification of customers, freight allowances and duration of and optional clauses in contracts, in connection with any sales by them of their said products.

3. Exchanging information among themselves with regard to the prices, discounts, terms and conditions of sale to be submitted by them when bids for their products are requested, and submitting or agreeing to submit identical, or substantially identical, bids on said products when requests for bids have been received.

4. Filing with respondent Surveying-Drafting-Coaters Section of Scientific Apparatus Makers of America, price lists including discounts, terms and conditions at which they will sell their products, for dissemination by said respondent Association among its members.

5. Agreeing not to sell their said products at a price less, or a discount greater, or on terms and conditions more favorable to the purchaser than those contained in any of the price lists filed with respondent Surveying-Drafting-Coaters Section of Scientific Apparatus Makers of America, or agreeing not to sell said products at a price less or discount greater than or on terms and conditions of sale more favorable to the purchaser than those contained in the price list published by the seller.

It is further ordered, That respondent association, Surveying-Drafting-Coaters Section of Scientific Apparatus Makers of America, Arthur L. Parker, its manager and his successors, Karl Keller, Paul J. Bruning, R. Fred Allin, and W. A. Berger, members of its executive committee and their successors, forthwith cease and desist from, directly or indirectly, jointly or severally, aiding and assisting the members of said respondent association in carrying out or engaging in any of the acts and practices hereinbefore set forth, and from performing any service or function in the furtherance of said acts and practices, and particularly from—

1. Adopting any rule or regulation designed or intended to prevent any deviation on the part of the members of said respondent Association from the prices, discounts and terms fixed and agreed upon by them, as hereinbefore set forth.

2. Receiving from the individual members of said respondent association price lists, including discounts, terms and conditions of sale, and disseminating such information among said respondent association members.

It is further ordered, That the complaint herein be and the same hereby is dismissed as to respondents Scientific Apparatus Makers of America, its officers and directors, and respondents Carl S. Hallauer, R. E. Gillmor and John M. Roberts, the evidence being insufficient to establish the charges of the complaint with respect to these respondents.

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

BRANCH v. FEDERAL TRADE COMMISSION¹

No. 8240—F. T. C. Dock. 4708

(Circuit Court of Appeals, Seventh Circuit. Feb. 29, 1944. Rehearing denied Mar. 25, 1944)

COMMERCE—FOREIGN COMMERCE—WHAT CONSTITUTES—CORRESPONDENCE COURSES—CONDUCT OF WITH STUDENTS IN LATIN AMERICAN COUNTRIES.

A correspondence school which sent textbooks, instructions, and examinations to students in Latin American countries, who remitted fixed fees for such services and supplies and ultimately received diplomas, was engaged in "foreign commerce" within the Constitution and Federal Trade Commission Act. Federal Trade Commission Act Secs. 1 et seq., 4, 15 U. S. C. A. Secs. 41 et seq., 44.

JURISDICTION OF COMMISSION—PUBLIC INTEREST—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—CORRESPONDENCE COURSES—SOLICITATION, IN COMPETITION WITH OTHER DOMESTIC SCHOOLS, OF LATIN AMERICAN STUDENTS THROUGH UNFAIR AND FRAUDULENT PRACTICES.

Preventing correspondence school operated in United States from employing unfair and fraudulent practices in soliciting students in Latin American countries in competition with other schools in this country involved a "public interest" so as to give Federal Trade Commission jurisdiction. Federal Trade Commission Act Sec. 1 et seq., 15 U. S. C. A. Sec. 41 et seq.

JURISDICTION OF COMMISSION—PUBLIC INTEREST—METHODS, ACTS AND PRACTICES—IF TENDENCY TO INJURE UNFAIRLY USER'S PRESENT AND POTENTIAL COMPETITORS.

Preventing use of unfair and fraudulent methods that tend to injure unfairly the user's present and potential competitors is in the "public interest" so as to give Federal Trade Commission jurisdiction.

JURISDICTION OF COMMISSION—PUBLIC INTEREST—METHODS, ACTS AND PRACTICES—IF TENDENCY TO INJURE UNFAIRLY USER'S PRESENT AND POTENTIAL COMPETITORS—WHERE MOST OF ACTIVITY OUTSIDE UNITED STATES.

That most of objectionable activity occurred outside United States did not deprive Federal Trade Commission of jurisdiction to protect United States foreign commerce by preventing correspondence school operated in United States from using fraudulent advertising to solicit students in Latin America to detriment of other United States citizens competing in same field. Federal Trade Commission Act Secs. 1 et seq., 4, 5 (a), 15 U. S. C. A. Secs. 41 et seq., 44, 45 (a).

UNITED STATES SOVEREIGNTY—CITIZENS—FOREIGN COUNTRIES—CONDUCT OF IN:

The United States has jurisdiction to control conduct of its citizens in foreign countries in respect to matters which a sovereign ordinarily governs within its territorial boundaries.

COMMERCE—FOREIGN COMMERCE—UNFAIR TRADE PRACTICES IN BY UNITED STATES CITIZENS—IF SOME ACTS DONE OUTSIDE TERRITORIAL LIMITS OF UNITED STATES—PREVENTION OF.

Congress has power to prevent unfair trade practices in foreign commerce by United States citizens, though some of the acts are done outside territorial limits of United States.

¹ Reported in 141 F. (2d) 31. For case before Commission, see 36 F. T. C. 1. 591546m—46—vol. 38—57

JURISDICTION OF COMMISSION—UNFAIR METHODS OF COMPETITION IN COMMERCE—
IF ACTS BY RESIDENT CITIZENS CONSUMMATED OUTSIDE TERRITORIAL LIMITS.

Federal Trade Commission Act authorizes Commission to exercise such jurisdiction as is necessary to prevent use by resident citizen of United States of unfair methods of competition in commerce, though acts constituting such unfair competition are consummated outside territorial limits of United States. Federal Trade Commission Act Secs. 1 et seq., 4, 5 (a), 15 U. S. C. A. Secs. 41 et seq., 44, 45 (a).

UNITED STATES SOVEREIGNTY—COMMERCE OF UNITED STATES—RESIDENT CITIZENS—
ACTS OF IN—SOVEREIGN CONTROL OF—EXERCISE OF AS NOT IN DEROGATION OF
THAT OF OTHER COUNTRY, OR BEYOND TERRITORIAL JURISDICTION.

The United States in exercising its sovereign control over its commerce and acts of its resident citizens therein does not invade sovereignty of any other country or attempt to act beyond territorial jurisdiction of the United States.

EXPORT TRADE ACT—SCOPE AND CONSTRUCTION—FOREIGN COMMERCE—UNFAIR
TRADE PRACTICES IN—ELIMINATION OF, AS OBJECT.

The Export Trade Act is a remedial statute implementing a national policy to free foreign commerce of unfair trade practices, and the generic words used therein must be given as liberal a construction as they are capable of in order to extend such protection to all foreign commerce of the United States. Export Trade Act Secs. 1, 4, 15 U. S. C. A. Secs. 61, 64.

EXPORT TRADE—EXPORT TRADE ACT—WORDS AND PHRASES—“OBJECTS OF COMMISSION” OR “MERCHANDISE” UNDER PROVISIONS OF SEC. 4 EXTENDING PROHIBITIONS OF FEDERAL TRADE COMMISSION ACT AGAINST UNFAIR METHODS OF COMPETITION IN COMMERCE, THE ACTS DONE OUTSIDE TERRITORIAL JURISDICTION OF UNITED STATES—CORRESPONDENCE SCHOOL SELLING TO LATIN AMERICAN STUDENTS.

Books, instructions, and examination questions sent by correspondence school operated in United States to students in Latin America and services furnished by school were “objects of commerce” or “merchandise,” trade or commerce in which is defined by Export Trade Act as export trade, and school was engaged in “export trade” within section of act extending to such trade prohibitions against unfair methods of competition contained in Federal Trade Commission Act though acts constituting unfair competition are done outside territorial jurisdiction of United States. Federal Trade Commission Act Sec. 1 et seq., 15 U. S. C. A. Sec. 41 et seq.; Export Trade Act Secs. 1, 4, 15 U. S. C. A. Secs. 61, 64.

WORDS AND PHRASES—“MERCHANDISE.”

“Merchandise” means the object of commerce; whatever is usually bought or sold in trade.

(The syllabus, with substituted captions, is taken from 141 F. (2d) 31)

On petition for review of order of Commission, petition denied.

Mr. Joseph G. Branch and *Mr. Warren H. Orr*, both of Chicago, Ill., for petitioner.

Mr. Joseph J. Smith, Jr., assistant chief counsel, Federal Trade Commission, of Washington, D. C. for appellee.

Before MAJOR and MINTON, *Circuit Judges*, and LINDLEY, *District Judge*.

MINTON, *Circuit Judge.*

Joseph G. Branch has filed in this Court a petition to review and set aside a cease and desist order issued by the Federal Trade Commission pursuant to a complaint of the Commission charging him with engaging in unfair methods of competition and unfair and deceptive acts in commerce in violation of the Federal Trade Commission Act, 52 Stat. 111, 15 U. S. C. A. § 41. Substantial evidence in the record supports the following statements of fact.

[33] The petitioner is an individual doing business as the Joseph G. Branch Institute of Engineering and Science, having his office and place of business at his residence in Chicago, Illinois. The petitioner conducts what he represents to be a correspondence school. For a number of years he has sold and distributed correspondence courses of study by mail in Latin-American countries. In the conduct of these courses, he has caused books, instructions, and lesson sheets to be transported to purchasers in these foreign countries. The purchaser prepares the lessons and returns them to the petitioner in Chicago, where they are graded. The courses range in price from \$70 to \$450 and are extensively advertised in newspapers published in various Central and South American countries. The petitioner also circulates letters, leaflets, circulars, catalogues and other advertising material among his prospective students. He represents in this literature that he maintains an institute of engineering and science in Chicago, where it was founded in 1910. Petitioner's curriculum includes correspondence courses in a large number of professional and other educational subjects. He offers courses in agriculture, architecture, aviation, mechanical engineering, industrial chemistry, sugar chemistry, analytical industrial chemistry, dentistry, Diesel engineering, radio and television engineering, automotive engineering, civil engineering, mechanical engineering, mining engineering, petroleum engineering, sanitary engineering, metallurgy, veterinary science, medicine, biology, bacteriology, law, pharmacy, and several other subjects. He represents that "The diplomas and degrees awarded by this worthy Institute are signed and sealed by the Officials of our Institute, acknowledged before a Notary Public, certified by the County Court Clerk and authenticated by the Secretary of the State of Illinois, U. S. A." and that it is "* * * the only officially recognized University in accordance with the laws of United States for extension courses (by correspondence)."

The petitioner's school is neither a university nor an institute. It has no entrance requirements, no resident students, no library, no laboratory, and no faculty. It has no one teaching anything. The staff consists of a day laborer, a messenger, eight girl translators, the petitioner's daughter, a Mexican by the name of Reyes who appears from the record to have a Bachelor of Science degree from the University of Mexico, and the petitioner.

Although he is not an engineer and, of course, has no engineers associated with him, he offers courses in all of the most difficult branches of engineering. Although he is not a doctor or a dentist, he offers courses in medicine and dentistry. The petitioner is himself a college graduate and has been admitted to the practice of law.

The petitioner's method is to send his students textbooks and lessons to study. Examination questions based upon these lessons are sent to the students who answer them and return them to the petitioner, where they are corrected and graded. A diploma or degree is awarded to anyone who makes the passing grade of more than seventy-five per cent. If the student does not make a passing grade, he is sent a further examination and if he

fails to pass this one, he is permitted to continue his studies until he passes. The evidence also shows that no university awards degrees for work done entirely by correspondence. The petitioner is not authorized by law or by any educational association to issue diplomas or give degrees. The petitioner did obtain from the Superintendent of Public Instruction of Illinois a provisional approval, pending inspection. Upon inspection, however, the petitioner's alleged school was disapproved of and the Superintendent's recognition was withdrawn by letter. The petitioner ignored this notice, however, and continued to represent that his courses of instruction were approved by the Department of Education of the State of Illinois. The so-called diplomas and degrees awarded by the petitioner have signatures attested to by public officials in such a manner as to make it appear that they have official sanction.

Upon evidence of this kind, the Commission issued its order that the petitioner cease and desist from using the words "Institute" or "University" in connection with the conduct of its business or representing that such business is either an institute or a university; from representing through the use of the word "University" that the petitioner's school is an educational institution of higher learning with the power to confer degrees; from representing through the issuance of so-called degrees and other documents that the school is an institution of higher learning; from using the words "officially recognized" or words of similar import in connection with [34] his school, or otherwise representing directly or by implication that the school is recognized or approved as an institution of learning by the United States Government or by any State of the United States or any agencies thereof; from representing, through the affixing to diplomas and degrees of certificates of acknowledgment or authentication executed by notaries public and other public officials, that the so-called school is an institution of learning recognized by the Government of the United States or any State thereof; and generally from representing, directly or indirectly, that the school is an accredited institution and that the so-called diplomas and degrees are accepted or recognized by any governmental agency or any reputable college or university.

The petitioner challenges the order of the Commission on the grounds that it is not supported by substantial evidence and that the Commission has no jurisdiction over his business. On oral argument, the petitioner did not have the temerity to insist that the evidence was insufficient to support the Commission's findings. The record certainly contains an abundance of evidence to support findings that the representations made by the petitioner in the conduct of his "diploma mill" were false and fraudulent.

The only serious question presented is whether or not the Commission had jurisdiction to issue the order which it did. The petitioner's first contention is that the business in which he is engaged is not commerce. As we have seen, the petitioner's method of conducting his correspondence courses, once he finds a customer, is to send him books, instructions and written examinations. The examinations are returned to the petitioner, who grades them and communicates the result to the customer, who ultimately gets a "diploma." For these services and supplies, the petitioner charges a fixed fee, which the customer remits. That such a course of business is "commerce" within the meaning of the Constitution and the Federal Trade Commission Act is not open to question after the Supreme Court's decision in *International Textbook Co. v. Pigg*, 217 U. S. 91, 106, 107, 30 S. Ct. 481, 54 L. Ed. 678. In that case, the intercourse between a correspondence school and its customers in different States was held to be interstate commerce. It follows that such business dealings of the peti-

tioner with customers in foreign countries is foreign commerce within the meaning of the Constitution and the Act.

The petitioner next insists that no "public interest" is shown to support the jurisdiction of the Federal Trade Commission as required by the decision of the Supreme Court in *Federal Trade Commission v. Klesner*, 280 U. S. 19, 50 S. Ct. 1, 74 L. Ed. 138 [13 F. T. C. 581]. In that case, a controversy existed between two business firms in Washington, D. C., over the right to use the name "Shade Shop." There was no issue which involved more than the rights of these two businesses. The general trade or public had no interest in a private controversy over the use of a name.

That is not the case at bar. The evidence here shows that there are some fifty or more correspondence schools in this country using correspondence methods to carry on their business. At least a few of these schools were engaged in competition with the petitioner for the business in the Latin-American field. The action of the Federal Trade Commission was aimed at compelling the petitioner to use fair methods in competing with his fellow countrymen. It was an attempt to eliminate the unfair, fraudulent, and deceptive practices of the petitioner from a field already occupied by several firms and potentially open to more. It has been held many times that the public has an interest in preventing false and fraudulent conduct under such circumstances. *Dr. W. B. Caldwell, Inc. v. Federal Trade Commission*, 111 F. (2d) 889 [30 F. T. C. 1670]. *International Art Co. v. Federal Trade Commission*, 109 F. (2d) 393, 397 [30 F. T. C. 1635]; *Consolidated Book Publishers, Inc. v. Federal Trade Commission*, 53 F. (2d) 942, 945 [15 F. T. C. 637].

Finally, it is contended by the petitioner that the Commission has no jurisdiction because the acts complained of, that is, the circulating of the misrepresentations in the forms of letters, catalogues, and newspaper advertisements, took place in Latin-American countries. It is true that much of the objectionable activity occurred in Latin America; however, it was conceived, initiated, concocted, and launched on its way in the United States. That the persons deceived were all in Latin America [35] is of no consequence. It is the location of the petitioner's competitors which counts.

The Federal Trade Commission does not assume to protect the petitioner's customers in Latin America. It seeks to protect the petitioner's competitors from his unfair practices, begun in the United States and consummated in Latin America. It seeks to protect foreign commerce. If that commerce was being defiled by a resident citizen of the United States to the disadvantage of other competing citizens of the United States, the United States had a right to protect such commerce from defilement, even though the customer who is the victim of such a defilement and a non-resident may look to his sovereign for protection. For protection of the competitors within the United States, the United States is the sovereign to look to. The right of the United States to control the conduct of its citizens in foreign countries in respect to matters which a sovereign ordinarily governs within its own territorial jurisdiction has been recognized repeatedly. *Blackmer v. United States*, 284 U. S. 421, 436-438, 52 S. Ct. 252, 76 L. Ed. 375; *Cook v. Tait*, 265 U. S. 47, 54-56, 44 S. Ct. 444, 68 L. Ed. 895. Congress has the power to prevent unfair trade practices in foreign commerce by citizens of the United States, although some of the acts are done outside the territorial limits of the United States.

The next question, then, is: Has Congress authorized the Federal Trade Commission to exercise this power? May the Federal Trade Commission prevent resident citizens of the United States from engaging in unfair

trade practices in commerce, although some of the acts in furtherance thereof took place without the territorial jurisdiction of the United States?

We have already held that the sale and furnishing of the petitioner's services and supplies to persons in foreign states is commerce within the meaning of Section 4 of the Federal Trade Commission Act, 15 U. S. C. A. § 44. Section 5a of the Act, 15 U. S. C. A. § 45a, provides that

"Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

The Commission is authorized and empowered to prevent such practices. This is not merely a partial grant of some of the power which Congress has to prevent such practices. This grant embraces such power as is necessary to prevent all such practices, including the practices of the petitioner, although his acts were consummated outside the territorial limits of the United States while he remained in the United States.

The United States may protect its commerce from the wrongful acts of its own citizens who remain, as the petitioner did, within the United States and whose wrongful acts are prejudicial to other citizens of the United States who are in competition for that commerce. We think the power which Congress has given the Federal Trade Commission under Section 5a of the Federal Trade Commission Act is ample to support the jurisdiction exercised by the Commission in this case. The exercise by the United States of its sovereign control over its commerce and the acts of its resident citizens therein is no invasion of the sovereignty of any other country or any attempt to act beyond the territorial jurisdiction of the United States.

The petitioner has cited the case of *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 29 S. Ct. 511, 53 L. Ed. 826. That was a suit for triple damages under the Sherman Act. The acts complained of took place entirely in Panama and Costa Rica and were not considered actionable wrongs there. The Supreme Court held that since the acts were committed outside the United States and were not wrongful where committed, the Sherman Act did not apply. That was not an attempt to protect resident competitors from the defilement of commerce originating in the United States. The commerce at which the action was directed in the *American Banana Co.* case was not commerce over which the United States had control. Therefore, a statute designed to protect commerce controlled by the United States could not possibly have applied.

From another source also we find evidence that Congress intended to give this power over foreign commerce to the Federal Trade Commission. That is the Export Trade Act, 40 Stat. 516, 517, 15 U. S. C. A. §§ 61, 64. Section 1 of the Act defines export trade as

"* * * trade or commerce in goods, wares, or merchandise exported * * * from the United States * * * to any foreign nation * * *"

Section 4 of the Act provides that

"The prohibition against 'unfair methods of competition' and the remedies provided for en[36]forcing said prohibition contained in sections 41-46 and 47-58 of this title [the Federal Trade Commission Act] shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States."

That the petitioner's business is commerce we have already decided. If it is commerce "in goods, wares, or merchandise," Section 4 of the Export

Trade Act is applicable, although part of the petitioner's practices go on outside the territorial jurisdiction of the United States. This is a remedial statute implementing a national policy. By it Congress is seeking to free foreign commerce of unfair trade practices, just as it has attempted to free commerce between the States from such practices. We cannot assume that Congress intended to free only some of its foreign commerce from unfair trade practices. We are bound to give to the generic words used by Congress just as liberal a construction as the words are capable of in order to prevent such a partial protection to foreign commerce.

"Merchandise" is defined by Webster as, "The objects of commerce; whatever is usually bought or sold in trade * * *." That the petitioner's business is an object of commerce would seem to follow from our holding that such a business is commerce. The books, the written instructions, and the examination questions are tangible things that can be seen and handled and are objects which pass through the channels of foreign commerce. In addition to these tangible articles, the petitioner provides certain services in connection with their use and application. All of these constitute "objects of commerce," or "whatever is usually bought and sold in trade." They are, therefore, merchandise.

Since the petitioner's business is commerce in merchandise within the meaning of Section 1 of the Export Trade Act, we find that Section 4 of the same Act specifically authorizes the jurisdiction exercised by the Commission in this case, even though some of the acts of the petitioner were done outside the territorial jurisdiction of the United States.

The Commission's order is valid, and the petition to set it aside is denied.

UNITED STATES v. WILLARD TABLET CO.¹

No. 8398

(Circuit Court of Appeals, Seventh Circuit. Mar. 7, 1944)

RES JUDICATA—IN GENERAL.

A judgment is res judicata in a second action upon the same claim between the same parties or those in privity with them.

RES JUDICATA—GOVERNMENT SUITS—WHERE SAME ISSUE RELITIGATED BETWEEN SAME PRIVATE PARTY AND ANOTHER REPRESENTATIVE OF GOVERNMENT.

There is privity between officers of same government so that a judgment in a suit between a party and a representative of government is res judicata in relitigation of same issue between that party and another officer of the government. ¹

APPELLATE PROCEDURE AND PROCEEDINGS—FINDINGS OF COMMISSION—WHERE SUPPORTED BY EVIDENCE—AS BINDING COURT.

Findings of Federal Trade Commission supported by evidence are binding on reviewing court in same proceeding. Federal Trade Commission Act Sec. 5 (b, c, g, l), as amended, 15 U. S. C. A. Sec. 45 (b, c, g, l).

¹ Reported in 141 F. (2d) 141.

FINDINGS OF COMMISSION—FINALITY OF—WHETHER SUBJECT TO ATTACK IN COLLATERAL PROCEEDING.

Finality of findings of Federal Trade Commission cannot be attacked in a collateral proceeding.

RES JUDICATA—GOVERNMENT SUITS—MISBRANDING PROCEEDINGS OR CHARGES—FEDERAL TRADE COMMISSION ACT AND FEDERAL FOOD, DRUG AND COSMETIC ACT—WHERE STATEMENTS RELIED ON UNDER LATTER ACT IDENTICAL WITH THOSE APPROVED UNDER FORMER AND PRIOR PROCEEDING.

Where statements relied on by government to uphold charge of misbranding were identical with those approved by Federal Trade Commission, and fundamental issue of fact as to whether claimant's product would give relief claimed had been considered by Federal Trade Commission, issues of fact tried by the Commission had a finality on which defense of res judicata could be predicated in proceedings by government to condemn claimant's product as misbranded. Federal Food, Drug and Cosmetic Act, Secs. 304, 502 (a, f), 21 U. S. C. A. Secs. 334, 352 (a, f); Federal Trade Commission Act Sec. 5 (b, c, g, l), as amended, 15 U. S. C. A. Sec. 45 (b, c, g, l).

RES JUDICATA—MUTUALITY OF ESTOPPEL BY JUDGMENT—WHETHER DEPENDENT ON. The doctrine of res judicata is not dependent upon mutuality of estoppel by judgment.

RES JUDICATA—GOVERNMENT SUITS—MISBRANDING PROCEEDINGS OR CHARGES—FEDERAL TRADE COMMISSION ACT AND FEDERAL FOOD, DRUG AND COSMETIC ACT—WHERE STATEMENTS RELIED ON UNDER LATTER ACT IDENTICAL WITH THOSE APPROVED UNDER FORMER AND PRIOR PROCEEDING—WHETHER ENFORCEMENT LATTER ACT IMPAIRED BY APPLICATION OF.

Where facts relied on by government to uphold charge of misbranding were identical with those that had been approved by Federal Trade Commission, the application of doctrine of res judicata would not result in impairment of enforcement of Federal Food, Drug and Cosmetic Act.

RES JUDICATA—GOVERNMENT SUITS—MISBRANDING PROCEEDINGS OR CHARGES—FEDERAL TRADE COMMISSION ACT AND FEDERAL FOOD, DRUG AND COSMETIC ACT—WHERE LIBEL PROCEEDING UNDER LATTER ACT TRIED ON ISSUE OF, AS TO WHOLE LIBEL BASED ON COMMISSION DECISION—CONVENTION ON APPEAL THAT PLEA DIRECTED TO BUT ONE COUNT—WHETHER SEASONABLY TAKEN.

Where proceeding by government to condemn claimant's product as misbranded was tried on issue of res judicata as to whole libel based on decision of Federal Trade Commission, government's contention made on appeal that plea of res judicata was directed to but one count of libel and that it was entitled to trial on other counts was too late.

(The syllabus, with substituted captions, is taken from 141 F. (2d) 141)

On appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division in proceeding for condemnation of a quantity of Willard's Tablets shipped in interstate commerce on ground that the labeling thereof was false, order of dismissal affirmed.

Mr. B. Howard Coughran, United States Attorney, of Indianapolis, Ind., *Mr. Tom C. Clark*, Assistant Attorney General, and *Mr. Paul A. Pfister*.

Assistant United States Attorney, of Indianapolis, Ind. (Mr. James B. Goding of Boston, Mass., of counsel), for appellant.

Mr. John A. Nash, Mr. Arthur H. Schwab and Mr. Albert I. Kegan, all of Chicago, Ill., for appellee.

Before SPARKS and MAJOR, Circuit Judges, and LINDLEY, District Judge.

MAJOR, Circuit Judge.

The United States (libellant) instituted this proceeding for condemnation of a quantity of Willard's Tablets shipped in interstate commerce on the ground that the labeling thereof was false, in violation of the Food, Drug and Cosmetic Act, 21 U. S. C. A. 352 (a), 352 (f), and the articles were therefore subject to seizure and confiscation (21 U. S. C. A. 334). The claimant filed an answer to the government's amended libel, setting up three affirmative defenses. The lower court sustained the claimant's defense of *res judicata*, based upon a prior proceeding before the Federal Trade Commission, and dismissed the action. From the order of dismissal, the government has appealed.

The only question for decision is whether the proceedings before the Federal Trade Commission are *res judicata*, and, therefore, binding upon the District Court and determinative of the issues involved herein.

The government urges as a basis for overruling the lower court's holding that: (1) the issues herein involved were not determined by the Federal Trade Commission; (2) unaffirmed decisions of the Federal Trade Commission do not have the finality necessary to constitute *res judicata*; (3) there is no mutuality of estoppel; (4) the lower court's holding would impair the enforcement of the Food, Drug and Cosmetic Act; and (5) the District Court improperly dismissed the amended libel as to that part alleging that the directions for use on the labeling were inadequate.

The facts as stipulated and adopted by the lower court effectively dispose of the government's first contention. The stipulation discloses: (1) that the statements relied upon by the government to uphold the charge of misbranding are identical with those approved by the Federal Trade Commission; (2) that the fundamental issue of fact as to whether the Willard Tablets would give the relief claimed was considered by the Federal Trade Commission. [143] We, therefore, have the incongruous situation of one branch of the government approving the method now pursued by the claimant and another branch seeking to condemn. This is, to say the least, placing claimant in an embarrassing situation and should be avoided if possible.

In *George H. Lee Co. v. Federal Trade Commission*, 113 F. (2d) 583 [31 F. T. C. 1846], the Circuit Court of Appeals for the Eighth Circuit upheld, and we think properly so, the defense of *res judicata*. Therein, the condemnation proceedings were instituted prior to the action before the Federal Trade Commission. The court on page 585 said:

"Although the remedies sought by the government in the two proceedings were different—condemnation in the first, and a cease and desist order in the second,—it is obvious that the alleged falsity of the representations of the petitioner with respect to the therapeutic value and effectiveness of its product constituted the main basis for each of the proceedings
* * *

And further, on page 586:

"If the question of the falsity of the representations of the petitioner contained on its labels and circulars had been determined adversely to the petitioner in the libel proceeding, it could not have been heard to say in

the proceedings instituted by the Commission that such representations were true. By the same token, the United States and its instrumentality, the Commission, were not, after the decree in the libel proceeding, entitled to say that the representations made by the petitioner which had been finally adjudged not to be false, were in fact false. The government had had its full day in court on that issue, had lost its case, and could not collaterally attack, either directly or indirectly, the decree entered against it."

And on page 585, the court stated:

"Where the underlying issue in two suits is the same, the adjudication of the issue in the first suit is determinative of the same issue in the second suit."

As was stated by the Supreme Court in *Sunshine Coal Co. v. Adkins*, 310 U. S. 381, 402:

"A judgment is *res judicata* in a second action upon the same claim between the same parties or those in privity with them. *Cromwell v. County of Sac*, 94 U. S. 351. There is privity between officers of the same government so that a judgment in a suit between a party and a representative of the United States is *res judicata* in relitigation of the same issue between that party and another officer of the government. See *Tait v. Western Maryland Ry. Co.*, 289 U. S. 620."

The government's second contention seems to rest solely upon the provisions of the Federal Trade Commission Act, as amended (15 U. S. C. A. 45 (b) (g)), that the Commission may, under certain conditions, modify its order after the expiration of time for appeal. Therefore, the contention is that such power of modification leaves an unappealed order without that finality essential to invoke the doctrine of *res judicata*. With this contention we do not agree.

The Act provides that an order of the Commission shall become *final* at the expiration of sixty days if no appeal is taken (45(g)), and further provides for heavy penalties for violation of such order (45(1)). It further provides that "the findings of the Commission as to the facts, if supported by evidence, shall be conclusive." Thus, even the reviewing court in the same proceeding is bound by the findings of the Commission. To allow their finality to be attacked in a collateral proceeding would seem to run counter to the provisions and purposes of the Act. As was said in the case of *United States v. Piuma*, 40 F. Supp. 119, 122 [33 F. T. C. 1827]:

"Is it the province of the court to try the truth or falsity of the defendant's advertisements already found to be false by the Commission? The answer to this question depends upon the meaning to be given the word 'final' as used in subsection (g). The purpose of the provision was to bring the doctrine of *res judicata* into the Federal Trade Commission's jurisprudence. * * * This court will not now retry that issue."

With this construction of the Act we agree. We must, therefore, uphold the decision of the lower court that the issues of fact tried by the Commission have a finality upon which *res judicata* may be predicated.

We agree with appellee's contention that mutuality of estoppel is not herein involved. We have held that the facts found by the Federal Trade Commission are conclusive and binding upon the District Court. The same result would obtain if the govern[ment] were depending upon these findings to sustain its charge of misbranding. The doctrine of *res judicata* is not dependent upon mutuality of estoppel by judgment, as is contended by the government. The cases cited in support of this contention are not applicable to the instant situation.

What we have heretofore said sufficiently disposes of the argument that the decisions of the Federal Trade Commission should not be allowed to

impair the enforcement of the Food, Drug and Cosmetic Act. Under the facts stipulated herein and to which this decision is limited, there can be no impairment of the enforcement of the aforementioned Act.

The last contention of the government to be considered is that the plea of *res judicata* was directed to but one count of the libel and that it is entitled to a trial upon the other count, *i. e.*, upon the issue of whether the labels gave adequate direction for use. We are of the view that this contention is not tenable. As appears from the record, this case was submitted by both parties upon a stipulation of "all of the facts." The parties so understood it and so did the lower court. The suit was tried upon the issue of *res judicata* as to the whole libel, and the government's contention to the contrary comes too late.

The judgment of the District Court is affirmed.

SEGAL v. FEDERAL TRADE COMMISSION¹

No. 152—F. T. C. Dock. 4181

(Circuit Court of Appeals, Second Circuit. Mar. 21, 1944)

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—NEGLECTING, UNFAIRLY OR DECEPTIVELY, TO MAKE MATERIAL DISCLOSURE—SOURCE OR ORIGIN OF PRODUCT—PLACE.

Substantial evidence supported finding of Federal Trade Commission that the marketing of Japanese made lenses for spectacles and sun glasses without mark showing their foreign origin misled buyers and authorized cease and desist order, notwithstanding that frames were American made and that one witness was obviously biased.

(The syllabus, with substituted caption, is taken from 142 F. (2d) 255)

On petition to review an order of Commission, order affirmed.

Mr. James W. Bevans, of New York City, for petitioner.

Mr. Allen C. Phelps, Mr. W. T. Kelley, chief counsel, and Mr. Joseph J. Smith, Jr., assistant chief counsel, all of Washington, D. C., for Federal Trade Commission.

Before L. HAND, SWAN, and AUGUSTUS N. HAND, *Circuit Judges*.

Per Curiam:

The Commission found that "a substantial portion of the purchasing public" assume that goods not marked as of foreign origin, have been "produced in whole or in major part" at home, and that buyers have "a substantial preference" for home made goods. The petitioner imports the lenses for cheap spectacles and "sun-glasses" from Japan, and cuts, edges, bevels, bores and fits them into their frames. He sells them without any mark to show their origin; indeed, in the process of preparing and inserting them, the original labels indicating their origin, which they bear at their importation, disappear. If it is true that a substantial number of buyers

¹ Reported in 142 F.(2d) 255. For case before Commission, see, 34 F. T. C. 218.

suppose that unmarked goods are home made goods and have a preference for such goods, the sale of unmarked foreign goods is a misrepresentation, which the Commission was authorized to stop. Incidentally, any hostility to goods of Japanese origin is likely to have increased since the war, and is likely to continue for some time after the peace.

Hence the outcome turns, as it so generally does, upon whether there was "substantial" evidence to support the Commission's finding. It is true that a part of the testimony was obviously biased, coming as it did from a witness whose sole occupation appears to have been to suppress the importation of any foreign goods whatever. Even so, if the Commission wished to rely upon such testimony, we may not intervene, whatever might be our own indisposition to accept what he said. But there was also testimony from apparently disinterested sources which sustained the finding. One witness was, for example, a buyer for the Woolworth stores, who testified that in his opinion American buyers had become accustomed to the marking of foreign goods, and assumed that goods were made at home when they carried no foreign mark. It is of course true, as the petitioner argues, that there comes a point where marking becomes impossible; the identity of a foreign made ingredient may be so lost in manufacture that any marking would be positively misleading, unless indeed it was so qualified as to be ineffective. That is not the case with lenses used in spectacles; the frame is merely the carrier of the lens, which is the only element of importance, [256] and which does not lose its identity either in appearance or in function.

The Commission also seeks to support its order as an enforcement of § 304 of the Tariff Act of 1930 (§ 1304, Title 19, U. S. C.). We need not consider whether the petitioner is within that section; it is enough that the Commission found him positively to mislead some buyers. That plainly brings the case within its powers, regardless of how far these permit it to forbid other practices which are not unlawful at common-law. *Federal Trade Commission v. R. F. Keppel & Brother, Inc.*, 291 U. S. 304, 310-314 [18 F. T. C. 684].

Order affirmed.

E. B. MULLER & CO. ET AL. v. FEDERAL TRADE
COMMISSION¹

No. 9046—F. T. C. Dock. 3224

(Circuit Court of Appeals, Sixth Circuit. Apr. 13, 1944)

COMMISSION PROCEDURE AND PROCEEDINGS—JOINER OF PARTIES FOR UNFAIR COMPETITION AND PRICE DISCRIMINATION—BUSINESS AS SUPPLEMENTARY AND UNDER UNITARY DOMINATION AND CONTROL AND SINGLE ENTERPRISE.

Where manufacturers and sellers of granulated chicory were charged with engaging in unfair competition in commerce and with unlawful discrimination in price, evidence sustained finding of Federal Trade Commission that the manufacturers did not compete with each other, but that the business of each was supplementary to that of the other and that there was unitary domination and control. Federal Trade Commission Act Sec. 1 et seq., as amended, 15 U. S. C. A. Sec. 41 et seq.; Clayton Act Sec. 1 et seq., as amended, 15 U. S. C. A. Sec. 12 et seq.

¹ Reported in 142 F. (2d) 511. For case before Commission, see 33 F. T. C. 24.

APPELLATE PROCEDURE AND PROCEEDINGS—FINDINGS OF COMMISSION—IF WARRANT FOR IN RECORD—COURT LIMITATION.

In proceeding to review a cease and desist order of the Federal Trade Commission, the findings of the Commission on issues of fact are controlling, so long as there is warrant in the record for the judgment of the Commission.

CEASE AND DESIST ORDERS—PROPRIETY—PARTIES—JOINER—DISPARAGEMENT AND MISREPRESENTATION—IF UNITARY CONTROL OF BOTH.

Where evidence warranted finding of Federal Trade Commission of unitary control of two manufacturers and sellers of granulated chicory, order of Commission directing both manufacturers to cease disparagement of competitor's product, and to cease misrepresentations as to the color of their granulated chicory, was not subject to objection which was based on premise that no unitary control existed.

EVIDENCE—METHODS, ACTS AND PRACTICES—UNFAIR METHODS OF COMPETITION AND PRICE DISCRIMINATION—FALSIFICATION OF BILLINGS TO OBTAIN ILLEGAL FREIGHT RATE.

Where manufacturers and sellers of granulated chicory were charged with engaging in unfair methods of competition in commerce and with unlawful discrimination in price, evidence sustained finding of Federal Trade Commission that falsified billings were made with manufacturer's knowledge and with deliberate intent of obtaining an illegal freight rate.

METHODS, ACTS AND PRACTICES—UNFAIR METHODS OF COMPETITION—DISPARAGEMENT AND MISREPRESENTATION—MISREPRESENTING METHOD OR PROCESS AND COMPOSITION OF COMPETITIVE PRODUCT.

Conceded facts that manufacturer of granulated chicory misrepresented its method of achieving uniformity in color and falsely represented that competitor's product contained molasses, sugar beet, and other foreign substances, established that "unfair method of competition" within Federal Trade Commission Act was practiced by manufacturer. Federal Trade Commission Act Sec. 1 et seq., as amended, 15 U. S. C. A. Sec. 41 et seq.

METHODS, ACTS AND PRACTICES—UNFAIR METHODS OF COMPETITION—MISREPRESENTATION—DISPARAGEMENT OF COMPETITIVE PRODUCT.

False disparagement of a competitor's goods is an "unfair method of competition" within Federal Trade Commission Act.

METHODS, ACTS AND PRACTICES—UNFAIR METHODS OF COMPETITION—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—MANUFACTURING METHOD OR PROCESS.

False advertising of a product, process or method by malicious active misrepresentations with reference to a method of achieving color and uniformity of color in chicory violates the Federal Trade Commission Act.

EVIDENCE—FINDINGS OF COMMISSION—EXPERT TESTIMONY—ACCOUNTING—PRINCIPLES—OPINION OF LITIGANTS, ACCOUNTANTS.

The rule that the Federal Trade Commission's findings of fact are conclusive unless record shows that they are clearly erroneous applies to findings based on expert testimony, and the Commission is not bound to accept opinion of litigants' accountants.

EVIDENCE—METHODS, ACTS AND PRACTICES—UNFAIR METHODS OF COMPETITION—SELLING BELOW COST WITH INTENT TO INJURE COMPETITORS—ACCOUNTING ALLOCATIONS.

Where Federal Trade Commission found that manufacturers and sellers of granulated chicory sold below cost during certain period with intent to injure competition and the basis of the Commission's tables of costs was a transactions method [512] of allocating certain expenses which was employed in accounts by auditor of manufacturer, the methods employed by the Commission were not so entirely at odds with fundamental principles of correct accounting as to require that they be disregarded. Clayton Act Sec. 1 et seq., as amended, 15 U. S. C. A. Sec. 12 et seq.

EVIDENCE—METHODS, ACTS AND PRACTICES—UNFAIR METHODS OF COMPETITION—SELLING BELOW COST WITH INTENT TO INJURE COMPETITOR—IF DISPARAGEMENT AND MISREPRESENTATION CONCEDED—MATERIALITY.

In determining whether manufacturers and sellers of granulated chicory sold their product during certain period with intent to injure competition, the conceded disparagement of competitor's product and conceded false representations as to quality of manufacturer's own product could be considered.

EVIDENCE—METHODS, ACTS AND PRACTICES—UNFAIR METHODS OF COMPETITION—SELLING BELOW COST WITH INTENT TO INJURE COMPETITOR.

Evidence sustained finding of Federal Trade Commission that manufacturers and sellers of granulated chicory sold their product during certain period with intent to injure competition.

EVIDENCE—METHODS, ACTS AND PRACTICES—SELLING BELOW COST WITH INTENT TO INJURE COMPETITOR—WHETHER SHOWING OF COMPETITIVE LOSS REQUIRED.

Where manufacturers and sellers of granulated chicory were charged with unlawful discrimination in price, it was not necessary that evidence show that competitor suffered loss to sustain finding of Federal Trade Commission that the manufacturers sold their product below cost with intent to injure competition.

FEDERAL TRADE COMMISSION ACT—SCOPE AND PURPOSE—AS PREVENTIVE.

The purpose of the Federal Trade Commission Act is to prevent potential injury by stopping unfair methods of competition in their incipiency. Federal Trade Commission Act Sec. 1 et seq., as amended, 15 U. S. C. A. Sec. 41 et seq.

METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—TRADE AREAS—IF COMPETITOR UNABLE MEET COMPETITION THROUGH LOW PRICE FORCED IN ITS AREA.

Where manufacturers and sellers of granulated chicory, by discriminating against other general trade areas in favor of area in which competitor operated, were able to force a price so low in the competitor's area that the competitor could not meet its competition, the statute prohibiting discrimination the effect of which may be substantially to lessen competition or tend to create a monopoly was applicable. Clayton Act Secs. 2, 11, as amended, 15 U. S. C. A. Secs. 13, 21.

DUE PROCESS—"FULL AND FAIR HEARING."

The right to a "full and fair hearing" is one of the substantial rights of a litigant and includes not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them.

FEDERAL TRADE COMMISSION ACT—COMMISSION JURISDICTION—AS INVOLVING, GENERALLY, UNLAWFUL METHODS AND PRACTICES IN COMMERCE.

The Federal Trade Commission Act gives the Commission jurisdiction to prevent unfair methods of competition in commerce, and it does not deal with specific acts claimed to be unfair but with unlawful methods and practices in commerce. Federal Trade Commission Act Sec. 1 et seq., as amended, 15 U. S. C. A. Sec. 41 et seq.

EVIDENCE—METHODS, ACTS AND PRACTICES—SELLING BELOW COST AND PRICE DISCRIMINATION—GROUP TRANSACTIONS AND COMPARISONS AS ONLY MEANS OF ESTABLISHING.

Where manufacturers of granulated chicory were advised by complaint filed by Federal Trade Commission that one of the principal charges was that the manufacturers in course and conduct of their businesses were selling below cost in interstate commerce and engaging in a practice of price discrimination, the violations charged could be established only by evidence of many transactions considered as a group and involving a comparison of prices and costs over a substantial period of time.

EVIDENCE—METHODS, ACTS AND PRACTICES—SELLING BELOW COST AND PRICE DISCRIMINATION—GROUP TRANSACTIONS AND COMPARISONS AS ONLY MEANS OF ESTABLISHING—IF NO JUSTIFICATION IN DIFFERENCE OF COST, QUALITY, QUANTITY, ETC., AS TO NUMEROUS AND VARYING PRICES IN DIFFERENT CITIES AND TRADE AREAS AS SHOWN BY INVOICES.

Where manufacturers of granulated chicory were advised by complaint filed by Federal Trade Commission that one of the principal charges was that the manufacturers were selling below cost in interstate commerce and engaging in a practice of price discrimination, invoices which showed that as to numerous and varying prices charged in different cities and in different trade areas during the period involved there was no justification in difference of cost, quality, quantity, etc., presented a prima facie case of discrimination and burden was on manufacturers of rebutting the prima facie case. Clayton Act Sec. 2 (b), as amended, 15 U. S. C. A. Sec. 13 (b).

EVIDENCE—METHODS, ACTS AND PRACTICES—SELLING BELOW COST AND PRICE DISCRIMINATION—WHERE EVIDENCE OF 1100 TRANSACTIONS OFFERED AS ESTABLISHING CONSISTENT PRACTICE OF DISCRIMINATION—IF PREJUDICE NOT SHOWN.

Where manufacturers of granulated chicory were advised by complaint filed by Federal Trade Commission that one of the principal charges was that the manufacturers were selling below cost in interstate commerce and engaging in a practice of price discrimination, and the Commission offered evidence of some 1,100 transactions claimed to establish a consistent practice of discrimination, the Commission's counsel in fairness should have specified individual or group transactions which he claimed constituted unlawful discrimination, but prejudice was not shown by failure to do so, in view of fact that manufacturers were not surprised. Clayton Act Sec. 2 (b), as amended, 15 U. S. C. A. Sec. 13 (b); Federal Trade Commission Act Sec. 5 (c), as amended, 15 U. S. C. A. Sec. 45 (c).

APPELLATE PROCEDURE AND PROCEEDINGS—EVIDENCE—LEAVE TO ADDUCE ADDITIONAL—IF PREJUDICE TO PETITIONER BY COMMISSION ATTORNEY'S FAILURE TO PARTICULARIZE AS TO ALLEGED DISCRIMINATING SALES IN BLANKET OFFER.

If manufacturers of granulated chicory were prejudiced by failure of attorney for Federal Trade Commission to furnish statement as to particular sales relied on

as constituting discrimination, the manufacturers were entitled to apply to Circuit Court of Appeals for leave to adduce additional evidence and to explain and justify transactions found by the Commission to constitute unlawful discrimination. Federal Trade Commission Act Sec. 5 (c), as amended, 15 U. S. C. A. Sec. 45 (c).

DUE PROCESS—"FULL AND FAIR HEARING"—EVIDENCE—METHODS, ACTS AND PRACTICES—SELLING BELOW COST AND PRICE DISCRIMINATION—WHERE BLANKET OFFER OF 1100 TRANSACTIONS AS ESTABLISHING CONSISTENT PRACTICE OF DISCRIMINATION—IF NO SURPRISE, OR APPLICATION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE.

Where manufacturers of granulated chicory were advised by complaint filed by Federal Trade Commission that one of the principal charges was that the manufacturers were selling below cost in interstate commerce and engaging in a practice of price discrimination, and Commission offered evidence of some 1,100 transactions claimed to establish consistent practice of discrimination, failure to furnish manufacturers statement as to the particular sales relied on as constituting discrimination did not deprive them of a "full and fair hearing," in view of fact that manufacturers were acquainted with transactions and did not apply to Circuit Court of Appeals for leave to adduce additional evidence. Clayton Act Sec. 2 (b), as amended, 15 U. S. C. A. Sec. 13 (b); Federal Trade Commission Act Sec. 5 (c), as amended, 15 U. S. C. A. Sec. 45 (c).

COMMISSION PROCEDURE AND PROCEEDINGS—SUBPOENAS DUCES TECUM—IF APPLICATION FOR TOO SWEEPING.

The Federal Trade Commission in the issuance of a subpoena duces tecum is invested with a quasi judicial discretion and is authorized to deny application for subpoena duces tecum in its entirety if it is too sweeping in its terms to be regarded as reasonable.

COMMISSION PROCEDURE AND PROCEEDINGS—SUBPOENAS DUCES TECUM—IF APPLICATION FOR TOO SWEEPING—IF PRODUCTION OF CUSTOMER LIST AND CAPITAL SOURCES OF COMPETITOR ENTAILLED.

Where manufacturers of granulated chicory were charged with engaging in unfair methods of competition and with unlawful discrimination in price and they filed application for subpoena duces tecum which would have compelled their competitor to give a complete list of his customers and the sources of his operating capital, the application was unreasonable and the Commission did not abuse its discretion in denying the application, since the competitor's customers list was a valuable property right entitled to protection. Federal Trade Commission Act Sec. 1 et seq., as amended, 15 U. S. C. A. Sec. 41 et seq.; Clayton Act Sec. 1 et seq., as amended, 15 U. S. C. A. Sec. 12 et seq.

COMMISSION PROCEDURE AND PROCEEDINGS—PUBLIC INTEREST—METHODS, ACTS AND PRACTICES—UNFAIR METHODS OF COMPETITION AND PRICE DISCRIMINATION—IF ONE COMPETITOR ONLY OF RESPONDENTS.

Proceedings against domestic manufacturers of granulated chicory for engaging in unfair methods of competition in commerce and for unlawful discrimination in price was not objectionable as not instituted in "public interest" because there was only one competitor in production and distribution of domestic chicory. Federal Trade Commission Act Sec. 5 (b), as amended, 15 U. S. C. A. Sec. 45 (b).

CEASE AND DESIST ORDERS—CLARITY—METHODS, ACTS AND PRACTICES—PRICE DISCRIMINATION—"TRADE AREAS"—IF NOT SPECIFICALLY DEFINED.

Cease and desist order of Federal Trade Commission prohibiting discrimination in price by manufacturers of granulated chicory between different trade areas was

not objectionable because the term "trade areas" was not defined, where in light of the record the meaning of the term was plain. Federal Trade Commission Act Sec. 1 et seq., as amended, 15 U. S. C. A. Sec. 41 et seq.; Clayton Act Sec. 1 et seq., as amended, 15 U. S. C. A. Sec. 12 et seq.

CEASE AND DESIST ORDERS—SCOPE—IN GENERAL.

[514] Cease and desist orders of Federal Trade Commission are necessarily general and must be broad enough to prevent evasion.

(The syllabus, with substituted captions, is taken from 142 F. (2d) 511)

On petition to review order of Commission, order affirmed and petition to review dismissed.

Mr. Hal. H. Smith, of Detroit, Mich. (*Mr. F. E. Robson*, *Mr. Joseph A. Vance, Jr.*, *Mr. Frank E. Cooper* and *Beaumont, Smith & Harris*, all of Detroit, Mich., on the brief), for petitioners.

Mr. Joseph J. Smith, Jr., assistant chief counsel, Federal Trade Commission, of Washington, D. C. (*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, of Washington, D. C., on the brief), for respondent.

Before HICKS, ALLEN and HAMILTON, *Circuit Judges*.

ALLEN, *Circuit Judge*.

Petitioners, E. B. Muller & Company and Heinr. Franck Sons, Inc. (hereinafter called Muller and Franck respectively), manufacturers and sellers of granulated chicory, were charged by the Federal Trade Commission with engaging in unfair methods of competition in commerce, in violation of the Federal Trade Commission Act, Title 15, U. S. C., § 41 et seq., and with unlawful discrimination in price, in violation of the Clayton Act as amended by the Robinson-Patman Act, Title 15, U. S. C., § 12 et seq. Hearings were held in 1937 and 1939, and at intervals until August 2, 1940. The Commission found the petitioners' practices were unlawful in the respects charged and entered a cease and desist order, from which this petition to review is prosecuted. Petitioners contend that the findings are not supported by substantial evidence; that the order is not authorized by the statutes, and that they were denied a full and fair hearing before the Commission.

The petitioners have been engaged in business in the United States since 1902 and 1895 respectively. During the period up to 1926 they manufactured and sold the greater part of all the domestic granulated chicory marketed in the United States. At the present time there are no manufacturers or sellers of granulated chicory in this country except the petitioners and R. E. Schanzer, Inc., of New Orleans, Louisiana (hereinafter called Schanzer), so that Schanzer is petitioners' only competitor.

The root of chicory, dried, roasted and granulated, is mixed with coffee either as a blend or a "filler." In the United States chicory is grown only in Michigan where the petitioners and Schanzer, under contract with various farmers, grow chicory for their own use in the trade and process it in their individual factories. Of late years there has been no substantial importation of foreign chicory into the United States.

Seventy-five per cent of all domestic chicory sold in the United States is consumed in the New Orleans trade area, comprising Florida, Alabama, Mississippi, Louisiana, Texas and Tennessee. Muller sells about forty per cent of its product and Franck about seventy-five per cent of its

product in the southern territory. In the South chicory is used as a blend, and at times it is sold at a higher price than coffee, but outside of the South the roasters use it simply as a filler in order to lower the cost of pure coffee.

The Commission found that the petitioners do not compete with each other, but that the business of each is supplementary to that of the other, and in substance that they constitute a single enterprise, directed and controlled by David McMorrان, Franck's president. This finding is supported by an abundance of evidence. David McMorrان owns all of Franck's outstanding common stock, and all of the stock of the Michigan Debenture Corporation, which owns 4,400 of Franck's outstanding 5430 shares of preferred stock. David McMorrان's wife, Charlotte H. McMorrان, holds the legal title to five-sixths of the 30,000 outstanding shares of capital stock in Muller. The officers of Muller are Gordon McMorrان, president, Charlotte H. McMorrان, secretary-treasurer, and Charlotte C. McMorrان, vice-president. Gordon McMorrان and Charlotte C. McMorrان are son and daughter of David McMorrان and Charlotte H. McMorrان. While prior to 1919 these two businesses were owned by different individuals and probably competed [515] with each other, in that year the situation changed. David McMorrان, who was then an officer of Muller and together with his father owned a controlling interest therein, purchased the stock of Franck at public auction from the United States Alien Property Custodian. The sale was made after a hearing by the Federal Trade Commission, upon condition imposed that David McMorrان resign as officer and director of Muller and dispose of his stock in that company. David McMorrان sold his Muller stock to his father, to his attorney, and to a personal friend. In the period between 1919 and 1924 all of the Muller stock disposed of by David McMorrان, together with the stock previously owned by David McMorrان's father, was acquired by Charlotte H. McMorrان, with funds furnished by David McMorrان. It was understood that the stock was to be placed in trust for David McMorrان and Charlotte H. McMorrان for life, and that the trust could be terminated either by the beneficiaries jointly or the survivor of them. This trust was thereafter established with the Detroit Trust Company.

The circumstance that the trust was set aside by a decree of the Michigan state court in 1939 does not overcome the evidence of close relationship between the corporations, arising from Charlotte H. McMorrان's ownership of the controlling interest in Muller, which was purchased with David McMorrان's funds. The record clearly shows that Charlotte H. McMorrان takes little active part in the business, and that David McMorrان dominates both companies. Muller furnishes David McMorrان with an office and stenographic help at its principal place of business in Port Huron, Michigan, for which it receives no compensation. David McMorrان is usually present at Muller's stockholders and directors' meetings and actively participates in the discussion and shaping of Muller's general business policies. He has permissive access to Muller's files at Port Huron.

The companies are so operated that they assist and benefit each other in their business. In 1920 Muller made an arrangement to supply the Michigan Debenture Company, whose stock was wholly owned by David McMorrان, with \$440,000 so that the Debenture Company could purchase from Franck \$440,000 of its preferred stock. The arrangement was carried through contemporaneously and Muller was thus shown to be one of the principal factors in furnishing Franck with \$440,000 of working capital. A practical division of business has been set up between Muller and Franck under which the latter concentrates upon packaged goods, retaining only

a small number of old customers of bulk goods, while Muller manufactures very few packaged goods and confines itself mainly to the sale of chicory in bulk. A similar practical division of territory is made between Muller and Franck. Franck operates principally in New Orleans, New York, San Francisco and Los Angeles, selling through brokers. Muller uses traveling salesmen and covers the entire country. The South in general is covered by Muller, with the exception of New Orleans, Atlanta and Memphis, where Franck retains some old customers. Schanzer's sales are in general confined to the southern states.

A non-competitive relationship has existed between Muller and Franck for over twenty years. Since 1921 Van Slambrouck, Muller's vice-president and production manager, has been in the habit of consulting with David McMorran as to Muller's business. These consultations were more frequent up to 1929, when Gordon McMorran became president of Muller, and specifically included the subject of prices to be instituted by Muller. Petitioners contend that the close relationship ceased in 1929, but the record does not sustain this contention. In 1930 David McMorran instructed Beitter, Franck's manager, to consult with Muller's sales manager "before making the change" in prices. In 1932 Van Slambrouck wrote to Eisinger, Muller's sales manager in New York, suggesting that Eisinger go to New Orleans and talk with one of Muller's important customers, and said, "before doing so it might be well for you to write D. [David McMorran] and frankly ask him what you are authorized to do in the matter of further price concessions in New Orleans proper and out of town to combat the Schanzer competition." Letters written in 1934 by both the sales manager and the president of Muller contain statements to the effect that Muller does not desire any of Franck's business. When Maxwell House, which had been a customer of Franck from 1930 to 1934, began to do business with Schanzer in 1934, Muller competed for the account, and Franck dropped any attempt to retain it.

[516] Petitioners concede that the ownership is such as might give David McMorran and his family control of both corporations. They do not contend that the evidence summarized and much other evidence referred to in the findings was not presented before the Commission, but state that certain contradictory evidence presented by petitioners requires a contrary conclusion. However, the findings of the Commission on issues of fact are controlling here, "So long as there is warrant in the record for the judgment of the expert body. . . ." *Rochester Telephone Co. v. United States*, 307 U. S. 125, 145. The evidence presented fully warranted the finding of unitary domination and control. Consequently petitioners' contention that the order of the Commission is unauthorized in that it orders "both petitioners" to cease disparagement of Schanzer's product, and to cease misrepresentations as to the color of their granulated chicory, being based upon the premise that no unitary control exists, has no merit and will not be further considered.

The finding that Muller obtained substantially lower freight rates than those properly applicable, falsely and fraudulently representing to the railroads that certain of its cars, which contained large quantities of chicory and similar quantities of coffee substitutes, contained chicory only, is not contested. The petitioners endeavor to soften the significance of these findings in briefs and argument; but it appears that Muller pleaded guilty to an indictment of unlawfully, wilfully and knowingly misbilling chicory and coffee substitutes. The finding that the falsified billings were made with Muller's knowledge and with the deliberate intent of obtaining an illegal freight rate is thus amply supported, and is reenforced by letters

written by the principal officials of Muller, warning their agents and employees that this misbilling must be concealed. Petitioners do not contest the finding that Muller used iron oxide for artificial coloring purposes, falsely representing that the desirable and uniform color thus secured was achieved by superior methods of roasting and a painstaking process of selecting and sorting. The finding that Muller disparaged Schanzer's chicory by falsely representing that it contained molasses, sugar beet, and other foreign substances, and that Franck falsely represented that Schanzer's chicory contained sugar beet, also is not challenged. These conceded facts establish that unfair competition was practiced by the petitioners in these respects as charged. False disparagement of the competitor's goods is an unfair method of competition. *Perma-Maid Co. v. Federal Trade Commission*, 121 F. (2d) 282 (C. C. A. 6) [33 F. T. C. 1803]. False advertising of a product, process or method by malicious active misrepresentations with reference to a method of achieving color and uniformity of color in chicory, violates the Federal Trade Commission Act. *Ford Motor Co. v. Federal Trade Commission*, 120 F. (2d) 175, 181 (C. C. A. 6) [33 F. T. C. 1781], certiorari denied, 314 U. S. 668.

Petitioners attack the finding that they sold below cost during 1936 and 1937, with intent to injure competition, principally in the New Orleans territory, where they competed with Schanzer.

The Commission found that during the six months ending June 30, 1936, Franck sold the greater part of its granulated chicory to two customers in New Orleans at a loss of approximately eleven cents per hundred pounds, and at cost, or slightly below cost, during the eight months ending March 31, 1937. Profitable sales, however, were made to other customers in amounts and for prices sufficient so that the business as a whole was not operated at a loss. Muller's entire business in 1936 and 1937 was conducted at an average loss of eighteen cents and eight cents per hundred pounds respectively, prices in New Orleans being in general substantially lower than in other areas where Muller did not have to compete with Schanzer. Muller's counsel concede that in 1936 and 1937 it sustained a loss on the total volume of granulated chicory sold, but contend that the Commission's findings as to degree of loss rest upon an arbitrary and unjustified distribution of costs made by the Commission's accountant. The rule that the Commission's findings of fact are conclusive unless the record shows that they are clearly erroneous applies to findings based upon expert testimony, *First National Bank v. Commissioner*, 125 F. (2d) 157 (C. C. A. 6), and the Commission is not bound to accept the opinion of petitioners' accountants. *Helvering v. National Grocery Co.*, 304 U. S. 282, 295; *Gamble v. Commissioner*, 101 F. (2d) 565, 567 (C. C. A. 6), certiorari denied, 306 U. S. 664; *Mott v. Commissioner*, 139 F. (2d) 317 (C. C. A. 6). The Commission's ac[517]countant is thoroughly qualified. He made revisions of his estimates at the trial in accordance with the testimony brought out by petitioners. The basis of the Commission's tables of costs was a transactions method of allocating certain expenses which was employed in these accounts by Franck's own auditor. We cannot say that the methods employed were "so entirely at odds with fundamental principles of correct accounting" (*Kansas City Southern Ry. Co. v. United States*, 231 U. S. 423, 444 (that they should be disregarded). *American Telephone & Telegraph Co. v. United States*, 299 U. S. 232, 236.

Moreover, the contention that the Commission's figures unfairly reflect the situation has little weight in view of the fact that the finding in this point is supported by voluminous evidence derived from petitioners' own management and employees. Repeated statements are made in the

official correspondence of the petitioners, quoted in the Commission's findings, to the effect that the petitioners at the time were selling substantially below cost. Muller's sales manager, on November 8, 1935, declared that the prevailing price of five and one-half cents "is already substantially below cost." David McMorran proposed on January 3, 1934, to cut prices in order to eliminate Schanzer, stating that "A cut of one-fourth to one-half cents will mean some loss to us." These statements, made in previous years, have weight not only upon the question of intent to eliminate Schanzer, but also upon the question whether sales consummated in 1936 and 1937, when the price-raising scheme had been put into effect, were actually below cost. In 1936 Gordon McMorran wrote to Muller's New York office, "The prices you set are below our cost at Port Huron," and in 1937 Muller's general sales manager advised the New Orleans office that the then current price resulted in loss. Petitioners attempt to explain these statements by saying that Schanzer had initiated a price war against them; but the Commission found, and the record clearly shows, that the price-cutting was begun by petitioners with the deliberate intent to destroy their only competitor.

The conceded disparagement of Schanzer's product and the conceded false representations as to the quality of petitioners' own product, already discussed, have weight upon the question of the existence of unlawful intent. Directly bearing on the same question and supporting the Commission's findings are numerous pieces of written and oral evidence, showing a deliberate intention on the part of Muller and Franck to stifle Schanzer's competition by cutting costs. A letter dated September 9, 1935, written by Muller's New York office, in speaking of statements made by Schanzer that he would do nothing that year on the new plant for manufacturing chicory in Michigan, concludes with these sentences: "Evidently Neal [Schanzer's financial backer] has drawn in the lines on account of poor conditions. So by continuing our efforts and putting a crimp into him wherever possible, we may ultimately curb this competition if we should not succeed in eliminating it entirely." In view of this evidence, petitioners' contention that the sales were made in good faith in order to meet competition and hence were not unlawful within the doctrine of *Federal Trade Commission v. Gratz*, 253 U. S. 421, 427 [2 F. T. C. 545], and *Federal Trade Commission v. Sinclair Refining Co.*, 261 U. S. 463, 475 [6 F. T. C. 587], cannot be sustained. A letter from a sales representative to Muller, January 14, 1933, declares: "I am sorry that we have allowed Schanzer to get to the point where he can expand, which was made possible by partner who has some capital. However, if a reduction on tariff should take place, it would make the situation still worse. I certainly hope that we can, as you expect, eliminate him entirely, by making prices that he cannot meet without losing money." Gordon McMorran admitted that he advised his salesmen that Muller must "at any cost" regain the volume of business lost to Schanzer. These statements must be read in light of the controlling fact that Schanzer is petitioners' only competitor, and so read they evince an evident determination to destroy Schanzer's business.

The fact that the sales were not greatly below cost does not aid the petitioners. It was not necessary that the evidence show that Schanzer suffered loss. *Federal Trade Commission v. Raladam Co.*, 316 U. S. 149, 152 [34 F. T. C. 1843]. The purpose of the Federal Trade Commission Act is to prevent potential injury by stopping unfair methods of competition in their incipiency. *Fashion Originators' Guild v. Federal Trade Commission*, 312 U. S. 457, 466 [32 F. T. C. 1856]. [518] But loss was shown. Prior to the latter part of January, 1937, Schanzer had cut its prices to meet the

petitioners' competition; but at that time it was compelled to increase prices, and its sales dropped from 2,319,507 pounds in 1936 to 1,459,195 in 1937. During the same year petitioners' sales increased 872,351 pounds. Schanzer lost substantial amounts of the business of three of its largest customers, the American Coffee Company, the Trico Coffee Company of New Orleans, and the Mobala Coffee Company of Mobile, Alabama. The importance of these losses is emphasized by the fact that Schanzer is a relatively small concern, having a net worth of about \$70,000 as compared with \$743,000 for Muller and \$1,256,000 for Franck. Meanwhile the petitioners discriminated in price between customers of different areas, selling chicory so much lower in the territory to which Schanzer had access than in the rest of the country, that they were able to recoup their losses in the New Orleans territory.

The Commission found, and the petitioners do not deny, that they have each discriminated in prices between purchasers of granulated chicory of like grade and quality since the effective date of the Robinson-Patman Act, Title 15, U. S. C., §§ 13, 21. Muller discriminated at times by selling the higher class of premium chicory at or below the price of standard or ordinary chicory, and also gave rebates to certain customers. It did not allow for differences in transportation costs and discriminated in favor of the New Orleans customer in varying degrees as against St. Louis, Memphis, Atlanta, and Birmingham customers. These discriminations were not, as petitioners would have us believe, unrelated to the central purpose, which was the destruction of petitioners' only competitor. By discriminating against other general trade areas in favor of New Orleans, Muller, on the one hand, was able to force the price so low in New Orleans that Schanzer could not meet its competition. On the other hand, by selling at higher prices in other general trade areas, Muller made up its loss in the New Orleans district.

Petitioners contend that in spite of the conceded discrimination, their course of conduct is not forbidden by the statute, Title 15, U. S. C., §§ 13 and 21. They urge that since Muller's standard grade of chicory was not of "the same grade and quality" as Schanzer's, there could be no discrimination against Schanzer. But the Commission did not find that there was discrimination against Schanzer. It found that the discrimination between the petitioners' customers injured Schanzer and tended to establish a monopoly. The record clearly shows that this discrimination existed between competing customers, although the statute requires only that the discrimination be between "different purchasers of commodities of like grade and quality." Since the discrimination prohibited is one the effect of which "may be substantially to lessen competition or tend to create a monopoly" or to "prevent competition with any person who either grants or knowingly receives the benefit of such discrimination," the statute clearly applies. The discrimination found to exist tended to create a monopoly.

The most serious contentions raised by petitioners are that they were not accorded a full and fair hearing and were denied due process (1) because they were not furnished the particulars of the charge as to discrimination, and (2) because they were not granted a subpoena duces tecum as prayed. The right to a full and fair hearing is one of the substantial rights of a litigant, constituting one of "the rudiments of fair play (*Chicago, M. & St. P. Ry. Co. v. Poll*, 232 U. S. 165, 168)." *Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio*, 301 U. S. 292, 304. It includes not only the right to present evidence, but also "a reasonable opportunity to know the claims of the opposing party and to meet them." *Morgan v.*

United States, 304 U. S. 1, 18. Cf. *Powhatan Mining Co. v. Ickes*, 118 F. (2d) 105 (C. C. A. 6).

With reference to the first point, petitioners contend that their motion to require the attorney for the Commission to furnish a statement as to the particular sales relied on as constituting discrimination should have been granted and that in default of such relief petitioners were deprived of the opportunity to rebut the charge by evidence as to the particular transactions relied upon. They urge that they were entitled to meet proof as to discriminations by showing [§ 2(a) of the Clayton Act] that the differential in price was not between different purchasers of commodities of like grade or quality; that the differentials were due to differences in cost of [519] manufacture, sale or delivery resulting from different methods or quantities or due to changing conditions of the market, etc. They claim that within the terms of § 2(b) of the Clayton Act whatever discrimination existed was in fact made "in good faith to meet an equally low price . . . of a competitor."

This contention is based on the fact that the Commission, by subpoena duces tecum, required the petitioners to produce all invoices of sale for the period between September, 1935, and October, 1937. These were offered in evidence as being relevant on the question of discrimination as well as on other features of the case. Counsel for petitioners urged, and still contend, that the petitioners could not meet the claim of the Government and explain and justify the various transactions without knowing upon which particular transactions the Government would rely. They assert that not until the brief of the Commission was received in 1940 was any information given as to the sales relied on as evidence of discrimination. The findings of the Commission specify certain transactions held to be discriminatory, but this was after the case was closed.

We think the contention that the petitioners were not given particulars of the charges against them has no merit on this record. While the Commission offered evidence of some 1,100 transactions claimed to establish a consistent practice of discrimination, petitioners were advised in the complaint that one of the principal charges was that the petitioners in the course and conduct of their respective businesses were selling below cost in interstate commerce and engaging in a practice of price discrimination. During the hearings they were repeatedly advised by counsel for the Commission that the charge was one covering a course of conduct. The Federal Trade Commission Act gives the Commission jurisdiction to prevent unfair methods of competition in commerce. It does not deal with specific acts claimed to be unfair, but with unlawful methods and practices in commerce. *Keller v. Federal Trade Commission*, 132 F. (2d) 59, 61 (C. C. A. 7) [35 F. T. C. 970]; *Hill v. Federal Trade Commission*, 124 F. (2d) 104, 106 (C. C. A. 5) [34 F. T. C. 1800]; *Hershey Chocolate Corp. v. Federal Trade Commission*, 121 F. (2d) 968, 971, 972 (C. C. A. 3) [33 F. T. C. 1798]. The Commission could not prove a course of conduct for the period charged by picking out a few instances of isolated sales. The violation could be established only by evidence of many transactions considered as a group, and involving a comparison of prices and costs over a substantial period of time. The invoices on their face presented a prima facie case of discrimination, for they showed that as to numerous and varying prices charged in different cities and in different trade areas during the period in question, there was no justification in differences of freight cost, quality, quantity, etc. We think that since the statute imposes upon the petitioners the burden of rebutting a prima facie case of discrimination [Title 15, U. S. C., § 13 (b)], the Commission's counsel should in fairness have speci-

fied the individual or group transactions which he claimed constituted unlawful discriminations. He should have stated that he relied on the transactions between Franck, Reily & Company, Merchants Coffee Company, American Coffee Company, Southern Coffee Mills Company of New Orleans, and Golden Gate Supply Company of San Francisco, and other instances of discrimination specified in the findings of the Commission with reference to the selling of granulated chicory of like grade and quality to some customers at materially higher prices than to others, not justified by cost differences. We think no prejudice was shown by this failure for the petitioners were well acquainted with the transactions covered by the invoices and could not have been surprised at any claim of discrimination based thereon. Moreover, petitioners had the right under § 5(c) of the Federal Trade Commission Act (Title 15, U. S. C., § 45), if they were prejudiced, to apply to this court for leave to adduce additional evidence to explain and justify the transactions found by the Commission to constitute unlawful discrimination. No such application was made. The Supreme Court has held that even in case of an arbitrary refusal to receive testimony, when petitioners fail to avail themselves of this right (*Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 226), due process is not denied. We conclude that the petitioners were not refused a fair trial in this regard.

With reference to the refusal of a subpoena duces tecum, it appears that the petitioners early in the hearings stated that they meant to apply for an order to compel Schanzer to produce his books as evidence in the case. Schanzer stated that he [520] was willing to have a disinterested auditor procure any information to which petitioners were entitled, but refused to produce the books, upon the ground that they contained the names of his customers, the sources of his capital, and other confidential information. The Commission ordered Schanzer either to produce his books and records or to produce data and information taken from the books and records, giving the information to which the petitioners were entitled. Schanzer furnished certain exhibits in accordance with this order, which were revised to conform to petitioners' objections, but refused to itemize these exhibits so as to give information as to his customers. The Commission in effect sustained Schanzer in this position.

Petitioners' contention upon this point is untenable. The Commission, in the issuance of a subpoena duces tecum, is invested with a quasi-judicial discretion, and is authorized to deny the application in its entirety if it is "too sweeping in its terms to be regarded as reasonable." *Hale v. Henkel*, 201 U. S. 43, 76, 77; *Federal Trade Commission v. American Tobacco Co.*, 264 U. S. 298, 306 [7 F. T. C. 599]. Under such circumstances a demand for the whole is not warranted, even though some part of the papers asked for may be relevant. *Goodyear Tire & Rubber Co. v. National Labor Relations Board*, 122 F. (2d) 450, 453 (C. C. A. 6). An application which would compel Schanzer to give a complete list of his customers and the sources of his operating capital was unreasonable. The customers' list is a valuable property right, entitled to protection, and in general privileged against disclosure. *Crocker-Wheeler Co. v. Bullock*, 134 Fed. 241, 248. The Commission did not abuse its discretion in denying the application, and the petitioners received all the information to which they were entitled. The proceedings, considered as a whole, were extremely fair.

Petitioners finally contend that this proceeding is not, as required by the statute [Title 15, U. S. C., § 45(b)], instituted in "the public interest." *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 647 [15 F. T. C. 598]. Upon this point also the Commission must be sustained. The basic

fact of the case is that Schanzer is the only competitor of Muller and Franck in the production and distribution of domestic chicory. Since competition has substantially ceased between the petitioners, they would divide the field in a complete monopoly if Schanzer were to be eliminated. The record clearly shows that the petitioners have resorted to unfair and illegal practices within the meaning of the Act. Hence the proceeding aimed to suppress the practices is "to the interest of the public." *Federal Trade Commission v. Keppel*, 291 U. S. 304 [18 F. T. C. 684]. Cf. *National Broadcasting Co. v. United States*, 319 U. S. 190, 224, construing a similar provision of the Communications Act, Title 47, U. S. C., § 303(g) and (r). To suppress elimination of competition and to prevent monopoly is in the public interest. *Hershey Chocolate Corp. v. Federal Trade Commission*, *supra*; *White Bear Theatre Corp. v. State Theatre Corp.*, 129 F. (2d) 600, 605 (C. C. A. 8). To protect the purchasing public against deceptive methods and misrepresentations by which purchasers are deceived is in the public interest. *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212, 217 [17 F. T. C. 664]; *Ford Motor Co. v. Federal Trade Commission*, *supra*. That Schanzer individually may benefit from the Commission's order is immaterial.

Numerous attacks are made upon the form and validity of the order, but the foregoing considerations dispose of most of them. It is evident that the order is authorized by the statute and is proper in scope. We consider here only the contention that it is void for indefiniteness due to the fact that it prohibits discriminations in price between different "trade areas." Petitioners urge that because the term "trade areas" is not defined, they cannot comply with the order. In light of the record we think that the meaning of the term is plain. Such orders are necessarily general [*Chamber of Commerce of Minneapolis v. Federal Trade Commission*, 13 F. (2d) 673, 696 (C. C. A. 8) [10 F. T. C. 687]], and must be "broad enough to prevent evasion." *Local 167 v. United States*, 291 U. S. 293, 299.

The Commission's order to cease and desist is affirmed, and the petitioners are commanded to comply therewith. The petition to review is dismissed.

PARKE, AUSTIN & LIPSCOMB, INC. ET AL. v. FEDERAL
TRADE COMMISSION¹

No. 238—F. T. C. Dock. 4465

(Circuit Court of Appeals, Second Circuit. Apr. 19, 1944)

JURISDICTION OF COMMISSION—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—SALESMEN'S—IF UNAUTHORIZED.

Misrepresentations of fact by salesmen subjected employers to jurisdiction of the Federal Trade Commission, though such misrepresentations were not authorized by employers. Federal Trade Commission Act, Sec. 1 et seq., 15 U. S. C. A. Sec. 41 et seq.

¹ Reported in 142 F. (2d) 437. For case before Commission, see 34 F. T. C. 591, Certiorari denied Oct. 16, 1944, 65 S. Ct. 86.

CEASE AND DESIST ORDERS—PROPRIETY—PARTIES—METHODS, ACTS AND PRACTICES—MISREPRESENTATION.

Evidence sustained finding of Federal Trade Commission that public was deceived by misrepresentations made by persons ordered to cease and desist from such unfair practices.

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—SALESMEN'S—IF FALSE AND MISLEADING STATEMENTS IN LITERATURE AND OTHER AIDS SUPPLIED TO, BY PUBLISHERS—WHETHER COMMISSION RULE OF USING DUE CARE, AVAILABLE.

Book publishers who had made false and misleading statements in literature and other aids supplied to salesmen could not invoke rule of Federal Trade Commission imposing only obligation of using due care by publishers who had made no false statements, etc., in literature and other aids supplied to salesmen.

COMMISSION PROCEDURE AND PROCEEDINGS—IF PROCEEDINGS OR FILES THEREFORE CLOSED “WITHOUT PREJUDICE”—REINSTATEMENT.

Where exoneration of publishers from any wrongdoing in 1937 was without prejudice to right of Federal Trade Commission to reinstate the matter if conditions should warrant, whether conditions warranted reinstatement rested in discretion of the Commission.

JURISDICTION OF COMMISSION—PUBLIC INTEREST—CASES IN COMMERCE AFFECTING—IF COMPETITION NOT INVOLVED.

The Federal Trade Commission has jurisdiction of all cases in commerce affecting the public interest, whether or not competition is involved. Federal Trade Commission Act Sec. 5, as amended by Act March 21, 1938, 45 U. S. C. A. Sec. 45.

JURISDICTION OF COMMISSION—PUBLIC INTEREST—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—SOURCE OR ORIGIN OF PRODUCT—MAKER.

It is in the interest of the public to prevent sale of commodities by the use of false and misleading statements and representations, and the intervention of the Federal Trade Commission is warranted even if the misrepresentations go no further than to state or imply that the maker of an article is other than the true one though the purchaser receives an article of equal value.

COMMISSION PROCEDURE AND PROCEEDINGS—JURISDICTION OF COMMISSION—PUBLIC INTEREST—WHERE ALLEGED IN COMPLAINT, AND, ON PROOF, NECESSARILY INVOLVED, ON MERITS—IF FAILURE OF TRIAL EXAMINER TO FIND EXPLICITLY.

The Federal Trade Commission was competent to pass on the question of public interest, and it was sufficient that complaint alleged the existence of the public interest which the proof showed was necessarily involved in the merits, and failure of trial examiner to find explicitly that the public interest was involved was immaterial.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—BUSINESS STATUS—TRADE OR CORPORATE NAMES—“SMITHSONIAN INSTITUTION” FOR COMMERCIAL ENTERPRISE.

The Federal Trade Commission Act was designed to redress public grievances and the Commission had power to forbid use of words “Smithsonian Institution” in corporate name or in any other manner to designate a commercial enterprise which was not a part of or directly connected with the institution at Washington, though the latter had agreed to the use of such words.

CEASE AND DESIST ORDERS—PROPRIETY—PUBLIC DECEPTION—FACT OF, AS TEST.

Whether the public were misled, and not whether they should have been misled, is the test of the power of the Federal Trade Commission to enter order for protection of public, and the Commission's finding that members of the buying public were misled ended the matter where sustained by the evidence.

CEASE AND DESIST ORDERS—SCOPE—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—BUSINESS STATUS—TRADE OR CORPORATE NAMES—"SMITHSONIAN INSTITUTION" FOR COMMERCIAL ENTERPRISE—ELIMINATION OF, FROM CORPORATE NAME—WHETHER ABUSE OF DISCRETION.

Order of Federal Trade Commission that words "Smithsonian Institution" be eliminated from corporate name of publisher of books was not an abuse of discretion under the evidence.

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—WHERE DESIGNED FOR PUBLIC PROTECTION—COURT LIMITATION.

The court can interfere with order of Federal Trade Commission designed for public protection only where there has been an abuse of discretion. Federal Trade Commission Act Sec. 1 et seq., 15 U. S. C. A. Sec. 1 et seq.

CEASE AND DESIST ORDERS—SCOPE—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—SPECIAL SELECTION OF PROSPECT AND TERMS AND CONDITIONS—"PATRON CERTIFICATES"—PROHIBITION OF IMPROPER USE.

Order of Federal Trade Commission forbidding the use of so-called "patron certificates," so as to imply that the individual prospect had been specially selected for any reason or that the enterprise benefited was other than an ordinary commercial venture, was proper, and only the improper use of such certificates and not the right of an institution to issue them was forbidden. Federal Trade Commission Act Sec. 5, as amended by Act March 21, 1938, 45 U. S. C. A. Sec. 45.

CEASE AND DESIST ORDERS—CERTIFICATES OF COMPLIANCE WITH—FORCE AND EFFECT THEREAFTER AS TO SUBJECT MATTER AND PARTIES.

An order of the Federal Trade Commission to cease and desist from unfair trade practices remained in force and continued to bind parties against whom it was issued, notwithstanding the filing by them of a certificate of compliance. Federal Trade Commission Act Sec. 1 et seq., 15 U. S. C. A. Sec. 1 et seq.

CEASE AND DESIST ORDERS—FINALITY—IF NO PETITION FOR REVIEW AS TO MATTERS IN WHICH ONLY SOME OF PARTIES CONCERNED.

Where no petition to review certain part of cease and desist order entered by Federal Trade Commission was filed and such part concerned matters in which only some of the parties were concerned, they were severable from the other part of order and became final at the expiration of time for filing of petition for review.

(The syllabus, with substituted captions, is taken from 142 F. (2d) 437.)

On petition for review and modification of an order by the Commission, petition dismissed and order enforced.

Marlow & Hines, of New York City (*Mr. Ernest W. Marlow* and *Mr. Richard Lincoln*, both of New York City, of counsel), for petitioners.

Mr. W. T. Kelley, chief counsel, and *Mr. Eugene W. Burr* and *Mr. Randolph W. Branch*, special attorneys, Federal Trade Commission, all of Washington, D. C., for respondent.

Before SWAN, CHASE, and CLARK, *Circuit Judges*.

[439] CHASE, *Circuit Judge*:

The petitioner Parke, Austin & Lipscomb, Inc., is a corporation which since 1914 has been engaged in the publication and distribution of books. The petitioner Smithsonian Institution Series, Inc., is a subsidiary corporation wholly owned by Parke, Austin & Lipscomb, Inc. The petitioners Monett, Hogan and McAndrews are officers of the two corporations.

In 1926 negotiations between the Smithsonian Institution of Washington, D. C., and Parke, Austin & Lipscomb, Inc., culminated in an agreement whereby a set of books written and edited by the scholars of the Institution would be published and distributed by a subsidiary corporation to be organized by Parke, Austin & Lipscomb, Inc., for the express purpose. A quarter of a million dollars was placed in escrow by the petitioners to ensure their proper preparation and distribution of the volumes, and a ten per cent royalty was agreed upon for payment to the Smithsonian Institution.

The name of Smithsonian Institution Series, Inc., was adopted for the subsidiary corporation at the request of a member of the board of regents of the Institution, whose expressed desire was to indicate by the name adopted that a relationship existed between the Institution and its publisher, and at the same time to limit the publisher to the manufacture and distribution of books issued by the Institution and designed to make its vast resources more readily available to the American people, as a "pocket edition of the Institution in all its activities."

Preparation of the manuscript was completed in 1932, and thereafter thirteen volumes comprising the "Smithsonian Scientific Series" were published. The work was done according to the agreement by the petitioner Smithsonian Institution Series, Inc., which employed a staff of several hundred salesmen engaged solely in the distribution of the books.

Testimony taken at the hearing before the Commission's trial examiner shows that some 250,000 prospects were interviewed over a period of years and that more than 34,000 sets of books were sold to purchasers throughout the country. A number of complaints were received from time to time from persons solicited by the petitioners' salesmen, most of them asserting that they had been misled by statements made to them by the salesmen. This proceeding and the order under review were the culmination of these complaints.

The trial examiner and the Commission found that in the course of offering their books to the public the petitioners made various misleading statements and misrepresentations having the purpose and effect of causing prospective purchasers to believe that the books were published and sold by the Smithsonian Institution of Washington, D. C., that the salesmen were in the employ of the Institution, that the entire selling price accrued to it, and that only a relatively small selected group of persons were being offered an opportunity to purchase the books because by virtue of social standing or influence or some commendable deed they were specially entitled to become patrons of the Institution.

The order to cease and desist from these practices contains six parts or paragraphs and enjoins the following activities: (1) representing that the petitioners' salesmen are employed by or directly connected with the Smithsonian Institution of Washington, D. C.; (2) representing that the books are published by the Institution and that it receives all the proceeds from sales; (3) representing to persons solicited that they have been selected from the public at large for special consideration or that they have been singled out to be patrons of the Institution; (4) making use of "patron certificates" in such a manner as to imply that the individual

prospects have been specially selected for any reason or that the enterprise benefited is other than an ordinary commercial venture; (5) using the words "Smithsonian Institution" in their corporate name or in any other connection to designate a commercial enterprise which in fact is not a part of or directly connected with the Institution in Washington; and (6) representing that the petitioner is engaged in anything other than a commercial enterprise for profit.

The evidence shows that in a substantial number of isolated instances the petitioners' salesmen approached prospective customers and did endeavor to better their chances of making sales by falsely representing directly or indirectly that they were employed by the Smithsonian Institution, and did make the other misstatements condemned by the Commission's order. The petitioners presented evidence that they habitually instructed all their salesmen to explain fully the true relationship existing [440] between the Institution and the publisher and to make sure that no false impression would be gathered by the persons interviewed. All prepared sales talks were checked and approved by the petitioners, and deviations by salesmen which tended to give false impressions were followed up by disciplinary action which frequently included discharge of the offenders. In all instances of complaint on the part of purchasers that they bought the books because of misrepresentations by the salesmen, the contracts of purchase were cancelled and the price refunded.

Such was the zeal of the petitioners, we are told, to avoid any semblance of an unfair practice in their dealings with the public, and it is argued that their efforts in this direction relieve them of the interdiction of the Federal Trade Commission Act. But however unauthorized the offending conduct of the salesmen may have been and however condemned and discouraged by their superiors, it still was conduct which subjects the employers to the jurisdiction of the Commission and to its cease and desist order. *Federal Trade Commission v. Standard Education Society*, 2 Cir., 86 F. (2d) 692, 697 [24 F. T. C. 1591].

An adequate answer to the contention that the petitioners themselves have done nothing to mislead the public in violation of the spirit and the text of the Act is to be found in the materials which they furnished to the salesmen to assist them in their work. These materials include a broadside description of the series of books, profusely illustrated with pictures of prominent members of the board of governors of the Institution and describing at length the Institution and its work. No reference is made to the separate corporation publishing the books, and unless the salesmen affirmatively pointed out its existence the readers of this broadside might readily be led to believe that the Institution there so fully discussed was the publisher of the books. There is also included among the salesmen's materials a statement by the secretary of the Smithsonian Institution describing the series of books being published and discussing the motives which impelled the Institution to bring them out. Again there is no reference to Smithsonian Institution Series, Inc., and no mention that publication of the books was undertaken by a private organization for its own profit. Moreover, in the complete and the short forms of the "authorized presentation" or sales talks there is a reference characterizing the actual publishers as "friends" of the Institution who came forward and assisted it in the work of the publication, inviting the conclusion that they were actuated by friendship rather than the prospect of business profits. This presentation also tends to indicate, without baldly asserting it, that the persons approached by the salesmen have been carefully selected from the

public at large for the purpose of being invited to share the privilege of becoming patrons of the Institution by buying its books.

The use of these devices tending to mislead the public, making up in part what are ostensibly carefully worded presentations of the true facts surrounding the publication of the books, made the petitioners active participants in the kind of unfair trade practices condemned by the Federal Trade Commission Act. Whether any deception was actually intended or not, the evidence is ample to support the Commission's finding that it was accomplished.

The suggestion is made, but not pressed very strongly, that under rule 16 of the Commission's trade practice conference rules for the subscription and mail order book publishing industry the obligation upon the petitioners does not extend beyond the exercise of due diligence to prevent their salesmen from misleading the public, and the petitioners assert that they have fulfilled this obligation. They point to the care with which they select and instruct their salesmen and to the relatively small number of complaints that have been made in proportion to the large number of prospects interviewed. Compare, *Harriet Hubbard Ayer, Inc. v. Federal Trade Commission*, 2 Cir., 15 F. (2d) 274, 277-8 [10 F. T. C. 754] cert. den. 273 U. S. 759. They are, indeed, entitled to commendation for so doing, but this argument overlooks a further provision of the rule, which states that all literature and other aids supplied to the salesmen must be "free from misleading or false implications or other matter which may tend to deceive or mislead." Title 16, § 150.16, Code of Federal Regulations, 1940 Supplement, page 1401. It is clear from what we have already said about the broadsides, prepared sales talks and other literature supplied by the petitioners to their [441] salesmen that they have not complied with all the requirements of the regulation which they cite.

It is contended that after a previous investigation by the Commission in 1937 the petitioners were completely exonerated from any wrongdoing, and that because their trade practices have not changed since that time there is no occasion now for a second inquiry into the same matters. That, however, is a matter for the Commission to decide in its discretion since in its letters exonerating the petitioners it expressly stated that the files were closed "without prejudice to the right of the Commission to reinstate the matter if conditions should warrant."

The petitioners next urge that they are not engaged in competition with anyone else in the publishing field, for they assert that the "Smithsonian Scientific Series" of books is not encyclopedic in nature and does not compete with the books marketed by a publishing house whose witnesses at the hearing gave evidence intended to show the existence of competition. But whether or not this is so, the point is quite irrelevant. Since the amendment of § 5 of the Act in 1938, 52 Stat. 111, the Commission has had jurisdiction of all cases in commerce affecting the public interest whether or not competition is involved. *Scientific Manufacturing Company v. Federal Trade Commission*, 3 Cir., 124 F. (2d) 640, 643-4 [34 F. T. C. 1793]; *Wolf v. Federal Trade Commission*, 7 Cir., 135 F. (2d) 564, 567 [36 F. T. C. 1135].

Nor is there merit in the petitioners' contention that the Commission has not demonstrated the existence of a public interest. As this court said in *L. & C. Mayers Company v. Federal Trade Commission*, 2 Cir., 97 F. (2d) 365, 367 [27 F. T. C. 1675], "it is in the interest of the public to prevent the sale of commodities by the use of false and misleading statements and representations." And the Commission's intervention is warranted even if the misrepresentations go no further than to state or to imply that the

maker of an article is other than the true one; the public interest requires its protection against this sort of misrepresentation, though the purchaser receive in the transaction an article of equal value in quality and workmanship. *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212, 216-7 [17 F. T. C. 664]. Nor is it important that in this case the trial examiner did not explicitly find that the public interest is involved. The question of public interest is a matter upon which the Commission was competent to pass and it is sufficient for present purposes that the complaint alleged the existence of a public interest which the proof shows was necessarily involved in the merits of the case. *Hills Brothers v. Federal Trade Commission*, 9 Cir., 9 F. (2d) 481, 483-4 [10 F. T. C. 653], cert. den. 270 U. S. 662.

The petitioners contend that there is no warrant for the fifth paragraph of the Commission's order forbidding their use of the words "Smithsonian Institution" in their corporate name or in any other manner to designate a commercial enterprise which is not a part of or directly connected with the Institution at Washington. They object that this part of the order is beyond the reach of the Commission because there has been no complaint by the Institution and because, as they say, there already existed sufficient safeguards to prevent confusion on the part of the public. As to the first reason, it is enough to point out that the Institution would be unlikely to complain since its board of regents and the petitioners had agreed upon the name to be given the corporation and that no such complaint is required since the Federal Trade Commission Act is designed to redress public grievances. *Federal Trade Commission v. Klesner*, 280 U. S. 19, 25 [13 F. T. C. 581]. Likewise without merit is the contention which seems to be made that the confusion of the complaining purchasers of books is not properly cognizable by the Commission because the purchasers should not have been misled. Not this but what in fact occurred is the test, and the issue is foreclosed by the Commission's justified finding that members of the buying public were in fact misled despite the petitioners' use of various protective devices, such as specific reference to the publisher's separate identity which was made on the petitioners' letterhead and in the subscription agreements signed by all purchasers.

The petitioners are standing upon much firmer ground when they insist that this paragraph in the order is needlessly severe in its sweeping requirement that the words "Smithsonian Institution" must be eliminated from the corporate name of petitioner Smithsonian In[442]stitution Series, Inc. There may well be some alternative remedy less drastic but adequately effective which might satisfy the requirements of fairness and should be adopted. On this record, however, we cannot be sure that the Commission has abused its discretion in this respect, and only in that event should we interfere with its action. Compare, *Herzfeld v. Federal Trade Commission*, 2 Cir., 140 F. (2d) 207 [38 F. T. C. 833].

Another paragraph of the order circumscribes the use of "patron certificates" issued by the Smithsonian Institution of Washington, D. C., to purchasers of the books. The evidence shows that upon making a sale the petitioners send the name of the purchaser to the Institution, which enrolls the name on its records and issues to the purchaser a certificate stating that he has been made a "patron" in recognition of his contribution to the Institution's program of diffusing knowledge among men. There is nothing unfair or unlawful about this practice, but there is evidence in the record from which the Commission properly found that the petitioners' salesmen made wrongful use of it. They exhibited specimen certificates to prospective purchasers in such a manner as to induce the impression

that they were representatives of the Institution at Washington rather than of a commercial publishing house, and they stated falsely that the individual persons being interviewed had been singled out by the Institution for the honor of being made patrons. It is this improper use of the certificates and the misrepresentations made by the salesmen in connection with them which are condemned by the fourth paragraph of the Commission's order to cease and desist. We do not understand it to go beyond that or to limit the right of the Institution to issue patron certificates to purchasers.

From 1936 until 1942 the petitioner Parke, Austin & Lipscomb, Inc., was engaged also in the publication and distribution of a series of books entitled "World Epochs," of a patriotic nature and intended to combat subversive influences. In the beginning the petitioner operated under a contract with the Veterans of Foreign Wars National Home, to which it paid a royalty on sales in return for the organization's endorsement of the series of books. In 1938 this arrangement was terminated and a contract was entered into by the petitioner with the United States Flag Association, a corporation organized under federal laws and having as its object the defeat of subversive forces and the perpetuation of American traditions and institutions as symbolized by the flag. Under this contract and a later substituted one the petitioner paid a royalty to the Flag Association and the latter furnished bulletins and letters from prominent persons recommending the books to the purchasing public.

In its complaint the Commission charged the petitioner with various unfair trade practices in the distribution of "World Epochs," similar to those charged in connection with sale of the "Smithsonian Scientific Series," and in its cease and desist order it required that these unfair methods should likewise be discontinued. The petitioner's contract with the United States Flag Association was terminated in 1942, however, and since that time it has not been engaged in the sale of "World Epochs." Instead of seeking to review that part of the cease and desist order which concerned its relationship with the Flag Association, the petitioner filed with the Commission a certificate of compliance. It did not concede any unfair trade practices, but it elected not to contest the Commission's order in this respect, believing that the issues had become moot. That, however, does not follow. *Federal Trade Commission v. Goodyear Tire & Rubber Co.*, 304 U. S. 257, 260 [26 F. T. C. 1521]. Notwithstanding the certificate of compliance, that portion of the order remained in force and continues to bind the petitioners. We think those parts of the order are severable from the rest. And since no petition to review them was filed, they became final at the expiration of the time allowed therefor. 15 U. S. C. A. § 45 (g) (1).

Petition dismissed and order enforced.

SWAN, *Circuit Judge* (concurring specially):

In my opinion paragraph (5) of the Commission's order, which forbids the use of the words "Smithsonian Institution" in respondent's trade or corporate name, is unnecessarily drastic. Until recently this court would have regarded itself as competent to modify an order which imposed a restraint broader than the necessities of the case required, as was done in *Federal Trade Com. v. Royal Milling Co.*, 288 U. S. 212, 218 [17 F. T. C. 664], and *Bear Mill Mfg. Co. v. Federal [443] Trade Com.*, 98 F. (2d) 67, 69 (C. C. A. 2) [27 F. T. C. 1685]. But in *Herzfeld v. Federal Trade Commis-*

tion, 140 F. (2d) 207 [38 F. T. C. 833], we held that later decisions of the Supreme Court had in effect overruled the doctrine of the *Royal Milling* case, and that the court is now forbidden to disturb that measure of relief which the Commission thinks necessary to protect against unfair methods of competition. Only because I feel constrained to follow the *Herzfeld* decision regardless of my personal views, am I willing to concur in affirming paragraph (5) of the order.

 MITCHELL CINADER v. FEDERAL TRADE COMMISSION ¹

 No. 18420² — F. T. C. Dock. 3479

(Circuit Court of Appeals, Second Circuit. Apr. 24, 1944)

Per curiam order dismissing petition to review Commission's order in Docket 3479, 35 F. T. C. 273 at 283, and affirming and enforcing said order requiring respondents, their representatives, etc., in connection with the offer, etc., of novelty merchandise, including pen and pencil sets, cigarette lighters, electric lamps, china-ware, silverware, cameras, etc., to cease and desist from (1) supplying to or placing in the hands of others pull cards or other 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) from shipping, mailing or transporting to agents or distributors, or to members of the public, such pull cards or other devices; (3) from selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise or lottery scheme; and (4) from using the word "Free," or any word of similar import, to designate or refer to any merchandise which is furnished as compensation for services rendered, as in said order in detail set forth.

On petition to review order of Commission, order affirmed, etc., as below noted.

Mr. Arthur D. Herrick, of New York City, for petitioner.

Mr. W. T. Kelley, chief counsel, *Mr. Joseph J. Smith, Jr.*, asst. chief counsel, and *Mr. Donovan R. Diwet*, sp. atty., all of Washington, D. C., for Commission.

Before AUGUSTUS N. HAND, CLARK, and FRANK, *Circuit Judges*.

PER CURIAM:

Petition dismissed, order of Federal Trade Commission affirmed, and enforcement of such order granted.

¹ Reported in 141 F. (2d) 1022. For case before Commission, see 35 F. T. C. 273.

² The calendar number of the case, reported in the Federal Reporter, is 211.

SCREEN BROADCAST CORPORATION AND ALBERT E. FAIR
v. FEDERAL TRADE COMMISSION¹

No. 18874—F. T. C. Dock. 4736

(Circuit Court of Appeals, Second Circuit. May 9, 1944)

Order dismissing petition for review, pursuant to petitioners' consent, of the cease and desist order in Docket 4736, June 25, 1943, 36 F. T. C. 957, 973, requiring, as a part of said order against various other respondents in said proceeding, respondent petitioners herein, and other respondents named in said part or branch of the entire order referred to, in connection with the offering for sale, sale, leasing, renting and distribution of commercial motion picture films in commerce (produced and offered, etc. to or on the order of manufacturers and national advertisers of various products and displayed in motion picture theaters), to cease and desist from concerted or cooperatively, entering into, continuing, or carrying out any agreement whereby (a) respondent distributors or any of them agree not to accept any national motion picture film advertising from any source other than respondent General Screen Advertising, Inc., or respondent Screen Broadcast Corporation, or any individual or booking agency, in any designated territory; or (b) respondents General Screen Advertising, Inc., Screen Broadcast Corporation, Albert E. Fair, and J. D. Alexander, or any of them, agree to sell motion picture film advertising for national advertisers for screening in theaters under contract with respondent distributors according to screening or display charges or rates of compensation cooperatively fixed or determined by respondent distributors or any two or more of them.

Mr. Willard S. McKay, of New York City, for petitioners.

Mr. J. J. Smith, Jr., assistant chief counsel, Federal Trade Commission, and *Mr. Everett F. Haycraft*, special attorney, both of Washington, D. C., for respondent.

ORDER DISMISSING PETITION FOR REVIEW

By and with the consent of petitioners Screen Broadcast Corporation and Albert E. Fair—

It is ordered, That the petition to review herein, filed on August 24, 1943, be and the same hereby is dismissed.

Note: The entire cease and desist order above referred to follows:

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission; the answers of respondents; a stipulation of facts entered into by and between W. T. Kelley, Chief Counsel for the Commission, and the attorneys for all of the respondents except Screen Broadcast Corporation and Albert E. Fair, which provided among other things that the Commission might proceed upon the statement of facts in such stipulation, together with any testimony taken in the proceeding, to make its report stating its findings as to the facts (including inferences which it might draw from the stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding as to such respondents without the filing of briefs or oral argument; testimony and other evidence taken before a trial examiner of the Commission thereto-

¹ Not reported in Federal Reporter. For case before Commission, see 36 F. T. C. 957.

fore duly designated by it; report of the trial examiner upon the evidence and the exceptions to such report filed by respondents Screen Broadcast Corporation and Albert E. Fair; brief in support of the complaint and brief in opposition thereto filed on behalf of respondents Screen Broadcast Corporation and Albert E. Fair; and oral argument by the attorney for the Commission and the attorney for respondents Screen Broadcast Corporation and Albert E. Fair; 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 Association of Advertising Film Companies, an unincorporated trade association, and its officers; respondent C. J. Mabry, individually and as Secretary of said Association; respondent distributors, Motion Picture Advertising Service Co., Inc., United Film Ad Service, Inc., Ray-Bell Films, Inc., Alexander Film Co., and A. V. Cauger Service, Inc., corporations, and their respective officers; and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, leasing, renting, and distribution of commercial motion picture films 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 or maintaining screening or display rates to be charged national advertisers, or rates, commissions, or other amounts of compensation to be paid or allowed booking agencies.

2. Entering into contracts with motion picture exhibitors for the exclusive privilege of exhibiting national advertising by means of commercial motion picture films in theaters owned, controlled, or operated by such exhibitors.

3. Entering into, continuing, or carrying out any agreement with respondent Screen Broadcast Corporation or respondent General Screen Advertising, Inc., or any other booking or central agency, whereby:

(a) respondent distributors agree not to accept national motion picture film advertising from any source other than respondent Screen Broadcast Corporation or respondent General Screen Advertising, Inc., or other booking or central agency, in any designated territory; or

(b) respondent Screen Broadcast Corporation or respondent General Screen Advertising, Inc., or any other booking or central agency, agrees to sell motion picture film advertising to national advertisers for screening in theaters under contract with respondent distributors according to screening or display rates cooperatively fixed and listed with respondent Screen Broadcast Corporation or respondent General Screen Advertising, Inc., or other booking or central agency, by the respective respondent distributors.

4. Furnishing to respondent Screen Broadcast Corporation or respondent General Screen Advertising, Inc., or any other booking or central agency, a list of theaters under contract with respondent distributors for classification by respondent Screen Broadcast Corporation or respondent General Screen Advertising, Inc., or other booking or central agency, according to size, circulation, distribution, or weekly attendance, for the purpose or with the effect of determining display rates or charges to advertisers.

5. Declining to accept or release any film for a national advertising account unless such film is booked and released through respondent Screen Broadcast Corporation or respondent General Screen Advertising, Inc., or some other designated booking or central agency.

6. Observing any rate card or similar device issued by respondent General Screen Advertising, Inc., or any other booking or central agency, for computing the screening or display rate or the amount of compensation due each distributor or theater.

7. Adopting, promulgating, or putting into effect standard rates of compensation for use in dealing with national advertisers in connection with cooperative advertising programs.

8. Adopting or observing in dealings with advertisers or theaters, rate books or similar devices issued by respondent Association or any other association, or by any booking or central agency.

It is further ordered, That respondent Screen Broadcast Corporation, a corporation, and its officers; respondent Albert E. Fair, individually and as President of said Corporation; respondent General Screen Advertising, Inc., a corporation, and its officers; respondent J. D. Alexander, individually and as Chairman of the Board of Directors of General Screen Advertising, Inc.; respondent distributors, Motion Picture Advertising Service Co., Inc., United Film Ad Service, Inc., Ray-Bell Films, Inc., Alexander Film Co., and A. V. Cauger Service, Inc., corporations, and their respective officers; and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, leasing, renting, and distribution of commercial motion picture films 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:

Entering into, continuing, or carrying out any agreement whereby:

(a) respondent distributors or any of them agree not to accept any national motion picture film advertising from any source other than respondent General Screen Advertising, Inc., or respondent Screen Broadcast Corporation, or any individual or booking agency, in any designated territory; or

(b) respondents General Screen Advertising, Inc., Screen Broadcast Corporation, Albert E. Fair, and J. D. Alexander, or any of them, agree to sell motion picture film advertising for national advertisers for screening in theaters under contract with respondent distributors according to screening or display charges or rates of compensation cooperatively fixed or determined by respondent distributors or any two or more of them.

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.

HARRY FROMAN, TRADING AS SUPREME SALES
COMPANY AND RELIABLE PREMIUM HOUSE
v. FEDERAL TRADE COMMISSION¹

No. 18361—F. T. C. Docket. 3559

(Circuit Court of Appeals, Second Circuit. May 12, 1944)

Ordered, in connection with petition to review cease and desist order of Commission in Docket 3559, 34 F. T. C. 1460 at 1470,—requiring respondent to cease and desist from supplying to or placing in the hands of others pull cards, etc., for use in the sale and distribution of his merchandise by means of a lottery scheme; shipping or mailing such cards to agents, distributors or members of the public for such use; selling his merchandise by means of a game of chance, etc.; or using the word "Free" to refer to merchandise given as compensation for services rendered—and pursuant to petitioner's subsequent stipulation to abide by the decision in *Mitchell Cinader v. Federal Trade Commission*² in which the court rendered its decree affirming and enforcing a similar cease and desist order, that petition to review be dismissed and the order to cease and desist be affirmed and enforced, as below set forth.

Mr. Arthur D. Herrick, of New York City, for petitioner.

Mr. W. T. Kelley, chief counsel, Mr. Joseph J. Smith, Jr., assistant chief counsel, and Mr. James W. Nichol, special attorney, all of Washington, D. C., for Federal Trade Commission, respondent.

Before AUGUSTUS N. HAND and CHARLES E. CLARK, *ircuit Judges.*

FINAL DECREE AFFIRMING AND ENFORCING
ORDER TO CEASE AND DESIST

Harry Froman, petitioner herein, having filed with this court on August 21, 1942, his petition to review and set aside an order to cease and desist issued against him on June 23, 1942, by the Federal Trade Commission, respondent, in a proceeding before the said respondent entitled "In the Matter of Harry Froman, individually, and trading as Supreme Sales Company and Reliable Premium House, Docket No. 3559"; and a copy of said petition having been served upon the respondent; and the respondent having thereafter certified and filed herein, as required by the Federal Trade Commission Act, a transcript of the entire record in said proceeding; and the parties hereto having stipulated and agreed, on October 4, 1943, that when this court entered its decree in the case of "*Mitchell Cinader, Petitioner, v. Federal Trade Commission, Respondent*," No. 18420, it should enter a like decree in this cause; and this court, on April 24, 1944, having rendered its decision in said case No. 18420 affirming and enforcing the cease and desist order of the Federal Trade Commission there involved and dismissing the petition to review and set aside said order, and having entered its decree to that effect:

Now, therefore, it is hereby ordered, adjudged and decreed that the petition to review herein be and the same hereby is dismissed; and that the aforesaid order to cease and desist issued against petitioner Harry Froman be and it hereby is affirmed and enforced, and said petitioner Harry Froman

¹ Not reported in Federal Reporter. For case before the Commission, see 34 F. T. C. 1460.

² See *supra*, p. 889.

is hereby commanded to obey said order to cease and desist and to comply therewith.

And it is hereby further ordered, adjudged and decreed that within 90 days after the entry of this decree petitioner shall file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which he has complied with the said order to cease and desist.

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 aforesaid order to cease and desist hereby affirmed and enforced, and without prejudice to the right of the Federal Trade Commission to institute and 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.

EMPIRE MERCHANDISE CORPORATION, ET AL. v.
FEDERAL TRADE COMMISSION¹

No. 18419—F. T. C. Dock. 3357

(Circuit Court of Appeals, Second Circuit. May 12, 1944)

Ordered, in connection with petition to review cease and desist order of Commission in Docket 3357, 35 F. T. C. 261 at 271,—requiring respondents to cease and desist from supplying to or placing in the hands of others pull cards for use in the sale and distribution of their merchandise by means of a lottery scheme, etc.; shipping or mailing such cards to agents, distributors or members of the public for such use; selling their merchandise by means of a game of chance, etc.; or using the word "Free" to refer to merchandise furnished as compensation for services rendered—and pursuant to petitioners' subsequent stipulation to abide by the decision in *Mitchell Cinader v. Federal Trade Commission*² in which the court entered its decree affirming and enforcing a similar cease and desist order, that petition to review be dismissed and the order to cease and desist be affirmed and enforced, as below set forth.

Mr. Arthur D. Herrick, of New York City, for petitioners.

Mr. W. T. Kelley, Chief counsel, *Mr. Joseph J. Smith, Jr.*, assistant chief counsel, and *Mr. James W. Nichol*, special attorney, all of Washington, D. C., for Federal Trade Commission, respondent.

Before AUGUSTUS N. HAND and CHARLES E. CLARK, *Circuit Judges*.

FINAL DECREE AFFIRMING AND ENFORCING
ORDER TO CEASE AND DESIST

Empire Merchandise Corporation and Sophie Rubman, petitioners herein, having filed with this court on October 1, 1942, their petition to review and set aside an order to cease and desist issued against them on August 4, 1942, by the Federal Trade Commission, respondent, in a pro-

¹ Not reported in Federal Reporter. For case before Commission, see 35 F. T. C. 261.

² See *supra*, p. 889.

ceeding before the said respondent entitled "In the Matter of Empire Merchandise Corporation, a corporation, and Sophie Rubman, individually, and as an officer of Empire Merchandise Corporation, Docket No. 3357"; and a copy of said petition having been served upon the respondent; and the respondent having thereafter certified and filed herein, as required by the Federal Trade Commission Act, a transcript of the entire record in said proceeding; and the parties hereto having stipulated and agreed, on October 4, 1943, that when this court entered its decree in the case of "*Mitchell Cinader, Petitioner, v. Federal Trade Commission, Respondent*," No. 18420, it should enter a like decree in this cause; and this court, on April 24, 1944, having rendered its decision in said case No. 18420 affirming and enforcing the cease and desist order of the Federal Trade Commission there involved and dismissing the petition to review and set aside said order, and having entered its decree to that effect:

Now, therefore, it is hereby ordered, adjudged and decreed that the petition to review herein be and the same hereby is dismissed; and that the aforesaid order to cease and desist issued against petitioners Empire Merchandise Corporation and Sophie Rubman be and it hereby is affirmed and enforced, and said petitioners Empire Merchandise Corporation and Sophie Rubman are hereby commanded to obey said order to cease and desist and to comply therewith.

And it is hereby further ordered, adjudged and decreed that within 90 days after the entry of this decree 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 with the said order to cease and desist.

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 aforesaid order to cease and desist hereby affirmed and enforced, and without prejudice to the right of the Federal Trade Commission to institute and 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.

LUSTBERG, NAST & COMPANY, INC. v. FEDERAL
TRADE COMMISSION.¹

No. 18382—F. T. C. Dock. 2536

(Circuit Court of Appeals, Second Circuit. May 29, 1944)

Order dismissing petition to review Commission's order in Docket 2536, 35 F. T. C. 132 at 139, and affirming and enforcing said order requiring respondents, their representatives, etc., in connection with the offer, etc., of coats, shirts, mackinaws, jackets and other garments in commerce, to cease and desist from using the term "Buck Skein," either alone or in conjunction with the outline of a deer's head, or any other colorable simulation of the word "buck skin" in advertising, or otherwise, to describe any product not made from the skin of a deer or elk, and from representing in any advertisement, or on labels, or otherwise, that any product made of wool or cotton or any other woven fabric is made of buckskin or other type of leather, as in order in detail set forth.

¹ Not reported in Federal Reporter. For case before the Commission, see 35 F. T. C. 132.

Mr. Charles Levy of Stroock & Stroock & Lavan, of New York City, for petitioner.

Mr. W. T. Kelley, chief counsel, *Mr. Joseph J. Smith, Jr.*, assistant chief counsel, and *Mr. James M. Hammond*, special attorney, all of Washington, D. C., for Federal Trade Commission, respondent.

Before LEARNED HAND and JEROME N. FRANK, *Circuit Judges*.

FINAL DECREE AFFIRMING AND ENFORCING
ORDER TO CEASE AND DESIST

This matter coming on this day for hearing upon the joint motion of Lustberg, Nast & Company, Inc., petitioner, and the Federal Trade Commission, respondent, for a decree dismissing petitioner's petition to review, filed September 8, 1942, and affirming and enforcing respondent's order to cease and desist entered against petitioner under date of July 10, 1942, in that certain proceeding styled "In the Matter of Lustberg, Nast & Company, Inc., a corporation," Federal Trade Commission Docket No. 2536, it is hereby *ordered, adjudged and decreed* that:

1. Petitioner's aforesaid petition to review be and it hereby is dismissed.
2. Respondent's aforesaid order to cease and desist be and it hereby is affirmed and enforced, and petitioner be and it hereby is commanded to obey said order to cease and desist and to comply therewith.
3. Within 90 days from this date petitioner shall, and it is hereby directed to, file with the respondent a report in writing setting forth in detail the manner and form in which it has complied with the aforesaid order to cease and desist.

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 aforesaid order to cease and desist hereby affirmed and enforced, and without prejudice to the right of the Federal Trade Commission to institute and 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.

AMERICAN CHAIN & CABLE CO., INC. ET AL. v.
FEDERAL TRADE COMMISSION¹

No. 5062—F. T. C. Dock. 4443

(Circuit Court of Appeals, Fourth Circuit. May 29, 1944)

CEASE AND DESIST ORDERS—MODIFICATION OF VACATION BY COMMISSION—WHERE PROVISIONS NO LONGER APPROPRIATE.

Orders of the Federal Trade Commission ordinarily have relation to the future, so that with the passage of time their provisions may be rendered inappropriate by changing conditions, and, in such case, the Commission has authority to modify or vacate its orders. Federal Trade Commission Act Sec. 5 (b), (g) (1), 15 U. S. C. A. Sec. 45 (b), (g) (1).

¹ Reported in 142 F. (2d) 909. For case before Commission, see 36 F. T. C. 790. For decision affirming order, see *supra*, at p. 825.

CEASE AND DESIST ORDERS—MODIFICATION OR VACATION BY COMMISSION—WHEN PROVISIONS NO LONGER APPROPRIATE—IF THERETOFORE AFFIRMED BY COURT OF APPEALS.

Power of Federal Trade Commission to modify or vacate its orders because of changed conditions exists where order has been affirmed by Circuit Court of Appeals as well as where no petition for review has been filed with such court.

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—COURT OF APPEALS' POWER OVER—NATURE.

The power of Circuit Court of Appeals over orders of the Federal Trade Commission is appellate and revisory merely and not an exercise of original jurisdiction of the court itself.

CEASE AND DESIST ORDERS—MODIFICATION OR VACATION BY COMMISSION—WHERE PROVISIONS NO LONGER APPROPRIATE—IF THERETOFORE PETITION FOR REVIEW.

Statute authorizing Federal Trade Commission to modify or change its orders because of changed conditions if no petition for review has been duly filed, suspends power of Commission to modify its orders while petitions for review thereof are pending in Circuit Court of Appeals, so as to avoid conflict of jurisdiction, but after court has acted, Commission has power to modify or vacate its orders. Federal Trade Commission Act Sec. 5 (b), 15 U. S. C. A. Sec. 45 (b).

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—COURT OF APPEALS POWER OVER—MODIFICATION BY COMMISSION—MANDAMUS DIRECTING COMMISSION TO CONSIDER MOTION FOR.

Under statute giving Circuit Court of Appeals power to review order of Federal Trade Commission modifying a prior order and to issue such writs as are ancillary to its jurisdiction, the court had power by mandamus to direct the Commission to consider a motion for modification of its prior order. Federal Trade Commission Act Sec. 5 (c), 15 U. S. C. A. Sec. 45 (c).

APPELLATE PROCEDURE AND PROCEEDINGS—MANDAMUS—COURT BELOW—IF EXERCISE OF JURISDICTION NECESSARY TO PROTECT HIGHER COURT'S POWER OF REVIEW.

A court given power of review may by mandamus compel court over which it is given such power to exercise its jurisdiction so that the power of review may not be defeated.

APPELLATE PROCEDURE AND PROCEEDINGS—MANDAMUS—POWERS OF ADMINISTRATIVE COMMISSIONS.

Mandamus from a court is an appropriate remedy to require an administrative commission to exercise power with which it is vested.

APPELLATE PROCEDURE AND PROCEEDINGS—MANDAMUS—LIMITATIONS ON POWER OF.

A Circuit Court of Appeals is without power to award mandamus except in aid of its supervisory or appellate jurisdiction.

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—COURT OF APPEALS POWER OVER—MODIFICATION AFTER AFFIRMANCE FOR CHANGED CONDITIONS—IF POWER TO MODIFY DENIED BY COMMISSION AND MOTION FOR, REFUSED CONSIDERATION.

Where a party who would be subject to punishment for contempt for disobedience of decree affirming order of Federal Trade Commission represents to court that conditions have changed to such an extent that he should not be required to comply with the order and that it should be modified, but that the Commission

denies its power to modify and refuses to consider a motion addressed to that end, court has power to direct Commission to consider motion and exercise administrative power delegated to it by Congress, so that court's power to enforce its decree by contempt proceedings or otherwise may be properly exercised. Federal Trade Commission Act Sec. 5 (b, c), 15 U. S. C. A. Sec. 45 (b, c).

MANDAMUS—NATURE OF POWER.

The power to issue writ of mandamus is an extraordinary power, which, though always guarded by court, is freely employed to prevent disorder from a failure of justice.

APPELLATE PROCEDURE AND PROCEEDINGS—DECREES ENFORCING ORDERS—MODIFICATION—IF NO CHANGE IN ORDER CONCERNED.

The Circuit Court of Appeals has power to modify its decree enforcing order of Federal Trade Commission, but there must be sufficient grounds shown for such modification and sufficient ground is not shown where no change is shown in the order since the decree is based on the order and not on the conditions which called it forth. Federal Trade Commission Act Sec. 5 (b, c), 15 U. S. C. A. Sec. 45 (b, c).

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—COURT OF APPEALS POWER OVER—MODIFICATION AFTER AFFIRMANCE, FOR CHANGED CONDITIONS—WHERE MOTION TO COMMISSION FOR STAY OF ENFORCEMENT UNTIL AFTER WAR, ON BASIS WAR CONDITIONS, AND STAY RECOMMENDED BY WAR AND NAVY DEPARTMENTS.

Where court had affirmed order of Federal Trade Commission directing manufacturers of wire rope to cease and desist from certain unfair trade practices and thereafter manufacturers filed a motion with Commission asking that, on account of war conditions, enforcement of order be stayed until after the war, and the War and Navy Departments made recommendations for stay, the circumstances warranted the giving of discretion to Commission to modify its order. Federal Trade Commission Act Sec. 5 (b, c), (g) (2), 15 U. S. C. A. Sec. 45 (b, c), (g) (2).

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—COURT OF APPEALS' POWER OVER—MODIFICATION AFTER AFFIRMANCE, FOR CHANGED CONDITIONS—WHERE MOTION TO COMMISSION FOR STAY OF ENFORCEMENT UNTIL AFTER WAR, ON BASIS WAR CONDITIONS, AND STAY RECOMMENDED BY WAR AND NAVY DEPARTMENTS—WHETHER QUESTIONS MOOT THROUGH PETITIONING MANUFACTURERS' CERTIFICATE OF COMPLIANCE.

Questions presented by manufacturers' petition for order in nature of writ of mandamus to require Federal Trade Commission to decide motion filed by manufacturers to stay enforcement of Commission's order until after war, were not rendered moot by certificate of compliance filed by the manufacturers. Federal Trade Commission Act Sec. 5 (b), 15 U. S. C. A. Sec. 45 (b).

(The syllabus, with substituted captions, is taken from 142 F. (2d) 909)

On petition for order in the nature of writ of mandamus requiring Commission to consider and decide on the merits motion for modification of a cease and desist order affirmed, 139 F. (2d) 622 [38 F. T. C. 825] petition granted.

Mr. Sumner S. Kittelle, of Washington, D. C. (*Feldman, Kittelle, Campbell & Ewing*, of Washington, D. C., on the brief), in support of petition.

Mr. Walter B. Wooden, assistant chief counsel, Federal Trade Commission, of Washington, D. C., in opposition to petition.

Before PARKER, SOPER, and NORTHCOTT, *Circuit Judges*.

PARKER, *Circuit Judge*:

On January 1, 1944, this Court entered its decree affirming and enforcing an order of the Federal Trade Commission which directed the American Chain & Cable Company, Inc., and certain other manufacturers of wire rope, hereinafter referred to as petitioners, to cease and desist from certain unfair trade practices found to be in violation of section 5 of the Federal Trade Commission Act. 15 USCA 45. The order directed that the petitioners "do forthwith cease and desist from continuing, entering into, or carrying out any agreement, understanding, combination or conspiracy, and from continuing or cooperating in any agreed or planned common course of action, between or among any two or more of said respondents, or between any one or more of said respondents and any person, association or corporation not a party to this order, to do or perform any of the following acts or things." The acts prohibited by the order include fixing the prices or conditions of sale of wire rope to dealers, distributors and users thereof, establishing and maintaining territorial delivered price zones, and making sales upon a delivered price basis under a zone system whereby the cost to all customers of any particular class is made identical to all destinations within a particular zone.

Before the order of the Commission became final under 15 USCA 45 (g) (2), the petitioners filed a motion with the Commission asking that, on account of war conditions, the enforcement of the order be stayed until after the war and stating that recommendations to that effect from the War Production Board and proper officers of the War and Navy Departments had been applied for and that assurances had been received that the recommendations would be made. The petition asked, also, that the Commission join in a request for the modification of the order of this Court, if of opinion that the prayer of the petition should be granted. The Commission, however, declined to entertain the motion on the ground that neither the Commission nor this Court had power to stay the enforcement of the order at that stage of the proceedings. The petitioners then filed a petition with the Court asking that the Commission be required to show cause why it should not consider and decide on its merits the motion filed by petitioners after receiving and considering such recommendations as might be filed by the War and Navy Departments. At the hearing on the petition here, it was stated that on March 31st petitioners filed with the Commission a certificate to the effect that they would comply with its order. A subsequent memorandum states that the War and Navy Departments have filed recommendations with respect to staying the enforcement of the order.

Three questions are presented by the motion before us: (1) whether there is power in the Commission to modify or stay the enforcement of the order which has been affirmed by the Court; (2) whether the Court has power to direct the Commission to consider the motion of petitioners directed to that end; and (3) whether the circumstances here warrant the giving of such direction to the Commission. We think that all of these questions should be answered in the affirmative.

Orders of the Commission, like most administrative orders, ordinarily have relation to the future and not to the past; and with the passage of

time their provisions may be rendered inappropriate by changing conditions. In such cases, provision is made that the orders may be modified or vacated. Section 5 of the Trade Commission Act, 15 USCA 45 (b), provides:

"After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require: Provided, however, That the said person, partnership, or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate circuit court of appeals of the United States, in the manner provided in subsection (c) of this section."

It is argued that the power of the Commission to modify or vacate its orders under the language quoted exists only where no petition for review has been filed with a Circuit Court of Appeals, and not where a petition has been filed and a decree of affirmance and enforcement has been entered; but we are not impressed with this argument. The necessity for modification may be just as urgent in the case of an order which has been affirmed and ordered enforced by a Circuit Court of Appeals as in the case of one which has become final under 15 USCA 45 (g) (1) by reason of failure to file a petition for review; and it is not reasonable to suppose either that Congress intended to deny relief in such cases or that it intended to vest the Circuit Court of Appeals with power to grant the relief, which is essentially administrative in character.* The proper interpretation of the "if" clause in [912] the language above quoted is to suspend the power of the Commission to modify its orders while petitions for review thereof are pending in the Circuit Courts of Appeals, so as to avoid conflicts of jurisdictions; but, after a Circuit Court of Appeals has acted upon a petition for review, there is no reason why the Commission should not modify its order, if modification is warranted by the changed conditions contemplated by the statute. There is no danger that the decree of the Court may be flouted by such modification, as provision is expressly made that modification orders shall be subject to review.

The power of this Court to direct the Commission to give consideration to a motion for a modification of one of its orders arises, we think, from the powers given the Court by 15 USCA 45 (c) to review such order of modification and "to issue such writs as are ancillary to its jurisdiction." It is well settled that a court given power of review may by mandamus compel the court over which it is given such power to exercise its jurisdiction so that the power of review may not be defeated. See *Roche v. Evaporated Milk Ass'n.*, 319 U. S. 21, 25; *Adams v. United States, ex rel. McCann*, 317 U. S. 269, 273; *McClellan v. Carland*, 217 U. S. 268, 279-280; *In re Pennsylvania Co.*, 137 U. S. 451, 452; *United States v. Malmin*, 3 Cir.

* It is well settled that the power of a Circuit Court of Appeals over orders of the Commission is appellate and revisory merely and not an exercise of original jurisdiction of the court itself. *Federal Trade Commission v. Eastman Kodak Co.* 274 U. S. 619, 623 [11 F. T. C. 669]. And this Court has held that it has no power to order any delay in putting into effect a lawful order of the Commission. *El Moro Cigar Co. v. Federal Trade Com'n.* 4 Cir. 107 F.(2d) 429 [29 F. T. C. 1616]. Under the National Labor Relations Act, modeled on the Trade Commission Act, the Circuit Court of Appeals exceeds its power in refusing to enforce or in modifying an order of the Labor Board, if sustained by substantial evidence, even though it may not approve of the relief awarded, since this is a matter which Congress has entrusted to the Board. *N.L.R.B. v. Bradford Dyeing Ass'n.* 310 U. S. 318; *Virginia Electric & Power Co. v. N.L.R.B.* 319 U. S. 533; *N.L.R.B. v. Condenser Corp. of America* 3 Cir. 123 F.(2d) 67.

272 Fed. 785. And that mandamus from a court is an appropriate remedy to require an administrative commission to exercise the power with which it is vested, see *Interstate Commerce Commission v. Humboldt S. S. Co.*, 224 U. S. 474, 484-5; *Louisville Cement Co. v. Interstate Commerce Commission*, 246 U. S. 638; *United States ex rel. Chicago Great Western R. Co. v. Interstate Commerce Commission*, 294 U. S. 50, 60. It is true of course that a Circuit Court of Appeals is without power to award mandamus except in aid of its supervisory or appellate jurisdiction; but where it is given jurisdiction to review an administrative commission there is no reason why the power should not be exercised in the same way as where reviewing power is given over a court. If there were any doubt as to this, the power granted by the section of the statute referred to above "to issue such writs as are ancillary to its jurisdiction" would remove the doubt here.

And we think that the power of the Court to direct the Commission to give consideration to the motion arises also from the power of the Court to enforce its decree and to punish any disobedience thereof as contempt. When a party who would be subject to punishment for contempt for disobedience of the decree represents to the Court that conditions have changed to such an extent that he should not be required to comply with the order and that it should be modified, but that the Commission denies its power to modify and refuses to consider a motion addressed to that end, the Court should have, and in our opinion does have, the power to direct the Commission to consider the motion and exercise the administrative power delegated to it by Congress, so that the Court's power to enforce its decree by contempt proceedings or otherwise may be properly exercised. The power to award mandamus in such cases arises out of necessity and would seem to fall clearly within the power given in the clause above quoted to issue writs ancillary to its jurisdiction. The proper exercise of the power to punish for contempt is as important as the exercise of the power of review and furnishes an additional ground for the issuance of the writ in a case of this character. The power to issue the writ is "an extraordinary power, which, though always guarded by courts, is freely employed 'to prevent disorder from a failure of justice.' *Rex v. Baker*, 3 Burr. 1265." *United States v. Malmin*, *supra*, 3 Cir. 272 Fed. 785, 789.

We note the decisions in *Indiana Quartered Oak v. Federal Trade Com'n.*, 2 Cir. 58 F. (2d) 182 [16 F. T. C. 683]; *H. N. Heusner & Son v. Federal Trade Com'n.*, 3 Cir. 106 F. (2d) 596 [29 F. T. C. 1580], and *Century Metalcraft Corp. v. Federal Trade Com'n.*, 7 Cir. 112 F. (2d) 443 [30 F. T. C. 1676], wherein expressions are used which would indicate a power in the Circuit Court of Appeals to modify its decree of enforcement because of changed conditions. We [913] entertain no doubt as to the power of the Court to modify its enforcement decree as other decrees in equity are modified; but there must be sufficient ground shown for such modification and this is not done where no change is shown in the order, since the decree is based on the order, not on the conditions which called it forth. To hold otherwise, would be to clothe the Circuit Courts of Appeals with the administrative powers of the Commission in cases in which they have entered decrees of enforcement. It is more consonant with the intention of Congress, we think, to hold that modification of enforcement decrees should be made only after the Commission has taken action under the provision of the statute above quoted, and that, in the meantime, the power of the Court with respect to modification is limited ordinarily to requiring that the Commission give consideration to matters said to require action on its part. Any action taken by the Commission would then be subject to review by the Court, as in the case of other orders, and any modification of

the original orders, whether reviewed or not, would serve as a basis for the modification by the Court of its original decree.

On the third question, we would not be impressed with the necessity for the modification or suspension of the order in this case, were it not for the recommendations made by the War and Navy Departments. Without intimating what action, if any, should be taken by the Commission on the motion of petitioners in the light of these recommendations, we are of opinion that the motion should be considered and passed upon and that the Commission should take such action with respect to granting or denying the motion as in its judgment may be appropriate in the premises.

We do not think that the certificate of compliance filed by the petitioners with the Commission renders moot the questions raised on their petition to us. It does not follow that the order should be left unmodified merely because petitioners have agreed to abide by it. If its enforcement in the future will in fact hinder the war effort, it ought to be modified, whatever they may have done toward accepting its provisions.

For the reasons stated, order will be entered directing the Commission to consider and pass upon the motion of petitioners.

Petition Granted.

Note, on August 24, 1944 the Commission made the following order—
ORDER POSTPONING COMPLIANCE REPORTS, STAYING ENFORCEMENT PROCEEDINGS, AND DENYING MOTION OF RESPONDENT THE AMERICAN STEEL AND WIRE COMPANY FOR REOPENING.

Whereas ten of respondents filed with the Commission on March 24, 1944 a "Motion to Join Petitioners in Requesting Fourth Circuit Court of Appeals to Stay Cease and Desist Order Until Six Months After Termination of the War, or, in the Alternative, to Join Petitioners in Requesting Court to Determine Its and the Commission's Authority to Grant Such a Stay, or, in the Alternative to Grant Such Stay Itself," and

Whereas before the statutory period for filing petition for certiorari in the Supreme Court expired on March 31, 1944 said respondents filed with the Commission their reports of compliance with said order, and

Whereas the United States Circuit Court of Appeals for the Fourth Circuit on May 29, 1944 held that the Commission has the implied power to grant relief such as requested if the Commission sees fit, and directed the Commission to consider and pass upon said motion of respondents,

Now, therefore, be it ordered, That respondents be notified as follows: .

Relying on the opinions and representations of the Secretaries of War and Navy to that effect the compliance with the order to cease and desist herein would seriously interfere with the war effort, the Commission hereby serves notice upon all respondents as follows:

Not later than six months after receipt of notice from the Commission that war conditions will no longer be treated as constituting sufficient ground for any continued noncompliance with the order to cease and desist, all respondents subject to said order shall file reports of compliance, such reports to be in writing and to set forth in detail the manner and form in which they have complied with the order. The Commission will take no steps toward requiring compliance by any respondent with the order to cease and desist herein, in addition to such compliance as has already been reported by certain respondents, before the time for filing compliance reports shall have expired as above provided for, that is, until six months after the receipt of notice from the Commission.

It is further ordered, That in view of the entry of the foregoing order applicable to all respondents, the motion of respondent The American Steel and Wire Company for reopening of proceeding and modification of the Commission's order be, and the same hereby is, denied.

ZENITH RADIO CORPORATION v. FEDERAL TRADE COMMISSION¹

No. 8175—F. T. C. Dock. 4174

(Circuit Court of Appeals, Seventh Circuit. June 3, 1944)

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—QUALITIES AND MANUFACTURER OF PRODUCT.

Evidence that radio manufacturer advertised that its radios could receive clearly daily foreign short-wave broadcasts and that its radios had a specified number of tubes, although in fact atmospheric and electrical conditions made daily reception impossible and some devices advertised as tubes were not tubes while others were rectifier tubes which do not perform primary function of detecting, amplifying, or receiving radio signals, authorized Federal Trade Commission to order manufacturer to cease and desist from such advertising. Federal Trade Commission Act Sec. 5 (b), 15 U. S. C. A. Sec. 45 (b).

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—DETERMINATION AS TO—CRITERIA—INSPECTION OF ADVERTISEMENTS CONCERNED AND EVIDENCE RELEVANT THERETO AND PUBLIC OPINION—IF SAMPLING LATTER PREREQUISITE TO.

Federal Trade Commission, in determining propriety of advertising, is not required to sample public opinion to determine what advertiser was representing to public, but may look at advertisements in question, consider relevant evidence that will aid in interpreting advertisements, and then decide whether advertiser is engaging in an unfair or deceptive practice.

APPELLATE PROCEDURE AND PROCEEDINGS—FINDINGS OF COMMISSION—IF FAIRLY ARRIVED AT AND SUBSTANTIAL EVIDENCE TO SUPPORT.

Where Federal Trade Commission has arrived at finding fairly and has substantial evidence to support it so that it cannot justly be said to be palpably wrong and therefore arbitrary, Circuit Court of Appeals must uphold findings.

EVIDENCE—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—ADVERTISEMENTS OF RADIO MANUFACTURER.

Substantial evidence sustained Federal Trade Commission's findings that advertisements of radio manufacturer constituted an unfair or deceptive trade practice.

CEASE AND DESIST ORDERS—CLARITY—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—ADVERTISING PRACTICES OF RADIO MANUFACTURER.

[30] Order of Federal Trade Commission directing radio manufacturer to cease and desist from certain advertising practices was not objectionable as not sufficiently definite.

CEASE AND DESIST ORDERS—CLARITY—IN GENERAL.

An order of the Federal Trade Commission directing one engaged in interstate commerce to cease and desist from certain unfair or deceptive practices need not chart a course for such person.

(The syllabus, with substituted captions, is taken from 143 F. (2d) 29)

On petition for review of order of Commission, petition denied.

Mr. Irving Herriott and Mr. W. Ward Smith, both of Chicago, Ill., for petitioner.

¹ Reported in 143 F. (2d) 29. For case before Commission, see 35 F. T. C. 579.

Mr. J. J. Smith, Jr., assistant chief counsel, Mr. W. T. Kelley, chief counsel, and Mr. Everett F. Haycraft and Mr. John W. Carter, Jr., special attorneys, Federal Trade Commission, all of Washington, D. C., for respondent.

Before SPARKS, MAJOR, and MINTON, *Circuit Judges*.

MINTON, *Circuit Judge*.

The Federal Trade Commission filed a complaint against the Zenith Radio Corporation of Chicago, Illinois, charging it with engaging in unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act. Sec. 5. [15 U. S. C. A. § 45 (b)]. The corporation answered and after extensive hearings, the Commission found the corporation had violated the Act as charged in the complaint and entered an order that it cease and desist from certain acts and practices. The corporation, hereinafter called the petitioner, has filed a petition in this Court to review this order of the Commission. The only question presented is whether there is substantial evidence to support the order.

The evidence without dispute showed that the petitioner was engaged in selling in interstate commerce radios which it manufactured. In behalf of its dealers, the petitioner prepared, and in some instances paid for, considerable advertising through newspapers and magazines, folders and circulars, and radio broadcasts. In these advertisements, two representations were made to the public which the Commission found were erroneous and misleading in violation of the act. These were advertisements as to (1) the capacity of the radio receiving sets to receive foreign broadcasts, and (2) the number of tubes in the radio receiving sets.

With reference to the foreign broadcast capacity of the petitioner's sets, the Commission found the following typical advertisement disseminated by the petitioner to be false and misleading:

"Europe is talking to you every night in English. Are you listening?"

"With Zenith, the short wave radio that gives you 'Europe, direct' you can hear all the leaders * * * all the daily news broadcasts. You need not depend on rebroadcasts which bring you only a small part.

"Europe, South America or the Orient every day guaranteed or your money back on all short wave Zeniths.

"1940 Zenith the guaranteed short wave radio"

The Commission found from evidence not in dispute that due to certain atmospheric conditions and electrical disturbances which the radio industry has been unable to overcome the satisfactory reception of foreign broadcasts every day is impossible, and that the petitioner's radio sets were incapable of the satisfactory reception of foreign broadcasts every day and under all conditions. The Commission further found that the public's knowledge of the difficulties of radio reception was so limited that it could not properly evaluate the petitioner's representations and that such representations were so made as to lead the public to believe that by using the petitioner's radio all of these difficulties of radio reception would be overcome.

The second violation of the Act alleged was in the sponsoring and disseminating of advertisements as to the number of tubes the radios contained, such as:

"[31] 6-Tube Superheterodyne Table Model"

"8-Tube Superheterodyne With Wavemagnet Aerial"

"Ten-Tube superheterodyne with Rotor Wavemagnet Aerial"

"Eleven-Tube superheterodyne with Rotor Wavemagnet Aerial"

As to these advertisements, it was stipulated:

"Respondent admits that during 1939 it encouraged and paid for advertisements of its radio receiving sets which represented that such sets contained a stated number of tubes. Respondent also admits that in some of such advertisements the fact that one or more of the devices therein referred to as tubes were rectifier tubes was not stated or indicated, and that in some of said advertisements one of the devices referred to as a tube, *i. e.*; the 'Magic Eye' device, was not a tube but was a tuning indicator device and was not referred to as such."

The Commission found that a substantial portion of the purchasing public believes that the greater number of tubes in a receiving set, the better and more powerful radio it is, and it also found that these advertisements impliedly represented that all of the tubes advertised were tubes having something to do with detecting, amplifying and receiving radio signals. The stipulation above admits that some devices advertised as tubes were not tubes at all, while others were rectifier tubes. The Commission found that rectifier tubes, which are used primarily to convert alternating current into direct current, "do not perform the primary function of detecting, amplifying, or receiving radio signals."

This stipulation is an admission by the petitioner that it had engaged in deceptive practices through disseminating and sponsoring advertisements which because of their makeup might cause the public to misunderstand or be deceived. Since the petitioner displayed the number of tubes so prominently in the advertisements, it seems clear that it was trying to give the impression that the more tubes a radio had, the more powerful reception it would have and that all of the tubes advertised had to do with the "customary functions of radio receiving set tubes in the detection, amplification, and reception of radio signals." If that was not what the petitioner intended, why all of the deceptive practices?

The Commission was not required to sample public opinion to determine what the petitioner was representing to the public. The Commission had a right to look at the advertisements in question, consider the relevant evidence in the record that would aid it in interpreting the advertisements, and then decide for itself whether the practices engaged in by the petitioner were unfair or deceptive, as charged in the complaint.

If the Commission arrived at its finding fairly "and has substantial evidence to support it, so that it cannot justly be said to be palpably wrong and therefore arbitrary" it is our duty to uphold the Commission's finding, *Leach v. Carlile*, 258 U. S. 133, 140, 42 S. Ct. 227, 66 L. Ed. 511. *Brougham v. Blanton Mfg. Co.*, 249 U. S. 495, 39 S. Ct. 363, 63 L. Ed. 725; *Houston v. St. Louis Independent Packing Co.*, 249 U. S. 479, 39 S. Ct. 332, 63 L. Ed. 717.

On a view of the advertisements and a consideration of the evidence, we think the Commission's findings were fairly arrived at and were supported by substantial evidence.

It was suggested by the petitioner that the order was not sufficiently definite to inform the petitioner of what it may and may not do. We do not think the order is open to this objection. The order is not bound to chart a course for the petitioner. The petitioner can have no doubt of the evils complained of and sought to be corrected. The offenses of which the petitioner was found guilty are met by the order. There was no overreaching by the order as condemned in *Cream of Wheat Co. v. Federal Trade Commission*, 14 F. (2d) 40, 50 [10 F. T. C. 724].

The petition to review is therefore denied.

IRWIN ET AL v. FEDERAL TRADE COMMISSION¹

No. 12646—F. T. C. Dock. 4722

(Circuit Court of Appeals, Eighth Circuit. June 15, 1944)

APPELLATE PROCEDURE AND PRECEDINGS—ISSUES OF FACT—COURT LIMITATION.

In proceeding to review cease and desist order of Federal Trade Commission, it is not within province of Circuit Court of Appeals to try issues of fact de novo. Federal Trade Commission Act, sec. 5 (c), as amended in 1938, 15 U. S. C. A. sec. 45 (c).

EVIDENCE—EXPERT TESTIMONY—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—IF TESTIMONY CONFLICTING—DETERMINATION OF ISSUE—IF FEW READILY DEMONSTRABLE ABSOLUTES IN FIELD CONCERNED.

In proceeding under Federal Trade Commission Act present-issue whether representation regarding use of device in treatment of sick were false, misleading or deceptive, fact that determination of issues required consideration of testimony of experts and decision on conflict between them in field where there are few absolutes readily demonstrable, did not deprive Commission of power to resolve the fact issue.

EVIDENCE—EXPERT TESTIMONY—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—IF TESTIMONY OF MEDICAL WITNESSES BASED ON GENERAL KNOWLEDGE RATHER THAN ACTUAL EXPERIENCE WITH DEVICE CONCERNED OR CLINICAL OBSERVATION PERTAINING THERETO.

In proceeding under Federal Trade Commission Act presenting issue whether representations regarding use of device for treatment of sick were false, misleading or deceptive, fact that none of Commission's medical witnesses had actual experience with the device, or were possessed of data as to what could be expected from it on basis of clinical observation, did not nullify weight attached to their testimony as qualified physicians, based on their general knowledge of medicine, that device could not perform cures claimed for it.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—QUALITIES OR PROPERTIES OF PRODUCT, ETC.

Evidence sustained finding of Federal Trade Commission that false, misleading and deceptive representations were made concerning device and its use in treatment of the sick and justified cease and desist order. Federal Trade Commission Act, secs. 5 (a, c), 12 (a), 15 (a, d), amended in 1938, 15 U. S. C. A. secs. 45 (a, c), 52, 55 (a, d).

COMMISSION PROCEDURE AND PROCEEDINGS—HEARINGS—TRIAL EXAMINER'S CONDUCT OF—PRESENTATION OF PETITIONER'S CASE.

In proceeding to review cease and desist order of Federal Trade Commission, record established that there were needless interruptions and interferences by trial examiner of Commission which impeded production of petitioners' evidence, but that petitioners were not finally prevented from full and complete presentation of their case and all evidence they relied on. Federal Trade Commission Act, sec. 5 (c), as amended in 1938, 15 U. S. C. A. sec. 45 (c).

¹ Reported in 143 F. (2d) 316. For case before Commission, see 36 F. T. C. 626. Rehearing denied July 17, 1944.

COMMISSION PROCEDURE AND PROCEEDINGS—HEARINGS—TRIAL EXAMINER'S CONDUCT OF—PRESENTATION OF PETITIONER'S CASE—EXCLUSION OF PROFFERED ADDRESS OF PHYSICIAN—IF LATTER NOT WITNESS, AND NO SUPPORT TO CONCLUSION CONTRARY TO COMMISSION'S FURNISHED.

In proceeding before Federal Trade Commission on complaint that false, misleading and deceptive representations had been made concerning use of a device in treatment of sick, trial examiner's exclusion of address given by physician was not prejudicial error, where the physician was not a witness subject to cross-examination, and his address furnished no support to any conclusion contrary to that of the [317] Commission.

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—TRADE-MARKS—EFFECT.

A trade-mark is not a license to engage in unfair competition, and it is not an unlimited sanction to use product to deceive.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—TRADE-MARKS—METHOD OF USE AS TEST.

The test of whether conduct is subject to cease and desist order under Federal Trade Commission Act is not whether trade-mark has been registered, but whether method of using it falls within prohibition of the act which forbids the use of misleading trade-marks.

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—TRADE-MARKS—METHOD OF USE AS TEST—IF MISLEADING.

Use of name "Detoxifier" was not permissible notwithstanding it had been used as a trade-mark to designate product, where evidence sustained determination of Federal Trade Commission that use of the term to designate device involved was misleading.

CEASE AND DESIST ORDERS—PUBLIC INTEREST—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—FALSE AND MISLEADING ADVERTISING—IF, NOTWITHSTANDING STATEMENTS DIRECTED IN PART TO HEALING PROFESSION AND DEVICE NOT SOLD TO LAY PUBLIC, MANNER OF DISSEMINATION CALCULATED TO DECEIVE SUBSTANTIAL PORTION OF PUBLIC.

Where some of advertised statements of manufacturers of rectal irrigator were directed to members of healing profession and device was not sold to lay public, but findings of Commission of manner in which manufacturers disseminated them and caused them to be disseminated, and that their dissemination tended to and had capacity to deceive substantial portion of public into buying and undergoing treatment with the device, were supported by evidence, proceeding under Federal Trade Commission Act and cease and desist order of Commission were authorized as to the interest of the public. Federal Trade Commission Act, sec. 5 (b), as amended, 15 U. S. C. A. sec. 45 (b).

PUBLIC INTEREST—METHODS, ACTS AND PRACTICES—FURNISHING MEANS AND INSTRUMENTALITIES OF MISREPRESENTATION AND DECEPTION—FALSE AND MISLEADING ADVERTISING—IF SUPPLIED TO DOCTORS BY MANUFACTURERS OF DEVICE CONCERNED.

Where manufacturers of device supplied to purchasers advertising to be distributed by purchasers to public, the fact that advertising representations of manufacturers as to the device went to doctors, mostly chiropractors, did not negate existence of a specific and substantial public interest which would warrant proceeding under Federal Trade Commission Act.

METHODS, ACTS AND PRACTICES—FURNISHING MEANS AND INSTRUMENTALITIES OF MISREPRESENTATION AND DECEPTION—FALSE AND MISLEADING ADVERTISING—IF AUTHOR THEREBY INSULATED AGAINST RESPONSIBILITY.

The author of false, misleading and deceptive advertising may not furnish customers with means of misleading the public and thereby insulate himself against responsibility for its deception.

(The syllabus, with substituted captions, is taken from 143 F. (2d) 316)

On petition to review order of Commission, order affirmed and obedience commanded.

Mr. Frank A. Whiteley for petitioners.

Mr. Joseph J. Smith, Jr., assistant chief counsel, Federal Trade Commission (*Mr. W. T. Kelley*, chief counsel, and *Mr. Eugene W. Burr*, special attorney, Federal Trade Commission, on the brief), all of Washington, D. C., for respondent.

Before *STONE, WOODROUGH, and THOMAS, Circuit Judges.*

WOODROUGH, Circuit Judge.

The petitioners, doing business as Associated Laboratories, have submitted their petition under 15 U. S. C. A. 45 c, for review of a cease and desist order entered against them by the Federal Trade Commission on April 30, 1943. They pray for reversal of the order, and the Commission prays that it be affirmed and that this court command obedience to it:

The proceedings were instituted before the Commission by complaint reciting probable cause to believe that petitioners had violated the provisions of the Federal Trade Commission Act and that a proceeding in respect thereof would be in the public interest, and charging that petitioners were [318] engaged in the business of manufacturing and selling and distributing in interstate commerce, "a device designated as Gordon Detoxifier, a rectal irrigator designed for cleansing the bowels and intestines," and that to promote its sale petitioners disseminated by mail and otherwise, a number of false, misleading and deceptive advertisements concerning the device and what may be done by the use of it. In paragraph three, the complaint set out in haec verba within quotation marks, specific statements alleged to be typical of those contained in petitioners' advertisements and charged to be false, misleading and deceptive, and in paragraph four, it was charged that by the use of the representations set out and others similar, petitioners represent directly and by implication that the use of the device, designated as "Gordon's Detoxifier" will thoroughly and harmlessly cleanse both the large and the small intestine; that its use will massage and strengthen both the large and small intestine and strengthen the tissues of the intestinal tract; that the injection of oxygen into the intestinal tract by said device will destroy the anaerobic germ; that its use will purify the blood stream; that its use, often in one treatment, will relieve the pain of rheumatism, arthritis, and of neuritis; that its use will reduce hypertension or high blood pressure with resulting relief of strain on the heart and on the brain; that its use will reveal to the patient himself, what foods to avoid in order to insure maximum efficiency in digestion; that its use will result in lessening the burden thrown on the liver and kidneys; that its use, in a few treatments, will relieve sinus and antrum complications; that its use will result in the re-establishment of a normal peristalsis or the natural muscular activity of the intestines; that its use will assist, by minimizing deposit of calcium and magnesium salts on the walls of the arteries, in preventing their hardening; that said device will send, in a scientifically controlled manner, a pulsating stream of water and

air bubbles into the bowels and into the otherwise inaccessible small intestine; that most ailments originate in the small intestine; that the use of Ozone in said device accelerates the healing process and stimulates recovery; and that ailments and conditions such as appendicitis, arthritis, asthma, colitis, constipation, excessive fatigue, foul breath, headache, gall bladder complications, high and low blood pressure, indigestion, irregular heart, kidney and bladder complications, liver complications, lumbago, menopause disturbances, muddy or pimply complexion, migraine, nervousness, pruritis ani, rheumatism, sinus trouble, rundown condition, shortness of breath, sleeplessness, ulcers of the stomach and bowels, and ulcerated colitis, are almost invariably caused by intestinal toxemia or toxins in the intestinal tract, and that such diseases or conditions can be successfully treated by respondents' said device.

In paragraph five, after asserting the falsity of petitioners' said advertisements, it is charged that,

"In truth and in fact, the use of respondents' said 'Gordon's Detoxifier' will not thoroughly and harmlessly cleanse both the large and small intestines. In fact, the frequent and repetitious use of said device may seriously interfere with the normal functioning of the lower bowels and may produce distinct harm by the removal of the normal protective mucous which should always be present on the surface of the mucosa of the lower bowels, thereby producing irritation. The use of said device will not massage and strengthen both the large and small intestines or any part of the intestinal tract. The injection by said device of oxygen into the intestinal tract will not destroy the anaerobic germ. The use of said device will not purify the blood stream and it will not relieve the pain caused by rheumatism, arthritis and neuritis. The use of said device will not reduce hypertension or high blood pressure and will have no effect on relieving strain on the heart or the brain. The use of said device will not reveal to the patient what foods to avoid in order to insure maximum efficiency in digestion. Its use will not lessen the burden thrown on the liver or the kidneys. Its use will not, in either a few treatments or in many treatments, relieve sinus and antrum complications. Its use will not result in the re-establishing of a normal peristalsis or the natural muscular activity of the intestine. Its use will not in any manner prevent the hardening of the arteries. Said device will not send a pulsating stream of water and air bubbles, in a scientifically controlled manner, into the small intestine. Furthermore, if water from said device should enter the small intestine the result of such penetration would not have a favorable effect on any disease or condition of the body, but might result in harmful or [319] serious consequences. Most ailments do not originate in the small intestines. The use of Ozone in said device will not accelerate the healing process and stimulate recovery, and if a significant amount of Ozone is injected into the intestinal tract, serious injury to health may follow. The ailments and conditions such as appendicitis, arthritis, asthma, colitis, constipation, excessive fatigue, foul breath, headache, gall bladder complications, high and low blood pressure, indigestion, irregular heart, kidney and bladder complications, liver complications, lumbago, menopause disturbances, muddy or pimply complexion, migraine, nervousness, pruritis ani, rheumatism, sinus trouble, rundown condition, shortness of breath, sleeplessness, ulcers of the stomach and bowels, and ulcerated colitis, are not almost invariably caused by intestinal toxemia or by the presence of toxins in the intestinal tract and such diseases or conditions cannot be successfully treated by the use of respondents' said device. Furthermore, the effect of said device is limited to an injection of liquid into the lower intestinal tract

and its therapeutic value is correspondingly limited to that of an ordinary enema."

The complaint also charged that petitioners' use of the term "hydro-surgery" in describing their device or the effects thereof, in the treatment of diseases or conditions of the human body, is false and misleading in that said term falsely indicates that the use of the device accomplishes results similar to results accomplished by surgery. It also charged that petitioners' use of the name "Gordon's Detoxifier" is false and misleading as falsely indicating that said device will remove or destroy toxins in the human system. In conclusion, it was alleged that all petitioners' acts and practices aforesaid are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.¹

The petitioners appeared and filed their answer to the complaint. They admitted that they were engaged in business as alleged in the complaint, and stated "that to the extent and as respondents have used in their advertising the specific details pre[320]sented in the quotes in paragraph three and the statements set forth in paragraph four, such statements are true, and are justified by therapeutic results obtained by the use of their instrument." They denied generally the allegations of paragraph five of the complaint and specifically "that ailments and diseases referred to in paragraph five cannot be successfully treated by the use of respondents' instrument, when the generalization 'successfully' is properly limited to the producing of an alleviation of the patient's complaint and a degree of recovery therefrom and a degree of restoration to health. The respondents further deny the allegation of paragraph five that the effect of said device is limited to an injection of liquid into the lower intestinal tract and its therapeutic value is correspondingly limited to that of an ordinary enema. In this regard respondents affirm that no competent observer who understands the nature of respondents' instrument and has observed its opera-

¹ The pertinent provisions of the statute are as follows:

"Sec. 5. (a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.

"The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce." 52 Stat. 111-112; 15 U. S. C. A. Sec. 45 (a).

"(c) * * * The findings of the Commission as to the facts, if supported by evidence, shall be conclusive." 52 Stat. 112-113; 15 U. S. C. A. Sec. 45 (c).

"Sec. 12. (a) It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement—

"(1) By United States mails, or in commerce by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics; or

"(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce of food, drugs, devices, or cosmetics.

"(b) The dissemination or the causing to be disseminated of any false advertisement within the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice in commerce within the meaning of section 5." 52 Stat. 114-115; 15 U. S. C. A. Sec. 52.

"Sec. 15. For the purposes of sections 12, 13 and 14—

"(a) The term 'false advertisement' means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. * * *

"(d) The term 'device' * * * means instruments, apparatus, and contrivances, including their parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals." 52 Stat. 116; 15 U. S. C. A. Sec. 55.

tion and the results obtained by it could honestly make the claim that the instrument provides only means for giving an ordinary enema."

They denied that any use by them of the term "hydro-surgery" is false or misleading, but affirm "that by the use of a mechanical appliance including water certain favorable results in the treatment of ailments are obtained, which is true, and that such use is a form of 'hydro-surgery.'" They also denied "that its use of its trade-mark 'Detoxifier' falsely indicates that respondents' instrument will remove or destroy toxins in the human system. The word 'Detoxifier' at the time adopted by the respondents as a trade-mark for its instrument was a coined term, and if it suggests or indicates that the instrument to which it is applied will remove or destroy toxins in the human system this is a fact, which has been abundantly demonstrated in thousands and thousands of cases."

They alleged "as an affirmative defense" "that the instrument which it sells is capable of producing and does produce therapeutic results of the highest value in the treatment of a large variety of human ailments.

"The medical profession comprises two groups of physicians, those who practice by the administration of drugs and the performance of surgical operations, involving the use of drugs, who are generally known as medical doctors or M.D.'s, and those who practice drugless healing by means of manual treatment and drugless appliances, who are generally known as chiropractors and osteopaths.

"It so happens that the medical doctors are extremely conservative in endorsing and using new forms of treatments, just as in the past they rejected bacterial discoveries, the use of anesthesia and other great therapeutic advances which from time to time have been brought into being and general use, almost invariably against strong and united opposition of the medical doctors. On the other hand, chiropractors and osteopaths are less conservative in the use of new appliances and where their efficiency is capable of demonstration have been quick to adopt them.

"The respondents' instrument is now being used by some 300 progressive and competent chiropractors and osteopaths. Their records show, in a manner which fair investigation must find incontrovertible, demonstration and proof, that the respondents' instrument sold as a 'Detoxifier' has in thousands and thousands of cases produced extraordinary therapeutic results in the remedying and alleviating of human ills, often when, before treatments with the 'Detoxifier,' cases were regarded by medical doctors as hopeless.

"Respondents have made repeated efforts to have the American Medical Association and other organizations of the medical doctors investigate the uses of respondents' instrument and to have determined, under fair conditions which they themselves can name, the extent to which it is beneficial in the alleviating of large numbers of human ills. These efforts have run up against a stone wall. The medical doctors and their organizations have absolutely refused to investigate this instrument. Some medical doctors, under a bond of keeping their names secret, have, for themselves and for their families, taken treatments with the 'Detoxifier,' but aside from those individuals who will not permit respondents to reveal their names, the medical doctors have kept themselves in ignorance of the manner of use and the highly valuable therapeutic results obtained from the 'Detoxifier.'

"Respondents do not know, and presumably the Commission will refuse to inform them, who, or what organization has brought these charges before the Commission. Respondents assert that the charges [321] are false and constitute an attack on a business which is struggling against many

adverse conditions at the present time and which is in fact of very great value to the public.

"For these reasons respondents demand that these charges be not determined upon theoretical conditions, but upon demonstrations of the machine itself in use, and upon the results obtained from that use.

"In this connection the Commission's attention is called to the fact that respondents are a small organization with little capital, and that such a proceeding as is instituted by this complaint might easily result in bringing about respondents' financial ruin. For all of which reasons it is respectfully urged that so far as possible costs to be incurred by respondents should be kept as low as possible."

On May 13, 1942, the Commission entered its order reciting that the matter was at issue and ready for the taking of testimony and evidence and designating a trial examiner to take the same at the time and place indicated with direction to him to make his report upon thereon.

Extensive evidence was taken before the examiner upon which he made his report, and thereafter the Commission granted a hearing and considered the evidence and made and entered its findings as to the facts, and its conclusion, and entered the cease and desist order here involved.²

¹ The Commission's order is as follows:

"It is ordered, that the respondents, Milton Irwin, Dr. Walter G. Berg, and Dr. David W. Milos, individually and trading as Associated Laboratories, 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' device designated 'Gordon Detoxifier,' or any other device of substantially similar character, 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

(a) uses the term 'hydro-surgery,' or any other term which includes the word 'surgery,' to describe respondents' device or the results obtained through the use of said device, or which otherwise represents or implies that the results obtained through the use of said device are comparable with those accomplished by surgery;

(b) uses the word 'Detoxifier,' or any other word of similar import, to designate or describe respondents' device, or which otherwise represents or implies that said device will rid the body of toxins; or which advertisement represents, directly or by implication,

(c) that respondents' device will cleanse the small intestine;

(d) that said device will massage or strengthen the large or small intestine, or strengthen the tissues of the intestinal tract;

(e) that the injection of oxygen into the intestinal tract by means of said device will destroy the anaerobic germs;

(f) that said device will purify the blood stream;

(g) that said device reduces high blood pressure;

(h) that said device reveals to the patient which foods should be avoided in order to insure maximum efficiency in digestion;

(i) that said device serves to lessen the burden upon the liver or kidneys;

(j) that said device relieves sinus or antrum complications;

(k) that the use of said device results in the reestablishing of a normal peristalsis or natural muscular activity of the intestines;

(l) that said device assists in preventing hardening of the arteries;

(m) that most ailments originate in the small intestine;

(n) that the introduction of ozone into the body by means of said device accelerates the healing process or stimulates recovery;

(o) that appendicitis, asthma, colitis, constipation, excessive fatigue, foul breath, headache, gall bladder complications, high or low blood pressure, indigestion, irregular heart, kidney or bladder complications, liver complications, lumbago, menopause disturbances, muddy or pimply complexion, migraine, nervousness, pruritis ani, rheumatism, sinus trouble, run-down condition, shortness of breath, sleeplessness, ulcers of the stomach or bowels, or ulcerative colitis are almost invariably caused by intestinal toxemia;

(p) that said device constitutes an effective treatment for appendicitis, asthma, colitis, excessive fatigue, foul breath, gall bladder complications, high or low blood pressure, indigestion, irregular heart, kidney or bladder complications, liver complications, lumbago, menopause disturbances, muddy or pimply complexion, migraine, nervousness, pruritis ani, rheumatism, sinus trouble, run-down condition, shortness of breath, sleeplessness, ulcers of the stomach or bowels, or ulcerative colitis;

[322] The findings set forth the facts in detail substantially as they are charged in the petition, but no finding or conclusion is made respecting advertisements concerning the use of petitioners' device in the treatment of the disease of arthritis. Paragraph three of the findings, in part, reads as follows:

"Among and typical of the statements and representations contained in such advertisements disseminated and caused to be disseminated, as set forth above, by insertion in periodicals and by booklets, pamphlets, circulars, letters and other advertising material, are the following:

"This natural and drugless therapy performs as follows:

1. Cleanses both large and small bowel, thoroughly and in a harmless manner.
2. Massages the bowel and gives necessary tone to tissues involved.
3. Its employment of oxygen destroys the anaerobic germs, which can not live in this medium.
4. Purifies the blood stream; proved by microscopic examination after treatments.

* * * * *

6. Reduces hypertension or high blood pressure, thus easing the work of the heart and freeing the walls of its cells, and the brain, from undue strain.

7. Indicates to patients what foods to avoid, to insure maximum efficiency in digestion.

8. Lessens the burden thrown on the liver and kidneys.

9. Improves sinus—and antrum complications in a few treatments.

10. Re-establishes a normal peristalsis, or natural muscular activity of the intestines.

* * * * *

12. Assists in preventing the hardening of the arteries, by minimizing the deposits of calcium and magnesium salts on the walls."

"A pulsating stream of water and air bubbles is introduced into the bowels in a scientifically controlled manner. This pulsating stream penetrates readily into the SMALL intestine, hitherto inaccessible to any other method of treatment. Most ailments are found to originate in the small intestine."

"Ozone is especially beneficial in cases of ulcers, colitis, bowel inflammation and toxemia.

"Ozone destroys bacteria on contact yet it is not a drug and is non-toxic and non-irritating. It promotes healing and stimulates."

"Specializing in Cases of
Intestinal Toxemia.

The Cause of Most Human Illness.

(q) that said device constitutes an effective treatment for constipation, except insofar as it may afford temporary relief by the irrigation or flushing of the lower bowel;

(r) that said device constitutes an effective treatment for headache, except insofar as it may afford temporary relief in those cases where such condition is due to constipation; or

(s) that said device possesses any therapeutic value in excess of that possessed by the ordinary enema.

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 respondents' device, which advertisement contains any representation prohibited in paragraph 1 hereof."

The following symptoms and ailments are almost invariably caused by Intestinal Toxemia. They can now be successfully treated.

Appendicitis

* * *

Asthma

Colitis

Constipation

Excessive Fatigue

Foul Breath

Headache

Gall Bladder Complications

High and Low Blood Pressure

Indigestion

Irregular Heart

Kidney and Bladder Complications

Liver Complications

Lumbago

Menopause Disturbances

Muddy or Pimply

Complexion

[Migraine]

Nervousness

Pruritis Ani

Rheumatism

Sinus Trouble

Run Down Condition

Short of Breath

Sleeplessness

Ulcers of Stomach and
and Bowels

Ulcerative Colitis."

[323] In this court petitioners have pressed their attack upon the findings, conclusion and order in briefs and oral arguments with serious earnestness, impressing the sincerity of their belief that their "Detoxifier" is an instrument of merit and that its use contributes to the alleviation of pain and sickness. Their testimony tended to show that it had been used upon many thousand sufferers, and there was no issue and no direct evidence was adduced that such use had in any instance inflicted injurious consequences. The two witnesses called by petitioners who had made very extensive use of the instrument were undoubtedly convinced as they testified that many patients had been greatly benefitted. There was certainly no testimony that would have justified any injunctive order prohibiting the use of the "Detoxifier" by men or women possessing the qualifications required to practice the art of healing, and it does not appear to have been sold by petitioners to individuals for use upon themselves.

But the Commission has in no way attempted to prevent the sale of the instrument in interstate commerce, or to restrict or limit its use for the purpose for which it is designed, and much of the argument before us is directed to matters which are not for our determination. The statute which is controlling here provides that "The findings of the Commission as to the facts, if supported by evidence, shall be conclusive." 52 Stat. 112-113, 15 U. S. C. A. §45 (c), and it is not within our province to try the issues of fact de novo. The order of the Commission is confined entirely to prohibiting the use by petitioners of certain specified representations and nomenclature in their advertisements to induce the sale and use of their product, and on the fact issue our inquiry can extend only to the question whether the Commission's findings are supported by evidence.

That the petitioners did disseminate and cause to be disseminated advertisements concerning their device to induce its sale and use, containing the statements and representations and conveying the implications found by the Commission, we determine to be amply sustained by the testimony. Aside from such of them as are descriptive of the mechanical operation of the device, the representations relate to the successful treatment of diseases, ailments and infirmities of the sick, and are, therefore, in a field of knowledge as to which it is universally recognized that laymen and the general public are not informed comparably with those who have devoted themselves to specialized studies. Accordingly, in these proceedings after petitioners' device had been introduced and its operation explained and the

representations in advertisements established, three physicians were called by the Commission who testified as expert witnesses. Their studies and experience were disclosed at length and they were undoubtedly physicians of profound learning and wide experience in their profession. They gave evidence in support of each of the items of the cease and desist order which is here involved. In their opinion each of the statements which the order prohibits the petitioners from disseminating is false, the designation of the device "Detoxifier" is deceptive, and the advertised claim that the device accomplishes "hydro-surgery" is misleading and untrue.

The petitioners, on their part, called two witnesses who were duly licensed to practice as chiropractors whose studies and experience were fully disclosed. They stated their opinions as to the capacity of the "Detoxifier" for successful treatment of the sick which in many respects were opposed to those of the three physicians. The Commission did not find, nor does this court, that they were not qualified expert witnesses. The petitioners also called several lay witnesses who had been sick and had been treated with the device and felt they had benefited. But the evidence as a whole presented for determination the issue of fact whether the representations were false, misleading or deceptive as charged. Such determination required consideration of the testimony of the experts and decision upon conflicts between them in a field where there are few absolutes readily demonstrable. But such difficulties suggest no reason to deny the Commission's power to resolve the fact issue. *Alberty v. Federal Trade Commission*, 9 Cir., 118 F. (2d) 669, 670 [32 F. T. C. 1871], cert. den., 314 U. S. 630; *Aronberg v. Federal Trade Commission*, 7 Cir., 132 F. (2d) 165, 170 [35 F. T. C. 979]; *Neff v. Federal Trade Commission*, 4 Cir., 117 F. (2d) 495, 497 [32 F. T. C. 1842]; *Dr. W. B. Caldwell, Inc. v. Federal Trade Commission*, 7 Cir., 111 F. (2d) 889, 891 [30 F. T. C. 1670]; *Justin Haynes & Co. v. Federal Trade Commission*, 2 Cir., 105 F. (2d) 988, 989 [29 F. T. C. 1578], cert. den. 308 U. S. 616; *E. Griffiths Hughes, Inc. v. Federal Trade Commission*, 2 Cir., 77 F. (2d) 886, 887 [20 F. T. C. 734], [324] cert. den., 296 U. S. 617; *Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 58 S. Ct. 113, 82 L. Ed. 111 [25 F. T. C. 1715]; *Quality Bakers of America v. Federal Trade Commission*, 1 Cir., 114 F. (2d) 393 [31 F. T. C. 1858]; *Benton Announcements v. Federal Trade Commission*, 2 Cir., 130 F. (2d) 254 [35 F. T. C. 941]; *Great Atlantic & Pacific Tea Co. v. Federal Trade Commission*, 3 Cir., 106 F. (2d) 667 [29 F. T. C. 1591]; cert. den., 60 S. Ct. 380, rehearing den., 309 U. S. 694; *Kidder Oil Co. v. Federal Trade Commission*, 7 Cir., 117 F. (2d) 892 [32 F. T. C. 1823]; *Keller v. Federal Trade Commission*, 7 Cir., 132 F. (2d) 59 [35 F. T. C. 970]; *Cf., Arkansas Wholesale Grocers' Association v. Federal Trade Commission*, 8 Cir., 18 F. (2d) 866, 870 [11 F. T. C. 646], cert. den., 275 U. S. 533.

Petitioners contend that no weight should be given to the opinions expressed by the three physicians whom the Commission called, because none of them had seen or used the device or observed its results and the argument is made that they did not understand it. But the proof is clear that the physicians had read the descriptions of the device and its operation. There was a physical example of it in evidence, and a printed manual describing it and its operation with meticulous exactness, in addition to extensive description by witnesses, and nothing in the record suggests that it embodies any mysterious or unknown elements. The definition and description of it by the Commission in its findings (paragraphs five and six) appears to us accurate and sufficient as we have compared it with the device and the testimony, and we see no reason to doubt that the physicians fully understood its functioning and gave their opinions as to what

it would not do in the field of therapeutics with full appreciation of what it is and how it works. The mere fact that none of the Commission's medical witnesses had actual experience with the Detoxifier or were possessed of data as to what could be expected from it on the basis of clinical observation, does not nullify the weight attached to their testimony as qualified physicians, based on their general knowledge of medicine, that the Detoxifier could not perform the cures claimed for it. *Neff v. Federal Trade Commission*, 4 Cir., 117 F. (2d) 495, 496-497 [32 F. T. C. 1842]; *Fulton Co. v. Federal Trade Commission*, 9 Cir., 130 F. (2d) 85, 86 [35 F. T. C. 946]; *Caldwell v. Federal Trade Commission*, supra; *Haynes v. Federal Trade Commission*, supra; Cf. *Goodwin v. United States*, 6 Cir., 2 F. (2d) 200, 201.

As pointed out in *Neff v. Federal Trade Commission*, supra:

"The actual question now presented is whether the testimony of the six experts who testified for the Commission can be considered substantial evidence in view of their lack of actual experience in the use of the petitioner's preparation, as compared with the conflicting statements of doctors who had administered Glantex to their patients. We think that the evidence is sufficient to support the Commission's finding. All of the experts were well qualified to speak upon the subject; and their opinions, though based only upon their general medical and pharmacological knowledge, constituted substantial evidence tending to show that the representations of the petitioner were not justified."

The injection of water into the body through the rectum is not a novel but an ancient practice, and the physicians disclosed their familiarity with the effects of such operations. They were unanimous and firm in the opinion that the benefits are narrowly limited, whereas the petitioners' advertisements would induce the purchaser of their device to build up a practice in the treatment of the listed diseases around the machine. The fundamental vice of inducing belief that benefits are absolute and general which in truth and fact are limited, uncertain, rare or nonexistent, pervades the whole body of petitioners' advertising, and the findings that the matter prohibited by the order is false are supported by the evidence of the physicians whose learning and experience entitle them to credence.

Petitioners have complained of misconduct of the trial examiner in interrupting their examination and cross-examination of witnesses and in preventing the introduction of their competent testimony, and examination of the record convinces that his conduct of the hearing is deserving of criticism. There were needless interruptions and interferences by him which impeded the production of petitioners' evidence. But petitioners were represented by able counsel, and careful study of the whole proceeding has convinced that although improperly impeded in several instances, petitioners were not finally prevented from full and complete presentation of their case and all the evidence they relied on.

The ruling of the trial examiner that an address made by Dr. Anthony Bassler before the 1936 session of the American Congress of Physical Therapy offered in evidence by petitioners was not competent, was not prejudicially erroneous. The doctor was not a witness subject to cross-examination, and his address, which has been included in the record and examined, lends no support to any conclusion contrary to that of the Commission.

Petitioners' contention that their use of the name "Detoxifier" is permissible because it "has been used as a trade-mark to designate their product," can not be sustained. A trade-mark "is not a license to engage in unfair competition," *Federal Trade Commission v. Real Products Corp.*, 2 Cir., 90 F. (2d) 617, 619 [25 F. T. C. 1685], nor is it an "unlimited sanction" to use the product to deceive, *Fluegelman & Co. v. Federal Trade*

Commission, 2 Cir., 37 F. (2d) 59, 61 [13 F. T. C. 602]. The test of petitioners' conduct is not "Whether a trade-mark may have been registered, but whether the method of using it falls within the prohibition of the Federal Trade Commission Act," which forbids the use of "misleading trade-marks." *Federal Trade Commission v. Real Products Corp.*, supra; *Fluegelman & Co. v. Federal Trade Commission*, supra; *Marietta Mfg. Co. v. Federal Trade Commission*, 7 Cir., 50 F. (2d) 641, 642 [15 F. T. C. 613]; *Federal Trade Commission v. Kay*, 7 Cir., 35 F. (2d) 160, 162 [13 F. T. C. 575], cert. den. 281 U. S. 764. See also, *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483, 494 [4 F. T. C. 610]; *Bougham v. Blanton Mfg. Co.*, 249 U. S. 495, 499.

Nor do we find merit in petitioners' contention that the proceeding and order of the Commission were not "to the interest of the public" within 15 U. S. C. A. Sec. 45 (b). Although some of petitioners' advertised statements were directed to members of the healing profession and the device is not sold to the lay public, the findings of the Commission of the manner in which petitioners disseminated them and caused them to be disseminated, and that dissemination tended to and had the capacity to mislead and deceive a substantial portion of the public into buying and undergoing treatment with the device, are supported in the evidence. The existence of a public interest here rests on the deception practiced upon the public. *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212, 53 S. Ct. 335, 77 L. Ed. 706 [17 F. T. C. 664]; See *National Silver Co. v. Federal Trade Commission*, 2 Cir., 88 F. (2d) 425 [24 F. T. C. 1627]. The Commission found that petitioners "also supply to purchasers of their machine, advertising to be distributed by such purchasers to the public," and thus the fact that the advertising representations of the petitioners as to the Detoxifier "goes to doctors, mostly chiropractors," does not negate the existence of a specific and substantial public interest, for it is clear that the deception of patients who present themselves to purchasers of the machine and undergo treatment involving its use as a result of circulation by the purchasers of the deceptive and misleading literature furnished them, involves the public interest. The author of false, misleading and deceptive advertising may not furnish customers with the means of misleading the public and thereby insulate himself against responsibility for its deception. Cf. *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483, 493 [4 F. T. C. 610]; *Warner & Co. v. Lilly & Co.*, 265 U. S. 526, 530; *Chicago Silk Co. v. Federal Trade Commission*, 7 Cir., 90 F. (2d) 689, 691 [25 F. T. C. 1692], cert. den. 302 U. S. 753; *Masland Etc., Co. v. Federal Trade Commission*, 3 Cir., 34 F. (2d) 733, 736 [13 F. T. C. 567]; *Marietta Mfg. Co. v. Federal Trade Commission*, 7 Cir., 50 F. (2d) 641, 642 [15 F. T. C. 613]; *Federal Trade Commission v. Martoccio Co.*, 8 Cir., 87 F. (2d) 561, 564 [24 F. T. C. 1608], cert. den. 301 U. S. 691.

We find the proceedings by the Commission were to the interest of the public and its order supported by the evidence. We affirm it and direct issuance of order commanding obedience to its terms.

AMIEL F. DECKER AND MABEL P. DECKER DOING BUSINESS AS DECKER PRODUCTS COMPANY v. FEDERAL TRADE COMMISSION

No. 8729—F. T. C. Dock. 5097

(Court of Appeals for the District of Columbia. June 26, 1944)

Per curiam order dismissing, without opinion, on motion of Commission, petition for review of order of Commission, which denied motion of petitioners — charged as respondents in Docket 5097 with false and misleading advertising through radio broadcasts, circulars and otherwise, in connection with the offer and sale of their "Vacudex" automatic device — for dismissal of the complaint in said matter, based on complaint and answer and exhibit thereto, and for oral hearing on said motion; without prejudice, however, to petitioners' right to refile said motion upon the final hearing of the case.

Mr. Josephus C. Trimble, Mr. Harry S. Hall and Mr. Paul A. Blair, of Washington, D. C., for petitioners.

Mr. J. J. Smith, Jr., assistant chief counsel, Federal Trade Commission, of Washington, D. C., for respondent.

Before MILLER, EDGERTON and ARNOLD, JJ.

ORDER

On consideration of respondent's motion to dismiss petition for review in the above-entitled case, and petitioners' objections thereto, It is Ordered by the Court that the petition for review in this case be, and it is hereby, dismissed.

PER CURIAM.

Note: Complaint charged petitioners with disseminating false, deceptive and misleading statements with respect to economies in gas and other economies which might be effected in the operation of automobiles and trucks through the use of petitioners' device.

In their answer to said complaint, petitioner denied the charges and alleged certain affirmative defenses, and filed a motion to dismiss, on the basis of said facts, asserting, as they claimed in their answer, that the Commission was without jurisdiction in the proceeding instituted against them for the reason that petitioners' alleged misrepresentations "arise out of, are authorized by, are based on and are fully within the intent, objects, specifications, drawings, claims and scope of certain letters patent" issued to petitioner Amiel F. Decker upon the device in question, and petitioners' alleged misrepresentations, so petitioners averred, were therefore "exempt from the application and operation [of the Federal Trade Commission Act] by the patent laws of the United States," and "in spite of the Federal Trade Act [petitioners] are legally justified in making the alleged misrepresentations complained of."

The Commission in its brief in support of its motion to dismiss said petition for review contended—

That "there is nothing in the statute which confers upon the Court any jurisdiction or authority to review a Commission order other than an order to cease and desist, and the principle is too well settled to require argument that interlocutory and procedural orders of an administrative agency are not subject to judicial review";

That "since the order which petitioners seek to have reviewed is not an order to cease and desist, but is purely interlocutory and procedural in

character, the Court has no jurisdiction of the subject matter of this proceeding"; and

As respects petitioners' aforesaid contentions relating to the patent aspects and issues sought to be raised, observed—

"The Court being without jurisdiction, it is unnecessary to argue the merits of petitioners' claim respecting the Commission's alleged lack of jurisdiction. It may be observed, however, that a patent is not a license to engage in unfair competition. And the fact that petitioners' representations respecting their patented device correspond with the claims and specifications of their letters patent neither confers upon petitioners any privilege to disseminate such representations if they are in fact false, nor deprives the Commission of jurisdiction to determine their truth or falsity and prohibit their dissemination if false.¹

Wherefore it moved the Court to dismiss petitioners' aforesaid "Petition for Review of Order of the Federal Trade Commission in the Nature of a Cease and Desist Order and Final Order Decisive of the Case."

Subsequent to said order of the court, the court on July 26, 1944 dismissed petitioners' motion for reconsideration of its said order.

Petitioners, on October 26 following, filed with the Supreme Court their petition for writ of certiorari and brief in support to review said order and charge of the court of Appeals.

Opposition thereto and brief denying the jurisdiction of the court below to review such interlocutory orders or other than final orders issued pursuant to Sec. 5 (b) of the Federal Trade Commission Act, was filed on November 30 with said court, and denied on December 11, 1944, 65 S. Ct. 277.

LOUGHRAN ET AL. v. FEDERAL TRADE COMMISSION ²

No. 12692—F. T. C. Dock. 4409

(Circuit Court of Appeals, Eighth Circuit. June 29, 1944)

COMMISSION PROCEDURE AND PROCEEDINGS—HEARINGS—CLOSING AND REOPENING.

It was for Federal Trade Commission to decide whether to set aside its order that taking of testimony be closed and whether hearing on complaint charging unfair methods of competition in commerce and unfair practices should be reopened.

Federal Trade Commission Act Sec. 5 (a), as amended, 15 U. S. C. A. Sec. 45 (a).

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—IF NO RECORD ON WHICH COURT COULD INQUIRE PRESENTED.

Petitioners had no standing to obtain review in Circuit Court of Appeals of Federal Trade Commission's cease and desist order against unfair practices in interstate commerce, where no record was presented on which court could even inquire into propriety of Commission's rulings on questions before it and petitioners did not print any parts of record that might throw light on pertinent issues. Federal Trade Commission Act Sec. 5 (a), as amended, 15 U. S. C. A. Sec. 45 (a); Rules of Circuit Court of Appeals, Eighth Circuit, rule 10 (a).

¹ See *F. T. C. v. Real Products Corp.*, 90 F. (2d) 617, 619 (C. C. A. 2, 1937); *Marietta Manufacturing Co. v. F. T. C.*, 50 F. (2d) 641, 642 (C. C. A. 7, 1931); *N. Fluegelman & Co. v. F. T. C.*, 37 F. (2d) 69, 61 (C. C. A. 2, 1930); *F. T. C. v. Kan.*, 35 F. (2d) 160, 162 (C. C. A. 7, 1929), cert. denied 281 U. S. 764 (1930). *Cf. F. T. C. v. Winsted Hosiery Co.*, 258 U. S. 483, 494 (1922); *Brougham v. Blanton Manufacturing Co.*, 249 U. S. 495, 499 (1919).

² Reported in 143 F. (2d) 431. For case before Commission, see 36 F. T. C. 885.

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—COMMISSIONERS' QUALIFICATION OR DISQUALIFICATION TO SIT.

The Federal Trade Commission Act establishes composition of Commission and contains no provision for change of venue; hence petitioners seeking to review and set aside Commission's cease and desist order against unfair methods of competition in interstate commerce could not successfully establish that Commissioners had disqualified themselves from sitting as an impartial fact finding body; Commission being the only body which can act in proceeding.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—LOTTERY MERCHANDISING SCHEMES AND DEVICES—DISTRIBUTION OF "PUNCH CARDS" BY CANDY SELLERS—AS NOT PART OF SELLING METHODS AND TO MEET COMPETITION OF OTHER DEALERS IN GAMES OF CHANCE—WHETHER SAVING CONTENTION.

Candy manufacturers which sold candy to dealers were properly required by Federal Trade Commission to cease distributing games of chance such as "punch cards" to dealers, enabling dealers to conduct lotteries in sale of their products by plan by which consuming public could obtain candy at prices less than normal retail prices and receive nothing if they lose, as against contention that distribution of such devices merely stimulated gambling in general and was not part of manufacturers' methods of selling candy, and that manufacturers only competed with other dealers in games of chance. Federal Trade Commission Act Sec. 5 (a), as amended, 15 U. S. C. A. Sec. 45 (a).

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—PETITIONS FOR REVIEW—IF UNSUCCESSFUL—TAXATION OF COSTS—PRINTING OF ABSTRACT OF RECORD—WHETHER PETITIONER ENTITLED TO COSTS OF.

On unsuccessful petition to review order of Federal Trade Commission to desist from unfair methods of competition in commerce, respondent's requested taxation of costs in its favor for printing of abstract of record filed by it was denied, where abstract was not called for or authorized by court and was not essential.

(The syllabus, with substituted captions, is taken from 143 F. (2d) 431)

On petition to review order of Commission, order affirmed.

Mr. F. W. James for petitioners.

Mr. Joseph J. Smith, Jr., assistant chief counsel (*Mr. W. T. Kelley*, chief counsel, and *Mr. Donovan R. Divet*, special attorney, Federal Trade Commission, on the brief), all of Washington, D. C., for respondent.

Before *SANBORN, WOODROUGH, and THOMAS, Circuit Judges.*

WOODROUGH, Circuit Judge.

This proceeding is brought before us on petition to review and set aside an order to cease and desist issued by the Federal Trade Commission following a Commission complaint charging petitioners with unfair methods of competition in commerce and unfair practices in commerce, in violation of Section 5 (a) of the Federal Trade Commission Act, 52 Stat. 111-112; 15 U. S. C. A. Sec. 45 (a). The order was issued after the petitioners had appeared and unsuccessfully moved to dismiss the complaint and after hearings had been had in which petitioners participated. The trial examiner who heard the evidence made his report and recommendations, and thereafter the proceeding regularly came on for hearing before the Commission. It made its findings as to the facts, and its conclusion, and entered the order here complained of.

The Commission found from the evidence that petitioners are individuals, trading as "Alma's Home Made Candies," having their principal office and place of business in Chicago, Illinois. In competition with

others, they are engaged in the business of manufacturing candy which they sell and ship in interstate commerce to candy dealers. To promote the sale of their candy to the consuming public, petitioners supply with it a chance or lottery device, commonly known as a "push card," which is used by retailers to dispose of petitioners' candy by means of chance. The order they seek to reverse commands them to cease and desist from the practice in which they were found to be engaged, and from "selling or otherwise disposing of any [433] merchandise by means of a game of chance, gift enterprise, or lottery scheme."

It appears that after the trial examiner in the proceeding had set it down for hearing testimony on numerous occasions, upon due notice to petitioners, and had heard the evidence adduced and had afforded petitioners full opportunity to present their testimony, they petitioned the Commission that additional hearings be held for the purpose of taking further testimony, and on consideration of the petition the Commission denied it at regular session, November 2, 1942, and ordered the taking of testimony closed. Thereafter, on February 5, 1943, petitioners applied again to the Commission praying that the closing order be set aside and that additional testimony be taken. The Commission considered and denied the request, and the final decision it arrived at in the proceeding was based upon the testimony that had been taken at the several hearings between the filing of the complaint December 9, 1940, and the closing date, November 2, 1942.

On this review the petitioners make no contention that the findings of fact made by the Commission are not supported by substantial evidence in the record, but in the petition which they presented to the Commission of February 5, 1943, to set aside the closing order of November 2, 1942, they alleged that they would be able to and would adduce certain testimony in defense of the complaint if the closing order should be set aside and further hearings were granted. They now ask this court to consider the statements which it is asserted they could substantiate at further hearings, and the contentions they urge upon us are to the effect that the statements present a defense to the complaint and require reversal of the cease and desist order.

But it was for the Commission to decide whether its closing order should be vacated and whether the hearing should be reopened. *Interstate Commerce Commission v. Jersey City*, 322 U. S. 503 (Decided May 29, 1944), and petitioners have not presented to this court any record upon which it could even inquire into the propriety of the Commission's ruling on that issue. They have not printed any parts of the record that might throw light on any issues pertinent to that ruling and have no standing here to obtain review of it. Rule 10 (a), C. C. A., 8th Circuit.

Petitioners contend under one of their points relied on that the Commission denied them opportunity to introduce evidence to show that the Commissioners had disqualified themselves from sitting in the proceeding as an impartial fact finding body. But aside from the fact, as shown by the record, that no such issue was tendered in the proceedings by timely motion or pleading, or by timely offer of proof before the case was closed, and that there is no evidence whatever in the record, received or tendered, impugning the fair impartiality of any member, the Federal Trade Commission Act establishes the composition of the Commission and contains no provision for change of venue. The "stern rule of necessity" required the Commission to act in the proceeding. *Brinkley v. Hassig*, 10 Cir., 83 F. (2d) 351; *State v. Houser*, 122 Wis. 534, 100 N. W. 964, 978; *United States v. Morgan*, 313 U. S. 409, 420-421; *Evans v. Gore*, 253 U. S. 245,

247-248; *Gordy v. Dennis*, 176 Md. 105, 5 A. (2d) 69, 70; *Montana Power Co. v. Public Service Commission*, 12 F. Supp. 946, 948-950; *State v. Humphreys*, 163 Tenn. 20, 40 S. W. (2d) 405, 406; *Zober v. Turner*, 106 N. J. Law 86, 148 A. 894, 895; *McCoy v. Handlin*, 35 S. D. 487, 153 N. W. 361, 363-369. See also cases collected in Note 39 A. L. R. 1476 (1925). We think the contention is without merit.

Petitioners contend under their other three points relied on that their practice of distributing their game of chance, lottery or gambling devices called "punch cards" is not a part of the candy business but is something separate and apart from that business. They characterize the practice as knavish, but argue that the Federal Trade Commission could do nothing about it because competition in the candy business was unaffected by it, and that it did not touch the public interest in unfair competition or unfair practices in commerce with which the Commission is concerned.

Although we have carefully considered all the arguments in support of these contentions, we are unable to find any merit in them. The Commission found as a fact that the petitioners, in the course of their business of manufacturing and selling candy in interstate commerce, pursued a method which is fully described in the findings, [434] whereby they supplied to and placed in the hands of others the means of conducting lotteries in the sales of their products, and that the sale of candy to the consuming public by their plan or method involves a game of chance or the sale of a chance to obtain merchandise at prices which are much less than the normal retail price of such merchandise. "Among [their] competitors are those who do not use such methods, or any method involving a game of chance, or lottery scheme." The argument for petitioners to the effect that petitioners merely distribute gaming devices to stimulate gambling in general and not as a part of their method of selling candy, contradicts the Commission's finding by which they are bound, and the evidence taken in the proceeding (which is before us) refutes it.¹

While it may be true that the scheme here involved competed with similar games of chance, it is no less true that petitioners' "chance business" was in active competition with traders in candy who pursued conventional business practices and adopted profit mark-ups and adjustments based on normal sales formulas. It seems to us to depart from logic or reality to argue that the purchase of chances was motivated by a desire to gamble only as distinguished from a desire to obtain candy, that the only persons who purchased chances were those inspired by the incentive to gamble, or that no interference with or diversion from sales by those engaged in the candy trade was occasioned. Petitioners' argument that it competes only with other dealers in games of chance was presented in *Bunte Bros., Inc. v. Federal Trade Commission*, 7 Cir., 104 F. (2d) 996 [28 F. T. C. 1959], and in *Ostler Candy Co. v. Federal Trade Commission*, 10 Cir., 106 F. (2d) 962 [29 F. T. C. 1584], and rejected correctly, it seems to us. Nor are we persuaded that petitioners are in a better position because the type of chance involved is the kind in which the purchaser receives nothing if he loses, as distinguished from the kind in which the purchaser receives a small piece of candy whether he wins or loses. See *Bunte Bros.*,

¹ The Commission found that petitioners "are and have been in substantial competition with other individuals and corporations, engaged in the sale and distribution of candy in commerce among and between the various States * * *. The sale of candy to the consuming public by the plan or method described above involves a game of chance or the sale of a chance to obtain merchandise at prices which are less than the normal retail price of such merchandise. * * The use of such method by respondents has the tendency and capacity to divert, and has diverted, substantial trade unfairly to respondents from such competitors."

Inc. v. Federal Trade Commission, supra. The Commission's finding of diversion of a substantial part of trade from straight candy to chance candy is substantiated in evidence and the diversion by the method described was properly forbidden by the Commission.

The order of the Commission on the facts found on substantial evidence is fully in accord with the following, among other cases: *Federal Trade Commission v. Keppel & Brother*, 291 U. S. 304, 313-314 [18 F. T. C. 684]; *Douglas Candy Co. v. Federal Trade Commission*, 8 Cir., 125 F. (2d) 665, 668 [34 F. T. C. 1815]; *Federal Trade Commission v. F. A. Martoccio Co.*, 8 Cir., 87 F. (2d) 561, 562-563 [24 F. T. C. 1608], cert. den., 301 U. S. 691; *Jaffe v. Federal Trade Commission*, 7 Cir., 139 F. (2d) 112 [37 F. T. C. 816]; *Wolf v. Federal Trade Commission*, 7 Cir., 135 F. (2d) 564, 566-567 [36 F. T. C. 1135]; *Ostler Candy Co. v. Federal Trade Commission*, 10 Cir., 106 F. (2d) 962, 965 [29 F. T. C. 1584], cert. den., 309 U. S. 675; *Minter v. Federal Trade Commission*, 3 Cir., 102 F. (2d) 69 [28 F. T. C. 1885]; *Keller v. Federal Trade Commission*, 7 Cir., 132 F. (2d) 59, 61 [35 F. T. C. 970]; *Helen Ardelle, Inc. v. Federal Trade Commission*, 9 Cir., 101 F. (2d) 718, 719-720 [28 F. T. C. 1894]; *Walter H. Johnson Candy Co. v. Federal Trade Commission*, 7 Cir., 78 F. (2d) 717, 718 [21 F. T. C. 1195]; *Federal Trade Commission v. Raladam Company*, 316 U. S. 149, 152 [34 F. T. C. 1843]. This court's order of enforcement should issue. Respondent has requested taxation of costs in its favor on account of the printing of an abstract of record filed by it, but as the same was not called for or authorized by the court and was not essential, the request is denied.

ULTRA-VIOLET PRODUCTS CO., INC. v. FEDERAL TRADE COMMISSION¹

No. 10218—F. T. C. Dock. 4407

(Circuit Court of Appeals, Ninth Circuit. June 30, 1944)

CEASE AND DESIST ORDERS—SCOPE—PROHIBITIONS, IN GENERAL—IF TRUTHFUL REPRESENTATION OF MATTER THERETOFORE MISREPRESENTED INCLUDED.

Fact that petitioner's past advertising has made improper comparisons of rays of its lamp with the sun's rays, even if established, does not deprive petitioner of right to make a truthful comparison with sun's rays in advertising its products.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—FALSE AND MISLEADING ADVERTISING—QUALITIES OR PROPERTIES OF PRODUCT—ELECTRIC LAMPS—RINGWORM, ETC.

Order of Federal Trade Commission directing petitioner to cease and desist from representing that its lamp constitutes a cure or remedy or a competent or adequate treatment for ringworm, athlete's foot, acne, eczema or psoriasis, is authorized by evidence.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—FALSE AND MISLEADING ADVERTISING—QUALITIES OR PROPERTIES OF PRODUCT—ELECTRIC LAMPS—SORES OR ULCERS.

Order of Federal Trade Commission directing petitioner not to advertise that its lamp constitutes a cure or remedy for sores or ulcers, or that it constitutes a com-

¹ Reported in 143 F. (2d) 814. For case before Commission, see 34 F. T. C. 1325 and, as modified order in 39 F. T. C., Aug. 26, 1944. Dissenting opinion July 19, 1944.

petent treatment therefor except insofar as it may stimulate the healing process in those cases in which the infection causing such condition is confined to surface of the skin, is authorized by evidence.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—FALSE AND MISLEADING ADVERTISING—QUALITIES OR PROPERTIES OF PRODUCT—ELECTRIC LAMPS—BRONCHITIS.

Order of Federal Trade Commission directing petitioner to cease and desist from advertising that its lamp possesses any therapeutic value in treatment of bronchitis is authorized by evidence.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—FALSE AND MISLEADING ADVERTISING—QUALITIES OR PROPERTIES OF PRODUCT—ELECTRIC LAMPS—RESISTANCE TO DISEASE.

[815] Order of Federal Trade Commission directing petitioner not to advertise that its lamp builds up in the body resistance to disease would prevent telling of truth about valuable property of lamp's rays in increasing resistance to rickets, and hence order would not be enforced.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—FALSE AND MISLEADING ADVERTISING—QUALITIES OR PROPERTIES OF PRODUCT—ELECTRIC LAMPS—SKIN STIMULATION.

Order of Federal Trade Commission directing petitioner to cease advertising that its lamp affords any stimulation to the tissues of skin in excess of such stimulation as may result from its irritating effect is authorized by evidence.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—FALSE AND MISLEADING ADVERTISING—QUALITIES OR PROPERTIES OF PRODUCT—ELECTRIC LAMPS—BODY CHEMISTRY, METABOLISM AND TISSUES.

Order of Federal Trade Commission prohibiting petitioner from advertising that its lamp normalizes the chemistry of the body, improves metabolism, or builds new tissues, except insofar as its use may result in the production of vitamin D, would be modified as requested by petitioner to accord with the evidence.

(The syllabus, with substituted captions, is taken from 143 F. (2d) 814)

On petition to review and set aside an order of the Commission, petition granted in part and denied in part; Mathews, C. J., dissenting, in part.

Mr. Henry McClernan of Glendale, Cal., for petitioner.

Mr. W. T. Kelley, chief counsel, *Mr. Joseph J. Smith, Jr.*, asst. chief counsel, and *Mr. Donovan R. Divet*, sp. atty., all of Washington, D. C., for respondent.

Before DENMAN, MATHEWS, and STEPHENS, *Circuit Judges*.

DENMAN, *Circuit Judge*.

Petitioner seeks to set aside an order of the Commission prohibiting it from using in its advertising certain statements regarding the effect of its cold quartz lamp, called "Life Lite," emitting certain rays which the advertising claims produce certain beneficial effects when directed against the human body. The jurisdiction is conceded and we may view and to the extent that the order of the Commission is affirmed we may give our own order commanding obedience to the terms of such order of the Commission, Federal Trade Commission Act, § 5 (c), 52 Stat. 113; 15 U. S. C. A. § 45 (c).

A. The first order complained of is to desist from advertising that Life Lite "affords benefits to the skin or to the general health of the user comparable to those afforded by natural sunlight."

The Commission's experts testified and its brief admits that Life Lite's rays produce in the fat-like sterols beneath the surface of the skin vitamin D which is carried through the body to the bones and aids if not cures rickets. So also do the sun's rays. A little over ten percent of Life Lite's rays are in the lower rays of the sun's spectrum. The remaining rays are below those of the sun. There is no testimony that the quantity of vitamin D produced by Life Lite is more or less than that of the sun's rays. Even in the restricted use of the word "comparable" as "equal" or "nearly as good" or "worthy of comparison" there is no evidence of untruth in the statement that the lamp "affords benefits . . . to the general health of the user comparable to those afforded by natural sunlight."

It is admitted that the lamp's rays are of some benefit to the skin. The Commission's brief admits that Dr. Ayers, its principal expert, testified that the lamp was "useful in the treatment of several skin diseases," but he said that its bactericidal action was limited to "that type of bacteria which is right at the very surface of the skin" because "most of the rays of the light are filtered out by the upper skin layers." Another of the Commission's experts, Dr. Moor, testified that the lamp was "Useful chiefly for very superficial infections and . . . to produce irritation of the skin." Dr. Moor himself states the comparable effect on [816] the skin of the lamp's rays and those of the sun. In this testimony "stimulating" and "irritating" are terms of the same meaning. The comparison seems favorable to the lamp's rays in the following testimony:

"Q. What is the difference in the effect from the shorter waves found in the cold quartz lamps as compared to the effect of the rays of natural sunlight?

A. Well, the shorter rays are much more irritating to the skin. They are bactericidal, more bactericidal than sunlight. They do not have the same biological effect as sunlight.

Q. Now, in what conditions would you say that such rays, such ultra-violet rays, of 2540 angstrom units, such as are found primarily in this respondent's product, would be useful in the treatment of disease or body ailments?

A. Useful chiefly for very superficial infections and if it is desirable to produce irritation of the skin, it can be used for that also.

Q. That is, you would say that it would have a bactericidal and stimulating—

A. And stimulating effect on the skin, yes.

Q. That would be two different classifications of effect; is that correct?

A. Yes."

"Q. And what bacteria would be effected by such a lamp?

A. Well, practically any organism which is on the surface. There are a few bacteria which flourish in light, but most of the pathogenic organisms are killed by light if they are right on the surface, where they are not protected by any covering of pus or crusts on the surface."

Dr. Moor continues to show that the use of the lamp may be injurious if used on certain skin diseases. The effect of his testimony is that the lamp should be used in many situations only on medical advice.

The question here is not whether the petitioner's past advertising has made improper comparisons of the lamp's rays with the sun's rays, but, assuming that offense, does it deprive the owner of the advertised product of making any comparison with the sun's rays—even though truthful. We think not. It is not the function of the Commission to inflict such a punishment upon the owner of such a product, with its admitted beneficent functions.

The broad terms of the order prevent *any* statement of even the admitted benefit to the skin or to the general health of the user of the lamp's rays comparable to natural sunlight. We decline to order its enforcement.

B. The remaining items of the cease and desist order are more specific. Petitioner claims that there is no substantial evidence to support an order to cease and desist from representing "that said lamp constitutes a cure or remedy or a competent or adequate treatment for . . . ringworm, athlete's foot, acne, eczema, psoriasis . . ." There is testimony by one or another of the physician experts sufficient to sustain the order that the light would be of "very little value" in treating ringworm; "not a proper means of treating athlete's foot"; "very little value in the treatment of acne"; that eczema was "simply a symptom of a disease of the skin," that "without finding out the underlying cause, it is perfectly futile to try to treat it," and while Life Lite might "be of some temporary value in eczema" it would not "effect a cure," and of "no value" in treating psoriasis.

C. Similarly there is testimony supporting the order not to advertise "that said lamp constitutes a cure or remedy for sores or ulcers, or that it constitutes a competent treatment therefor except insofar as it may stimulate the healing process in those cases in which the infection causing such condition is confined to the surface of the skin."

Dr. Ayers testified that he knew of no "chronic skin condition which would be improved . . . or benefited" by the lamp except to the extent that the lamp might have a "stimulating effect, such as perhaps in the case of a chronic ulcer, but I doubt very much if the light by itself would be sufficient to bring about a cure in even such a condition." He also testified that it would "Very definitely" be "necessary to have the diagnosis of a physician" before using petitioner's lamp in the treatment of sores and ulcers for the reason that, while the lamp "might be of some value in the treatment of certain chronic ulcers, by way of stimulating cicatrization,¹ . . . one would have to know what the ulcer was caused by. [817] You could have an ulcer due to syphilis and no amount of light would do it any good. Or you may have an ulcer due to cancer and the use of the light might even aggravate it."

D. Similarly with regard to advertising that the lamp "possesses any therapeutic value in the treatment of . . . bronchitis . . ." Dr. Moor testified that bronchitis was "commonly caused by germs in the respiratory tract," that petitioner's lamp did not possess sufficient penetrating power to reach the source of the infection, and had "no direct effect on bronchitis."

E. With regard to not advertising "that said lamp builds up in the body resistance to disease," the testimony of the Commission's experts that by irradiating the body's sterols with the lamp's rays its resistance to rickets is increased if the disease is not cured. The Commission's order would prevent the telling of the truth about this valuable property of the lamp's rays and we decline to enforce it.

F. With regard to ceasing to advertise "that said lamp afford any stimulation to the tissues of the skin in excess of such stimulation as may result from its irritating effect," there is evidence that the stimulation of the lamp's rays may have a beneficial effect in certain diseases appearing in or through the skin and injurious in others, and that the stimulation is an irritation of the skin. We think this item of the order emphasizing the irritation is warranted and advisable to impress the user with the likely injury from irritating some diseases appearing on the skin.

¹ Cicatrization is "A healing process which leaves a scar or cicatrix." Dorland, the American Illustrated Medical Dictionary (18th ed. 1938); Stedman's Medical Dictionary (14th rev. ed. 1939).

G. Regarding the prohibition against advertising that the lamp "normalizes the chemistry of the body, improves metabolism, or builds new tissues, except insofar as its use *may* result in the production of vitamin D," (emphasis supplied,) we agree that it should be modified as requested by the petitioner to read to prohibit the statement that the lamp "normalizes the chemistry of the body, improves metabolism, or builds new tissues, except insofar as such effects are related to the production of vitamin D resulting from the use of the lamp."

The testimony is that the rays do produce vitamin D in the chemistry of the body. There is no ground for the doubtful word *may* italicized in the order. Petitioner's experts describe the process and the Commission's expert Dr. Moor testified.

"Q. In your opinion, would you agree that the only definite benefits known to come from the use of ultra-violet rays would be the maintaining of the phosphorous and calcium of the body and inhibition of rickets?"

A. Really, that is the only well proven effect of ultra-violet radiation of the body.

Q. In your opinion, would that be the only proven benefit from such a device, —

A. Yes.

Q. —of the respondent, as described to you in this case?

A. "Yes, sir."

We set aside the order of the Commission with respect to items A and E, without prejudice to the Commission's right to treat the proceeding as one submitted upon these items and subject to such order as the Commission may be advised to make. Cf. *International Shoe Co. v. Commission*, 280 U. S. 291, 297 [13 F. T. C. 593]. We decree the enforcement of the Commission's order with respect to items B, C, D, F, and item G as modified.

Petition granted in part and denied in part.

MATHEWS, *Circuit Judge* (dissenting in part):

The Commission's order should be affirmed in toto.

MATHEWS, *Circuit Judge* (dissenting in part):

Here for review is an order¹ of the Federal Trade Commission that petitioner, Ultra-Violet Products, Inc., in connection with the offering for sale, or distribution of petitioner's therapeutic lamp known as Life Lite, or any other lamp of substantially similar construction, whether sold under the name or 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 [818] Federal Trade Commission Act,² which represents, directly or by implication,

"(a) that said lamp is a sun lamp, or that it affords benefits to the skin or to the general health of the user comparable to those afforded by natural sunlight;

¹ My associates (Judges Denman and Stephens) speak of "The first order complained of," thus implying that two or more orders are under review. Actually, there is only one order.

² Section 4 of the Act, 15 U. S. C. A. § 44, defines "commerce" as "commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation."

"(b) that said lamp constitutes a cure or remedy or a competent or adequate treatment for barber's itch, ringworm, athlete's foot, acne, eczema, psoriasis, shingles, or erysipelas;

"(c) that said lamp constitutes a cure or remedy for sores or ulcers, or that it constitutes a competent treatment therefor except insofar as it may stimulate the healing process in those cases in which the infection causing such conditions is confined to the surface of the skin;

"(d) that said lamp possesses any therapeutic value in the treatment of asthma, hay fever, bronchitis, colds, sinus trouble, or discharge from the ears;

"(e) that said lamp possesses any therapeutic value in the treatment of anemia;

"(f) that said lamp builds up in the body resistance to disease;

"(g) that said lamp has any tonic effect upon the blood, that it produces any chemical reaction with respect to the blood streams, or that it is of any assistance in overcoming a deficiency of white or red corpuscles;

"(h) that said lamp builds up the resistance of the body to infection, or that it stimulates the endocrine glands;

"(i) that said lamp affords any stimulation to the tissues of the skin in excess of such stimulation as may result from its irritating effect;

"(j) that said lamp quiets or soothes the nerves or the nerve endings in the skin;

"(k) that said lamp acts as an antacid or has any alkalizing effect upon the body;

"(l) that said lamp improves the general tone of the body, makes the body strong, increases vitality, or improves mental reaction;

"(m) that said lamp tones up the nervous system, induces sleep, or relieves pain;

"(n) that said lamp normalizes chemistry of the body, improves metabolism, or builds new tissues, except insofar as its use may result in the production of Vitamin D.

"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 fails to reveal that excessive exposure to said lamp either with respect to proximity or length of time may result in injury to the 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 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, directly or indirectly, the purchase in commerce, as 'commerce' is defined in the Federal Trade Commission Act, of said lamp, which contains any representation prohibited in paragraph 1 hereof, or which fails to comply with the affirmative requirements set forth in paragraph 2 hereof."

The order was issued in a proceeding by the Commission against petitioner under § 5 (b) of the Federal Trade Commission Act, 15 U. S. C. A. § 45 (b), and was based on findings to the effect that petitioner was engaged in the business of selling and distributing its lamp in commerce; that, in the course and conduct of its business, petitioner disseminated ad-

* See footnote 2.

vertisements, by United States mails and by other means, in commerce and otherwise, for the purpose of inducing, and which were likely to induce, the purchase of its lamp, in commerce and otherwise; that the advertisements made the representations mentioned in paragraph 1 (a) to 1 (n) of the order;⁴ that the representations were misleading; that the advertisements failed to reveal [819] the facts mentioned in paragraph 2 of the order; and that, in the light of the representations, these facts were material.

The findings are supported by evidence and hence are conclusive.⁵ Upon the facts found, the Commission properly concluded that the advertisements disseminated by petitioner were false advertisements,⁶ and that petitioner's dissemination thereof constituted an unfair or deceptive act or practice in commerce;⁷ and it properly ordered petitioner to cease and desist therefrom.⁸

Paragraphs 1 (a) and 1 (f) of the order do not (as my associates seem to think) prevent petitioner from telling the truth about its lamp. They merely prevent it from disseminating advertisements containing representations which the Commission, upon ample evidence, has found to be misleading.

The order should be affirmed in toto and should be enforced.

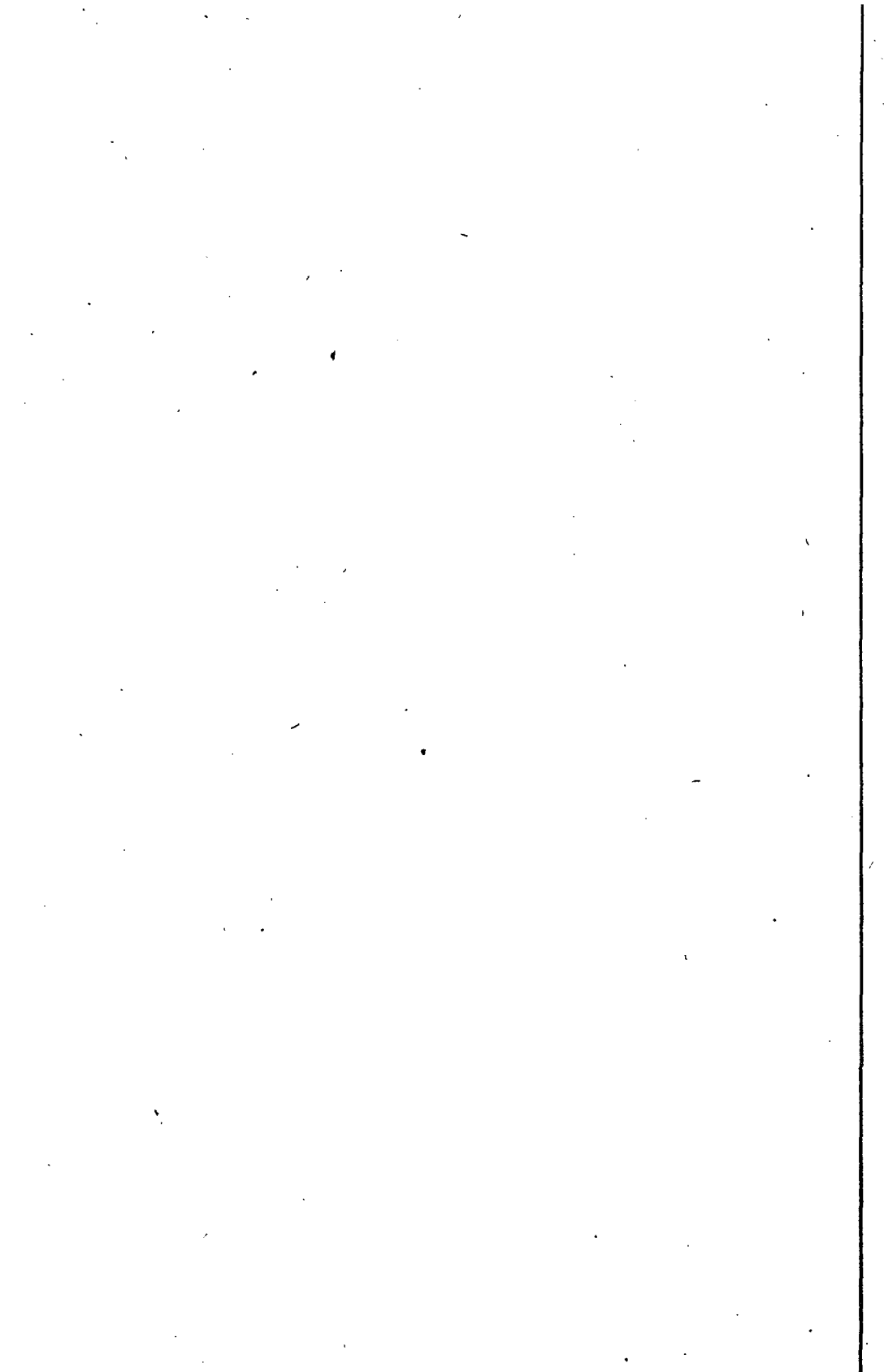
⁴ My associates speak of "items A and E," "items B, C, D, F" and "item G" of the order. There are no such "items."

⁵ Federal Trade Commission Act, § 5(o), 15 U. S. C. A. § 45(o).

⁶ Federal Trade Commission Act, § 15(a), 15 U. S. C. A. § 55(a).

⁷ Federal Trade Commission Act, § 12, 15 U. S. C. A. § 52.

⁸ Federal Trade Commission Act, § 5(b), 15 U. S. C. A. § 45(b).



RESTRAINING AND INJUNCTIVE ORDERS OF THE COURTS
UNDER THE PROVISIONS OF SECTION 13 OF THE FED-
ERAL TRADE COMMISSION ACT

KOCH LABORATORIES, INC., WILLIAM F. KOCH AND
LOUIS KOCH, v. FEDERAL TRADE COMMISSION

(Circuit Court of Appeals, Sixth Circuit. May 20, 1944)

Order dismissing, pursuant to stipulation below set forth, appeal from order for temporary injunction of District Judge Ernest P. O'Brien in the District Court for the Eastern District of Michigan, Southern Division, enjoining defendants from disseminating false advertisements concerning their products—medicinal preparations designated as "Glyoxylide," "B-Q" and "Malonide Ketene Solution"—pending the final disposition of the Commission's complaint in the matter, as in said order below set out.¹

Mr. Joseph J. Smith, Jr., Assistant Chief Counsel, Federal Trade Commission, Washington, D. C., for the Commission.

Voorhies, Long, Ryan and McNair, of Detroit, Mich., and Mr. Richard Steel, of New York City, and Mr. William Henry Gallagher, of Detroit Mich., for defendants.

STIPULATION FOR DISMISSAL OF APPEAL

Whereas, Koch Laboratories, Inc., William F. Koch and Louis Koch, defendants in an action pending in the District Court of the United States for the Eastern District of Michigan, Southern Division, entitled "Federal Trade Commission, Plaintiff, v. Koch Laboratories, Inc., et al, Civil Action 3387," filed a notice of appeal from an injunction order of Honorable Ernest A. O'Brien, District Judge, restraining defendants from taking action as more particularly set forth in said order; and

Whereas, said defendants have not perfected their appeal and are willing that it should be dismissed;

Now, therefore, the parties hereto agree that the appeal herein be dismissed without costs against defendants and appellants, other than Clerk's fees incident to the filing of this stipulation and entry of order of dismissal, and the Clerk is hereby directed to enter such order of dismissal.

Note: The order for temporary injunction, dated Nov. 6, 1942, from which appeal was dismissed, follows:²

¹ Commission's complaint is Docket 4772.

² For temporary restraining order, see 34 F. T. C. 1867. As there set forth in footnote, the preliminary injunction was granted July 28, 1942, though actual writing thereof, as above set out, did not occur until later due to Judge O'Brien's sickness.

ORDER FOR INJUNCTION

At a session of said court, continued and held pursuant to adjournment in the District Court Room in the Federal Building, in the City of Detroit, in said District, on the 6th day of November, A.D., 1942.

PRESENT: Honorable Ernest A. O'Brien
United States District Judge.

This cause having come to be heard upon the complaint of the Federal Trade Commission praying for the issuance of an injunction against the defendants, the plaintiff appearing by its attorney, William M. King, and the defendants appearing by their attorneys, Voorhies, Long, Ryan and McNair, Richard Steel and William Henry Gallagher; and

It appearing to the court that defendants are domiciled and transact business in the Eastern District of Michigan; and

It appearing to the court that it has jurisdiction over the parties and subject matter hereof; and

It appearing to the court that the defendants are engaged in the sale and distribution of drugs, as defined by the Federal Trade Commission Act, advertised as "Glyoxylyde," "B-Q" and Malonide Ketene Solution" in commerce between and among the various states of the United States and in the District of Columbia; and

It appearing to the court that said defendants, prior to the filing of the complaint herein, had disseminated or caused to be disseminated certain advertisements concerning said drugs by United States Mails 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 said drugs, and by various means for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said drugs, which advertisements are alleged by the plaintiff to be false in that they represented that said preparation "Glyoxylyde" is a competent and adequate treatment for any type or stage of cancer, coronary occlusion or thrombosis, arterio-sclerosis, angioneurotic cedema, obliterative endarteritis, asthma, hay fever, dementia praecox, epilepsy, psoriasis, poliomyelitis, tuberculosis, syphilis, arthritis, osteomyelitis, any type of allergy or infection, abscess of the prostate gland, septicaemia, and insanity, and that said preparation "B-Q" is a competent and adequate treatment for all infections and their sequelae, including gonorrhoea, salpingitis, sinusitis, meningitis, infantile paralysis, septicaemia, streptococcus sore throat, pneumonia, undulant fever, malaria, coronary thrombosis, diabetes, cancer, arthritis, and the degenerative diseases, and that said preparation "Malonide Ketene Solution" is a competent and effective treatment for the allergic diseases, infections, diabetes, cancer, double pneumonia, osteomyelitis and post operative meningitis; and

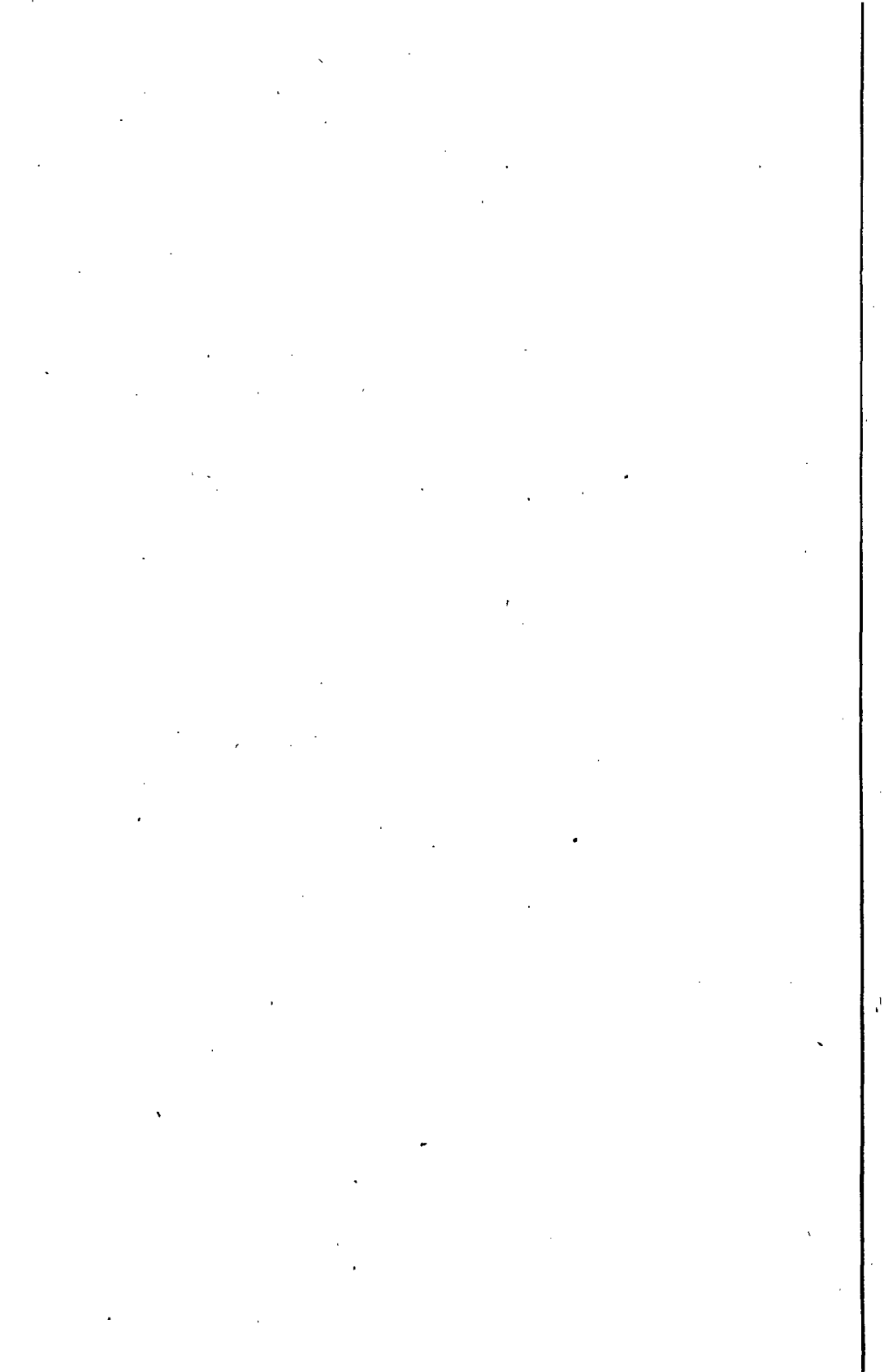
It appearing to the court that the defendants have filed numerous affidavits contradicting the claim of the plaintiff with respect to the alleged falsity of said advertisements; and

It appearing to the court from the showing made by the plaintiff and the showing made by the defendants that there exists between the parties hereto an honest controversy, the determination of which will require a full presentation of all of the facts with reference thereto, which full presentation is contemplated by the Federal Trade Commission Act to be made to

said Commission, and not to the court upon application for preliminary injunction; and

It appearing to the court that if the claim of the plaintiff is true, there is a possibility of greater damage arising from failure to issue an injunction pending the full hearing before the Federal Trade Commission than if the claim of the defendants is true and if an injunction should be denied.

Therefore, *It is ordered, adjudged and decreed*, That the defendants, William F. Koch, an individual, Louis G. Koch, an individual, and Koch Laboratories, Inc., a corporation, and their officers, directors, agents, servants, representatives, employees and assigns, and all other persons having notice of this order, be and they hereby are, and each of them hereby is, pending the disposition of the complaint issued by the Federal Trade Commission under Section 5 of the Federal Trade Commission Act, and until such complaint is dismissed by the Commission, or set aside by a court on review or the order of the Commission to cease and desist made thereon, shall have become final within the meaning of Section 5 of said Act, enjoined and restrained from disseminating or causing to be disseminated any advertisement (a) by means of the United States Mails, or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, that said preparation "Glyoxylide" is a competent or effective preparation for use in the treatment of any type or stage of cancer, coronary occlusion or thrombosis, arteriosclerosis, angioneurotic oedema, obliterative endarteritis, asthma, hay fever, dementia praecox, epilepsy, psoriasis, poliomyelitis, tuberculosis, syphilis, arthritis, osteomyelitis, any type of allergy or infection, abscess of the prostate gland, septicaemia, or insanity; that said preparation "B-Q" is a competent or effective preparation for use in the treatment of any infection or its sequelae, including gonorrhoea, salpingitis, sinusitis, meningitis, infantile paralysis, septicaemia, streptococcus sore throat, pneumonia, undulant fever, malaria, coronary thrombosis, diabetes, cancer, arthritis, or the degenerative diseases; that the said preparation "Malonide Ketene Solution" is a competent or effective preparation for use in the treatment of the allergic diseases, infections, diabetes, cancer, double pneumonia, osteomyelitis or post-operative meningitis.



PENALTY PROCEEDINGS

During the six-months period covered by volume 38, Jan. 1 to July 1, 1944, four civil penalty proceedings involving violations of cease and desist orders which had been certified to the Attorney General, were settled and penalties totaling \$15,500 were collected. They are as follows:

United States v. Retonga Medicine Co.; United States District Court for Georgia, Northern District, Atlanta Division; dismissed without prejudice on Jan. 4, 1944.

Retonga Medicine Co., its representatives, etc., had been ordered, as of June 25, 1940, in connection with the interstate sale, etc., of its "Retonga" medicinal preparation, to cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent directly or through inference, (1) that said preparation is a cure or remedy for diseases or disorders characterized by such symptoms or conditions as nervousness, indigestion, headaches, sluggishness, pains, toxic poisoning, dizziness, muscular aches and pains, insomnia, biliousness, undernourishment, loss of weight, or lack of strength, or possesses any remedial or curative value in connection with the treatment of such diseases, disorders, symptoms or conditions; (2) that said preparation possesses any value in the treatment of such symptoms and conditions as nervousness, indigestion, headaches, sluggishness, pains, toxic poisoning, dizziness, muscular aches, and pains, insomnia, biliousness, undernourishment, loss of weight, or lack of strength in excess of the temporary relief furnished by a mild laxative or gastric tonic when such symptoms or conditions are due to or caused by constipation or lack of appetite; (3) that said preparation has therapeutic value in the treatment of constipation in excess of providing temporary relief therefrom; (4) that said preparation relieves the body of toxic poisons or cleanses the system; (5) that said preparation has any beneficial effect or therapeutic value in the treatment of kidney or bladder disorders; (6) that said preparation renews or restores the strength or health or has any therapeutic properties with respect to building health or strength in excess of stimulating the appetite.

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 said advertisements contain any of the representations prohibited in paragraph 1 hereof. Docket 3949, 31 F. T. C. 225.

United States v. R. T. Vanderbilt Co., Inc., et al.: United States District Court for New York, Southern Division; dismissed May 19, 1944.

The Commission had ordered R. T. Vanderbilt Co., Inc. and its subsidiary corporation, operating one of the three deposits of Pyrophyllite (important raw material of ceramics) in North Carolina which were the only deposits in the United States developed in commercial quantities—in connection with the sale, etc., in commerce of pyrophyllite, to cease and desist from

1. Directly or by implication or innuendo, either orally or by letters, circulars or any other means, representing that the Sproat patents, or any other patent owned or controlled by the respondents, or either of them, confer upon the respondents, or either of them, the exclusive right to use pyrophyllite in the manufacture of semivitreous earthenware bodies, or that patents confer the exclusive right upon the respondents, or either of them, to sell or supply pyrophyllite to be used in the manufacture of semivitreous earthenware bodies.

2. Directly, or by implication or innuendo, either orally or by letters, circulars, or any other means, threatening any person, firm or corporation with patent infringement or damage suit, or other legal action, in bad faith, for the purpose of diverting the trade of any competitor to the respondents.

3. Licensing the use of the Sproat patents, or any other patent owned or controlled by the respondents, or either of them on the condition, agreement, or understanding that the licensee shall purchase from the respondents, or either of them, the pyrophyllite used in the process covered by any of said patents.

4. Licensing the use of the Sproat patents, or any other patent owned or controlled by the respondents, or either of them, upon the condition, agreement or understanding that the licensee shall not purchase or procure from a competitor of respondents the Pyrophyllite used in the process covered by any of said patents.

5. Making any sale, or contract, or agreement for sale, of pyrophyllite, on the condition, agreement, or understanding that the purchaser thereof shall not use, in the manufacture of semivitreous earthenware, pyrophyllite purchased from or supplied by a competitor of respondents. Docket 3656, 34 F. T. C. 378.

United States v. Dr. Emile Carpentier; United States District Court for New Jersey; judgment for \$15,000 and costs of \$29.21 entered May 25, 1944.

Respondent manufacturer of his "T. B. Compound," proprietary preparation for tuberculosis and for chronic bronchitis and other ailments, was ordered, as of Feb. 11, 1938, to cease from directly or indirectly:

1. Representing that said product has any curative, remedial, or therapeutic value, or is in any way beneficial in the treatment of tuberculosis of the lungs, larynx, intestines, kidneys, brains, or tuberculosis of any other part or parts of the human body.

2. Representing that said product has any curative, remedial, or therapeutic value, or is in any way beneficial in the treatment of chronic bronchitis, colitis, chronic gastritis, and ulcerated duodenum, or of diseases and maladies of the stomach and intestines, or of any other similar or allied condition or conditions of the human body.

3. Representing that said product contains any oriental herbs of any nature or description whatsoever.

4. Representing that physicians have prescribed said product for patients suffering from any tubercular conditions, or that physicians have sent critical and incurable consumptive patients to the said Emile Carpentier to take said product.

5. Representing that "Consumption" or tuberculosis in any form is cured by Emile Carpentier.

6. Representing through the use of the term medical doctor, or doctor of medicine, or any abbreviation thereof or any other professional designation of like or similar import that Emile Carpentier is a physician or doctor.

7. Representing that any one has been cured of tuberculosis in from 6 to 8 weeks, or any other period of time, by use of respondent's compound. Docket 3073, 26 F. T. C. 690.

United States v. Herbal Medicine Co., et al.; United States District Court for Maryland; judgment for \$500 entered June 12, 1944.

Respondent copartners, engaged in the interstate distribution and sale of their "Herb Doctor Compound" and "Natex" medicinal preparations, were ordered, as of Nov. 3, 1937, to cease and desist from:

1. Representing that said preparations, or any of them, are competent or effective cures, remedies, or treatments from stomach troubles, rheumatism, neuritis, liver troubles, deranged kidney, nervousness, general run-down condition, indigestion, dizziness, gastritis, colds, biliousness and other similar maladies, ailments and conditions of the human body; or that said preparations, or any of them, will cure constipation or headaches due to constipation;

2. Representing that said preparations, or any of them, are new remedies. Docket 3075, 25 F. T. C. 1296.

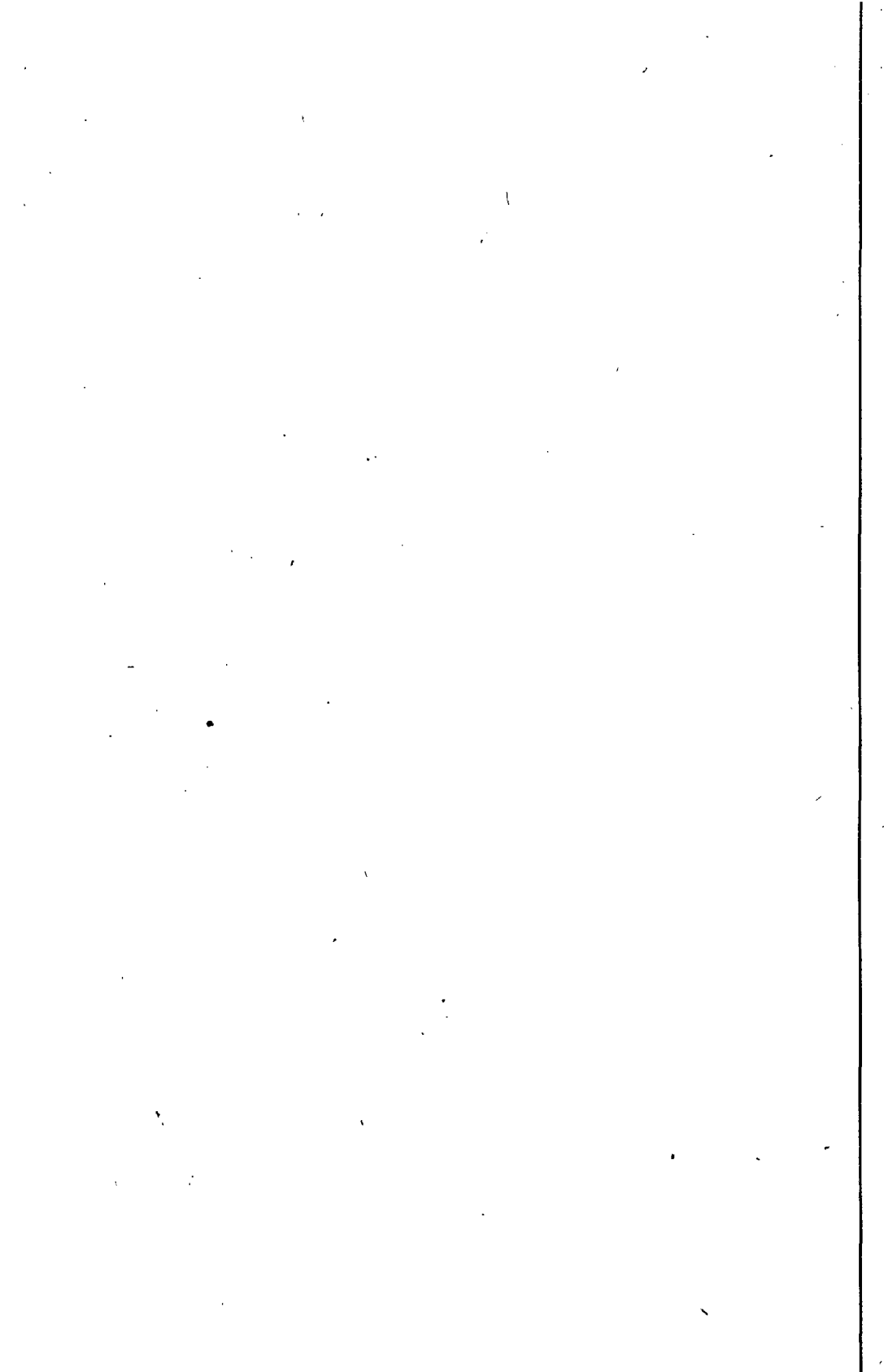


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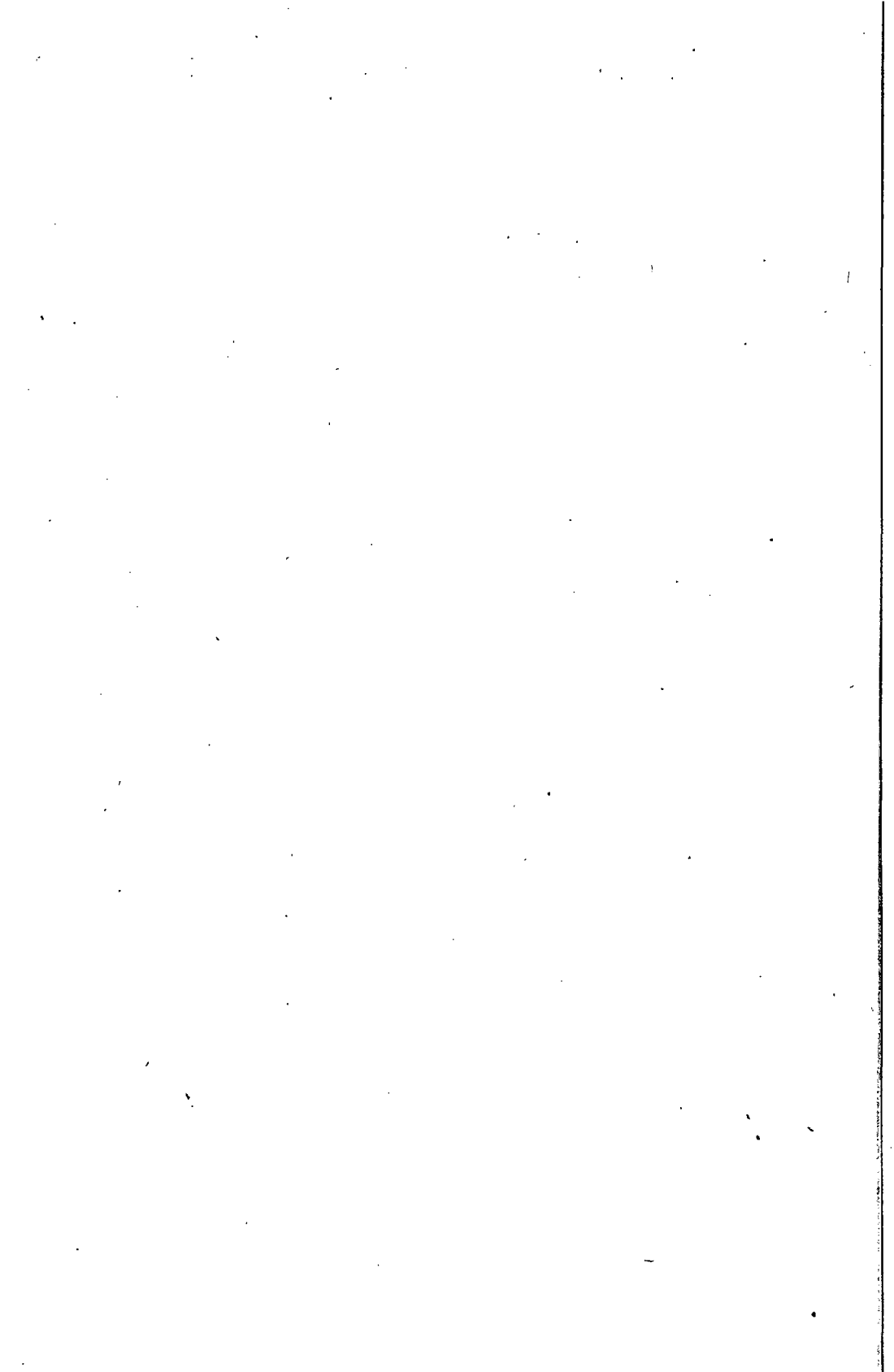
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¹ Page references to stipulations of the Radio and Periodical Division are indicated by italicized page references. Such stipulations are also distinguished by figure "0" preceding the serial number of the stipulation, e.g., "03187," etc.

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Unfair methods of competition, etc., condemned in this volume. *See*

- Advertising falsely or misleadingly.
- Assuming or using misleading trade or corporate name.
- Claiming or using indorsements or testimonials falsely or misleadingly.
- Concealing or obliterating foreign source marking.
- Disparaging or misrepresenting competitors or their products.
- Misbranding or mislabeling.
- Misrepresenting business status, advantages of connections.
- Misrepresenting directly or orally by self or representatives.
- Misrepresenting prices.
- Neglecting, unfairly or deceptively, to make material disclosure.
- Offering deceptive inducements to purchase.
- Securing agents or representatives falsely or misleadingly.
- Using misleading product name or title.

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