

FEDERAL TRADE COMMISSION DECISIONS



FINDINGS, ORDERS, AND STIPULATIONS

JANUARY 1, 1945 TO JUNE 30, 1945

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**MEMBERS OF THE FEDERAL TRADE COMMISSION AS OF
JUNE 30, 1945**

EWIN L. DAVIS, *Chairman.*

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

GARLAND S. FERGUSON.

 Took oath of office November 14, 1927,² January 9, 1928, September 26, 1934,²
 and February 9, 1935.¹ Reappointment for third term confirmed July 15, 1941

CHARLES H. MARCH.

 Took oath of office February 1, 1929, and August 27, 1935.¹ Reappointment for
 third term confirmed September 10, 1942.

WILLIAM A. AYRES.

 Took oath of office August 23, 1934, and September 24, 1940.¹

ROBERT E. FREER.

 Took oath of office August 26, 1935, and September 19, 1938.² Reappointment
 for second term confirmed January 28, 1939.

OTIS B. JOHNSON, *Secretary.*

 Took oath of office August 7, 1922.

¹ Second term.

² Recess appointment.

ACKNOWLEDGMENT

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

NOTE: The attention of those interested in following currently the cease and desist orders of the Commission is invited to the advantages offered by the Federal Register, which is published daily by the Division of the Federal Register, National Archives, and sets forth, among other things, current orders and regulations of the different Government establishments, which have general applicability and legal effect.

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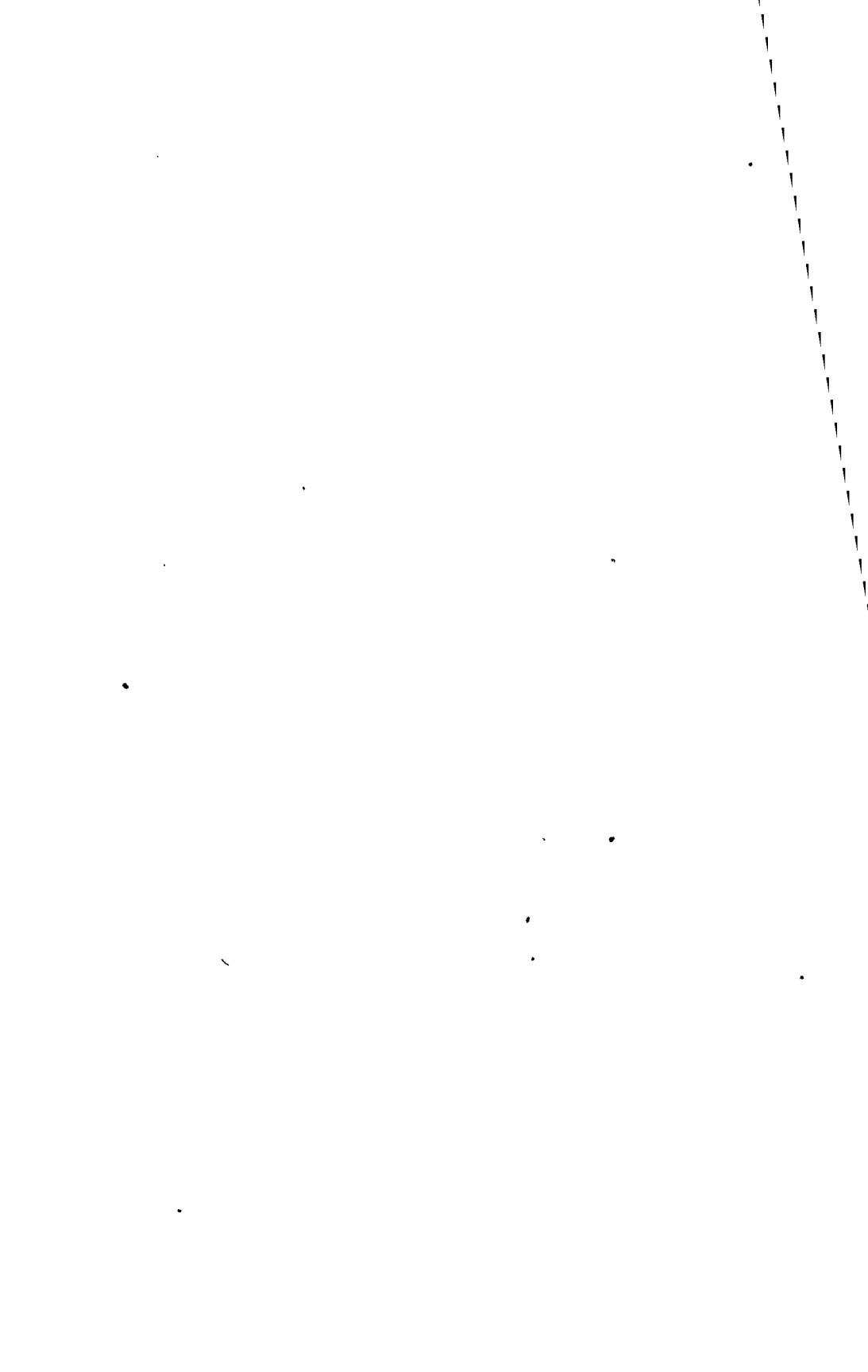


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Abbreviations: S. C. = U. S. Supreme Court; C. C. A. = Circuit Court of Appeals; S. C. of D. C. = Supreme Court of the District of Columbia (changed on June 25, 1936, to District Court of the U. S. for the District of Columbia, and identified by abbreviation 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 Interlinear citations are to the reports of the National Reporter System and to official United States Supreme Court Reports in those cases in which the proceeding, or proceedings as the case may be, have been there reported. Such cases do not include the decisions of the Supreme Court of the District of Columbia, nor, in all cases, some of the other proceedings set forth in the above table, and described or reported in the Commission's Decisions and the Commission publications entitled "Statutes and Decisions—1914-1929," "Statutes and Decisions—1930-1938," and "Statutes and Decisions—1939-1943," which also include cases here involved, for their respective periods.

The two earlier 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. As above noted, they are respectively referred to as 1 S. & D.—, 2 S. & D.—, and 3 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.

¹ For interlocutory order of lower court, see "Memoranda," 28-1966 or 2 S. & D. 487.

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*For interlocutory order, see "Memoranda," 28-1965 or 2 S. & D. 485.

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

⁷For order of Circuit Court of Appeals on mandate, see "Memoranda," 20-741 or 1 S. & D. 189.

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

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

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

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

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¹³For final decree of Supreme Court of the District of Columbia, see footnote, 3-542 et seq., 1 S. & D. 190.

¹⁴For interlocutory order, see "Memoranda," 28-1966 or 2 S. & D. 485.

¹⁴For interlocutory order, see "Memoranda," 20-744 or 2 S. & D. 720.

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¹⁴For interlocutory matter, see "Memoranda," 28-1954, or 2 S. & D. 485.

¹⁵For interlocutory order, see "Memoranda," 20-746, or 1 S. & D. 724.

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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. E. Todd, Inc.....	(C. A. of D. C.) 39-712.
145 F. (2d) 858.	
J. L. Hudson Co., The.....	(C. C. A.) 32-1889; 3 S. & D. 373.
John J. Fulton Co.....	(C. C. A.) 35-946; 3 S. & D. 499.
130 F. (2d) 85.	

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

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

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

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J. Silverman & Associates, etc.....	(C. C. A.) 39-704; 40-883. 145 F. (2d) 751; 148 F. (2d) 823.
Justin Haynes & Co., Inc.....	(C. C. A.) 29-1578; 3 S. & D. 134. 105 F. (2d) 988.
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Kaplan, Blanche (Progressive Medical Co., etc.)	(D. C.) 30-1690; 3 S. & D. 656.
Kastor & Bros., Inc., Adolphe.....	(C. C. A.) 37-818; 3 S. & D. 612. 138 F. (2d) 824.
Kay, Abbott E.....	(C. C. A.) 13-575; 1 S. & D. 1162. 35 F. (2d) 160.
Keller, Louis, et al. (Casey Concession Co.)	(C. C. A.) 35-970; 3 S. & D. 520. 132 F. (2d) 59.
Kelley, James.....	(C. C. A.) 24-1617; 2 S. & D. 381. 87 F. (2d) 1004.
Keppel & Bro., Inc., R. F.....	(C. C. A.) 17-651; 2 S. & D. 204; 63 F. (2d) 81; 291 U. S. 304 (54 S. Ct. 423). (S. C.) 18-684; 2 S. & D. 259.
Keuffel & Esser Co., et al.....	(C. C. A.) 38-840. 142 F. (2d) 321.
Kidder Oil Co.....	(C. C. A.) 32-1823; 3 S. & D. 317. 117 F. (2d) 892.
Kinney-Rome Co.....	(C. C. A.) 4-546; 1 S. & D. 140. 275 Fed. 665.
Kirk & Co., Jas. S., et al. ³⁰	(C. C. A.) 16-671; 2 S. & D. 172. 59 F. (2d) 179.
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L. & C. Mayers Co., Inc.....	(C. C. A.) 27-1675; 2 S. & D. 460. 97 F. (2d) 365.

³⁰For interlocutory order, see "Memoranda," 20-745 or 1 S. & D. 723.

³¹For interlocutory order, see "Memoranda," 20-745 or 1 S. & D. 721.

Lane, Albert.....	(C. C. A.) 35-949; 3 S. & D. 501 130 F. (2d) 48.
Lanteen Laboratories, Inc., et al., U. S. v.....	(D. C.) 40-957.
Leach & Co., G., U. S. v.....	(D. C.) 39-726.
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Lee, U. S. v. (Sherwin et al. v. U. S.).....	(D. C.) (C. C. A.); footnote, 6- 290 Fed. 517; 297 Fed. 704 (affirmed 268 U. S. 369; 45 S. Ct. 517). 559; 1 S. & D. 1006.
Leisenring, Edwin L., et al. (U. S. Drug & Sales Co., etc.)	(D. C.) 30-1701; 3 S. & D. 666.
Lekas & Drivas, Inc.....	(C. C. A.) 39-713. 145 F. (2d) 976.
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Levere Co. et al., U. S. v.....	(D. C.) 33-1883; 3 S. & D. 728.
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Liberty Co., etc. (Joe B. Hill et al.).....	(C. C. A.) 34-1800; 3 S. & D. 436. 124 F. (2d) 104.
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Liquor Trades Stabilization Bureau, Inc., et al....	(C. C. A.) 33-1780; 3 S. & D. 377. 121 F. (2d) 455.
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Lorillard Co., P.....	(D. C.) 5-558; 1 S. & D. 239; (S. 283 Fed. 999; 264 U. S. 298 (44 S. Ct. 336). C.) 7-599; 1 S. & D. 341.
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Lustberg, Nast & Co., Inc.....	(C. C. A.) 38-895.
Lytle, Andrew J., et al.....	(C. C. A.) 39-693.
Macfadden Publications, Inc. ¹²	(C. A. of D. C.) 13-605; 2 S. & D. 65 37 F. (2d) 822.
Macher Watch & Jewelry Co., etc.....	(C. C. A.) 34-1835; 3 S. & D. 467. 126 F. (2d) 420.
Magnecoil Co., Inc., U. S. v.....	(D. C.) 40-958.
Mahler Co., Inc., D. J.....	(D. C.) 31-1891; 3 S. & D. 691.

¹¹For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 721.

¹²For 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.

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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.
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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.
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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.
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Masland Durable Leather Co., et al.....	(C. C. A.) 13-567; 1 S. & D. 1155. 34 F. (2d) 733.
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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; 84 F. (2d) 910; 94 F. (2d) 802. 26-1501; 2 S. & D. 439; 31-1828; 3 S. & D. 261.
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Melster Candy Co., U. S. v.....	(D. C.) 36-1173; 3 S. & D. 734.
Mennen Co.**.....	(C. C. A.) 6-579; 1 S. & D. 298. 288 Fed. 774.
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Mid-West Portrait Service, etc. (Cornelius P. Van Schaack, Jr.), U. S. v.....	(D. C.) 36-1171; 3 S. & D. 732.
Mid-West Sales Syndicate, etc. (Cornelius P. Van Schaack, Jr.), U. S. v.....	(D. C.) 36-1171; 3 S. & D. 732.
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*For order of the Supreme Court of the District of Columbia on mandata from Court of Appeals of the District of Columbia, see "Memoranda," 20-742 or 1 S. & D. footnote, 650.

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

Miles Laboratories, Inc.-----	(D. C. of D. C.) 36-1148; 3 S. & 50 F. Supp. 434; 140 F. (2d) 683.	D. 575; (C. A. of D. C.) 38-836.
Miller Co., Charles N.-----	97 F. (2d) 563.	(C. C. A.) 27-1678; 2 S. & D. 464.
Miller Drug Co.-----		(D. C.) 31-1908; 3 S. & D. 706.
Miller, Ward J. (Amber-Ita)-----		(C. C. A.) 21-1223; 2 S. & D. 329.
Millers National Federation, et al.-----	23 F. (2d) 968; 47 F. (2d) 428.	(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.
Millinery Creators' Guild Inc., et al.-----	109 F. (2d) 175; 312 U. S. 469 (61 S. Ct. 708).	(C. C. A.) 30-1619; 3 S. & D. 175; (S. C.) 32-1865; 3 S. & D. 352.
Mills Novelty Co., et al., U. S. ex rel.-----		(S. C. of D. C.) 22-1137.
Minneapolis, Chamber of Commerce of, et al. ¹⁶ ..	280 Fed. 45; 13 F. (2d) 673.	(C. C. A.) 4-604; 1 S. & D. 193; 10-687; 1 S. & D. 502.
Minter Brothers, etc.-----	102 F. (2d) 69.	(C. C. A.) 28-1885; 3 S. & D. 51.
Mishawaka Woolen Mfg. Co.-----	283 Fed. 1022; 260 U. S. 748 (43 S. Ct. 247).	(C. C. A., S. C.) 5-557; 1 S. & D. 238.
M. J. Holloway & Co., et al.-----	84 F. (2d) 910.	(C. C. A.) 22-1149; 2 S. & D. 347, 439; 31-1829; 3 S. & D. 263.
Modern Hat Works (Jacob Schachnow)-----		(C. C. A.) 32-1875; 3 S. & D. 361.
Modern Marketing Service, Inc., et al.-----	149 F. (2d) 970.	(C. C. A.) 40-938.
Modernistic Candies, Inc., et al.-----	145 F. (2d) 454.	(C. C. A.) 39-709.
Mogilner, George S., et al. (Merit Health Appli- ance Co.).		(D. C.) 32-1900; 3 S. & D. 715.
Moir, John, et al. (Chase & Sanborn) ¹⁷ ..	12 F. (2d) 22.	(C. C. A.) 10-674; 1 S. & D. 489.
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Moretrench Corp.-----	127 F. (2d) 792.	(C. C. A.) 34-1849; 3 S. & D. 480.
Morrissey & Co., Chas. T., etc.-----	47 F. (2d) 101.	(C. C. A.) 14-710; 2 S. & D. 113.
Morton Salt Co.-----		(C. C. A.) 30-1666; 3 S. & D. 215.
Moss, Inc., Samuel H.-----	148 F. (2d) 378.	(C. C. A.) 40-885.
Motor Equipment Specialty Co. (Hiram Barber), U. S. v.		(D. C.) 36-1174; 3 S. & D. 734.
Muller & Co., E. B., et al.-----	142 F. (2d) 511.	(C. C. A.) 38-868.
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National Association of Counter Freezer Manufac- turers et al.		(S. C. of D. C.) 22-1137; 2 S. & D. 337.
National Biscuit Co. ¹⁸ ..	299 Fed. 733; 18 F. Supp. 667.	(C. C. A.) 7-603; 1 S. & D. 315; (D. C.) 24-1618; 2 S. & D. 390.
National Biscuit Co., U. S. v.-----	25 F. Supp. 329.	(D. C.) 27-1697; 2 S. & D. 477.

¹⁶For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 719.

¹⁷For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 718.

¹⁸For 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.
National Merchandising Co., etc. (Perce P. Green et al.)	(D. C.) 35-958; 3 S. & D. 510.
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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; 88 F. (2d) 425. 28-1957; 3 S. & D. 109; 30- 1675; 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. 117 F. (2d) 495.
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Nitke, Samuel	(C. A. of D. C.) 34-1840; 3 S. & D. 472.
Non-Plate Engraving Co."	(C. C. A.) 15-597; 2 S. & D. 115. 49 F. (2d) 766.
Norden Ship Supply Co., Inc., et al. (Winslow et al.)	(C. C. A.) 4-578; 1 S. & D. 166. 277 Fed. 206.
Normandie et Cie (John H. Davis et al.).....	(C. C. A.) 34-1833; 3 S. & D. 465.
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Nulomoline Co.....	(C. C. A.), footnote, 3-542; 1 S. & D. 35; "Memoranda," 20-740. 254 Fed. 988.
Oberlin, Robert C. (Research Products Co.).....	(D. C.) 29-1626; 3 S. & D. 640.
Ohio Leather Co."	(C. C. A.) 4-699; 1 S. & D. 724. 45 F. (2d) 39.
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Omega Manufacturing Co., Inc., et al.....	(D. C.) 30-1717; 3 S. & D. 679.
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Oppenheim, Oberndorf & Co. (Sealpax Co.) ¹¹ ...	(C. C. A.) 9-629; 1 S. & D. 409. 5 F. (2d) 574.
Ostermoor & Co., Inc." ¹²	(C. C. A.) 11-642; 1 S. & D. 589. 16 F. (2d) 962.
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Ozment, C. J., etc.....	(C. C. A.) 22-1135; 2 S. & D. 335.
Pacific States Paper Trade Ass'n. et al.....	(C. C. A.) 8-608; 1 S. & D. 384; 4 F. (2d) 457; 273 U. S. 52 (47 S. Ct. 255); 88 F. (2d) 1009. (S. C.) 11-636; 1 S. & D. 583; (C. C. A.) 24-1631; 2 S. & D. 402.

¹¹For interlocutory order, see "Memoranda," 28-1965 or 2 S. & D. 485.

¹²For interlocutory order, see "Memoranda," 20-745 or, 1 S. & D. 724.

¹³For interlocutory order, see "Memoranda," 20-743 or 1 S. & D. 717.

¹⁴For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 720.

Page Co., Inc., <i>The E. R., U. S. v.</i>	(D. C.) 36-1175; 3 S. & D. 734.
Paramount Famous-Lasky Corp. ³³	(C. C. A.) 16-660; 2 S. & D. 161. 57 F. (2d) 152.
Parfums Corday, Inc.....	(C. C. A.) 33-1797; 3 S. & D. 392. 120 F. (2d) 808.
Park, Inc., Philip R. et al.....	(C. C. A.) 36-1155; 3 S. & D. 581; 136 F. (2d) 428. (C. C. A.) 38-828.
Parke, Austin & Lipscomb, Inc., et al.....	(C. C. A.) 38-881. 142 F. (2d) 437.
Pearsall Butter Co., B. S. ³⁴	(C. C. A.) 6-605; 1 S. & D. 324. 292 Fed. 720.
Pease Co., C. F., et al.....	(C. C. A.) 38-840. 142 F. (2d) 321.
Pep Boys—Manny, Moe & Jack, Inc.....	(C. C. A.) 33-1807; 3 S. & D. 401. 122 F. (2d) 158.
Perfect Reconditioned Spark Plug Co., The, et al.	(C. C. A.) 32-1891; 3 S. & D. 375.
Perfect Voice Institute et al.....	(C. C. A.) 35-975; 3 S. & D. 524.
Perloff, et al.....	(C. C. A.) 40-878. 150 F. (2d) 757.
Perma-Maid Co., Inc.....	(C. C. A.) 33-1803; 3 S. & D. 397. 121 F. (2d) 282.
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Pioneer Advertising Co., etc. (Cornelius P. Van Schaack, Jr.), U. S. v.	(D. C.) 36-1171; 3 S. & D. 732.
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Piuma, U. S. v.....	(D. C.) 33-1827; 3 S. & D. 412. 40 F. Supp. 119; 126 F. (2d) 601. (C. C. A.) 34-1837; 3 S. & D. 468.
Plantation Chocolate Co., Inc., U. S. v.....	(D. C.) 32-1908; 3 S. & D. 727.
Pond's Extract Co.....	(C. C. A.) 36-1101; 3 S. & D. 534.
Positive Products Co., etc. (Earl Aronberg).....	(D. C.) 29-1634; 3 S. & D. 647; 132 F. (2d) 165. (C. C. A.) 35-979; 3 S. & D. 528.
Post Institute Sales Corp., et al.....	(C. C. A.) 39-693.
Powe Lumber Co., Thos. E.....	(C. C. A.), footnote, 16-684; "Memoranda," 20-739.
Poy, Fong, et al.....	(C. C. A.) 34-1790; 3 S. & D. 427. 124 F. (2d) 398.
Premium Sales Co., etc. (Mitchell A. Bazelon et al.).	(C. C. A.) 34-1806; 3 S. & D. 441.
Preparatory Training Institute.....	(C. C. A.) 40-877.
Procter & Gamble Co. et al.....	(C. C. A.) 10-661; 1 S. & D. 475. 11 F. (2d) 47.

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

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

TABLE OF COURT CASES IN VOLUMES 1-40, INCLUSIVE XXXIX

Progressive Medical Co., etc. (Blanche Kaplan).....	(D. C.) 30-1690; 3 S. & D. 656.
Prostex Co. (George G. Neff).....	(C. C. A.) 32-1842; 3 S. & D. 332. 117 F. (2d) 495.
Pure Silk Hosiery Mills, Inc.....	(C. C. A.) 8-595; 1 S. & D. 371. 3 F. (2d) 105.
Q. R. S. Music Co." ¹	(C. C. A.) 10-683; 1 S. & D. 498. 12 F. (2d) 730.
Quality Bakers of America et al.....	(C. C. A.) 31-1858; 3 S. & D. 287. 114 F. (2d) 393.
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.
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.
Raladam Co." ²	(C. C. A.) 14-683; 2 S. & D. 81; 42 F. (2d) 430; 51 F. (2d) 587; 283 U. S. 643; (S. C.) 15-598; 2 S. & D. 116; (51 S. Ct. 587); 123 F. (2d) 34; 316 U. S. (C. C. A.) 33-1820; 3 S. & D. 149; (62 S. Ct. 966). 417; (S. C.) 34-1843; 3 S. & D. 474.
Rand, Howard, et al. (Green Supply Co., etc.)....	(D. C.) 35-958; 3 S. & D. 510
Rango Tablet Co., et al., U. S. v.....	(D. C.) 40-955.
Raymond Bros.-Clark Co.....	(C. C. A.) 4-625; 1 S. & D. 212; 280 Fed. 529; 263 U. S. 565 (44 S. Ct. 162). (S. C.) 7-594; 1 S. & D. 336.
Real Products Corp. et al.....	(C. C. A.) 25-1685; 2 S. & D. 404. 90 F. (2d) 617.
Red & White Corp., et al.....	(C. C. A.) 40-938. 149 F. (2d) 970.
Reed's Cut Rate Drug Store, etc. (Lenard Gotlieb et al.).....	(D. C.) 31-1885; 3 S. & D. 686
Reliable Premium House, etc. (Harry Froman)....	(C. C. A.) 38-893.
Republic Iron & Steel Co.....	(D. C.) (S. C. of D. C.), footnote, 3-543.
Research Products Co. (Robert C. Oberlin).....	(D. C.) 29-1626; 3 S. & D. 640.
Retonga Medicine Co., U. S. v.....	(D. C.) 38-935.
Rex Products Co., etc. (Earl Aronberg).....	(D. C.) 29-1634; 3 S. & D. 528; 132 F. (2d) 165. (C. C. A.) 35-979; 3 S. & D. 647.
Ritholz, Benjamin D., et al.....	(C. C. A.) 22-1145; 2 S. & D. 334; (D. C. of D. C.) 27-1690; 3 S. & D. 475; (C. A. of D. C.) 29- 1569; 3 S. & D. 126.
Rittenhouse Candy Co. (Sol Block et al.).....	(C. C. A.) 26-1497; 2 S. & D. 436.
Rock, Monica M.....	(C. C. A.) 32-1845; 3 S. & D. 335. 117 F. (2d) 680.
Rogers Candy Co.....	(C. C. A.) 28-1894; 3 S. & D. 59. 101 F. (2d) 718.
Rogers Redemption Bureau, etc., U. S. v.....	(D. C.) 40-956.
Ron-Al Medicine Co., Dr., etc. (Irving Sofronski).	(D. C.) 29-1624; 3 S. & D. 638.

¹For interlocutory order, see "Memoranda," 20-741 or 1 S. & D. 719.

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

Royal Baking Powder Co. ⁴⁷	(C. C. A.) 4-614; 1 S. & D. 202' 281 Fed. 744; 32 F. (2d) 966.	715; (S. C. of D. C.) 11-677, 701; 1 S. & D. 624, 650, 651, 703; (C. A. of D. C.) 12-740; 1 S. & D. 701.
Royal Milling Co. et al. ⁴⁸	(C. C. A.) 16-679; 2 S. & D. 180; 58 F. (2d) 581; 288 U. S. 212 (53 S. Ct. 335).	(S. C.) 17-664; 2 S. & D. 217.
R. T. Vanderbilt Co., Inc., et al., U. S. v.....	(D. C.) 38-935.	
Ryan Candy Co. (Southern Premium Manufactur- ing Co., etc.)	(C. C. A.) 22-1143; 2 S. & D. 342. 83 F. (2d) 1008.	
Saks & Co.....	(C. C. A.) 32-1877; 3 S. & D. 363.	
Salt Producers Ass'n et al.....	(C. C. A.) 36-1110; 3 S. & D. 542. 134 F. (2d) 354.	
Samuel H. Moss, Inc.....	(C. C. A.) 40-885. 148 F. (2d) 378.	
Sanders, Peter, et al. (The Perfect Reconditioned Spark Plug Co.)	(C. C. A.) 32-1891; 3 S. & D. 375.	
Savage Candy Co.....	(C. C. A.) 25-1705; 2 S. & D. 421. 92 F. (2d) 1003.	
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.) ⁴⁹ ..	(C. C. A.) 9-629; 1 S. & D. 409. 5 F. (2d) 574.	
Sears, Roebuck & Co.....	(C. C. A.) 1-562, 2-536; 1 S. & D. 258 Fed. 307.	36.
Sebrone Co. et al.....	(C. C. A.) 36-1142; 3 S. & D. 570. 135 F. (2d) 676.	
Segal Lock & Hardware Co., Inc., et al.....	(C. C. A.) 39-690. 143 F. (2d) 935.	
Segal Optical Co.....	(C. C. A.) 38-867. 142 F. (2d) 255.	
Sekov Corp., et al.....	(D. C.) 30-1705; 3 S. & D. 669.	
Shade Shop, etc., Alfred Klesner doing business under name of, see Klesner, Alfred.		
Shakespeare Co.....	(C. C. A.) 15-609; 2 S. & D. 126. 50 F. (2d) 758.	
Shapiro, William, et al.....	(C. C. A.) 35-978; 3 S. & D. 527.	
Sheffield Silver Co., Inc.....	(C. C. A.) 27-1689; 2 S. & D. 472; 98 F. (2d) 676.	31-1826; 3 S. & D. 260.
Sherry's Cut Rate Drug Co., Inc.....	(D. C.) 31-1903; 3 S. & D. 701.	

⁴⁷For 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.

⁴⁸For interlocutory order of lower court, see "Memoranda," 28-1966 or 2 S. & D. 486.

⁴⁹For interlocutory order, see "Memoranda," 20-743 or 1 S. & D. 717.

Sherwin et al. v. U. S. (Lee, U. S. v.)	(D. C.); (C. C. A.) footnote, 6-290 Fed. 517; 297 Fed. 704 (affirmed, 268 U.S. 369); (45 S. Ct. 517).
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.
Siegel Co., Jacob	(C. C. A.) 39-714. 150 F. (2d) 751.
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. 289 Fed. 985; 292 Fed. 752. 278, 327.
Silverman & Associates, J., etc.	(C. C. A.) 39-704; 40-883. 145 F. (2d) 751; 148 F. (2d) 823.
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.
Smith, A. E., et al, and Electric Bond and Share Co.	(D. C.) 13-563; 1 S. & D. 709; 17-637; 2 S. & D. 191. 34 F. (2d) 323; 1 F. Supp. 247.
Sofronski, Irving (Dr. Ron-Al Medicine Co., etc.)	(D. C.) 29-1624; 3 S. & D. 638.
Southern Hardware Jobbers Ass'n	(C. C. A.) 6-597; 1 S. & D. 316. 290 Fed. 773.
Southern Premium Manufacturing Co., etc. (Ryan Candy Co.)	(C. C. A.) 22-1143; 2 S. & D. 342. 83 F. (2d) 1008.
Sowles, M. H.	(D. C.) "Memoranda" 20-740.
Spicer, William Edgar, et al.	(C. C. A.) 39-693.
Stadley, Nolan B. (Sterling Appliance Co.)	(D. C.) 32-1896; 3 S. & D. 712.
Staley Mfg. Co., A. E., et al.	(C. C. A.) 36-1126; 3 S. & D. 556. 135 F. (2d) 453; 144 F. (2d) 221; 324 U. S. 746; 65 S. Ct. 971. 39-677; (S. C.) 40-906.
Standard Container Manufacturers' Association, Inc., et al.	(C. C. A.) 32-1879; 3 S. & D. 364. 119 F. (2d) 262.
Standard Distributing Co. (Philip Harry Koolish et al.)	(C. C. A.) 34-1863; 3 S. & D. 492; 35-944; 3 S. & D. 497. 129 F. (2d) 64.
Standard Education Society	(C. C. A.) 10-751; 1 S. & D. 567; 14 F. (2d) 974; 86 F. (2d) 692; 302 U. S. 112 (58 S. Ct. 113); 97 F. (2d) 513; 148 F. (2d) 931. 24-1591; 2 S. & D. 366; (S. C.) 25-1715; 2 S. & D. 429; (C. C. A.) 26-1524; 3 S. & D. 525; 27-1680; 35-976; 3 S. & D. 603; 40-917.
Standard Education Society et al., U. S. v.	(D. C.) 37-810. 55 F. Supp. 189.
Standard Oil Co. of New Jersey, et al.	(C. C. A.) 5-542; 1 S. & D. 226; 282 Fed. 81; 261 U. S. 463 (43 S. Ct. 450). 6-587; 1 S. & D. 306.
Standard Oil Co., of New York	(C. C. A.) 3-622; 1 S. & D. 129. 273 Fed. 478.
Stanley Laboratories, Inc. et al.	(C. C. A.) 37-801; 3 S. & D. 596. 138 F. (2d) 388.
Stanton, Druggist to Women, Clara	(C. C. A.) 35-956; 3 S. & D. 508. 131 F. (2d) 105.

Startup Candy Co.....	(C. C. A.) 28-1951; 3 S. & D. 106. 102 F. (2d) 1015.
Steffy, William C., et al, U. S. v.....	(D. C.) 37-835; 3 S. & D. 735.
Stephen Rug Mills (Herzfeld, et al.).....	(C. C. A.) 38-833. 140 F. (2d) 207.
Sterling Appliance Co. (Nolan B. Stadley).....	(D. C.) 32-1896; 3 S. & D. 712.
Stetson Felt Mills (Dorfman, et al.).....	(C. C. A.) 39-700. 144 F. (2d) 737.
Stevenson Corp., The, et al.....	(C. C. A.) 33-1818; 3 S. & D. 411
Sun Cut Rate Drug Store (Howard Deckelbaum)	(D. C.) 31-1888; 3 S. & D. 689.
Supreme Sales Co., etc. (Harry Froman).....	(C. C. A.) 38-893.
Sweet Candy Co.....	(C. C. A.) 30-1682; 3 S. & D. 229; 112 F. (2d) 168. (D. C.) 35-988; 3 S. & D. 731.
Sweets Co. of America, Inc.....	(C. C. A.) 30-1625; 3 S. & D. 180; 109 F. (2d) 296. (D. C.) 35-988; 3 S. & D. 732.
Swift & Co.....	(C. C. A.) 8-616; 1 S. & D. 392; 8 F. (2d) 595; 272 U. S. 554 (47 S. Ct. 175). (S. C.) 11-629; 2 S. & D. 575.
Temple Anthracite Coal Co.....	(C. C. A.) 15-616; 2 S. & D. 132. 51 F. (2d) 656.
Texas Co. (Standard Oil Co. of N. Y.).....	(C. C. A.) 3-622; 1 S. & D. 129. 273 Fed. 478.
Thatcher Mfg. Co.....	(C. C. A.) 9-631; 1 S. & D. 411; 5 F. (2d) 615; 272 U. S. 554 (47 S. Ct. 175). (S. C.) 11-629; 1 S. & D. 575.
Thomas Quilt Factories.....	(C. C. A.) 32-1815; 3 S. & D. 310. 116 F. (2d) 347.
Thomsen-King & Co., Inc., et al.....	(C. C. A.) 30-1642; 3 S. & D. 658; 109 F. (2d) 516. (D. C.) 30-1692; 3 S. & D. 195.
Thyrole Products Co. (I. Ralph Weinstock).....	(D. C.) 30-1722; 3 S. & D. 684.
Toledo Pipe-Threading Machine Co.*.....	(C. C. A.) 9-652; 1 S. & D. 432; 6 F. (2d) 876; 11 F. (2d) 337. 10-664; 1 S. & D. 479.
Todd, Inc., J. E.....	(C. A. of D. C.) 39-711. 145 F. (2d) 858.
Tubular Rivet & Stud Co.....	(D. C. of D. C.) 34-1786; 3 S. & D. 423.
Ultra-Violet Products Co., Inc.....	(C. C. A.) 38-923. 143 F. (2d) 814.
United Corporation et al.....	(C. C. A.) 30-1659; 3 S. & D. 209. 110 F. (2d) 473.
United Diathermy, Inc.....	(D. C.) 32-1893; 3 S. & D. 709.
United States Steel Corp., et al.....	(C. C. A.) 40-927.
U. S. Drug & Sales Co., etc. (Edwin L. Leisenring et al.)	(D. C.) 30-1701; 3 S. & D. 666.
U. S. ex rel. Cubberley.....	(S. C. of D. C.) footnote, 18-663; 2 S. & D. 240.
U. S. ex rel. Mills Novelty Co. et al.....	(S. C. of D. C.) 22-1137.
U. S. v. American Television Institute, Inc.....	(D. C.) 36-1175; 3 S. & D. 735.
U. S. v. Certane Co. et al.....	(D. C.) 37-837; 3 S. & D. 737.
U. S. v. Chesapeake Distilling & Distributing Co.	(D. C.) 32-1909; 3 S. & D. 727.
U. S. v. Cornelius P. Van Schaack, Jr. (The Ink Co. of America, etc.)	(D. C.) 36-1171; 3 S. & D. 732.
U. S. v. Deran Confectionery Co.....	(D. C.) 30-1729; 3 S. & D. 724.
U. S. v. Dr. Emile Carpentier.....	(D. C.) 38-936.

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

U. S. v. Elmer Candy Co.....	(D. C.) 30-1729; 3 S. & D. 725.
U. S. v. Gellman Brothers.....	(D. C.) 37-836; 3 S. & D. 737.
U. S. v. G. Leach & Co.....	(D. C.) 39-726.
U. S. v. Gynex Corp. (Bureau of Hygiene).....	(D. C.) footnote, 34-1869; 35-987; 3 S. & D. 731.
U. S. v. Hamilton-Brown Shoe Co.....	(D. C.) footnote, 26-1495.
U. S. v. Herbal Medicine Co., et al.....	(D. C.) 38-937.
U. S. v. Hiram Barber (Motor Equipment Specialty Co.)	(D. C.) 36-1174; 3 S. & D. 734.
U. S. v. Holst Publishing Co. et al.....	(D. C.) 30-1728; 3 S. & D. 724.
U. S. v. Irving Roy Jacobson, et al.....	(D. C.) 39-725.
U. S. v. John Petrie (B-X Laboratories and Purity Products Co.)	(D. C.) 29-1643; 30-1727; 3 S. & D. 723.
U. S. v. K & S. Sales Co. et al.....	(D. C.) 30-1727; 3 S. & D. 723.
U. S. v. Klimate-Pruf Manufacturing Co.....	(D. C.) 30-1730; 3 S. & D. 725.
U. S. v. Koch et al.....	(D. C.) 34-1870; 3 S. & D. 730.
U. S. v. Kongo Chemical Co., Inc.....	(D. C.) 39-725.
U. S. v. Lanteen Laboratories, Inc., et al.....	(D. C.) 40-957.
U. S. v. Levore Co. et al.....	(D. C.) 33-1833; 3 S. & D. 728.
U. S. v. Magnecoil Co., Inc.....	(D. C.) 40-958.
U. S. v. McKewen, et al.....	(D. C.) 31-1913; 3 S. & D. 726.
U. S. v. Mells Manufacturing Co.....	(D. C.) 32-1907; 3 S. & D. 726.
U. S. v. Melster Candy Co.....	(D. C.) 36-1173; 3 S. & D. 734.
U. S. v. Midwest Studios, Inc.....	(D. C.) 34-1869; 3 S. & D. 729.
U. S. v. Montebello Distillers, Inc.....	(D. C.) 32-1908; 3 S. & D. 726.
U. S. v. Mutual Printing Co.....	(D. C.) 32-1909; 3 S. & D. 728
U. S. v. National Biscuit Co.....	(D. C.) 27-1697.
25 F. Supp. 329.	
U. S. v. Oppenheim, Collins & Co., Inc.....	(D. C.) 33-1833; 3 S. & D. 729.
U. S. v. Piuma.....	(D. C.) 33-1827; 3 S. & D. 412.
40 F. Supp. 119; 126 F. (2d) 601.	34-1837; 3 S. & D. 728.
U. S. v. Plantation Chocolate Co., Inc.....	(D. C.) 32-1908; 3 S. & D. 727.
U. S. v. Rango Tablet Co., et al.....	(D. C.) 40-955.
U. S. v. Retonga Medicine Co.....	(D. C.) 38-935.
U. S. v. Rogers Redemption Bureau, etc.....	(D. C.) 40-956.
U. S. v. R. T. Vanderbilt Co., Inc., et al.....	(D. C.) 38-935.
U. S. v. Standard Education Society et al.....	(D. C.) 37-810; 3 S. & D. 603.
55 F. Supp. 189.	
U. S. v. Sweet Candy Co.....	(D. C.) 35-988; 3 S. & D. 731.
U. S. v. Sweets Co. of America, Inc.....	(D. C.) 35-988; 3 S. & D. 732.
U. S. v. The E. R. Page Co., Inc.....	(D. C.) 36-1175; 3 S. & D. 734.
U. S. v. Willard Tablet Co.....	(C. C. A.) 38-863.
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U. S. v. William C. Steffy et al.....	(D. C.) 37-835; 3 S. & D. 735.
U. S. v. Wilson Chemical Co., Inc.....	(D. C.) 36-1171; 3 S. & D. 732.
Utah-Idaho Sugar Co.....	(C. C. A.) 11-692; 1 S. & D. 638.
22 F. (2d) 122.	
Vanderbilt Co., Inc., et al., E. T., U. S. v.....	(D. C.) 38-935.
Van Schaack, Jr., Cornelius P. (The Ink Co. of America, etc.), U. S. v.	(D. C.) 36-1171; 3 S. & D. 732.
Viscose Co. et al.....	(D. C.) "Memoranda," 28-1970.
Vivaudou, Inc., V.....	(C. C. A.) 15-631; 2 S. & D 146.
54 F. (2d) 273.	
Von Schrader Manufacturing Co. et al.....	(C. C. A.) 34-1788; 3 S. & D. 425.
Walker, James, et al. (Merit Health Appliance Co.)	(D. C.) 32-1900; 3 S. & D. 715.

Walker's New River Mining Co.....	(C. C. A.) 21-1213; 2 S. & D. 320. 79 F. (2d) 457.
Wallace, E. J. ⁴¹	(C. C. A.) 20-713; 2 S. & D. 280. 75 F. (2d) 733.
Ward Baking Co.....	(C. C. A.) 2-550; 1 S. & D. 49. 264 Fed. 330.
Warner's Renowned Remedies Co.....	(C. A. of D. C.) 38-831. 140 F. (2d) 18.
W. B. Caldwell, Inc., Dr.....	(C. C. A.) 30-1670; 3 S. & D. 218. 111 F. (2d) 889.
Webb-Crawford Co. et al.....	(C. C. A.) 30-1630; 3 S. & D. 184. 109 F. (2d) 268.
Weiler, Alexander, et al. (New York Premium Novelty Co.)	(C. C. A.) 34-1789; 3 S. & D. 426.
Weinstock, I. Ralph (Thyrole Products Co.).....	(D. C.) 30-1722; 3 S. & D. 684.
Wellworth Sales Co. (Isidore Halperin et al.).....	(C. C. A.) 34-1841; 3 S. & D. 472.
Western Chemicals, Inc., et al.....	(D. C.) 28-1939; 3 S. & D. 632.
Western Meat Co.....	(C. C. A.) 8-589, 623; 1 S. & D. 1 F. (2d) 95; 4 F. (2d) 223; 272 U. S. 554 (47 S. Ct. 175); 33 F. (2d) 824.
Western Sugar Refinery Co. et al.....	(C. C. A.) 4-557; 1 S. & D. 149. 275 Fed. 725.
Wholesale Dry Goods Institute, Inc. et al.....	(C. C. A.) 37-821; 3 S. & D. 615. 139 F. (2d) 230.
Wholesale Grocers' Ass'n. of El Paso et al.....	(C. C. A.) 4-595; 1 S. & D. 181. 277 Fed. 657.
Willard Tablet Co., U. S. v.....	(C. C. A.) 38-863. 141 F. (2d) 141.
Wilson Chemical Co., Inc., U. S. v.....	(D. C.) 36-1171; 3 S. & D. 732.
Winship Corp. et al.....	(D. C.) 30-1697; 3 S. & D. 663.
Winslow et al.....	(C. C. A.) 4-578; 1 S. & D. 166. 277 Fed. 206.
Winsted Hosiery Co. ⁴²	(C. C. A.) 3-618; 1 S. & D. 125; 272 Fed. 957; 258 U. S. 483 (42 S. Ct. 184). (S. C.) 4-610; 1 S. & D. 198.
Winston Co., John C. ⁴³	(C. C. A.) 8-625; 1 S. & D. 401. 3 F. (2d) 961.
Wire Rope and Strand Mfrs. Ass'n., Inc.....	(C. C. A.) 36-1146; 3 S. & D. 574.
Wolf, Alvin B. (DeLuxe Products Co., etc.).....	(C. C. A.) 36-1135; 3 S. & D. 564. 135 F. (2d) 564.
Woolley, E. R.....	(C. C. A.) 11-692; 1 S. & D. 638. 22 F. (2d) 122.
Wrisley Co., Allen B., et al.....	(C. C. A.) 31-1815; 3 S. & D. 250. 113 F. (2d) 437.
Yardley of London, Inc.....	(C. C. A.) 31-1869; 3 S. & D. 297.
Zelle Co., The (Leland F. Benham).....	(D. C.) 29-1631; 3 S. & D. 644.
Zenith Radio Corp.....	(C. C. A.) 38-903. 143 F. (2d) 29.
Ziegler Co., George.....	(C. C. A.) 24-1625; 2 S. & D. 397. 90 F. (2d) 1007.

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

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

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

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JANUARY 1, 1945, TO JUNE 30, 1945

IN THE MATTER OF

G. C. COUNCIL TRADING AS DANVILLE ENGRAVING COMPANY

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

Docket 5045. Complaint, Sept. 10, 1943—Decision, Jan. 16, 1945

Where an individual engaged in the manufacture and in the competitive interstate sale and distribution under the trade name "Decotones" of photoengraving plates, made on the standard halftone screen, and properly described as halftones; through statements in circulars distributed among prospective purchasers located throughout the United States, directly or by implication—

(a) Represented that his photoengraving plates were etched to double the depth of standard plates, or twice as deep as those sold by his competitors, and for that reason produced a sharper, clearer, and more distinct impression than did his competitors';

The facts being that his plates were not, as thus represented, etched to double the respective depths prescribed by the "scale of standard depths for halftone plates," which was in general use in the photoengraving industry and represented the etching depth which it was desirable to obtain, but—aside from serious doubt as to whether it is possible to etch to double depth without doing harm to the plate—fell far short of being etched to such depth; further etching, after sufficient depth has been obtained, serves no purpose and is likely to injure rather than improve the plate; and etching of a plate to double depth, therefore, will not result in a sharper, clearer, or more distinct impression;

(b) Represented that the wet plate process employed by him in making halftones required more skill, patience, and experience, and produced better negatives than the film or dry plate process used by his competitors;

The facts being that the film process was the more modern and was apparently supplanting the other, which, however, was still in use to some extent in the industry, some concerns using both processes; and the wet plate process does not require more skill, patience or experience than the other, or produce better negatives;

(c) Represented that the cost of the plates produced by his competitors was higher than the cost of his plates because of the tax imposed on film, and that such increased cost is passed on to the consumer through higher prices, through such statements in said circular as "The new tax law now adds a TEN PER CENT TAX to the cost of DRY PLATES because such plates are prepared from the commercial film. Naturally, the engraver is NOT going to absorb this tax—You can judge for yourself who is going to pay for this extra cost—But if you order DECOTONES (Pro-

Complaint

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cessed the WET PLATE way) you'll not only get a BETTER job—but will find that our prices have NOT advanced because this type of process is NOT taxed"; The facts being that the principal item of cost in the making of photoengraving plates is labor; and the tax on the film used in the film process has not appreciably affected the cost of plates to engravers, who have absorbed the small additional cost and have not passed it on to the consumer through higher prices; and

- (d) Represented that halftones produced by his competitors were composed of square dots, whereas the wet plate process employed by him produced round or "island" dots on the halftone screen, resulting in a sharper, clearer, and more satisfactory finished plate;

The facts being the shape of the dots in a halftone depends upon the manipulation of the camera and the etching operation, and these are the same, irrespective of the process used; halftones frequently contain both square and round dots, and there is no advantage in one over the other, and the differences between the two photographs in his advertising circular were due not to any difference in the shape of the dots composing the photographs, but solely to the fact that the better photograph was made from a good negative, while the poorer photograph was made from an inferior negative;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to his products and to disparage the products of his competitors, and to induce such public to purchase substantial quantities of his products as a result, whereby substantial trade was diverted unfairly to him from his competitors:

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

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

Mr. Merle P. Lyon and *Mr. Clark Nichols* for the Commission.
Allen, Dalbey & Foreman, of Danville, 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 G. C. Council, an individual, trading as Danville Engraving Company, 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, G. C. Council, is an individual, trading under the name and style of Danville Engraving Company, with his principal office and place of business located at 220 North Logan Avenue, Danville, Ill.

Respondent is now, and for several years last past has been, engaged in the making of photo-engraving plates and in the sale and distribution thereof by mail direct to the purchasers thereof located in various States of the United States. Respondent causes said photo-engraving plates, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said plates in com-

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

PAR. 2. Respondent, during the times mentioned herein, has been and is now in substantial competition with other individuals and with firms, partnerships and corporations engaged in the manufacture and sale of photo-engraving plates in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent's photo-engravings are made on zinc, alloy or copper plates on the standard half-tone screen and are properly described as half-tones, although they are sold under the trade name "Decotones." Solicitation for the sale thereof has been principally by means of advertisements in trade journals and magazines and by means of circulars disseminated to prospective customers through the United States mails.

Among the representations made by respondent in said advertisements and circulars are the following:

DECOTONES produce a sharper, a clearer and more distinct impression because they are etched to double depth and are produced from the old tried and true WET PLATE process.

Now, there's a big difference between the WET PLATE process and the DRY PLATE (prepared from commercial film).

You see, some photo engravers prefer to use the prepared film process because it is easier, even though it is also more expensive and does NOT produce the BEST negative.

The WET PLATE process requires more skill; patience; and years of experience—

But this extra effort is truly worthwhile for YOU, the customer, as it gives you a printing plate that will produce a true, clear impression.

The new tax law now adds a TEN PERCENT TAX to the cost of DRY PLATE because such plates are prepared from the commercial film.

Naturally, the engraver is NOT going to absorb this tax—

You can judge for yourself who is going to pay for the extra cost—

But if you order DECOTONES (processed the WET PLATE way) you'll not only get a BETTER job—but will find that our prices have NOT advanced because this type of process is NOT taxed.

On an inside page of one of respondent's advertising circulars appears a girl's photograph with the following words beneath it:

A REGULAR HALFTONE

First, notice this regular halftone proof.

A 60 line screen is used, which is first composed of square dots. And while its physical make-up consists of shadow dots, middle tone and highlight dots, all remain more or less a SQUARE dot with the lines or sides of the dots running at a 45 degree angle

See for yourself with your own eyes what can be expected from an ordinary half-tone,

On the opposite page appears a girl's photograph, apparently identical with the following words beneath it,

DECOTONES

Now, study this picture.

Compare it with the one on the opposite page.

This is an actual sample of our high quality DECOTONE process which is etched deeper (double depth); dots are of a round formation (THE ISLAND DOT).

See this contrast—darker portions are darker; light portions are lighter; details are sharper and more distinct—

Surely, you can see the difference in the two illustrations—

And if you will compare the pictures thoroughly, we're confident this comparison will prove to you more than mere words or claims, the difference—and show you exactly why YOU, too will always want to use our high quality Decotones.

PAR. 4. By means of the foregoing representations and others of similar import and effect, respondent has represented, directly and by implication and inference, that his photo-engraving plates are etched to double the depth of standard plates or twice as deep as those produced by his competitors, and for that reason produce a sharper, clearer and more distinct impression and are superior to plates produced by his competitors or by other processes; that the wet plate process of making halftones employed by respondent is a less expensive method and produces better negatives than the dry plate or film method employed by his competitors and the photo-engraving trade generally; that respondent's Wet Plate process requires more skill, patience and experience than the processes used by his competitors; that the costs of the plates produced by respondent's competitors are higher than his costs because of the ten percent tax on the cost of the dry plates or film used by his competitors and that this tax results in higher prices to the ultimate consumer for plates produced by his competitors compared to plates produced by respondent; and that half-tones produced by his competitors are composed of square dots whereas the Decotone process employed by respondent produces round or "island" dots on the half-tone screen, resulting in a sharper, clearer and more satisfactory finished plate.

PAR. 5. In truth and in fact, respondent's "Decotone" plates are not etched to twice the standard depths of plates produced by respondent's competitors, and in fact it is impossible to etch a photo-engraving to double the standard scale depth, because in so doing the dots in the half-tone screen would be so worn and broken down that they would not make satisfactory impressions. "Decotones" do not produce a sharper, clearer or more distinct impression and are not superior to plates produced by respondent's competitors or by other processes. There is no difference between the results obtained by the wet plate process and those obtained by the film or dry plate process, and the film or dry plate process is neither easier, more expensive or productive of less satisfactory negatives than the wet plate process employed by respondent, and does not require less skill, patience and experience than the wet plate process. The film or dry plate method of producing half-tones has been widely adopted in the photo-engraving industry because of the greater speed and volume of output obtainable by its use, and resultant decrease in labor costs per unit of output. In the photo-engraving industry labor costs amount to about 95 percent of the total cost of the finished product, and the greater speed of the film process makes that method of producing half-tones cheaper than the wet plate process employed by respondent. The ten percent tax on the materials used in the film process adds very little, if any, to the cost of the finished plates produced by respondent's competitors, and the prices charged to the ultimate consumer by respondent's competitors are not necessarily increased because of said tax.

All half-tone screens are composed of square dots regardless of what photographic materials or processes may be applied, and respondent's representation that the use of wet plate photography converts these square dots in the half-tone screen to round dots in the finished plate is unfounded in fact. The shape of the dots depends largely upon manipulation of the

camera, and round dots would be no more readily produced by the wet plate method than by the film method. Also, dots originally square may take on a rounded appearance due to the fact that the chemical solution used in a second or additional etching, often made to improve the tone values, tends to round off the corners to some extent. Round dots are not in any way peculiar to the plates produced by respondent, and ordinarily make no better reproductions than do square dots. The differences between the two photographs in respondent's advertising circular are due, not to different materials or methods of photography, but to deliberate manipulations by the respondent to indicate a superiority in plates produced by him as compared to those made by other processes. The defects apparent in the so-called "regular half-tone" result from an under-exposed and over-etched plate, and are not due to the employment of methods or materials commonly used by respondent's competitors.

The aforesaid statements contained in respondent's advertisements are not only false, misleading and deceptive to the purchasing public, but unfairly defame and disparage the products of respondent's competitors in that it is represented that respondent's products are superior to those of respondent's competitors, and require more skill, patience and experience to produce, and are less expensive, sharper, clearer and more satisfactory than the products of respondent's competitors, when such is not the fact.

PAR. 6. The use by respondent of the false, misleading and disparaging statements, representations and advertisements as aforesaid has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false, misleading and disparaging statements, representations and advertisements are true, and induce a substantial portion of the purchasing public, because of such erroneous and mistaken beliefs, to purchase respondent's photo-engraving products. As a result thereof, injury has been and is now being done by respondent to competition in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 10, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, G. C. Council, individually, and trading as Danville Engraving Company, charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of 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, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, G. C. Council, is an individual, trading under the name Danville Engraving Company, with his principal office and place of business located at 220 North Logan Avenue, Danville, Ill. Respondent is now and for a number of years last past has been engaged in the manufacture and sale of photoengraving plates. The plates are used by the printing trade in the reproduction of photographs, drawings and other copy.

PAR. 2. In the course and conduct of his business respondent causes his photoengraving plates, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in his plates in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is and has been in substantial competition with other individuals and with firms and corporations engaged in the manufacture of photoengraving plates and in the sale and distribution of such plates in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent's photoengravings are made on the standard half-tone screen, and are properly described as halftones. In addition to such general designation, however, respondent uses the trade name "Decotones" to describe his products, this name being a coined word made up as follows: "D" for Danville, the city in which respondent is located, "e" from the word engraving, "co" from company, and "tone" for what respondent considers the tonal value of pictures made from his plates.

Respondent advertises his products by means of advertisements inserted in trade journals, and also by means of circulars distributed among prospective purchasers through the United States mail. One of these circulars, of which some ten thousand copies were distributed among prospective purchasers located throughout the United States, contained the following representations:

DECOTONES produce a sharper, a clearer and more distinct impression because they are etched to *double* depth and are produced from the old tried and true WET PLATE process.

Now, there's a big difference between the WET PLATE process and the DRY PLATE (prepared from commercial film).

You see, some photo engravers prefer to use the prepared film process because it is easier, even though it is also more expensive and does NOT produce the BEST negative.

The WET PLATE process requires more skill; patience; and years of experience—

But this extra effort is truly worthwhile for YOU, the customer, as it gives you a printing plate that will produce a true, clear impression.

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Findings

The new tax law now adds a TEN PERCENT TAX to the cost of DRY PLATES because such plates are prepared from the commercial film.

Naturally, the engraver is NOT going to absorb this tax—

You can judge for yourself who is going to pay for this extra cost—

But if you order DECOTONES (processed the WET PLATE way) you'll not only get a BETTER job—but will find that our prices have NOT advanced because this type of process is NOT taxed—

(Commission's Exhibit No. 4)

On one of the inside pages of the circular there appeared the photograph of a young woman, and under the photograph the following:

A REGULAR HALFTONE

First, notice this regular halftone proof.

A 60 line screen is used, which is first composed of square dots.

And while its physical make-up consists of shadow dots, middle tone and high-light dots, all remain more or less a SQUARE dot with the lines or sides of the dots running at a 45 degree angle

* * *

See for yourself with your own eyes what can be expected from an *ordinary half-tone*.

On the opposite page there appeared another photograph of the same young woman, and beneath this photograph the following:

DECOTONES

Now, study this picture.

Compare it with the one on the opposite page.

This is an actual sample of our high quality DECOTONE process which is etched *deeper* (double depth); dots are of a round formation (THE ISLAND DOT).

See this contrast—darker portions are darker; light portions are lighter; details are sharper and more distinct—

Surely, you can see the difference in the two illustrations—

And if you will compare both pictures thoroughly, we're confident this comparison will prove to you more than mere words or claims, the difference—and show you exactly why YOU, too will always want to use our high quality DECOTONES—

PAR. 5. Through the use of these representations and others of similar import, respondent has represented, directly or by implication, that his photoengraving plates are etched to double the depth of standard plates, or twice as deep as those sold by his competitors, and that for that reason respondent's plates produce a sharper, clearer, and more distinct impression than do plates sold by his competitors; that the wet plate process employed by respondent in making halftones requires more skill, patience, and experience than the film or dry plate process used by his competitors, and that the wet plate process produces better negatives than the film process; that the cost of plates produced by respondent's competitors is higher than the cost of respondent's plates because of the tax imposed on film, and that such increased cost is passed on to the consumer through higher prices; and that halftones produced by respondent's competitors are composed of square dots, whereas the wet plate process employed by respondent produces round or "island" dots on the halftone screen, resulting in a sharper, clearer and more satisfactory finished plate.

PAR. 6. Photoengraving plates are made from zinc, copper, or an alloy metal. They may be made by either of two processes, the "wet plate" process or the film (dry plate) process. The essential difference between the two processes is that in the wet plate process the engraver begins with a piece of clear glass and applies to the glass the necessary sensitizing elements, thus actually making the plate-negative upon which the picture or other material is photographed. In the film process, commercial film is used. The film is ready for use when received by the engraver, that is, it does not have to be sensitized. In either case the image produced on the negative (wet plate, if the wet plate process is employed, or film, if the film process is used) is transferred to the metal plate, after which the engraver, by the skillful application of certain acids, etches the plate until sufficient depth has been obtained to bring out the various tones and details of the original photograph or other copy.

Of the two processes, the film process is the more modern and appears to be supplanting the wet plate process, although the latter is still being used to some extent in the industry. Some photoengraving concerns use both processes.

PAR. 7. There is in general use in the photoengraving industry a "Scale of Standard Depths for Halftone Plates." This scale represents the etching depths which it is desirable to obtain. Respondent's statement that his plates are etched to "double depth" constitutes a representation that the plates are etched to double the respective depths prescribed by this scale. The evidence discloses that the plates fall far short of being etched to this depth. There is, in fact, serious doubt as to whether it is possible to etch to double depth without doing harm to the plate. After sufficient depth has been obtained, further etching serves no purpose and is likely to injure rather than improve the plate. The etching of a plate to double depth therefore will not result in a sharper, clearer, or more distinct impression.

The wet plate process does not require more skill, patience, or experience than the film process, nor will the wet plate process produce better negatives than the film process. The principal item of cost in the making of photoengraving plates is labor, and the tax on the film used in the film process has not appreciably affected the cost of plates to engravers using that process. Such small additional cost as the tax has occasioned has been absorbed by the engravers and has not been passed on to the consumer through higher prices.

The shape of the dots in a halftone depends upon the manipulation of the camera and the etching operation, and these are the same, regardless of whether the wet plate or the film process is employed in making the negative. The kind of process used does not affect the shape of the dots. Halftones frequently contain both square dots and round dots, and there is no advantage in one over the other. Round dots do not produce a sharper, clearer, or more satisfactory plate. The differences between the two photographs in respondent's advertising circular are due not to any difference in the shape of the dots composing the photographs, but are due solely to the fact that the better photograph was made from a good negative while the poorer photograph was made from an inferior negative.

PAR. 8. The Commission therefore finds that the representations made by respondent with respect to his products, as set forth in paragraphs 4 and 5 thereof, are erroneous and misleading.

PAR. 9. The use by respondent of these erroneous and misleading

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Order

representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's products and to disparage the products of respondent's competitors, and the tendency and capacity to induce such portion of the public to purchase substantial quantities of respondent's products as a result of the erroneous and mistaken belief so engendered. In consequence thereof, substantial trade has been diverted unfairly to respondent from his competitors.

CONCLUSION

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

It is ordered, That the respondent, G. C. Council, individually, and trading as Danville Engraving 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 of respondent's photoengraving plates 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 respondent's photoengraving plates are etched to "double depth," or to any depth in excess of that to which said plates are in fact etched.

2. That the etching of a photoengraving plate to double depth results in a sharper, clearer, or more distinct impression.

3. That the wet plate process of making photoengraving plates requires more skill, patience, or experience than the film or dry plate process, or that the wet plate process produces better negatives than the film process.

4. That the imposition of the tax on film used in the film process of making photoengraving plates has resulted in higher prices to consumers of such plates.

5. That the use of the wet plate process in making photoengraving plates affects the shape of the dots in such plates, or that round dots produce a sharper, clearer, or more satisfactory plate than square dots.

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
HEALTHAIDS, INC., THE JOURNAL OF LIVING
PUBLISHING CORPORATION, AND VICTOR H. LINDLAHR

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

Docket 4332. Complaint, Oct. 4, 1940—Decision, Jan. 18, 1945

Where a corporation engaged in the manufacture and interstate sale and distribution of its medicinal preparation "Serutan"; a second corporation engaged in the publication, sale and distribution of a monthly magazine and of various booklets, pamphlets, circulars and other written material directed to promoting the sale of Serutan; and an individual who (1) was editor of said "Journal of Living" monthly magazine, as well as of various books, pamphlets, circulars and other written material distributed by said corporations, and was employed by said manufacturing corporation to deliver radio talks constituting the principal feature of a program devoted to promoting sale of "Serutan," broadcast by numerous stations in various parts of the United States; (2) was licensed to practice as an osteopath upon the completion of a course at a college of osteopathy, attended by him after securing the equivalent of a high school education, and had secured a degree as doctor of medicine from an admitted diploma mill;

Acting in concert in advertising and promoting the sale of said "Serutan" to members of the public, under a general plan in accordance with which (a) said manufacturing corporation directly advertised said product and promoted said individual as "an eminent diet authority," "famous editor of the Journal of Living," "the eminent nutritionist," and by other designations, and promoted the "Journal of Living" and various books and pamphlets of said individual; said individual in his radio talks, books, pamphlets, and circulars promoted "Serutan" and the "Journal of Living," and the "Journal of Living" directly advertised "Serutan" and promoted said individual and his writings, which in turn promoted "Serutan," and essence of which plan (b) was to promote the sale and distribution of said product, and to do so in as indirect and apparently disinterested a guise as possible; whereby they were able to sell to the public publications which were actually advertisements of "Serutan" disguised with titles such as "Eat Your Way to Beauty—The Famous Lindlahr Beauty Diet," "Eat Stay Young—The Fountain of Youth," "How to Gain Weight—The Famous Lindlahr 7-Day Weight Gaining Diet," "The Famous Lindlahr 7-Day Reducing Diet," and which pointed out how essential "Serutan" was to whatever the purpose of the booklet might be—beauty, health, longevity, weight reduction, weight gain, or other objective—

Represented directly or by implication, through statements in advertisements in newspapers and periodicals, by radio continuities and by circulars, leaflets, pamphlets and other advertising literature that "Serutan" was of substantial therapeutic value in restoring and maintaining natural elimination, that it stimulated and strengthened the digestive and eliminative organs and muscles and promoted normal and regular action on their part, constituted a cure or remedy for constipation, and possessed substantial therapeutic value in the treatment thereof;

The facts being that it did not constitute a cure or remedy for constipation, symptom usually of some other trouble for which the proper treatment is the ascertainment and correction of its cause; therapeutic value thereof being limited to the temporary relief afforded by its laxative action as a result of its bulk and irritant proper-

ties which tend to stimulate peristaltic action; statement that product had substantial therapeutic value in restoring and maintaining natural elimination was unwarranted, the physiological process of elimination without the intervention of drugs being normal, but abnormal if caused by other than normal foods or normal physiological processes; and, except for the tendency to stimulate peristaltic action, "Serutan" would not strengthen the digestive or eliminative organs or muscles or promote normal or regular action thereby;

With the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such false and misleading representations were true whereby it was induced to purchase substantial quantities thereof:

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

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

Mr. William L. Taggart for the Commission.

Mr. Irving R. Rosenhaus, of Newark, N. J., and *Mr. Louis H. Rowe*, of New York City, for respondents, and Healthaids, Inc. was also represented by *Mr. W. Cameron Burton* and *Mr. George C. Vournas*, of Washington, D. C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Healthaids, Inc., a corporation, The Journal of Living Publishing Corporation, a corporation, and Victor H. Lindlahr, 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, Healthaids, Inc., is a corporation, organized under the laws of the State of New Jersey, with its principal office and place of business located at 404-14 Tonnelle Avenue, Jersey City, N. J. Said respondent is now, and for more than one year last past has been, engaged in the sale and distribution of a medicinal preparation known as "Serutan" which is intended for use in the treatment of certain ailments and conditions of the human body.

Said respondent causes its product, when sold, to be transported from its place of business in the State of New Jersey to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in its product in commerce among and between the various States of the United States and in the District of Columbia.

Respondent, The Journal of Living Publishing Corporation, is a corporation, organized under the laws of the State of New York, with its principal office located at 1819 Broadway, New York, N. Y. Said respondent is engaged in the business of promoting the sale of the said medicinal preparations hereinbefore referred to, and as a part of its operations said respondent issues and disseminates a publication known as "The Journal of Living" which is used for the purpose of advertising said preparation.

Respondent, Victor H. Lindlahr, is an individual, with his principal

office located at 1819 Broadway, New York, N. Y. Said respondent is editor of the publication The Journal of Living hereinabove referred to and directs and controls the practices and methods of respondent The Journal of Living Publishing Corporation. Said respondent, Victor H. Lindlahr, also directs and controls the practices and methods of respondent, Health-aids, Inc., with respect to the advertising of its said preparation.

The respondents have acted in conjunction and cooperation each with the other in carrying on the acts and practices hereinafter alleged.

PAR. 2. In the course and conduct of their aforesaid businesses, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their 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 respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, 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 advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets and other advertising literature, are the following:

NO MORE LAXATIVES
SAY THOUSANDS OF GRATEFUL USERS!

Don't fool around with constipation . . . don't gamble with irritating physics and doubtful, "one-time" remedies. Thousands who were ready to give up hope have found blessed relief with Serutan, the new-type food auxiliary that contains no habit-forming drugs, no harsh roughage or irritants. Serutan helps Nature in Nature's own way by stimulating normal, regular action. Can be used as a natural regulator. Free. 40 Page Book Real Truth about constipation.

A NATURAL CORRECTIVE
WITHOUT LAXATIVES!

Why risk taking irritating "one-time" remedies that may do serious harm? Let Serutan help you, as it has helped thousands of others. Not a cathartic, but a new-type food auxiliary designed to re-establish natural elimination. Serutan contains no habit-forming drugs, no harsh roughage or irritants. Many doctors recommend it as a natural regulator for Pile, Ulcer and Colitis sufferers. Free. 40 Page Book Real Truth about constipation.

These headlines in the news of health and nutrition have been brought to you by SERUTAN—acclaimed by thousands as the safe, sensible way of combatting food delay. SERUTAN should not be confused with harsh-acting drugs. It is a natural food auxiliary which works with Nature to help you restore regularity and internal cleanliness. It contains no habit-forming drugs—no harmful roughage or irritants—nothing which works violently on the delicate digestive system. Don't take chances with your health! Let SERUTAN help you to the kind of internal cleanliness that is the basis for vigorous good health. Get the big economical container today—at any good drug, department or health food store. It's sold with an absolute money-back guarantee. But be sure to ask for it by name—SERUTAN, spelled SERUTAN. And remember, when you spell it backward, it reads—Nature's.

SERUTAN is not a mere "one-time" help. It is designed to promote internal cleanliness by stimulating and strengthening the normal action of the digestive organs. SERUTAN has already shown thousands (many of whom had literally tried everything else without success) how to overcome food delay and enjoy the renewed good health that comes with internal cleanliness.

AND NOW HERE'S A QUESTION—do you show as much consideration for yourself as you do for other people? Well—judging from the large number of folks who suffer serious digestive ailments, it would seem that far too many do not show enough consideration for themselves. That's why a word of caution is in order, particularly for those past the age of 35, who thoughtlessly and habitually use laxatives that may be too harsh for their systems. For after 35, the intestinal muscles are apt to be weaker and not as able to withstand the abuse of harsh drugs. What you may need for internal cleanliness is something to help strengthen those intestinal muscles and to help them maintain normal rhythm or peristaltic action. And that's exactly what SERUTAN is designed to do. SERUTAN contains no harsh drugs, no roughage, no irritants. So you see, it's ideal for those whose digestive systems can no longer stand abuse. Why not get SERUTAN today at any good drug or health food store? In the meantime send for your free copy of the 4 page booklet, "THE TRUTH ABOUT INTERNAL CLEANLINESS." Just put your name and address on a penny postcard and send it to SERUTAN spelled S E R U T A N—SERUTAN, Station WAAT, Jersey City, N. J. And remember—when you read SERUTAN backwards—it spells—NATURE'S!

PAR. 3. Through the use of the representations hereinabove set forth, and others of similar import not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondents' said preparation, respondents have represented and do now represent, directly or by implication, that their said preparation is of substantial therapeutic value in restoring and maintaining natural elimination; that it stimulates and strengthens the digestive and eliminative organs and muscles, and promotes normal and regular action on the part of such organs and muscles; that it constitutes a cure or remedy for constipation and possesses substantial therapeutic value in the treatment of constipation.

PAR. 4. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondents' preparation possesses no therapeutic value with respect to restoring or maintaining natural elimination. It is wholly incapable of stimulating or strengthening the digestive or eliminative organs or muscles, or of promoting normal or regular action on the part of such organs or muscles. Said preparation does not constitute a cure or remedy for constipation, nor does it possess any therapeutic value in the treatment of constipation except insofar as its laxative properties may assist in the temporary evacuation of the intestinal tract. The active ingredient of respondents' preparation consists of the mucilaginous portion of psyllium seed, and the presence of such ingredient serves to give said preparation the properties of a mild laxative. Aside from such properties, said preparation is wholly without therapeutic value.

PAR. 5. The use by the respondents of the foregoing false, deceptive and misleading representations with respect to their said product 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 and misleading representations are true, and as a result of such erroneous and mistaken belief the purchasing public is induced to, and does, purchase substantial quantities of respondents' product.

PAR. 6. 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 October 4, 1940, issued and subsequently served its complaint in this proceeding upon respondents, Healthaids, Inc., a corporation, The Journal of Living Publishing Corporation, a corporation, and Victor H. Lindlahr, 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, 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. (a) Respondent, Healthaids, Inc., of New Jersey (the respondent referred to in the caption as Healthaids, Inc.) is a corporation, organized and existing under the laws of the State of New Jersey, with its principal office and place of business located at 404-14 Tonnele Avenue, Jersey City, N. J.

(b) Respondent, the Journal of Living Publishing Corporation, is a corporation, organized and existing under the laws of the State of New York, with its principal office located at 1819 Broadway, New York, N. Y.

(c) Respondent, Victor H. Lindlahr, is an individual, with his principal office located at 1819 Broadway, New York, N. Y.

PAR. 2. (a) Healthaids, Inc., of New Jersey, hereinafter frequently referred to as Healthaids, is engaged in the manufacture, sale, and distribution of a medicinal preparation designated "Serutan." Said respondent causes its product, when sold, to be transported from its place of business in New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains 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.

(b) The Journal of Living Publishing Corporation is engaged in the publication, sale, and distribution of a monthly magazine and of various booklets, pamphlets, circulars, and other written material directed to promoting the sale of Serutan. Matthew Rosenhaus and Maurice Haas, respectively president and treasurer of Healthaids, are members of the board of directors of the Journal of Living Publishing Corporation, and the other

members of said board of directors are Victor H. Lindlahr, Peter Lersch, and Ann White.

(c) Respondent, Victor H. Lindlahr, is editor of the "Journal of Living" and author of various books, pamphlets, circulars, and other written material distributed by the Journal of Living Publishing Corporation and Healthaids and devoted to promoting the sale of Serutan. He is employed by Healthaids to deliver radio talks which constitute the principal feature of a radio program broadcast by numerous radio stations located in various parts of the United States, which programs are devoted to promoting the sale of Serutan. Until some time after the issuance of the complaint in this proceeding the publication known as the "Journal of Living" was mailed to subscribers and others from the offices of Healthaids in Jersey City. The radio talks and writings of Lindlahr, which purport to set out his views on numerous subjects, are reviewed and revised before publication by a medical director employed by Healthaids. Respondent, Lindlahr, secured the equivalent of a high school education at the Lewis Institute in Chicago and then attended the Chicago College of Osteopathy. Upon completion of his course at the latter institution, he was licensed in 1918 to practice as an osteopath in Illinois. In 1923 he secured a degree as Doctor of Medicine from the St. Louis College of Physicians and Surgeons, and though he admitted that he knew this was a diploma mill and that he has never been licensed to practice as a doctor of medicine in any State of the United States, he testified that he considers himself entitled to use his M. D. degree for purposes of writing and that "it is as good as anybody else's for the purpose of writing." In the past Victor H. Lindlahr has promoted the sale of various other medicinal preparations. In his capacity as editor of the "Journal of Living" and as a writer and radio lecturer, he currently promotes the sale of Serutan and receives compensation for his services from the Journal of Living Publishing Corporation and from Healthaids.

(d) Through its radio programs, Healthaids directly advertises Serutan and promotes respondent Lindlahr as "an eminent diet authority," "famous editor of the Journal of Living," "the eminent nutritionist," and by other designations, and promotes the "Journal of Living" and various Lindlahr books and pamphlets. Lindlahr in his radio talks, books, pamphlets, and circulars promotes Serutan and the "Journal of Living." The "Journal of Living" directly advertises Serutan and promotes Lindlahr and his writings, which in turn promote Serutan. The essence of the entire arrangement is to promote the sale and distribution of Serutan, and to do so in as indirect and apparently disinterested guise as possible. Through these processes respondents are actually able to sell to the public publications which are fundamentally advertisements of Serutan disguised with titles such as "Eat Your Way to Beauty—The Famous Lindlahr Beauty Diet," "Eat Stay Young—The Fountain of Youth," "How to Gain Weight—The Famous Lindlahr 7-Day Weight Gaining Diet," "The Famous Lindlahr 7-Day Reducing Diet," and others. These publications point out how essential Serutan is to whatever the purpose of the booklet may be—beauty, health, longevity, weight reduction, weight gain, or other objective.

(e) The several respondents act in concert, cooperate with and assist one another in advertising and promoting the sale of Serutan to members of the public.

PAR. 3. 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 the product designated "Serutan" 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 product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the 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 and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature are the following:

NO MORE LAXATIVES
SAY THOUSANDS OF GRATEFUL USERS!

Don't fool around with constipation . . . don't gamble with irritating physics and doubtful, "one-time" remedies. Thousands who were ready to give up hope have found blessed relief with Serutan, the new-type food auxiliary that contains no habit-forming drugs, no harsh roughage or irritants. * * * Send for FREE 36-page booklet "Truth about Constipation." (Comm. Ex. 3-D).

* * * * *

A NATURAL CORRECTIVE
WITHOUT LAXATIVES!

Why risk taking irritating "one time" remedies that may do serious harm? Let Serutan help you, as it has helped thousands of others. Not a cathartic, but a new-type food auxiliary designed to re-establish *natural* elimination. * * * Send for FREE 36-page booklet "Truth About Constipation" (Comm. Ex. 3-F).

* * * * *

Here is REAL Relief
from Constipation

Thousands of grateful people say that SERUTAN has rid them of the laxative habit . . . that it has helped them win back healthful regularity (Comm. Ex. 29-J, p. 18).

* * * * *

Serutan has brought grateful relief to thousands over 35, because it is one product specifically designed to help tone up and strengthen weak, sluggish digestive muscles, so that regularity may be maintained. So if you're over 35 and would like to get real relief; and keep as regular as a clock—try SERUTAN! (Comm. Ex. 29-Z-8).

* * * * *

For after 35, the digestive action which promotes regularity; is apt to be weaker, more sluggish. And today LAXATIVES which cannot help to improve THAT action may not be the TRUE answer to your problem. So try that effective product called SERUTAN—It's ESPECIALLY designed for folks over 35—to TONE UP and STRENGTHEN the digestive action which encourages regularity (Comm. Ex. 29-Z-19).

* * * * *

In my radio broadcasts in other large cities, such as New York, Philadelphia, Boston, etc., I have brought to the attention of thousands of *grateful people* what I consider to be the best and most advanced product for combating that "scourge of humanity"—constipation. And that product is Serutan. When you read Serutan backwards it spells Nature's. And that is exactly what it is—Nature's answer—Nature's way to overcome constipation without the use of drugs (Comm. Ex. 26-A).

* * * * *

So in order to get REAL relief from the miseries of common sluggishness, what you may need is something to help tone up the weakened action of those muscles that PROMOTE regularity. In other words . . . what you may need is SERUTAN. You see, SERUTAN is DIFFERENT . . . it's not a pill . . . not salts . . . not oil or liquid. As Victor H. Lindlahr has told you, Serutan is a HYDRO-GEL . . . a mild concentrated combination of purely vegetable ingredients that help nature thoroughly yet gently (Comm. Ex. 7).

* * * * *

New Drugless Food Auxiliary
Reestablishes Regularity!

* * * Let the new food auxiliary, SERUTAN—help Nature re-establish internal cleanliness * * * SERUTAN is not a mere "one-time" help. It is designed to promote internal cleanliness by stimulating and strengthening the normal action of the digestive organs. SERUTAN has already shown thousands (many of whom had literally tried everything else without success) how to overcome food delay and enjoy the renewed good health that comes with internal cleanliness (Comm. Ex. 29-E).

* * * * *

"The Truth About Internal Cleanliness" has enabled thousands to free themselves from the cathartic habit. It may be the answer to your problem too . . . Send for your FREE copy right now. Just write your name and address plainly on a penny postcard and mail it to SERUTAN (Comm. Ex. 7).

* * * * *

What is needed is something to get at the cause of the trouble—something that will help strengthen the intestinal muscles and stimulate their natural, regular action. And that is exactly what SERUTAN is designed to do! * * * Thousands of grateful people say that SERUTAN has rid them of the laxative habit . . . that it has helped them win back youthful, healthful regularity, where everything else had failed (Comm. Ex. 22).

PAR. 4. Through the use of the representations quoted above, and many others of similar character purporting to describe the therapeutic properties of Serutan, respondents have represented, and now represent, directly and by implication, that Serutan is of substantial therapeutic value in restoring and maintaining natural elimination, that it stimulates and strengthens the digestive and eliminative organs and muscles and promotes normal and regular action on the part of such organs and muscles, that it constitutes a cure or remedy for constipation, and possesses substantial therapeutic value in the treatment of constipation.

PAR. 5. The product "Serutan" consists of equal parts of rice polishings and the epithelial tissue of psyllium seed. The rice polishings contain a small proportion of rice bran. The psyllium seed is that of the *Plantago Ovata* variety, and the portion intended to be used is the epithelial tissue,

but in fact small bits of the germ and endosperm of the seed are mixed with it. The epithelial tissue of the psyllium seed, when brought into contact with water, expands to 15 or 20 times its dry volume and forms a mucilaginous, jelly-like mass, and is the type of product commonly referred to as a hydrogel. The rice polishings included in Serutan are intended by the manufacturer to serve the purpose of preventing the hydrogel from becoming a too closely adhesive mass when expanded through the absorption of liquid. Serutan is sold to the public in dry form, made into small pellets about two millimeters in diameter by 4 millimeters in length, and the dosage recommended is approximately three teaspoonfuls per day. When taken as directed, Serutan acts as a mild irritant, bulk laxative and tends to bring about a temporary evacuation of the bowels. Its laxative action results from both its bulk and irritant properties. The bulk is provided primarily by the psyllium seed product which, after expanding through the absorption of liquid into a mucilaginous mass, retains the liquid absorbed and passes through the intestines in that form. A small portion of the indigestible residues of Serutan is broken down into volatile fatty acids which irritate the intestinal walls. The crude fibers contained in the rice polishings also have a direct irritant effect upon the intestinal walls. The bulk and irritant properties of Serutan thus tend to stimulate peristaltic action and result in bowel movement.

PAR. 6. (a) Constipation is usually a symptom of some other trouble and the proper method of treatment is to ascertain the cause, if possible, and correct it. Those cases of constipation where no organic lesion is detected are sometimes classified as functional, and may be due to various causes, including diet, poor habits, abuse of the digestive system, and some nervous conditions. Serutan does not constitute a cure or remedy for constipation, its therapeutic value being limited to the temporary relief afforded by its laxative action. Though a person suffering from constipation may secure temporary relief from the use of Serutan or some other laxative, if the cause of his constipation is not corrected, he will revert to a state of constipation when he ceases to take the laxative.

(b) Respondents' representation that Serutan has substantial therapeutic value in restoring and maintaining natural elimination is unwarranted. Normal elimination is a physiological process which takes place without the intervention of drugs, but if caused by anything other than normal foods or normal physiological processes is abnormal. Bowel movements induced through the taking of Serutan do not constitute natural or normal elimination.

(c) Respondents represent that Serutan stimulates and strengthens the digestive and eliminative organs and muscles. The digestive organs include the stomach, liver, gall bladder, and pancreas. The only therapeutic property possessed by Serutan is that it is a mild, irritant, bulk laxative which tends to stimulate peristaltic action by the intestines. It will not strengthen the digestive or eliminative organs or muscles or promote normal or regular action by them. Except for the tendency to stimulate peristaltic action by the intestines, it will not stimulate the digestive or eliminative organs or muscles.

(d) Serutan is not a cure or remedy for constipation and possesses no therapeutic value in the treatment of constipation, except that in its capacity as a laxative it may assist in the temporary evacuation of the intestinal tract.

PAR. 7. Respondents produced a number of medical expert witnesses

who testified generally as to the product "Serutan," and some of whom produced the results of studies made by them concerning Serutan. The Commission has given careful consideration to such testimony and other evidence. In the evaluation of the testimony of Dr. Harry Barowsky and his study entitled, "The Clinical and Roentgen Evaluation of the Effect of a Hemicellulose Product on Colonic Stasis in Gastro-intestinal Disease," substantial weight has been given to the testimony of Drs. L. J. Boyd and Thomas H. McGavack respecting the testimony of Dr. Barowsky and their inquiries concerning the studies testified to by Dr. Barowsky. Similarly, in considering and evaluating the testimony of Dr. Irwin W. Friedberg and his study entitled, "The Hydrogel Treatment of Colonic Stasis," consideration has been given to the stipulation concerning the testimony of Dr. Michael Schuman and the resolution adopted by the board of directors of the Jewish Memorial Hospital concerning Dr. Friedberg's work in connection with Serutan and the published reports thereof.

PAR. 8. The use by respondents of the false, deceptive, and misleading representations with respect to the product "Serutan," in the manner hereinabove 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 false and misleading representations are true, and as a result of such erroneous and mistaken belief the purchasing public is induced to, and does, purchase substantial quantities of such 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, the answers of respondents, 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, 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Healthaids, Inc., of New Jersey, a corporation, and Journal of Living Publishing Corporation, a corporation, their respective officers, representatives, agents, and employees, and Victor H. Lindlahr, an individual, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of Serutan, or any product of substantially similar composition or possessing similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

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

(a) Is a cure or remedy for constipation; will restore or maintain natural elimination; will promote normal or regular action by the digestive or eliminative organs or muscles; or has any therapeutic value in the treatment of constipation in excess of the temporary relief afforded by its laxative action.

(b) Will strengthen the digestive or eliminative organs or muscles.

(c) Will stimulate the digestive or eliminative organs or muscles; but this shall not be construed to prohibit representations that said product tends to stimulate peristaltic action by the intestines.

2. Disseminating or causing to be disseminated, by any means, any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said product, which advertisement contains any of the representations prohibited in paragraph 1 above.

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

HAWKEYE SALES, INC. AND TIM LAKE

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

Docket 4919. Complaint, Feb. 23, 1943—Decision, Jan. 18, 1945

Where a corporation and its sales manager, engaged in the manufacture and interstate sale and distribution of their "Blu-V-Spray," and "Jermite," medicinal preparations for poultry; through statements in advertisements or in letters, circulars, leaflets and by other means,—

- (a) Falsely represented that use of their said "Blu-V-Spray" assured germ-free poultry, of greater weight and higher quality; would eliminate the necessity or expediency of killing sick poultry or adopting other cautionary measures, and avoid the possibility of ruining an entire flock of poultry by reason of sickness; was a competent and effective treatment for colds and other respiratory troubles of poultry; and would save the ives of the poultry and insure poultry against hazards of severe weather conditions;
- (b) Falsely represented that use of their said "Jermite" improved the physical fitness of poultry to the extent that the maximum amount of feed would be consumed and the full benefit thereof obtained; that it acted as an appetizer and stimulator when used in poultry feed and would aid in the proper digestion thereof; and that the use thereof with 20 pounds of buttermilk would give the same feeding results as 35 or 40 pounds of buttermilk without "Jermite"; and
- (c) Falsely represented that the combined use of "Blu-V-Spray" and "Jermite" insured substantial benefits worth hundreds of times the cost;

With the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such false representations were true and thereby into the purchase of substantial quantities of their 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.

Before *Mr. Miles J. Furnas*, trial examiner.
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 Hawkeye Sales, Inc., a corporation, and Tim Lake, an individual, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Hawkeye Sales, Inc., is a corporation, organized, existing 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 615 Tenth Street, Des Moines, Iowa. Respondent, Tim Lake, is an individual, and acts as sales manager of the corporate respondent above

named, with his business address the same as that of said corporate respondent and, as sales manager of said corporation, dominates and controls the sales policies thereof and is responsible for its advertising program, including especially the preparation, use and dissemination of the advertising representations and statements hereinafter referred to.

PAR. 2. Respondents are now, and for more than three 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 medicinal preparation designed for spraying poultry, designated as Blu-V-Spray, and a medicinal preparation designed as a feed supplement for poultry, designated as Jermite.

Respondents cause said preparations, when sold, to be transported from their aforesaid place of business in the State of Iowa 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 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 respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said preparations designated as Blu-V-Spray and Jermite, 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 preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said preparations 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 and by advertisements in letters, circulars, leaflets and other media are the following:

As to Blu-V-Spray—

The small added expense of about $\frac{1}{20}$ th of 1% per poultry pound is regained many times in extra gain, higher quality and germ-free poultry.

Why not order out Blu-V-Spray and stop those gapers or the possibility of having gapers in your station.

Don't be "penny wise" and "pound foolish" by killing off the sick birds and possibly ruining the entire pack.

Blu-V-Spray * * * contains every essential ingredient necessary to cope with head colds and other respiratorial troubles.

This is the season when the weather changes over night. Why not prepare yourself by ordering our Blu-V-Spray today and use it regularly? Cold nights, warm days, and change in weather throws poultry off feed. Blu-V-Spray is not a miracle water and will not perform the impossible, but it will sure prevent unnecessary death loss. I really believe you can get better gains when the poultry is free from colds and other respiratorial troubles.

As to Jermite—

Like a human being, a chicken must be physically fit to look right and again Jermite

plays that important part of assisting the birds physically so that they can consume the maximum amount of feed and get the full benefit * * *.

* * * Without question you do need Jermite in the feed for that added appetizer, stimulator and helpful digestive action.

The use of buttermilk in your poultry station, of course, is not affecting your health nor the poultry's health but over-use is costing you extra money which is unnecessary and I do not believe you can get any better results through the use of 35 or 40 pounds of buttermilk without the Jermite than 20 pounds of milk plus one envelope of Jermite.

As to both Blu-V-Spray and Jermite—

The actual cost of using Jermite and Blu-V-Spray continuously by one of the large poultry packers in all of their houses averaged one one-hundredth (1/100) of 1¢ per poultry pound packed. I don't believe there is any insurance in the world written at that low cost and you must admit that Jermite and Blu-V-Spray together do produce substantial results which we know and have been proven by actual tests and are worth hundreds of times this cost.

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 that the use of the preparation Blu-V-Spray assures germ-free poultry of greater weight and higher quality; that said preparation will prevent the infestation of fowl with gape-worms and is a competent and effective treatment therefor; that its use will eliminate the necessity or expediency of killing sick poultry or adopting other cautionary measures and will avoid the possibility of ruining an entire flock of poultry by reason of sickness; that said preparation is a competent and effective treatment for colds and other respiratorial troubles in poultry; that its use will save the lives of poultry and constitutes an insurance of poultry against the hazards of severe weather conditions. That the use of the preparation Jermite improves the physical fitness of poultry to the extent that the maximum amount of feed will be consumed and the full benefit thereof obtained; that it acts as an appetizer and stimulator when used in poultry feed, will aid in the proper digestion of food and through the use of said product 20 pounds of buttermilk will give the same feeding results as 35 or 40 pounds when said product is not used, and substantial savings can thus be made in feeding costs. That the combined use of Blu-V-Spray and Jermite insures substantial beneficial results and are worth hundreds of times the cost.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false and misleading. In truth and in fact the use of the preparation Blu-V-Spray cannot assure germ-free poultry nor will its use assure poultry of greater weight or higher quality. Said preparation will not prevent infestation of fowl with gapeworms and is not a competent or effective treatment for gapeworms or the conditions caused thereby. Its use will not eliminate the necessity of killing sick poultry or the adoption of other cautionary measures in cases of sickness, and will not avoid the possibility of ruining an entire flock of poultry because of sickness. Said preparation is not a competent or effective treatment for colds and other respiratorial troubles in poultry. It is not an insurer of poultry against the hazards of severe weather conditions and cannot be depended upon to save the lives of poultry under such conditions. The use of the preparation Jermite will not substantially improve the physical fitness of poultry and will not improve the physical condition of poultry to the extent that the

minimum amount of food will be consumed and the full benefit obtained therefrom. Said product has not significant value as an appetizer, a stimulant or as an aid to proper digestion of food. The administration of Jermite in connection with 20 pounds of buttermilk will not give the same feeding results as 35 to 40 pounds of buttermilk when said product is not used and it cannot truthfully be stated that the use of said product will substantially reduce the amount of buttermilk necessary to produce the desired results nor result in substantial savings in feed costs. The combined use of Blu-V-Spray and Jermite cannot insure substantial beneficial results and it cannot truthfully be stated that any results obtained will be worth hundreds of times the cost or any number the times of the cost.

PAR. 6. The use by the respondents of the aforesaid false, deceptive and misleading statements and representations, disseminated as aforesaid, with respect to their said preparations, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and because of such mistaken and erroneous belief, to purchase substantial quantities of respondents' said preparations.

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 February 23, 1943, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced 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 and the answer thereto, testimony and other evidence, report of the trial examiner and exceptions thereto, and brief in support of the complaint (respondents not having filed brief and oral argument not having been requested); and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (a) Respondent, Hawkeye Sales, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 615 Tenth Street, Des Moines, Iowa.

(b) Respondent, Tim Lake, is an individual, and acts as sales manager of Hawkeye Sales, Inc., with his business address at 615 Tenth Street,

Des Moines, Iowa. In his capacity as sales manager of the corporate respondent he dominates and controls the sales policies thereof and is responsible for the preparation, use, and dissemination of the advertising representations hereinafter set forth.

PAR. 2. Respondents are now, and for more than three years last past have been, engaged in manufacturing and in the sale and distribution in commerce between and among various States of the United States of a medicinal preparation designed for spraying poultry designated as "Blu-V-Spray," and also a medicinal preparation designated as "Jermite" which is administered by mixing it in the feed or water given to poultry. Respondents cause said preparations, when sold, to be transported from their place of business in the State of Iowa to purchasers thereof at their points of location in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparations in commerce between and among various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business respondents have disseminated and now disseminate, and have caused and are now causing the dissemination of, false advertisements concerning their said preparations designated as "Blu-V-Spray" and "Jermite," 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 preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparations 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 above set forth by letters, circulars, leaflets, and other means, are the following:

Blu-V-Spray will penetrate into the membranes of the nasal passages and the respiratory tract destroying all disease germs that heretofore have caused head colds, gapes, and other respiratory troubles. The new Blu-V-Spray also has a high germicidal value and will penetrate the most minute cracks and crevices of the batteries either wood or steel and destroy certain disease germs that are often found in the batteries. * * * It should eliminate gapes, head colds, and other respiratory troubles in their entirety and when used in conjunction with Jermite, I am sure you will get the best results you have ever had (Comm. Ex. 5).

* * * * *

Last week's storm caught a good many houses unprepared to cope with conditions that existed. Results were heavy losses through gapes and colds. The boys that were prepared and had BLU-V-SPRAY on hand reduced this hazard to a minimum. * * * Cold nights, warm days, any change in weather, throws poultry off feed. BLU-V-SPRAY is not a miracle water and will not perform the impossible but it will sure prevent unnecessary death loss (Comm. Ex. 8).

* * * * *

I don't believe there is any insurance in the world written at that low a cost and you must admit that JERMITE and BLU-V-SPRAY together do produce substantial results which we know and have been proven by actual tests and are worth hundreds

of times this cost. * * * Trusting you will start today insuring your poultry at a cost of 1/100 of 1¢ per poultry pound by using JERMITE and BLU-V-SPRAY * * * (Comm. Ex. 10).

* * * * *

The small added expense of about 1/20 of 1¢ per poultry pound is regained many times in extra gains, higher quality and germ-free poultry. Don't be "PENNY-WISE AND POUND-FOOLISH" by killing out the sick birds and possibly ruining your entire pack. Order Jermite and Blu-V-Spray today * * * (Comm. Ex. 11).

* * * * *

I really believe that the present cost and set-up of the Jermite—Blu-V-Spray combination is so low that every house should use it, especially when you realize the extra gains, quality, and acceptable poultry this combination helps produce (Comm. Ex. 12).

* * * * *

Like a human being, a chicken must be physically fit to look right and again Jermite plays that important part of assisting the birds physically so they can consume the maximum amount of feed and get the full benefits which you know produces gain, bloom, and top grades. * * * Do you know that Blu-V-Spray costs as little as 10¢ per gallon and contains every essential ingredient necessary to cope with head colds and other respiratorial troubles (Comm. Ex. 15).

* * * * *

The use of buttermilk in your poultry station, of course, is not affecting your health nor the poultry's health but over use is costing you extra money which is unnecessary and I do not believe you can get any better results through the use of 35 or 40 pounds of buttermilk without the Jermite than 20 pounds of milk plus I envelope of Jermite. Your saving on the reduction of buttermilk would be from 10¢ to 40¢ per bag of feed fed (Comm. Ex. 17).

Why not order out Blu-V-Spray and stop those gapers or the possibilities of having gapers in your station (Comm. Ex. 18).

* * * * *

You definitely should spray and without question you do need Jermite in the feed for that added appetizer, stimulator, and helpful digestive action (Comm. Ex. 21).

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 that the use of the preparation Blu-V-Spray assures germ-free poultry of greater weight and higher quality; that its use will eliminate the necessity or expediency of killing sick poultry or adopting other cautionary measures, and will avoid the possibility of ruining an entire flock of poultry by reason of sickness; that said preparation is a competent and effective treatment for colds and other respiratory troubles of poultry; that its use will save the lives of the poultry and insure poultry against hazards of severe weather conditions; that the use of the preparation Jermite improves the physical fitness of poultry to the extent that the maximum amount of feed will be consumed and the full benefit thereof obtained; that it acts as an appetizer and stimulator when used in poultry feed and will aid in the proper digestion of feed; that the use of said product with 20 pounds of buttermilk will give the same feeding results as 35 or 40 pounds of buttermilk when Jermite is not used

with it; and that the combined use of Blu-V-Spray and Jermite insures substantial beneficial results worth hundreds of times the cost.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, the use of the preparation Blu-V-Spray does not assure germ-free poultry, nor will its use assure poultry of greater weight or higher quality. Its use will not eliminate the necessity for killing sick poultry or the adoption of other precautionary measures in case of sickness, and will not avoid the possibility of ruining an entire flock of poultry because of sickness. Said preparation is not a competent or effective treatment for colds, gapes, or other respiratory troubles in poultry. It is not an insurer of poultry against the hazards of severe weather conditions and cannot be depended upon to save the lives of poultry under such conditions. The use of the preparation Jermite will not improve the physical fitness of poultry, and will not improve the physical condition of poultry to the extent that the maximum amount of food will be consumed and the full benefit obtained therefrom. Said product has no significant value as an appetizer, a stimulant, or as an aid to the proper digestion of food. The administration of Jermite in connection with 20 pounds of buttermilk will not give the same feeding results as 35 to 40 pounds of buttermilk when Jermite is not used, and the use of said product will not reduce the amount of buttermilk necessary to produce the desired results, nor will its use result in savings in feed costs. The combined use of Blu-V-Spray and Jermite does not insure substantial beneficial results, nor will the use of these preparations produce results worth hundreds of times the cost or any number of times the cost of such preparations.

PAR. 6. The use by respondents of the aforesaid false, deceptive, and misleading 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 such false statements and representations are true and, because of such mistaken and erroneous belief, into the purchase of substantial quantities of respondents' said preparations.

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

It is ordered, That respondent, Hawkeye Sales, Inc., a corporation, its officers, representatives, agents, and employees, and respondent, Tim Lake, an individual, his representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of Blu-V-Spray or Jermite, or any products 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 through inference:

(a) That the use of Blu-V-Spray will result in germ-free poultry or poultry of greater weight or higher quality.

(b) That the use of Blu-V-Spray will make the killing of sick poultry or the adoption of other precautions unnecessary in cases of sickness or will prevent sickness ruining an entire flock.

(c) That Blu-V-Spray is a competent or effective treatment for colds, gapes, or other respiratory troubles in poultry.

(d) That the use of Blu-V-Spray will prevent sickness or loss of life of poultry due to weather conditions.

(e) That the use of Jermite will substantially improve the physical condition of poultry or will enable poultry to consume the maximum amount of food and obtain full benefit therefrom.

(f) That Jermite will materially improve or stimulate the appetite of poultry or aid poultry in the proper digestion of food.

(g) That the addition of Jermite to buttermilk fed to poultry will materially reduce the amount of buttermilk required or will thus result in any substantial saving in feed costs.

(h) That the concurrent use of Blu-V-Spray and Jermite will produce substantial beneficial results, or results worth hundreds of times the cost or any number of times the cost.

2. Disseminating or causing to be disseminated, by any means, any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of Blu-V-Spray or Jermite, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

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

DODGE, INCORPORATED

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5185. Complaint, June 24, 1944—Decision, Jan. 19, 1945*

Where a corporation engaged in the interstate sale and distribution of a New Testament and a Catholic prayer book, designated as "Shields of Faith" and "Armored Bibles", with a steel plate over the front cover, intended principally for use by members of the armed forces, size of which, $2\frac{3}{4}$ inch by $4\frac{1}{2}$ inch, would permit their being carried in the breast pocket of a uniform; by means of circulars, advertisements in magazines and other advertising literature, directly and by implication—

Represented that such "Shields of Faith" and "Armored Bibles" were capable of deflecting bullets and that the steel covering afforded protection from wounds and might be the means of saving the lives of soldiers, through such typical statements as "SHIELDS OF FAITH ARMORED BIBLES Capable of deflecting bullets, shrapnel and bayonet. Fits the uniform breast pocket" (accompanied by a picture of a book bearing the inscription "May the Lord Be With You"), and "COVERED WITH HEAVY STEEL PLATE—SUNRAY FINISH";

The facts being said books were not capable of deflecting bullets except in such isolated instances as where the steel cover might be struck from an extreme angle, or the velocity of the projectile was substantially spent before striking the book; in latter event any similar book without a steel cover would accomplish the same result in most cases; and, rather than affording any substantial protection, the steel cover created an additional hazard in that the impact thereon of a bullet passing through would distort latter so as to cause a more serious and painful wound than would the case without it;

With capacity and tendency to mislead and deceive a substantial number of the purchasing public, including millions concerned for relatives and friends in the armed services, into the erroneous belief that said representations and implications were true, whereby many purchased the same:

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. Andrew B. Duvall*, trial examiner.

Mr. William L. Pencke for the Commission.

Lord, Bissell & Kadyk, 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 Dodge, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Dodge, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 706 N. Hudson Avenue,

in the city of Chicago and State of Illinois. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of religious books, including the New Testament and a Catholic Prayer Book. Said books are approximately two and three-quarter inches by four and one-half inches in size, with the front cover bearing an additional cover of steel. Respondent sells said books to retailers situated in the various States of the United States causing them to be transported from its said place of business in the State of Illinois to purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia. Respondent maintains, and at all times herein mentioned has maintained a course of trade in said books in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business in commerce, as aforesaid, and for the purpose of inducing its prospective retailer customers, as well as members of the purchasing public to purchase said books, respondent, by means of circulars, advertisements inserted in magazines having a national circulation, and other advertising literature, has made and is making false, deceptive and misleading statements and representations with respect to the amount of protection afforded by carrying one of its armored or steel-covered books, described by respondent as "Shields of Faith" and "Armored Bible" and sold and distributed in commerce as aforesaid, while serving with the armed forces. Among and typical of said statements and representations used and caused to be used by said respondent are the following:

Shields of Faith	Picture of book with the inscription
Armored Bibles	"May the Lord Be With You"
Capable of deflecting bullets, Shrapnel and bayonet	Actual Size
Fits the Uniform Breast Pocket	

COVERED WITH HEAVY STEEL PLATE—SUNRAY FINISH

PAR. 3. Through the use of the aforesaid statements and representations and others of similar import and meaning not herein set out, the respondent represents and implies that its so-called "Shields of Faith" or "Armored Bibles" are capable of deflecting bullets, shrapnel and bayonet thrusts; that the steel covering on said books affords protection from wounds and may be the means of saving the lives of soldiers; that said books fit the breast pocket of the uniform and thereby protect the heart of the soldier.

PAR. 4. In truth and in fact said representations, statements and implications made and disseminated by the respondent as aforesaid, are false, deceptive and misleading. While there may be isolated instances in which said steel cover may deflect a bullet striking the same from an extreme angle, respondent's said steel-covered books will not physically protect the person carrying one of them, nor are they capable of deflecting bullets, shrapnel or bayonets. Said armored books do not fit the pocket

of the uniform in the sense that they are approximately of the size of such pockets, but on the contrary, they are much smaller than the breast pocket of the uniform and neither protect nor fit over the heart of the wearer.

The metal cover of respondent's said "armored" books would neither stop nor deflect a bullet, regardless of whether such bullet is fired from an automatic pistol, revolver, rifle or machine gun, unless the bullet is a "spent" bullet by reason of having lost its velocity and, in such event, the book itself, without the metal cover, would be sufficient to prevent the bullet from entering the human body. Moreover, said metal cover, instead of being a protection, affords an additional hazard for the reason that a bullet passing through said cover will be distorted because of the impact on the metal and, upon entering the body, will cause a much more serious and painful wound than if the metal cover had not been present. While it may be true that some pieces of shrapnel striking a man may be deflected by said metal cover, any book of approximately the same size and thickness of the books sold by respondent would give the same protection against such shrapnel. In the case of rifle bullets said cover would afford no protection whatever for the reason that the rifle bullets used in modern warfare would readily penetrate steel covers several times the thickness of respondent's metal cover. With respect to the deflection of bayonet thrusts, respondent's metal cover would not deflect a blow squarely struck upon it, but if a soldier were struck with a bayonet at an angle, said cover would merely deflect the blow in such a manner as to cause a more severe wound.

PAR. 5. There are presently in the United States millions of citizens who have relatives and friends in the armed services, many of whom are engaged in active combat, with resulting death and casualties in action. The concern and anxiety of those citizens whose friends and relatives are so engaged in active combat is very great and they will readily seize upon any opportunity or means whereby in any manner whatever the lives of such members of the armed forces may be protected or whereby the chances for injuries and wounds may be lessened. In making the statements and representations as hereinabove set forth, respondent thus abuses and betrays the anxiety and confidence of such citizens by urging them to buy said armored books.

PAR. 6. The use of the said exaggerated, misleading and deceptive statements and representations, as aforesaid, has had and now has the tendency and capacity to, and does mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said representations and implications are true. As a result of such erroneous and mistaken beliefs, many members of the purchasing public have purchased a substantial number of respondent's said metal-covered testaments.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 24, 1944, issued and subsequently served its complaint in this proceeding upon respondent, Dodge, Incor-

porated, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter, at a hearing before an examiner of the Commission theretofore duly designated by it, certain facts were stipulated into the record, certain exhibits admitted into evidence, and pursuant to agreement there made other facts were later stipulated into the record. A report by the trial examiner, the filing of briefs, and oral argument were waived. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and the stipulated facts and other evidence; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Dodge, Incorporated, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 706 North Hudson Avenue, Chicago, Ill. For approximately a year preceding the issuance and until the service of the complaint herein the respondent was engaged in the sale and distribution of certain religious books; namely, a New Testament and a Catholic Prayer Book. These books were designated as "Shields of Faith" and "Armored Bibles" and were approximately $2\frac{3}{4}$ inches by $4\frac{1}{2}$ inches in size, with a steel plate over the front cover of each.

PAR. 2. In the course and conduct of its aforesaid business, respondent caused said books, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof at their various points of location in States other than the State of Illinois and in the District of Columbia. Respondent thus maintained a course of trade in said products in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. As a means of promoting the sale of its said books to retail dealers and to members of the purchasing public, respondent, by means of circulars, advertisements inserted in magazines, and other advertising literature, made deceptive and misleading statements and representations concerning the physical protection afforded by carrying one of its steel-covered New Testaments or Catholic Prayer Books. Said books were principally intended for use by members of the armed forces of the United States, and were of a size that would permit their being carried in the breast pocket of a uniform. Typical of the statements and representations used by said respondent is the following:

SHIELDS OF FAITH ARMORED BIBLES

Capable of deflecting bullets,
shrapnel and bayonet

Fits the uniform
breast pocket

(Picture of
book bearing
inscription,
"May the Lord
Be With You.")

COVERED WITH HEAVY STEEL PLATE—SUNRAY FINISH

PAR. 4. Through the use of the aforesaid statements and representations, respondent represents, directly and by implication, that its so-called "Shields of Faith" and "Armored Bibles" are capable of deflecting bullets and that the steel covering affords protection from wounds and may be the means of saving the lives of soldiers. In truth and in fact, said representations, statements, and implications are false, deceptive, and misleading. The steel-covered religious books sold and distributed by respondent are not capable of deflecting bullets except in such isolated instances where the steel cover may be struck from an extreme angle or the velocity of the projectile is substantially spent before striking the book, and in the latter event any similar book without a steel cover would accomplish the same result in most cases. A Colt 45-caliber pistol using service type ammunition, even when fired from an angle of 45 degrees to the face of said books, will penetrate the steel cover, the book, and some three inches of wood in addition. The velocity of the bullet from the automatic pistol is approximately 800 feet per second, whereas many rifles and machine guns used in warfare have bullet velocities as high as 2,700 to 3,000 feet per second, and these projectiles would penetrate respondent's steel-covered religious books far more readily and from a more acute angle than a lower-velocity pistol bullet. Rather than affording any substantial protection, the steel cover on respondent's books creates an additional hazard for the reason that a bullet passing through the cover will be distorted by its impact on the metal and upon thereafter entering the body will cause a more serious and painful wound than if it struck the body before being flattened or distorted.

PAR. 5. There are in the United States millions of citizens who have relatives and friends in the armed services, many of whom are engaged in active combat, with resulting deaths and casualties in action. The concern and anxiety of those citizens whose friends and relatives are so engaged is very great and the use of the aforesaid exaggerated, misleading, and deceptive statements and representations by respondent has had the capacity and tendency to mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said representations and implications are true, and as a result of such erroneous and mistaken beliefs many members of the purchasing public have purchased respondent's metal-covered religious books.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, certain facts and other evidence stipulated into the record at a hearing before an examiner of the Commission theretofore duly designated by it, and other facts later stipulated by counsel (report of the trial examiner, the filing of briefs, and oral argument having been waived), and the Commission having made its findings as to the facts and its conclusion that the respondent in this proceeding has violated the provisions of the Federal Trade Commission Act:

Order

40 F. T. C.

It is ordered, That respondent, Dodge, Incorporated, 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 metal-covered books in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that said books will stop or deflect bullets or similar projectiles or will otherwise afford any substantial protection from such projectiles.

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

Order

IN THE MATTER OF
IMPERIAL CANDY COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 5046. Order, January 22, 1945

Modified order in proceeding in question, in which original order issued on November 29, 1944, 39 F. T. C. 459, requiring respondent, its officers, etc., in connection with the offering for sale, etc., of peanuts or other merchandise, to cease and desist from selling said peanuts, etc., through use of lottery schemes, punch boards, push cards, Whirling Derbies, etc., as in said order below set forth.

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

Skeel, McKelvy, Henke, Evenson & Uhlmann, of Seattle, Wash., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of 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 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, Imperial Candy 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 peanuts or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing peanuts or any 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 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.

2. Supplying to or placing in the hands of others punch boards, push or pull cards, Whirling Derbies, or other lottery devices, either with assortments of peanuts or other merchandise or separately, which said punch boards, push or pull cards, Whirling Derbies, or other lottery devices are to be used or may be used in selling or distributing such peanuts or other merchandise to the public.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

IN THE MATTER OF

PHILLIP BARTELL TRADING AS THE EN-EX COMPANY
AND THE EN-EX DISTRIBUTING COMPANY

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

Docket 4766. Complaint, May 28, 1942—Decision, Jan. 23, 1945

Where an individual engaged in the interstate sale and distribution of a medicinal preparation which he designated as "En-Ex"; through advertisements in newspapers and other advertising literature—

- (a) Represented that said "En-Ex" was a cure or remedy for psoriasis, which would rid the skin and scalp of blotches, lesions, eruptions and pimples resulting therefrom; the facts being that no cure or remedy for psoriasis is known to the medical profession; the maximum benefit that might be obtained by the use of said "En-Ex" is that it might remove or assist in the removal of scales from psoriatic lesions, though lesions might later return at the same or other locations; and, while he stated in advertising material sent with purchases of his preparation that there is no known cure for psoriasis and that his preparation is not a cure for any skin disease, said statements reached members of the public only after they had responded to advertisements such as those set out and had purchased his preparation;
- (b) Falsely represented that said preparation was a cure or remedy and a competent and effective treatment for dandruff, which would prevent falling hair; the facts being that at most it afforded no more than temporary relief from dandruff and might aggravate the condition;
- (c) Represented that it was safe and harmless and might be used without danger of ill effects; the facts being it would, in many cases, seriously irritate the skin, and might result in secondary infections; it was particularly irritating to mucous membrane; and if it came in contact with the eyes might cause conjunctivitis; and
- (d) Failed to reveal facts material in the light of said representations and with respect to the consequences which might result from the use of their preparation under prescribed or usual conditions, and that, due to said product's irritant qualities, care should be exercised in applying it to the skin and its use discontinued if irritation resulted, and it should not be allowed to come into contact with the eyes or with any mucous membrane;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby induce 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. J. Earl Cox*, trial examiner.

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 Phillip Bartell, an individual, trading as The En-Ex Company, and The En-Ex Distributing Company,

respectively, 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, Phillip Bartell, is an individual, trading as The En-Ex Company, and The En-Ex Distributing Company, respectively, having his principal office and place of business at 614 Society for Savings Building, in the city of Cleveland, Ohio.

PAR. 2. Respondent is now and for more than two years last past has been engaged in the business of selling and distributing a certain medicinal preparation designated as "En-Ex."

In the course and conduct of his business, respondent causes his said product when sold by him, to be transported from his place of business in the State of Ohio to the purchasers thereof, at their respective points of location in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said product in commerce 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, the respondent has disseminated and is now disseminating, and has caused, and is now causing the dissemination of, false advertisements concerning his said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning his said product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers, and by circulars, pamphlets and other advertising literature, are the following:

THIRTY DAY "CHART"

DIRECTIONS for application of "En-EX" to remove eruptions of psoriasis and other skin eruptions * * * follow this and you can always have a clean skin.

PSORIASIS EN-EX clears skin and scalp of blotches, lesions, eruptions, pimples and dandruff, or your money back within two weeks.

BEAT psoriasis at no risk.

FALLING HAIR AND DANDRUFF

Repeat this process after a week, then two weeks later, and then about once every three weeks or month. You should no longer be bothered with any hair falling out, or any Dandruff-lint appearing on your clothes.

PAR. 4. Through the use of statements and representations hereinabove set forth and others similar thereto not specifically set out herein, including advertisements in the form of testimonials, all of which purport to be descriptive of the remedial and therapeutic properties of respondent's preparation, respondent, directly or by implication, represents that said

preparation "En-Ex" is a cure or remedy for and constitutes a competent and effective treatment of psoriasis; that it will rid the skin and scalp of blotches, lesions, eruptions, pimples and dandruff resulting from psoriasis; that the use of said preparation will produce a clean skin in cases of persons suffering from psoriasis; that said preparation is a competent and effective treatment for dandruff and will prevent falling hair, and that said preparation is safe and harmless and may be used without danger of ill effects.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparation is not a cure or remedy for and does not constitute a competent and effective treatment of psoriasis. It will not produce a clear skin or rid the skin or scalp of blotches, lesions, eruptions, pimples and dandruff in cases of persons suffering from psoriasis, and has no therapeutic value in the treatment of psoriasis or the external manifestations thereof in excess of affording temporary relief from itching and assisting in the removal of scales from the skin. Said preparation will not prevent falling hair and has no therapeutic value in the treatment of dandruff in excess of assisting in the removal of dandruff scales. It is not safe and harmless since, when used as directed or under such conditions as are customary and usual, it is strongly irritating to the skin and particularly irritating to the eyes and other mucous membrane and skin which is already irritated.

PAR. 6. The advertisements disseminated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations or material with respect to the consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary or usual. In truth and in fact, said preparation is strongly irritating to the skin and its use will result in definite injury to the superficial layers of the skin. Furthermore, because of its irritating qualities, said preparation should never be allowed to come into contact with the eyes or any other mucous membrane of the body and should not be used on skin which is already irritated.

PAR. 7. The use by the respondent of the foregoing false, misleading and deceptive statements and representations 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 and representations are true, and to induce a substantial portion of the purchasing public to purchase substantial quantities of respondent's said preparation because of such erroneous and mistaken belief engendered as above set forth.

PAR. 8. The aforesaid acts and practices of respondent, as alleged herein, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce, within the meaning and intent 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 28, 1942, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondent's answer, 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 the complaint, answer, 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, Phillip Bartell, is an individual, trading as En-Ex Company and En-Ex Distributing Company and having his principal office and place of business in the Society for Savings Building, Cleveland, Ohio. He is now, and for a number of years last past has been, engaged in the sale and distribution of a medicinal preparation designated as "En-Ex."

PAR. 2. In the course and conduct of his said business, respondent causes his said medicinal preparation, when sold, to be transported from his place of business in Cleveland, Ohio, to purchasers thereof at their respective points of location in various other States of the United States, and respondent maintains, and has maintained, a course of trade in said preparation in commerce among and between various States of the United States.

PAR. 3. In carrying on his business as aforesaid, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his 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 his said medicinal preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said medicinal 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 above set forth, by advertisements inserted in newspapers and by other advertising literature, are the following:

PSORIASIS

EN-EX clears skin and scalp of blotches, lesions, eruptions, pimples and dandruff, or your money back within two weeks (Comm. Ex. 10).

* * * * *

PSORIASIS

Quit hiding your skin. "EN-EX" clears skin and scalp of eruptions, blotches, or money back within one month. * * * BEAT Psoriasis at no risk (Comm. Ex. 11).

* * * * *

Findings

40 F. T. C.

PSORIASIS

ERUPTIONS DISAPPEAR when you apply "EN-EX" (liquid-externally) following our DIRECTIONS—"CHART," * * *. You see them FADE day by day or MONEY BACK in 30 days. Discouraged amazed, happy, send us unsolicited interesting Testimonials. Sent FREE.

\$1.00	* * *	ONE BOTTLE ENOUGH
BOTTLE	* * *	IN MANY CASES

(Comm. Ex. 19).

* * * * *

PSORIASIS SUFFERERS

GOOD NEWS: Our exclusively NEW METHODS of EXTERNAL APPLICATION of "EN-EX" makes it possible for you to have a NORMAL APPEARING SKIN! * * *. \$1.00 Bottle Enough in many cases (Comm. Ex. 21).

* * * * *

FALLING HAIR AND DANDRUFF

4 Repeat this process after a week, then two weeks later, and then about once every three weeks or month. You should no longer be bothered with any hair falling out, or any Dandruff-lint appearing on your clothing.

(a) After a half dozen applications along this routine, it will be necessary to apply "EN-EX" only once in about six months, to keep your scalp in good condition (Comm. Ex. 5).

PAR. 4. By means of the above statements and representations, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial and therapeutic properties of respondent's preparation, respondent represents, directly or by implication, that "En-Ex" is a cure or remedy for psoriasis, that it will rid the skin and scalp of blotches, lesions, eruptions, and pimples resulting from psoriasis, that it is a cure or remedy and a competent and effective treatment for dandruff and will prevent falling hair, and that it is safe and harmless and may be used without danger of ill effects.

PAR. 5. (a) In truth and in fact respondent's preparation is not a cure or remedy for psoriasis. There is no cure or remedy for this disease known to the medical profession. The external manifestations of psoriasis tend to follow a wave-like pattern of up-and-down trends and the lesions or eruptions which have appeared will sometimes disappear without any treatment whatever. Typically, the lesions of psoriasis appear on the elbows, knees, and scalp, but may appear anywhere on the body and may substantially cover the body. There are numerous types of psoriasis but the typical lesion is a reddened surface of the skin covered with silvery scales. In some cases the lesions or eruptions are accompanied by itching. Various treatments are used for the purpose of relieving the external manifestations of psoriasis and in some types of psoriasis the external manifestations respond better to one treatment than to another. The maximum benefit that may be obtained by the use of respondent's product is that it may remove or assist in the removal of scales from psoriatic lesions, and if more scales do not reappear on such lesions the reddened skin at those points will in course of time become normal in appearance, though lesions

may later return at the same or some other locations. Respondent states in his advertising pamphlets, circulars, and other material sent to members of the public with their purchases of his preparation that there is no known cure for psoriasis and that his preparation is not a cure for any skin disease. These statements, however, reach members of the public only after they have responded to advertisements such as those heretofore set out and have purchased respondent's preparation. Respondent's preparation consists of approximately 20 percent coal tar, 10 percent soap bark, and 70 percent isopropyl alcohol. Occasionally a small quantity of methyl salicylate is added. This formula corresponds rather closely to the formula for *liquor picis carbonis* appearing in the "National Formulary," except for the presence of any methyl salicylate and the fact that respondent uses isopropyl alcohol instead of ethyl alcohol. Coal tar is one of the accepted treatments for psoriatic lesions but is not as widely used by dermatologists as certain other treatments, and when used is more generally used in an ointment form than in an alcohol solution, because alcohol tends to irritate psoriatic lesions.

(b) Respondent's product is not a cure or remedy for dandruff or falling hair. It would have no tendency to prevent falling hair. In the case of dandruff, it might in some cases be helpful as a temporary measure and in others might aggravate the condition, and at most affords no more than temporary relief.

(c) Respondent's preparation is not safe and harmless. If it comes in contact with normal skin surrounding a psoriatic lesion it will, in many cases, seriously irritate the skin, causing redness, inflammation, or weeping, and possibly result in secondary infections. It is particularly irritating to the eyes or any mucous membrane, and if it comes in contact with the eyes may result in conjunctivitis.

PAR. 6. The advertisements disseminated by respondent, 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 the consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual. Because of the irritant qualities of said preparation, as set out above, care should be exercised in applying it to the skin and its use discontinued if irritation results, and it should not be allowed to come into contact with the eyes or with any mucous membrane of the body.

PAR. 7. The use by respondent of the false, misleading, and deceptive statements and representations disseminated as aforesaid has had, and now has, the tendency and capacity to mislead 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 such public to purchase respondent's said preparation because of such erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence in support of and in opposition to the allegations of 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 (respondent not having filed brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Phillip Bartell, an individual, trading as En-Ex Company or En-Ex Distributing 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 "En-Ex," or any preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from, directly or indirectly:

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

(a) That said preparation constitutes a cure or remedy for psoriasis; or will cause eruptions, blotches, or other psoriatic lesions to disappear permanently or contribute more to their disappearance than to remove or assist in the removal of the scales therefrom.

(b) That said preparation is a cure or remedy for or will prevent falling hair.

(c) That said preparation is a cure or remedy for or has therapeutic value in the treatment of dandruff in excess of affording temporary relief.

2. Disseminating or causing to be disseminated, by any means, any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which fails to reveal that said preparation should not be allowed to come into contact with the eyes or any mucous membrane of the body and that if irritation results from its use on the skin its use should be discontinued; 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.

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.

Syllabus

IN THE MATTER OF

ELI EGHAN, TRADING UNDER HIS OWN NAME AND
ALSO AS OX'O-GAS COMPANY

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

Docket 5040. Complaint, Sept. 3, 1943—Decision, Jan. 23, 1945

Where an individual engaged in interstate sale and distribution of a gasoline additive, or a solution designed to be mixed with gasolines for use as a motor fuel, under designation "Ox'o," and of a gasoline to which said Ox'o had been added, designated "Ox'o-Gas"; through statements on labels attached to the containers of said Ox'o and through advertisements thereof in newspapers and circulars and other advertising material, directly or by implication—

- (a) Falsely represented that his products greatly increased the combustion efficiency and power of an internal combustion engine and the mileage supplied thereby, and provided quicker starting and faster pickup; the facts being that laboratory tests by the National Bureau of Standards, and the testimony of the expert who supervised them established that his said products were wholly incapable of accomplishing said results; and
- (b) Falsely represented that his said "Ox'o" solution had been approved by major oil companies for blending with their gasoline; the facts being that while certain companies had stated to him that their examination of the product did not disclose any detrimental effects resulting from its use, none of the major oil companies had approved the solution;

With the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the value, properties, and efficiency of his products, and thereby to cause it to purchase substantial quantities thereof:

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

As respects the validity of claims to the effect that a certain gasoline additive greatly increased the combustion efficiency and power of an internal combustion engine and the mileage supplied thereby and provided quicker starting and faster pickup: Evidence of certain road tests with automobiles and motor busses made by the seller's representative and by purchasers of the product—results of which, if acceptable, would indicate a product of substantial merit—was not sufficient to meet evidence consisting of laboratory tests made by the National Bureau of Standards with an automobile engine, electro-dynamometer and other necessary equipment, and testimony of the expert who conducted them, since said road tests, unlike the laboratory tests, do not permit adequate control or allowances for a great number of variables including such factors as engine temperatures, wind velocity and direction, effects of the road (surface conditions, curves and grades) and traffic density or control.

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

Mr. Joseph Callaway for the Commission.

Mr. James P. Kohler, *Mr. James P. Kohler, Jr.*, *Mr. Joseph H. Denmark* and *Mr. John Hoxie*, of New York City, for respondent.

Complaint

40 F. T. C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Eli Eghan, trading under his own name and also as Ox'o-Gas 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, Eli Eghan, is an individual, doing business under his own name and also as Ox'o-Gas Company with his principal place of business at No. 3 West Columbia Avenue, Palisades Park, N. J.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of a solution for mixing or blending with gasoline, when the gasoline is to be used as a motor fuel, which solution is designated by him as Ox'o. During the time aforementioned the respondent has also engaged in the sale and distribution of gasoline mixed with said solution, which is designated by him as Ox'o-Gas.

In the course and conduct of his business, the respondent causes said products when sold to be transported from his place of business in the State of New Jersey to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, and for the purpose of inducing the purchase of his said products in commerce, respondent has made, and is now making certain extravagant, false, deceptive and misleading statements and representations regarding the value and efficacy and effect of his said products, by means of advertisements inserted in newspapers, circulars and advertising blotters, circulated generally among the purchasing public, and in various other ways. Typical representations are as follows:

GASOLINE IS AMMUNITION

Use it Wisely with Ox'o

OX'O Saves Gas For DEFENSE and VICTORY

Saves MONEY for DEFENSE BONDS

Per Official Tests by State and city of New York, Hudson County Municipalities, Contacted Automotive Engineers, and Oil Concerns.

OX'O added to ANY gasoline, Increases Power and Mileage up to 33%, Eliminates Carbon and Knock, Saves Wasted (unburned) Gasolines.

Join thousands of motorists, truckers and buses using OX'O and realizing SAVINGS AND EFFICIENCY.

To convince yourself, try a tankful of OX'O BLEND GAS or add OX'O to ANY gasoline in your tank and let 4 gallons of OX'O blend gas give you the mileage of 5 gallons of untreated gasoline.

Complaint

OX'O-GAS

Will keep your motor free from carbon and reduce your gasoline cost.
An Auxiliary Adjunct Gasoline Fuel that when blended with ANY gasoline

Increases	Eliminates	Renders	Substantially
Combustion	Carbon	Smoother	Reduces
Efficiency	Knock	Operation	Noxious
Power and	Cleans	Quicker Start	Gases and
Mileage	Sticky Valves	Faster Pickup	Fumes
Up to 33%			

In any Internal Combustion Engine, and keeps a Motor in Perfect Condition.
Approved by Major Oil Companies to blend their gasolines.

OX'O-GAS FOR MAXIMUM POWER, BETTER PERFORMANCE, NO CARBON AND GREATER ECONOMY.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import and meaning not specifically set out herein, the respondent has represented and is now representing among other things, that Ox'o added to any gasoline or Ox'o-Gas, when used in internal combustion engines, increases combustion efficiency, power and mileage up to 33%; that it eliminates carbon knocks; that it cleans sticky valves; that it furnishes smoother operation, quicker starting and faster pickup; that it substantially reduces noxious gases and fumes; that it keeps a motor in perfect condition; that official tests by the State of New York and different municipalities, automotive engineers and oil concerns have proven that the use of Ox'o and Ox'o-Gas by motorists saves gas and money; that major oil companies have approved the blending or mixing of Ox'o with their gasolines; that thousands of motorists, truckers and buses are realizing savings and obtaining better motor efficiency from the use of Ox'o and Ox'o-Gas.

PAR. 5. The foregoing representations are extravagant, false, deceptive and misleading in the following respects:

The addition of Ox'o to gasoline or the use of Ox'o-Gas in internal combustion engines does not increase combustion efficiency of the engine; does not increase engine power or mileage; does not eliminate carbon knock, nor does it have any appreciable effect thereon; does not clean sticky valves; does not furnish smoother operation or quicker starting or faster pickup; does not reduce noxious gases or fumes. Its effect on the motor is not different from ordinary gasoline. The purported tests referred to in the advertising were neither accurate nor conclusive. The use of Ox'o or Ox'o-Gas by motorists has not and will not save either gas or money. Major oil companies have not approved Ox'o to blend with their gasolines.

PAR. 6. The use by the respondent of the foregoing extravagant, false, deceptive and misleading statements and representations, disseminated as aforesaid, in connection with the offering for sale and sale of his products in commerce has had and now has the capacity and the 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 such products in commerce because of such erroneous and mistaken belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 3, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Eli Eghan, an individual trading under his own name and also as Ox'o-Gas 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 by the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Eli Eghan, is an individual, doing business under his own name and also under the trade name Ox'o-Gas Company, with his principal place of business located at No. 3, West Columbia Avenue, Palisades Park, N. J. Respondent is now, and for a number of years last past has been, engaged in the sale and distribution of a solution known as a gasoline additive, that is, a solution designed to be mixed or blended with gasoline which is to be used as a motor fuel. The solution is designated by respondent as "Ox'o." Respondent also sells gasoline to which the solution Ox'o has been added, such gasoline being designated as "Ox'o-Gas."

PAR. 2. Respondent causes and has caused his products, when sold, to be transported from his 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. Respondent maintains and has maintained a course of trade in his products in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his products, respondent has made various statements with respect to the value, properties and efficiency of the products, such statements being made by means of labels attached to the containers in which the solution Ox'o is packaged and sold, and also by means of advertisements inserted in newspapers and circulars and other advertising material distributed among prospective purchasers.

Through the use of these statements respondent has represented, directly or by implication, that his products greatly increase the combustion

efficiency and power of an internal combustion engine and the mileage supplied by the engine; that the products provide quicker starting and faster pickup; and that the solution Ox'o has been approved by major oil companies for blending or mixing with their gasolines.

PAR. 4. In August, 1941, respondent's solution was examined and tested by the National Bureau of Standards, such action being taken at the request of the Coordinator of Petroleum for National Defense, submitted through the Bureau of Mines, Department of the Interior. The tests were laboratory tests made with an automobile engine, an electric dynamometer and other necessary equipment, and appear to have been conducted with care and thoroughness. The report of the Bureau of Standards showing the results of these tests forms a part of the record in the present proceeding, together with the testimony of the Bureau of Standards expert who supervised the tests. This evidence establishes that respondent's products are wholly incapable of increasing the combustion efficiency or power of an internal combustion engine or the mileage supplied by the engine. They are likewise incapable of providing quicker starting or faster pickup.

Nor has the solution been approved by major oil companies, although certain companies have stated to respondent that their examination of the product did not disclose that any detrimental effects resulted from its use.

There was introduced on behalf of respondent evidence with respect to certain tests of the solution which had been made by respondent's representative, and also by purchasers of the product. If acceptable, the results of these tests would indicate that the product possesses substantial merit. The tests, however, appear not to have been made in a scientific manner, and their accuracy is open to serious question. The tests were not laboratory tests made under proper controls, as were the Bureau of Standards tests, but were "road tests"—that is, tests made by using respondent's solution in automobiles and motor buses which were in operation on the streets and highways. In the opinion of the Commission, such tests are not comparable as to accuracy or dependability with the laboratory tests made by the Bureau of Standards. As pointed out in the Bureau's report:

* * * The reason for this is quite obvious. In the laboratory, one factor can be varied at a time with all other test conditions under adequate control. Results on the road are affected by a great number of variables which can not be completely controlled or allowed for. Among these factors are: engine temperatures, effects of wind velocity and direction, effects of the road (surface condition, curves and grades), and effects of traffic density or traffic control. Consequently successive road tests commonly will show appreciable differences in mileage per gallon of fuel when the same fuel is used and every effort is made to duplicate the test run. (Com. Ex. No. 8-E)

After consideration of all of the evidences introduced by respondent, the Commission is of the opinion that it is insufficient to meet the evidence introduced in support of the complaint.

PAR. 5. The Commission therefore finds that the representations made by respondent with respect to his products, as set forth in paragraph 3 hereof, are 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, properties, and efficiency of respondent's products, and the tendency and capacity to cause such portion of the public to purchase substantial

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

It is ordered, That the respondent, Eli Eghan, individually, and trading as Ox'o-Gas 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 solution designated "Ox'o" and respondent's gasoline designated "Ox'o-Gas," or any other products 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 representing, directly or by implication:

1. That respondent's products increase the combustion efficiency or power of an internal combustion engine or the mileage supplied by such engine.

2. That said products provide quicker starting or faster pickup.

3. That said product Ox'o has been approved by major oil companies.

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

CLAIROL, INC. AND JOAN GELB, LEON A. SPILO, AND
MORRIS GELB

MODIFIED CEASE AND DESIST ORDER

Docket 3615. Order, January 25, 1945

Modified order, pursuant to provisions of Section 5 (i) of the Federal Trade Commission Act, and in accordance with decree below referred to, in proceeding in question, in which original order issued on October 8, 1941, 33 F.T.C. 1450, and in which the Circuit Court of Appeals for the Second Circuit, on August 14, 1944, *Gelb v. Federal Trade Commission*, 144 F. (2d) 583, 39 F.T.C. 694, rendered its opinion, and on September 19, 1944 issued its decree modifying the Commission's aforesaid order in certain respects and affirming the same as therein modified;

Requiring respondent individuals, in connection with the offer, etc., in commerce, of respondents' cosmetic preparations, to cease and desist from misrepresenting their nature, properties, source, and safety, as in said order in detail below set out.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission, and it appearing that on October 8, 1941, the Commission made its findings as to the facts herein and concluded therefrom that the respondents, Joan Gelb, Leon A. Spilo and Morris Gelb had violated the provisions of Section 5 of the Federal Trade Commission Act and on October 8, 1941 issued and subsequently served its order to cease and desist upon said respondents; and it further appearing that on September 19, 1944, the United States Circuit Court of Appeals for the Second Circuit issued its decree modifying the aforesaid order in certain respects and affirming said order as therein modified.

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 said individual respondents, Joan Gelb, Leon A. Spilo and Morris Gelb, 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 their cosmetic preparations designated generally as "Clairol" and more specifically designated as "Instant Clairol" and "Progressive Clairol," or any other preparations 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:

1. Representing that said preparations are not hair dyes.
2. Representing that said preparations restore the natural or youthful color of the hair.
3. Representing that the effect produced upon the color of the hair by the use of said preparations is permanent.
4. Representing that said preparations supply nourishment to the hair.
5. Representing that said preparations are made or compounded in France.

Order

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6. Representing that the number of treatments of said preparations used by the public is greater than is the fact.

7. Representing that said preparation Instant Clairol is harmless or safe for use.

It is further ordered, That said individual 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.

The corporate respondent, Clairol, Inc., having been dissolved, *It is further ordered,* that this proceeding be, and it hereby is, dismissed as to said corporate respondent.

Syllabus

IN THE MATTER OF

AMERICAN SCHOOL OF COMMERCE, JOHN A. YOUNGSTROM AND EDWARD C. DUSATKO, TRADING AS AMERICAN COLLEGE AND AS PRESIDENT AND VICE PRESIDENT, RESPECTIVELY, OF AMERICAN SCHOOL OF COMMERCE; AND D. N. DOYLE, INDIVIDUALLY AND AS SECRETARY THEREOF

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

Docket 4624. Complaint, Nov. 5, 1941—Decision, Jan. 31, 1945

Where a corporation which succeeded to and carried on the business long theretofore engaged in by its president and its vice president as "American College," along with the aforesaid two individuals and a third, secretary of said corporation; engaged in conducting a school in business subjects such as shorthand, bookkeeping, commercial law, salesmanship and merchandising, and in the sale and distribution of home study or correspondence courses in said subjects, and offering students their choice of attending classes conducted at their place of business in Omaha or receiving instruction by correspondence; in soliciting the sale of their courses through advertising material and salesmen—

- (a) Continued to distribute to prospective purchasers of their courses—following the organization of aforesaid corporation—folders, circulars and other advertising material in which their school was referred to as "American College" or as a "College";

Notwithstanding the fact it was not an institution of higher learning within the ordinary meaning of the designation "College";

- (b) Represented, as aforesaid, that their said school was located on and had a campus, that new and modern equipment and facilities were available for the use and instruction of students, and that various extracurricular activities, both athletic and social, similar to those usually associated with colleges, were maintained for and available to their students;

Notwithstanding the fact their school was conducted in six or, later, seven or eight rooms rented in certain Omaha office buildings and had never had any campus; a substantial part of their mechanical equipment was neither new nor modern, nor, in some instances, was it maintained in proper operating condition, nor during most of the period concerned were there available to students in their school the extracurricular athletic and social activities, such as a basketball team, a band, an orchestra, or a gymnasium, which were promised by their sales representatives;

- (c) Informed many high school graduates, whom as a class it was their practice to solicit, that because of high scholastic standing, the particular graduate was one of a few to whom they were offering the scholarship, which materially reduced the cost of their courses; in some instances, naming no specific reduction and in others ascribing a value of \$50.00 thereto, or one-half of the cost of the course, or some other specific sum; and in other instances, misinforming prospects as to the exact fees and terms available to them;

The facts being they gave no scholarships and such prospects were charged and paid the regular and customary prices for their courses; and it was a frequent practice of their salesmen to insist upon prompt action on said supposed offer without affording the prospect or his parents sufficient time to read and consider the contract they

were asked to sign, on the pretext that the offer was a special one and, if not accepted, would have to be made to some one else; and

- (d) Wrote collection letters to students—many of whom agreed to pay in installments—or to their guarantors, under the name “Western Bond and Finance Company,” demanding payment of the amounts claimed to be due and representing said supposed company as the owner of students’ notes or contracts through purchase, as a result of which many persons paid amounts claimed which they would not otherwise have paid because of misrepresentations made in securing such notes or contracts;

Notwithstanding said so-called Western Bond and Finance Company was entirely fictitious and simply a scheme to collect payments as aforesaid;

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 them to purchase said courses of instruction and texts and books of reference pertaining thereto, and pay amounts claimed to be due on notes or installment contracts which they would not otherwise have paid:

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. Andrew B. Duwall*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. Harry F. Horak, of Lincoln, Nebr., 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 American School of Commerce, a corporation, John A. Youngstrom and Edward C. Dusatko, individually, and as copartners, doing business under the firm name and style of American College, and as president and vice president, respectively, of American School of Commerce, a corporation, and D. N. Doyle, individually, and as secretary of American School of Commerce, 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. American School of Commerce, is a corporation, organized and existing pursuant to the laws of the State of Nebraska, having its office and principal place of business at Room 412, Arthur Building, 210 South 18th Street, Omaha, Nebr.

Respondent, John A. Youngstrom, is an individual, and is now or was a copartner of respondent, Edward C. Dusatko, doing business under the firm name and style of American College and is now and has been for a long time last past, president of respondent American School of Commerce. His office and principal place of business is located at 210 South 18th Street, Omaha, Nebr.

Respondent, Edward C. Dusatko, is an individual, who is now or was a copartner of John A. Youngstrom, doing business under the firm name and style of American College. He is now and for a long time last past has been treasurer of respondent, American School of Commerce. His office and principal place of business is located at 210 South 18th Street, Omaha, Nebr.

Respondent, D. N. Doyle, is an individual, who is now and for a long

time last past has been an officer of American School of Commerce, a corporation. His office and principal place of business is located at 210 South 18th Street, Omaha, Nebr.

PAR. 2. In 1917 or thereabouts, respondents, John A. Youngstrom and Edward C. Dusatko, formed a partnership under the firm name and style of American College. Operating under this partnership name they conducted a school for the instruction of students, pupils and the general public in business subjects such as shorthand, bookkeeping, commercial law, salesmanship, merchandising, business machines and the like. They also solicited and sold courses of instruction in such subjects, among others, as Diesel engines, radio, television, telegraphic and electrical engineering. These courses of instruction were sold to students residing in the various States of the United States and in the District of Columbia. This school continued until 1939 or thereabouts, whereupon the business was transferred to a corporation organized for that purpose by the said respondents, John A. Youngstrom and Edward C. Dusatko, and known as American School of Commerce, one of the respondents herein.

The American School of Commerce has continued operation of the business theretofore conducted by the aforesaid partners under the firm name and style of American College, and the acts and practices of the said respondents, John A. Youngstrom, Edward C. Dusatko and D. N. Doyle, individually, and as officers of the respondent corporation, American School of Commerce, are now and have been a continuation of the acts and practices carried on under the name of American College.

PAR. 3. In the course and conduct of their business the aforesaid respondents have been, and are in competition with other corporations, individuals, firms and partnerships also engaged in similar business involving the offering for sale and sale of courses of instruction in business, commercial, mechanical and electrical subjects to students and members of the public, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. The aforesaid corporate respondent, American School of Commerce, and the individual respondents, John A. Youngstrom and Edward C. Dusatko, as individuals and as copartners, doing business under the firm name and style of American College, and as president and treasurer, of the respondent, American School of Commerce, and D. N. Doyle, individually, and as an officer, of the American School of Commerce, a corporation, for a number of years last past, have been and now are engaged in the business of operating a school at Omaha, Nebr., for the instruction of students and members of the public in various subjects as described in paragraph 2 hereof. In promoting the sale, and in the sale of these and similar courses of instruction, together with texts and books of reference pertaining thereto, in commerce between and among the various States of the United States, respondents advertised in newspapers of general circulation, distributed literature, circulars and other promotional matter. Agents and representatives were likewise engaged by the said respondents to travel in the various States of the United States for the purpose of offering for sale and selling the said courses of instruction, to distribute literature pertaining thereto, and to make oral representations concerning the same, to purchasers and prospective purchasers thereof. The orders received for these courses of instruction by the said agents in the various States in which they operated were and are transmitted to the main office of respondents in the city of Omaha, Nebr. The courses of instruction

offered for sale and sold by the said respondents consist of courses commonly described as "resident instruction" wherein the student receives his instruction at the headquarters of the American College or at the American School of Commerce in Omaha, Nebr., and in correspondence or "extension" courses wherein the student received his instruction primarily by mail. In some instances the courses are given partly by resident instruction at the headquarters of the said school at Omaha, Nebr., and partly by mail through extension work at the abode of the pupil. The students and members of the public to whom these courses of instruction were sold are domiciled both in the State of Nebraska and in various other States of the United States, and there is now and has been at all times mentioned herein a course of trade in said courses of instruction and the texts and books of reference so sold and distributed by respondents, in commerce between and among various States of the United States.

PAR. 5. In the course and conduct of their business the aforesaid respondents, in promoting the sale of and selling their said courses of instruction, and reference books, in the manner above set forth, the students and prospective students and to the general public located in the several States of the United States, have advertised and represented through newspapers of general circulation, through circularizations, and orally by agents and representatives engaged by them, as follows, to wit:

(a) That American College or American School of Commerce is an institution of higher learning such as is commonly described as a college or university, with a campus, dormitories, gymnasium, swimming pool, and college buildings, and supported all usual college activities except a football team; and that respondents maintained full, adequate, and modern equipment and facilities for use in the instruction of all students enrolled in the courses purchased by them.

(b) That the aforesaid respondents would furnish accommodations whereby resident students might earn their room and board, and would secure employment for the student upon completion by him or her of the courses of instruction for which he or she enrolled.

(c) That United States or State Civil Service positions would be obtained for enrollees upon graduation without further effort on their part.

(d) That American College and subsequently the American School of Commerce maintains on its own premises the best Diesel, electrical and radio engineering schools in the United States.

(e) That the aforesaid American College or the American School of Commerce has 1500 or more resident students and that students would receive regular college credits for their work acceptable by Universities and colleges of higher learning.

(f) That the amount stated at the time of enrollment covers all possible charges pertaining to the classes, courses, or subjects for which enrolled.

(g) That the scholarship, equivalent to one-half of the regular tuition, would be tendered as a reward of merit to one or two students of especially high scholastic standing in each town or community; that the said scholarship has a definite valuation equivalent to one-half of the stated or regular price of the courses offered the enrollee.

(h) That the headquarters of the said school or college was housed in an imposing building surrounded by a campus, all of which belonged to or was occupied by the said school, and that pictures showing groups of students adjacent to imposing buildings were photographed at or in buildings controlled or owned by the respondents herein.

PAR. 6. In truth and in fact, neither the American College nor the American School of Commerce are or have been regular colleges, with campus, gymnasium, swimming pool, dormitories, privately owned or controlled buildings, and adequate equipment, and do not support all usual college activities except a football team. The equipment and facilities maintained by the respondents at the said school are not adequate, complete, or modern and are insufficient in quantity and quality, for the instruction of the students enrolled. The said schools are not colleges or institutions of higher learning within the ordinarily accepted meaning of that term. The aforesaid respondents do not furnish or obtain accommodations or remunerative positions where resident students may earn their room and board and the said respondents do not secure employment for the student on the completion by him or her of the courses of instruction for which they enrolled. Civil Service positions are not obtained for enrollees upon graduation from the said school without further effort. The said respondents do not maintain on their premises or at any other place the best Diesel engineering school in the United States or any other Diesel engineering school; and do not maintain there or at any other place qualified schools for instruction in radio and electrical engineering. The aforesaid American College or the American School of Commerce does not give regular college credits which are acceptable by universities or colleges of higher learning and the said student body of the American College or the American School of Commerce does not now and never has had an enrollment of 1500 resident students. The amount of tuition stated at time of enrollment does not cover all possible charges made or imposed upon the said students during their course or courses of instruction for which enrolled. The so-called scholarship offered by the said respondents as a reward of merit to new enrollees is not a true reward of merit, but is regularly granted to prospective enrollees regardless of prior scholastic standing and is used as a trick or artifice to entice students to the school maintained by the said respondents. The school maintained by the said respondents is not housed in a separate school building surrounded by a campus, but is housed in a few rooms in an ordinary office building and the photographs displayed of students standing on the steps or adjacent to imposing buildings are photographs of students grouped at or adjacent to government owned buildings, or buildings other than that in which the classes of instruction given by respondent are located.

PAR. 7. In the further course and conduct of their said business, respondents, John A. Youngstrom and Edward C. Dusatko, operate a so-called collection agency, under the name of Western Bond & Finance Company, solely for the purpose of making collections from students enrolled in the American School of Commerce. Under the agreement of enrollment many of said students agree to pay tuition in installments. Upon accepting the enrollment of a student upon the deferred payment plan, it is the practice of the respondents, through the said Western Bond & Finance Company, to notify said student that the note or enrollment agreement had been purchased by the said Western Bond & Finance Company, and that payment should be made to said company. Thereafter, should a payment be in default, the said respondents, through the Western Bond & Finance Company, write collection letters to said students or to the guarantors signing the enrollment contract, demanding payment of amounts claimed to be due. Some of such letters are threatening in nature and convey the impression that suit will be brought to enforce the collection of

the amounts claimed to be due, unless paid at once. As a matter of fact, the said Western Bond & Finance Company is entirely fictitious in nature and is simply a scheme or device used by the respondents to collect such accounts. Respondents never reveal the fictitious nature of such company, but on the contrary, at all times represent said company to be the owner of the notes or enrollment contracts through purchase from respondents. As a result of such practice, many persons pay amounts claimed to be due on said notes or enrollment agreements which they would not otherwise pay on account of the various misrepresentations made by respondents in securing the same, in the erroneous belief that such notes or contracts are no longer owned by the respondents herein, but have been endorsed or assigned to said Western Bond & Finance Company and are the property of such company. The respondent, D. N. Doyle, is fully aware of this deceptive practice and participates therein by signing the collection letters sent out in the name of such fictitious company.

PAR. 8. The use by the respondent of the foregoing false, deceptive and misleading statements and representations 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 to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' courses of instruction and the texts and books of reference pertaining thereto and to pay amounts claimed to be due on notes or enrollment contracts which they would not otherwise pay. As a direct result thereof trade has been and is unfairly diverted to the respondents from their competitors, thereby causing substantial injury to competition in commerce among and between the various States of the United States.

PAR. 9. The aforesaid acts and practices of respondents are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 5, 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 competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before 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 the said complaint, the answer thereto, testimony and other evidence, report of the trial examiner and exceptions thereto, 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. (a) Respondent, American School of Commerce, is a corporation, organized and existing under the laws of the State of Nebraska, with its principal office and place of business located in the Baum Building, Omaha, Nebr.

(b) Respondent, John A. Youngstrom, is an individual, who with respondent, Edward C. Dusatko, as a partner, formerly traded as American College and who is now president of respondent, American School of Commerce.

(c) Respondent, Edward C. Dusatko, is an individual, who with respondent, John A. Youngstrom, as a partner, formerly traded as American College and is now vice president of respondent, American School of Commerce.

(d) Respondent, D. N. Doyle, is an individual, who until a few months preceding the issuance of the complaint herein, was secretary of respondent, American School of Commerce.

PAR. 2. For a number of years last past respondents have been engaged in conducting a school for the instruction of members of the public in business subjects such as shorthand, bookkeeping, commercial law, salesmanship, merchandising, and allied subjects, and in the sale and distribution of home study or correspondence courses in said subjects. In the course and conduct of this business, respondents have caused said courses of instruction, consisting of texts, instructions, and other materials, to be transported from their place of business in Omaha, Nebr., to purchasers thereof at their respective points of location in other States of the United States, and have maintained a course of trade in commerce among and between various States of the United States.

PAR. 3. For many years respondents, Youngstrom and Dusatko, co-partners, trading as American College, conducted a school in Omaha, Nebr., for the instruction of members of the public in shorthand, bookkeeping, commercial law, salesmanship, merchandising, and other subjects, and solicited the sale of, and sold, home study or correspondence courses in such subjects. In 1938 or thereabouts the respondents herein organized a corporation known as American School of Commerce for the purpose of taking over, and which did take over and continue, the business theretofore conducted by respondents, Youngstrom and Dusatko, as a partnership, and the acts and practices of respondents herein, individually, and as officers of respondent, American School of Commerce, have been a continuation of the acts and practices carried on under the name of American College.

PAR. 4. (a) Respondents have conducted their school upon both a resident and an extension basis; that is, they offer students or prospective students an election as to attending classes conducted at respondents' place of business in Omaha, Nebr., or receiving instruction by home study or correspondence methods. For example, the secretarial science course offered by respondents is offered on a home study or correspondence basis at a price of \$96, if paid in installments, or \$86.40 if paid in cash. A student who undertakes this course may become a resident student and attend classes by the payment of an additional fee of \$11 per month if paid monthly. For enrollment in this course on a resident student basis the charge is \$212, if paid in installments, or \$196 if paid in cash. It has not been uncommon for purchasers of respondents' courses to receive a portion

of their instruction by correspondence and a portion through attendance of classes at respondents' place of business in Omaha.

(b) As a means of promoting the sale of both resident and correspondence courses of instruction, respondents have advertised in newspapers and have distributed circulars and other advertising materials purporting to be descriptive of their school and the courses of instruction offered and have employed salesmen to call upon high school graduates and other members of the public for the purpose of securing their enrollment in respondents' school, if possible. In the course of offering for sale and selling their said courses of instruction by the means stated, respondents have in their advertising material and through the oral statements of their salesmen made numerous false, misleading, and deceptive representations to purchasers and prospective purchasers of their said courses of instruction.

PAR. 5. (a) After the organization of the corporate respondent, American School of Commerce, respondents continued to distribute to prospective purchasers of their courses of instruction folders, circulars, and other advertising materials in which their school was referred to as "American College" or as a "college." In truth and in fact, said school, whether designated as American College or as American School of Commerce, has not been, and is not, a college in that said school is not an institution of higher learning within the ordinary meaning of the designation "college." The use of such designation for said school or references to it as a "college" have the capacity and tendency to mislead and deceive members of the purchasing public into the belief that it is in fact an institution of higher learning.

(b) Through the means heretofore stated, respondents have represented to prospective purchasers of their courses of instruction that their said school was located on and had a campus, that new and modern equipment and facilities were available for the use and instruction of students, and that various extra-curricular activities, both athletic and social, similar to those usually associated with colleges, were maintained for and available to their students. As a matter of fact, respondents' school until about 1941 was conducted in six or seven rooms in the Arthur Building which were rented by respondents for such purpose, and thereafter was conducted in seven or eight rooms in the Baum Building rented by respondents for such purpose. Both of these buildings are office buildings located in Omaha and respondents' school has never been located upon or had any campus. A substantial part of the mechanical equipment such as typewriters, adding machines, tabulating machines, and other office and business machines maintained by respondents for use in instructing students in their business courses were not new, modern, and up to date, and in some instances not maintained in proper operating condition. During the period in which most of the witnesses who testified in this proceeding enrolled in or attended respondents' school (1938-41, inclusive) respondents did not maintain nor were there available to students in respondents' school the extracurricular athletic and social activities such as a basketball team, a band, an orchestra, or a gymnasium which were promised by their sales representatives.

PAR. 6. Respondents have made it a practice to solicit the sale of their courses of instruction to recent high school graduates and to secure the enrollment of such graduates as students in their business school. Many such prospective enrollees were informed that because of their high

scholastic standing in high school they were one of a few to whom respondents were offering a scholarship and that this scholarship materially reduced the cost of respondents' courses. In some instances no specific amount of reduction was named and in others the scholarship was said to be worth \$50, or one half of the cost of the course, or some other specific sum. As a matter of fact, respondents did not give scholarships and the prospective students to whom such statements were made were charged, and paid, the regular and customary prices for respondents' courses and received no reduction whatever in price. In some instances prospective students were misinformed as to the exact fees and terms available to them and respondents' salesmen frequently pursued a course of insisting upon prompt action upon the offer made without affording the prospective students or the parents of such students sufficient time to read and consider the contract they were asked to sign. This was done in the guise of the offer being a special one and if it was not accepted then and there the offer would have to be made to some one else.

PAR. 7. The respondents herein operated a so-called collection agency under the name Western Bond & Finance Company, solely for the purpose of making collections of amounts due or claimed to be due from students or those who guaranteed their payments. Under the enrollment agreement many students agreed to pay tuition in installments and it was the practice of respondents to notify such students that the note or enrollment agreement had been purchased by Western Bond & Finance Company and that payments should be made to that company. Thereafter, in the event of default in payments, respondents, through the Western Bond & Finance Company, wrote collection letters to students or their guarantors demanding payment of the amounts claimed to be due. As a matter of fact, the so-called Western Bond & Finance Company was entirely fictitious and was simply a scheme or device used by respondents to collect payments from students in their school or their guarantors. However, respondents represented such company to be the owner of the notes or installment contracts through purchase, and as a result of such practice many persons have paid amounts claimed to be due which they would not otherwise have paid because of the various misrepresentations made by respondents in securing such notes or contracts.

PAR. 8. The use of respondents of the aforesaid false, deceptive, and misleading statements and representations 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 to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' courses of instruction and texts and books of reference pertaining thereto, and pay amounts claimed to be due on notes or installment contracts which they would not otherwise pay.

CONCLUSION

The aforesaid acts and practices of respondents 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 an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, and brief in support of the complaint (respondents not having filed brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, American School of Commerce, a corporation, its officers, representatives, agents, and employees, and respondents, John A. Youngstrom, Edward C. Dusatko, and D. N. Doyle, individually, and as officers of respondent, American School of Commerce, 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 any courses of study or instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "college" in or as a part of the name for or designation of respondents' school, or representing in any manner that said school is a college or other institution of higher learning.

2. Representing in any manner that the tuition, fees, or other charges, costs, or expenses for any course or courses in respondents' school are less than is the fact.

3. Representing that the usual or customary charges for any course or courses in respondents' school constitute special or reduced prices.

4. Representing that scholarships or other special terms or advantages are given to a few selected high school graduates, when in fact the terms offered are the customary and usual terms to any student or prospective student.

5. Representing that respondents' school has a campus, or that it maintains or has available for students other physical facilities or equipment greater than is the fact; or that extracurricular school activities different from or greater than is the fact are available to students.

6. Representing that the Western Bond & Finance Company, or any other collection agency or activity owned, controlled, or conducted by respondents, or any of them, as a means of collecting sums due or alleged to be due from students or their guarantors is an innocent holder for value of the notes or other evidence of such indebtedness given by such students or their guarantors; or using a fictitious name for such collection activities as a means of importing or implying that said evidences of indebtedness are in the hands of an innocent holder for value, when in fact respondents, or any of them, are the beneficial owners of such evidences of indebtedness.

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

F. H. NOBEL & COMPANY

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

Docket 5092. Complaint, Dec. 4, 1943—Decision, Jan. 31, 1945

Where a corporation engaged in the manufacture and interstate sale and distribution of jewelers' findings and gold solder to dealers and others—

Represented that its gold solders were of low-karat, 6-karat, 8-karat, 10-karat, 12-karat, 14-karat, 16-karat, 18-karat, or 20-karat gold content, respectively, through describing them on labels and in advertising literature by a circle containing the letter "N" surrounded by a band bearing the legend "solder for low K gold," "solder for 6K gold" "solder for 8K gold," etc., in all of which the word "for" was in much smaller type than the other words, and the various designations such as "low K," "6K," were printed in much larger type; and through designating its gold solder in its price lists under the heading of "Quality," as "LK," "6 K," "8K," etc.; when in fact such solders were of a lower gold content than the gold with which they were to be used;

With the effect of misleading members of the jewelry repairing trade and the purchasing public into the mistaken and erroneous belief that its gold solders were of the fineness indicated by said legends and of the gold with which they were indicated for use, as a result of which belief, members of said trade and the general public purchased substantial amounts thereof:

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

Mr. J. W. Brookfield, Jr. for the Commission.
Fyffe & Clarke, 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 has reason to believe that F. H. Noble & 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 respondent, F. H. Noble & Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 535-559 West 59th Street, Chicago, Ill. Respondent is now, and for more than two years last past has been, engaged in the manufacture, sale and distribution of jeweler's findings and gold solders to dealers and others located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said jeweler's findings and gold solder to be transported from its place of business in the city of Chicago, Ill., to purchasers thereof at their respective points of location in various States of the United States other than Illinois

and in the District of Columbia. Respondent maintains and has at all times mentioned herein maintained a course of trade in said jeweler's findings and gold solder in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business and to induce the purchase of its said products, the respondent issues and distributes, and has issued and distributed, by United States mails and otherwise, to prospective purchasers, catalogs, price lists, and other advertising literature purporting to be descriptive of its said products; among the products so advertised are its gold solders which are represented and described in the following manner;

On labels and on the literature is depicted a circle containing the letter "N" surrounded by a band bearing the following legend—"Solder for 18 K Gold," "Solder for 14 K Gold," etc. The word "for" is in much smaller type than the other words in the legend and 18K, 14K, etc., are printed in much larger type. Respondent in its price list designates its gold solders under the heading of "Quality" as "LK," "6K," "8K," "10K," "12K," "14K," "16K," 18K" and "20K." Through the use of the representations above quoted respondent represents that the gold content of its solders is low karat, 6 karat, 8 karat, 10 karat, 12 karat, 14 karat, 16 karat, 18 karat or 20 karat, respectively.

PAR. 3. The foregoing representations are false and misleading. In truth and in fact respondent's solders represented and marked as 6, 8, 10, 12, 18 and 20 karat gold, respectively, are not of the gold content represented but are composed of substantially smaller amounts of gold than marked.

PAR. 4. The use by the respondent of the foregoing false and misleading statements and representations with respect to its said products has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the jewelry repairing trade and purchasing public into the erroneous and mistaken belief that such statements and representations are true and that respondent's products are of greater gold content than is actually the case. As a result of such erroneous belief the jewelry repairing trade and purchasing public have been induced to and do purchase a substantial quantity of respondent's products.

PAR. 5. 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 December 4, 1943, issued and thereafter served its complaint in this proceeding upon respondent, F. H. Noble & 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 respondent filed its answer in this proceeding, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for 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 and in opposition to the charges

stated in the complaint and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, F. H. Noble & Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 535-559 West 59th Street, Chicago, Ill. Respondent is now, and for more than two years last past has been, engaged in the manufacture, sale, and distribution of jeweler's findings and gold solders to dealers and others located at points in the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, respondent caused, and has caused, said jeweler's findings and gold solder to be transported from its place of business in Chicago, Ill., to purchasers thereof at their respective places of location in various States of the United States other than Illinois and in the District of Columbia. Respondent maintains, and has at all times mentioned herein maintained, a course of trade in said jeweler's findings and gold solder in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In order to induce the purchase of its said products, the respondent issues and distributes, and has issued and distributed, to prospective purchasers, by United States mails and otherwise, catalogs, price lists, and other advertising literature purporting to be descriptive of its said products. Among the products so advertised are its gold solders which are represented and described on labels and literature by the depiction of a circle containing the letter "N" surrounded by a band bearing one of the following legends:

Solder for 20K gold,
 Solder for 18K gold,
 Solder for 16K gold,
 Solder for 14K gold,
 Solder for 12K gold,
 Solder for 10K gold,
 Solder for 8K gold,
 Solder for 6K gold,
 Solder for low K gold.

The word "for" is in much smaller type than the other words in the legend, and 20K, 18K, 16K, 14K, 12K, 10K, 8K, 6K, and low K are printed in much larger type. Respondent in its price lists designates its gold solders under the heading of "Quality" as "LK," "6K," "8K," "10K," "12K," "14K," "16K," "18K," and "20K." By the use of the representations above quoted, members of the purchasing public are led

to believe that the gold content of respondent's solders is as designated, low-karat, 6-karat, 8-karat, 10-karat, 12-karat, 14-karat, 16-karat, 18-karat, or 20-karat, respectively. In truth and in fact respondent's solders labeled and advertised as "Solder for 20K," "Solder for 18K," "Solder for 16K," "Solder for 14K," "Solder for 12K," "Solder for 10K," "Solder for 8K," "Solder for 6K," respectively, are of a lower gold content than the gold with which they are to be used.

PAR. 4. The use by the respondent of the foregoing statements and representations has misled members of the jewelry repairing trade and the purchasing public into the mistaken and erroneous belief that respondent's gold solders are of the fineness indicated by said legends and of the gold with which they are indicated for use. Because of such mistaken and erroneous belief, members of the jewelry repairing trade and the general public have purchased substantial amounts of respondent's said solders.

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 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 findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, F. H. Noble & 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 solders for use on gold in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using terms such as "20K" or "for 20K," or any other term indicating gold fineness, to designate, describe, or refer to solders for use on gold, unless the solder is of the fineness indicated by the term used; *Provided, however*, that such terms may be used to indicate that a particular solder is for use on gold articles of the fineness indicated by the term used, if such term is accompanied by a statement of equal conspicuousness clearly showing that the solder is of lower gold content and not of the fineness indicated by the term used but is to be used upon articles of the fineness indicated.

2. Representing, directly or by implication, that its solder is of a fineness in excess of its actual gold content

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

KENNETH E. BREWER, EVERETT R. BREWER, AND NELSON C. BREWER, TRADING UNDER THE NAME OF CHAS. A. BREWER & SONS

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

Docket 3952. Complaint, Nov. 16, 1939—Decision, Feb. 1, 1945

Where two individuals, who were the world's largest manufacturers of punch boards and push cards, with annual sales aggregating some two million or more of such devices, many of which were designed for use by retail dealers in sale and distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme, under a plan by which the particular concealed number or legend, secured by chance by the person playing the board or card, determined which article the purchaser received without additional cost, or whether he received merchandise of much less value than such article, or nothing other than the privilege of a chance, and under which, in some cases, amounts to be paid for such chances was also thus determined; and the advantages of which devices of chance—made in various types and sizes and to order, with from 50 to 10,000 holes in the case of the boards, and from 10 to 100 discs in that of the cards—in building business, with their "certain thrill," and attraction to "thousands of people in every community," they stressed in their catalog—

Sold and distributed said devices to manufacturers and wholesalers—many of whom made up assortments consisting of a board or card and quantity of merchandise and sold the same to the retailer,—and to retailers direct, by whom, whether as direct or indirect purchases, said devices were employed in the sale and distribution, by chance, of merchandise to the public as above described; and thereby

Supplied to and placed in the hands of others means whereby, through the appeal thereof, they were enabled to use unfair methods of competition and thereby divert to themselves substantial trade from many retailers, manufacturers and wholesalers who do not make use of lottery or chance in the sale and distribution of their products, or supply others with means of so doing:

Held, That such acts and practices of said individuals, under the circumstances 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. D. C. Daniel and *Mr. J. W. Brookfield, Jr.* for the Commission.

Mr. Herlton H. Bowen, 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 Kenneth E. Brewer, Everett R. Brewer and Nelson C. Brewer, individually, and as copartners, trading under the name of Chas. A. Brewer & Sons, 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 in-

terest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Kenneth E. Brewer, Everett R. Brewer and Nelson C. Brewer, are individuals, doing business as copartners, under the name of Chas. A. Brewer & Sons, with their principal office and place of business located at 6320-32 Harvard Avenue, Chicago, Ill. Respondents are now, and for some time last past have been, engaged in the manufacture of devices commonly known as push cards and punch boards and in the sale and distribution of said merchandise to manufacturers of, and dealers in, various other articles of merchandise in commerce between and among the various states of the United States and in the District of Columbia.

Respondents cause and have caused said devices when sold, to be transported from their aforesaid place of business to purchasers thereof in various states of the United States other than the State of Illinois and in the District of Columbia at their respective points of location. There is now, and for some time last past has been, a course of trade in such push card and punch board devices by said respondents 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, to said manufacturers and dealers push cards and punch boards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed, many kinds of said push cards and punch boards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of other merchandise and vary only in detail.

Many of said push cards and punch boards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punch boards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the push card or punch board, and when a push or punch is made a disc or printed slip is separated from the push card or punch board and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punch board devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punch boards the purchasers thereof place instructions or legends which have the same import or meaning as the instructions or legends placed by the respondents on said push card and punch board de-

vices first hereinabove described. The only use to be made of said push card and punch board devices and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various states of the United States and in the District of Columbia, purchase and have purchased respondents' said push card and punch board devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push card and punch board devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punch boards in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punch boards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices. Said persons, firms or corporations have many competitors who sell or distribute like or similar articles of merchandise in commerce between and among the various states of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said push card and punch board devices or other similar devices which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise, or to suffer the loss of substantial trade. Said competitors do not sell or distribute their merchandise by means of push card or punch board devices or similar devices because of the element of chance or lottery features involved therein, and because such practices are contrary to the public policy of the Government of the United States and in violation of criminal laws, and such competitors refrain from supplying to, or placing in the hands of, other push card or punch board devices, or any other similar devices which are to be used or which may be used in connection with the sale or distribution of the merchandise of such competitors to the general public by means of a lottery, game of chance or gift enterprise. As a result thereof substantial trade in commerce among and between the various states of the United States and in the District of Columbia has been unfairly diverted to said persons, firms and corporations from said competitors who do not sell or use said devices.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or method in the sale of merchandise and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of the sort which is contrary to an established public policy of the Government

of the United States and in violation of criminal laws, and constitutes unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

The sale or distribution of said push card and punch board devices by respondents as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their merchandise. The respondents thus supply to, and place in the hands of, said persons, firms and corporations the means of, and instrumentalities for, engaging in unfair methods of competition in commerce and unfair acts and practices in commerce within intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondents, as hereinabove alleged, are all to the prejudice and injury of the public, and constitute 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 16, 1939, issued and subsequently served its complaint in this proceeding upon the respondents, Kenneth E. Brewer, Everett R. Brewer, and Nelson C. Brewer, individually, and as copartners, trading under the name Chas. A. Brewer & Sons, charging them with the use of unfair 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 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. On March 15, 1943, respondent Kenneth E. Brewer died, and an order dismissing the proceeding as to him was entered by the Commission on March 31, 1943. Subsequently, the proceeding regularly came on for final hearing before the Commission as to respondents Everett R. Brewer and Nelson C. Brewer on the complaint, answer, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Nelson C. Brewer, is an individual, trading as Chas. A. Brewer & Sons, with his principal office and place of business located at 6320 Harvard Avenue, Chicago, Ill. He is now and for many years last past has been engaged in the manufacture, sale and distribution of devices commonly known as punch boards and push cards. For a number of years immediately preceding September 22, 1939, respondent, Everett R. Brewer, was a copartner in the business, which was a copartnership composed of Everett R. Brewer, Nelson C. Brewer, and Kenneth E. Brewer. On that date (September 22, 1939), Everett R. Brewer severed

his connection with the business. The copartnership operated under the same trade name as that now used by respondent, Nelson C. Brewer.

The findings hereinafter made, insofar as respondent, Everett R. Brewer, is concerned, relate only to that period of time during which Everett R. Brewer was connected with the business—that is, the period prior to September 22, 1939.

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

PAR. 3. Respondents are the world's largest manufacturers of punch boards and push cards, their annual sales aggregating some two million or more of such devices. They manufacture some five thousand different types of punch boards and some three thousand different types of push cards. The devices are sold to manufacturers of various other articles of merchandise and to both wholesale and retail dealers in other merchandise.

PAR. 4. Among the various types of punch boards and push cards manufactured and sold by respondents are many which are designed for use by retail dealers in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme. These boards and cards vary in detail but all of them involve the same general principle. The punch boards contain a certain number of holes in which are placed slips of paper bearing different numbers or legends. These slips of paper are effectively concealed from view. Persons desiring to "play" the board pay to the operator thereof a designated sum, and thus become entitled to punch the board and to remove therefrom one of the slips of paper. Certain specified numbers or legends on the slips entitle purchasers to designated articles of merchandise without additional cost. Purchasers who do not punch a lucky or winning number receive nothing for their money other than the privilege of playing the board, or in some cases merchandise which is of much less value than that which would be received if lucky numbers were punched. The articles of merchandise are thus distributed to the public wholly by lot or chance. On some of the boards, the amount to be paid for the privilege of making the punch is also determined by chance.

The push cards are operated in substantially the same manner except that instead of having holes, the cards usually have perforated discs which contain the numbers or legends. As in the case of the boards, the numbers or legends are effectively concealed from the purchaser of the chance until after the punch has been made and the disc separated from the card. The punch boards range in size from fifty holes to ten thousand holes, while the push cards usually are much smaller, ranging in size from ten discs to one hundred discs.

PAR. 5. Many of the boards and cards bear picturizations and descriptions of certain articles of merchandise, such as candy, cigarettes, etc., as well as instructions which explain the operation of the device and the prizes to be awarded to those obtaining lucky numbers. Others have no pictures or instructions thereon but have blank spaces in which the purchaser of the device may insert his own instructions and a statement of the merchandise to be awarded as prizes. Some of the punch boards are

known as "cut-out" boards, which means that the board contains a large hole or depression in which may be exhibited a sample of the merchandise offered by the dealer. In addition to the boards and cards, respondents also sell printed headings which may be affixed by the purchaser to a blank board or card. Many of the boards and cards sold by respondents are made to order to meet the requirements of the particular purchaser. In numerous instances, manufacturers and wholesale dealers purchasing respondents' boards and cards make up assortments consisting of a board or card and a quantity of merchandise, and sell the complete assortment to the retail dealer.

PAR. 6. Retail dealers who acquire respondents' punch boards and push cards (either directly from respondents or from a manufacturer or wholesaler of merchandise) use them in the sale and distribution of merchandise to the public in the manner described above. That the boards and cards are designed and sold by respondents for that specific purpose is evident not only from the make-up of the boards and cards themselves, but also from statements made by respondents in the catalogs advertising their devices.

Among these statements are the following:

A FEW POINTS WORTH KNOWING . . .

HUGE CANDY SALES

Last year over \$30,000,000 worth of Candy was sold by means of Sales Boards. Over half of all the box candy sold in the United States was sold in this manner and over 75% of all Candy Manufacturers and Jobbers used Brewer Boards and Cards to build up their volume.

TOBACCO INDUSTRY REAPS PROFITS

The same is true of the Tobacco Industry. Millions of Dollars worth of cigars and cigarettes were sold by the use of Brewer Boards and Cards. The Candy and Tobacco industries were not the only ones to reap extra profits. Hundreds of other items were sold in this same manner and with like success.

ELIMINATE SLACK SEASONS

Brewer Boards have a year round appeal to every class of trade and give quick turnover—and quick turnover means added PROFITS. There are no slack seasons when Brewer Boards are used.

LIVE RETAILERS USE BOARDS

Thousands of people in every community enjoy punching Boards. The "up to the minute" and "Live" retailer, realizing this, uses them to bring customers to his store. They build up his sales volume and boost his profits.

BOARD SALES BRING OTHER SALES'

Compare two stores—one using Brewer Boards and one not using them—other factors being equal the one with Brewer Boards invariably has the largest group of regular customers. There is a certain thrill to punching boards and the public will favor the store using them. Records show that the average customer who spends 25¢ to 50¢ will spend twice this amount when the storekeeper uses Brewer Boards—and in addition to this the customer usually makes other purchases while in the store.

ARE YOU GETTING YOUR SHARE

Thousands of merchants are increasing their sales in this manner. Are you getting your share of this business? (Com. Ex. 1, p. 1)

PAR. 7. Respondents thus supply to and place in the hands of retail dealers, either directly or indirectly, the means of conducting lotteries or games of chance in the sale of merchandise to the general public. The sale of merchandise by and through such means and methods is a practice which is in contravention of an established public policy of the Government of the United States, and respondents, through the supplying of such means, knowingly and purposely assist and participate in the violation of such policy.

PAR. 8. There are many retail dealers who do not use lotteries or games of chance in the sale and distribution of their merchandise, and, by reason of the appeal which games of chance have for a large portion of the public, substantial trade is diverted from such dealers to those who do use such methods. Likewise, there are many manufacturers of and wholesale dealers in merchandise who do not supply to their retail dealers the means of conducting lotteries in the sale of their merchandise. As in the case of the retail dealer, such manufacturers and wholesalers suffer a substantial loss of trade to competitors who do supply such means to their dealers. The practice of respondents in selling and distributing their lottery devices thus serves to place in the hands of others means and instrumentalities whereby they are enabled to use unfair methods of competition and thereby unfairly to divert substantial trade to themselves from those who do not use such methods.

CONCLUSION

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

ORDER TO CEASE AND DESIST¹

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

It is ordered, That the respondents, Everett R. Brewer and Nelson C. Brewer, individually, and trading as Chas. A. Brewer & Sons, or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

¹ By order dated March 31, 1943 the Commission dismissed proceedings as to Kenneth E. Brewer, as follows:

This matter coming on to be heard by the Commission upon the request filed by counsel for respondents that this proceeding be dismissed as to the individual respondent, Kenneth E. Brewer, because of the death on March 15, 1943, of said Kenneth E. Brewer, and the Commission having duly considered said request and the record, and being now fully advised in the premises.

It is ordered, That the request of counsel for respondents that this proceeding be dismissed as to the individual respondent, Kenneth E. Brewer, be and the same hereby is, granted.

Order

40 F. T. C.

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, punch boards, push cards or other lottery 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.

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

UNION TRADING STAMP COMPANY, AND FRANK A.
HAYES, PRESIDENT AND TREASURER THEREOF

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

Docket 5011. Complaint, July 19, 1943—Decision, Feb. 1, 1945

Where a corporation and an individual, its president and treasurer, engaged in the manufacture and competitive interstate sale and distribution to retail merchants and others, of various sales promotion plans involving a lottery scheme or gift enterprise when used in promoting sales to the consuming public, typical plan including for distribution to retail customers, booklets, which had blank spaces for the pasting in of a designated number of the sales receipts or trading stamps supplied therewith, contained on the outside a gold-colored seal concealing name of a prize to be awarded when the book was filled, and a legend advising members of the consuming public that products, services, or other awards designated and described under the seal, the value of which varied with the individual booklet, would be awarded to the holder of the book upon his presenting the same to the merchant concerned, with the seal unbroken and answering the quiz question therein propounded—

Sold and distributed such plans, in which the amount of the prizes distributed was determined wholly by lot or chance, and which were designed and intended by them as a means by which the retail merchant purchasers might promote the sale of merchandise through the appeal supplied by the lottery or chance element inherent therein, to such merchants and others; and

Thereby supplied to and placed in their hands the means of conducting lotteries, gift enterprises, or games of chance in the sale of merchandise in accordance therewith, contrary to the established public policy of the United States Government;

With tendency and capacity to induce many members of the consuming public to deal with such merchants using their said sales plan, by reason of the lottery or chance feature thereof, in preference to those using sales promotion plans or devices of their competitors with no such feature connected therewith, and with result that many retail merchants were thereby induced to purchase aforesaid booklets or stamps in preference to the devices and stamps of such competitors; and with capacity and tendency, because of such element of chance, unfairly to divert trade from aforesaid competitors to them:

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

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 Union Trading Stamp Company, a corporation, and Frank A. Hayes, an individual, and president and treasurer of Union Trading Stamp Company, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Com-

mission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Union Trading Stamp Company, 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 549 West Randolph Street, in the city of Chicago, Ill. Respondent, Frank A. Hayes, is an individual, and president and treasurer of respondent, Union Trading Stamp Company, with his office and principal place of business located also at 549 West Randolph Street. Both 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 or pamphlets, together with a larger number of sales receipts, trading stamps or coupons. In the booklet are blank spaces provided for the pasting in of a designated number of 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 or respondents' other customers to the consuming public, contain the following legend:

POT OF GOLD

(Gold colored seal here)

Void If Seal Is Broken

QUIZ CONTEST

HOW TO RECEIVE FREE CASH AWARD

You will be given a receipt for each 10¢ purchase at our station. 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 this 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 award you will receive if you can answer this question correctly.

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 "Pot of Gold" and "Major Dividend Plan," all of which are similar to the sales plans hereinbefore described, and are used by respondents' customers for the distribution of merchandise in the same manner as the plans above 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 July 19, 1943, issued and subsequently served its complaint in this proceeding upon respondents, Union Trading Stamp Company, a corporation, and Frank A. Hayes, individually, and as president and treasurer of Union Trading Stamp Company, charging them with the use of unfair methods of competition and unfair acts and practices in commerce in violation of the provisions of said act. On September 4, 1943, the respondents filed their 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. 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, Union Trading Stamp Company, 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 549 West Randolph Street, in the city of Chicago, Ill. Respondent, Frank A. Hayes, an individual, is president and treasurer of respondent, Union Trading Stamp Company, with his office and principal place of business located at 549 West Randolph Street. Both the respondents have acted together and in cooperation with each other in doing the acts and things herein found. 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 conduct of their aforesaid business, 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 by 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 or pamphlets, together with a larger number of sales receipts, trading stamps, or coupons. In the booklet are blank spaces provided for the pasting in of a designated number of 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 or respondents' other customers to the consuming public, contain the following legend:

POT OF GOLD

(Gold-Colored seal here)

Void If Seal Is Broken

QUIZ CONTEST

HOW TO RECEIVE FREE CASH AWARD

You will be given a receipt for each 10¢ purchase at our station. 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 this 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 award you will receive if you can answer this question correctly.

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 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 "Pot of Gold" and "Major Dividend Plan," all of which are similar to the sales plans hereinbefore described, and are used by respondents' customers for the distribution of merchandise in the same manner as the plans above described. Said sales plans are designed and intended by respondents as a means by which the retail merchants and others to whom they are sold may promote the sale of merchandise through the appeal supplied by the lottery or chance element inherent in such plans.

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 members 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 promo-

tion plans or devices of respondents' competitors which have no element of lot or chance connected with them, 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 sales plans of respondents' competitors which do not involve a 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.

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 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 hearings as to the said facts, and the Commission having made its findings as to the facts and conclusion that said respondent is violating the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Union Trading Stamp Company, a corporation, its officers, and Frank A. Hayes, individually, and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, sales promotion cards, booklets, or other articles so designed that their use in connection with the distribution of merchandise in accordance with such design or plan constitutes the operation of a game of chance, gift enterprise, or lottery scheme.

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

Complaint

IN THE MATTER OF

SYLVIA PIETRI, TRADING AS DR. H. A. PIETRI COMPANY

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

Docket 5146. Complaint, Mar. 31, 1944—Decision, Feb. 6, 1945

Where an individual engaged in the interstate sale and distribution of a lead acetate hair dye designated as "Zenaida"—

- (a) Represented, directly and by implication, through advertisements in Spanish in newspapers and other advertising material, that her said preparation would restore the hair of the user to its original color, and restore thereto "the appearance of its natural color";

The facts being said product was a dye, its only action was that of a dye, and the color it imparted did not have, in many respects, the appearance of a natural color, particularly as respected hair which was originally of a light shade;

- (b) Falsely represented that it would not stain clothing, hands or scalp; and
(c) Falsely represented, through the use of the trade name "Dr. H. A. Pietri Co." that her said preparation was the prescription of a member of the medical profession by that name, or was made under his supervision or offered for sale by him;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations were true, and of thereby inducing it to purchase substantial quantities of her said preparation:

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

Mr. B. G. Wilson for the Commission.

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 Sylvia Pietri, an individual, trading as Dr. H. A. Pietri 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, Sylvia Pietri, is an individual, trading as Dr. H. A. Pietri Company, with her office and principal place of business at 620 West 141st Street, New York, N. Y.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the sale and distribution of a lead acetate hair dye designated as "Zenaida."

Respondent causes her said preparation when sold to be shipped from her said 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 her said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her aforesaid business respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said preparation by 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 causing the dissemination of false advertisements concerning her said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of her said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, deceptive and misleading statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth by United States mails, by advertisements inserted in newspapers and by means of other advertising material are the following, all in Spanish language, the English translations being as follows:

NO MORE GRAY HAIRS. The imperial preparation Zenaida will return your hair to original color whether it was blond, red, black or chestnut * * *. It does not stain the clothing, hands, nor the scalp. * * * Dr. H. A. Pietri Company * * *.

Without gray hair you will look ten years younger. Don't miss the opportunities of life. Imperial Zenaida Preparation will restore to your hair the appearance of its natural color. * * * Dr. H. A. Pietri Company * * *.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, respondent represents and has represented, directly and by implication, that the said preparation will restore the hair of the user to its original color and will restore to the hair the appearance of its natural color and that it will not stain clothing, hands or the scalp. The use of the trade name, Dr. H. A. Pietri Company in connection with her preparation serves as a representation that said preparation is the prescription of a member of the medical profession by the name of Dr. H. A. Pietri or is made under the supervision of a member of the medical profession by that name and is offered for sale by him.

PAR. 5. The foregoing representations are false, misleading and deceptive. In truth and in fact, respondents preparation is a dye and its only action is that of a dye. While this preparation will impart a color to the hair it does not restore the original color or any color nor does it restore the appearance of any color. The color imparted by this preparation does not have the appearance in many respects, of a natural color, and this is particularly true as to hair which was originally of a light shade. Said preparation will stain clothing, hands and scalp if contacted by it. H. A. Pietri is not a member of the medical profession. Respondent's preparation is not the prescription of a member of the medical profession by the name of Dr. H. A. Pietri and is not made under the supervision or offered for sale by a member of the medical profession by that name.

PAR. 6. The use by respondent of the foregoing false, deceptive and misleading statements has had and now has the capacity and tendency to, and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations, and advertisements are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's 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 March 31, 1944, issued and subsequently served its complaint in this proceeding upon respondent, Sylvia Pietri, an individual, trading as Dr. H. A. Pietri Company, charging her with the use of unfair and deceptive acts or practices in commerce in violation of the provisions of said act. On May 1, 1944, 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, Sylvia Pietri, is an individual, trading as Dr. H. A. Pietri Company, with her office and principal place of business at 620 West 141st Street, New York, N. Y.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the sale and distribution of a lead acetate hair dye designated as "Zenaida."

Respondent causes her said preparation, when sold, to be shipped from her said 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 her said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said preparation by 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 causing the dissemination of false advertisements concerning her said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of her said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, deceptive, and misleading statements and representations contained in said false advertisements disseminated and caused to be disseminated, as hereinabove set forth, by United States mails, by advertisements inserted in newspapers, and by means of other advertising material are the following, all in Spanish language, the English translations being as follows:

Order

40 F. T. C.

NO MORE GRAY HAIRS. The imperial preparation Zenaida will return your hair to original color whether it was blond, red, black or chestnut * * *. It does not stain the clothing, hands, nor the scalp. * * * Dr. H. A. Pietri Company * * *.

Without gray hair you will look ten years younger. Don't miss the opportunities of life. Imperial Zenaida Preparation will restore to your hair the appearance of its natural color. * * * Dr. H. A. Pietri Company * * *.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, respondent represents and has represented, directly and by implication, that the said preparation will restore the hair of the user to its original color and will restore to the hair the appearance of its natural color and that it will not stain clothing, hands, or the scalp. The use of the trade name "Dr. H. A. Pietri Company" in connection with her preparation serves as a representation that said preparation is the prescription of a member of the medical profession by the name of Dr. H. A. Pietri or is made under the supervision of a member of the medical profession by that name and is offered for sale by him.

PAR. 5. The foregoing representations are false, misleading, and deceptive. In truth and in fact, respondent's preparation is a dye and its only action is that of a dye. While this preparation will impart a color to the hair, it does not restore the original color or any color nor does it restore the appearance of any color. The color imparted by this preparation does not have the appearance in many respects of a natural color, and this is particularly true as to hair which was originally of a light shade. Said preparation will stain clothing, hands, and scalp if contacted by it. H. A. Pietri is not a member of the medical profession. Respondent's preparation is not the prescription of a member of the medical profession by the name of Dr. H. A. Pietri and is not made under the supervision or offered for sale by a member of the medical profession by that name.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations, and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent 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, 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, Sylvia Pietri, an individual, trading as Dr. H. A. Pietri Company, or trading under any other name or names, her representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of her preparation designated as "Zenaida," or any other preparation of 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 implication:

(a) That said preparation will restore the hair of the user to its original color or the appearance of its natural color.

(b) That said preparation will not stain the clothing, hands, or scalp.

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 preparation 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 said respondent, her representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of the preparation designated "Zenaida," or any other preparation of substantially similar composition or possessing substantially similar properties, whether 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:

Using the word "Doctor" or any abbreviation or simulation thereof, in the trade name or designation of her said business; or representing, directly or by implication, that said preparation is made under the supervision of or offered for sale by a member of the medical profession.

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

IN THE MATTER OF
WOELFEL STUDIO, 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 4649. Complaint, Mar. 10, 1942¹—Decision, Feb. 7, 1945

Where a number of individuals engaged as "operators" in the competitive interstate sale and distribution to members of the consuming public of colored enlargements or miniatures of photographs and snapshots, produced by one W. at his Chicago studio and purchased by them from him along with frames therefor; together with various other individuals, who as "crew managers," "road managers," "proof passers," "delivery men," "salesmen" and "sales agents," assisted them in selling and distributing said products to the public—

- (a) Employed trade names such as "United Art Company," "Atlas Portrait Company," "Modernistic Art Company," "Windsor Studio," "Superior Artists Association," "Royal Art Studios," "Real Art Portrait Company," "Windsor Portrait Service," "American Art Association," "Modern Art Company," "Central Art Company," and "National Art Association," and, with the consent and active assistance of said W., made use of the Chicago address of his studio as the address of the businesses conducted by them under such trade names, and used said names and address on their contract forms, order blanks, and credentials; and

Where said W., with authority so to do—

- (b) Received and opened mail addressed to the trade names used by such "operators," answered such of the complaints as he could handle, by writing letters on behalf of said operators on their trade-name stationery kept in his office and signing them with the trade name to which the complaint was addressed; and forwarded such as he could not handle, to the operator to whom it was addressed;

Notwithstanding the fact that none of said operators or their aforesaid employees owned or operated any art studio or place of business at said Chicago address or at any other place, or had in his employ any persons skilled in producing the products they sold; nor the fact that the business operations indicated were conducted solely by said W., who possessed the equipment and employed the personnel necessary for making the products sold by him to said operators and by them and their sales agents to the consuming public;

With the result that purchasers were led to believe that they were dealing with sales agents of an actual art studio, etc. and confused the character of the said operators' business with that of organizations of similar name which, like the studio in question, were actually conducting an art studio; and said operators, through the use of such trade names and business address, obtained prestige with purchasers and, along with said W., and his office manager, who conducted collections as below described, were enabled to evade liability to purchasers for their representations and sales methods; and

Where a collection agency under the designation "States Finance Co.," conducted by said office manager as part of the plan for selling and distributing said products with respect to which (1) the operators made it a practice to have purchasers execute notes for any balance due—usually upon printed forms bearing the trade name of the operator and the aforesaid Chicago address—which, through understanding

¹ Amended.

with said W., were assigned and delivered for collection to said company in Chicago which made a charge for each note whether or not collection was successfully made; (2) said company furnished to operators printed envelopes for the use of their customers in remitting installment payments to it; (3) operators with satisfactorily established credit maintained running accounts with W. which were credited with amounts collected by "States Finance Co." on notes and debited with charges for Studio products sold to them; (4) no separate books were kept by "State Finance Co." and any amounts due operators on account of the collection of notes or as a result of the aforesaid running accounts were paid by check of the Studio; and (5) said Finance Company actually operated from the office of the Studio while using the address of a side entrance on a different street—

- (c) Represented through statements in form letters addressed to debtors in instances where makers of the notes failed or refused to pay or unduly delayed payments, that it was an innocent holder for value of said notes for unpaid balances, that it had paid for the merchandise, that the entire obligation was now directly to it, and that it was looking to the addressee for entire settlement;

The facts being that it had not paid any sum or given anything of value for the notes on which it sought payment; said notes actually continued to be the property of the operator who secured them and, in the event of failure to collect the notes, he stood any loss involved; and the true function of said States Finance Co. was to assist in the business operations conducted by the aforesaid persons in the sale and distribution of the products of said Studio; and

Where said operators and their said sales agents—

- (d) Designated the pictures being offered as "paintings" or "portrait paintings," and so described them in contract forms for orders, and at times described them to prospective purchasers as such, or as "oil paintings" or "portrait paintings" or "paintings finished in oil by hand";

The facts being said colored photographs, enlargements or miniatures, made from the photograph furnished by the customer, through use of special photographic equipment, and colored with airbrush and hand brush, were not "paintings" as understood by artists, photographers and the general public;

- (e) Falsely represented to prospective customers that the finished picture would be equal in appearance to the samples exhibited, notwithstanding the fact that many photographs or snapshots accepted by said operators or their agents were photographically inferior and incapable of producing good enlargements or miniatures, and said W. was unable to produce therefrom a finished product equal in appearance to the sample which had been displayed to the purchaser;

- (f) Represented that said paintings, etc., were being sold or delivered at a "reduced price" or an "advertising price," as a "special introductory offer," or at the "cost of production," and made such representations in connection with the use of a "draw," in the operation of which the customer was induced to take a "chance" by drawing from a number of envelopes containing slips of paper; representing that the purchaser who drew the "lucky coupon" or "lucky certificate" was entitled to receive a \$25 or a \$30 hand-painted painting or hand-painted portrait for only \$6.25 or some comparable sum;

The facts being that the envelopes were so manipulated that an acceptable customer invariably drew a lucky coupon or certificate which, however, gave the holder no advantage in price over any other purchaser; and said pictures, sold either by use of the "draw" or otherwise, were not sold at any "reduced price" or "advertising price," at any "special introductory offer," or "at the cost of production," and did not have any \$25 or \$30 sales value, but on the contrary the prices at which sales were made were their regular and customary prices;

- (g) Concealed from, or failed to disclose to, customers at the time pictures were or-

dered, that the finished picture would be hexagonal in shape, with a convex surface, so that it could be used only in a specially designed, odd-style frame that would be difficult or impossible to obtain from any source other than themselves; and in some cases in which customers, approached in due course by a second sales agent or "delivery man" with the finished picture mounted in an expensive type of frame, objected or refused to purchase the same notwithstanding agent's representations that his company made the only frame which would fit the picture and that it would not hold its color or be of any value unless framed, refused to deliver the completed picture regardless of whether or not it had been paid for in full, and on occasion refused to return the original photograph loaned by the customer until the frame was ordered, notwithstanding that purchasers had been advised that photographs submitted by them would be returned at the time the finished picture was submitted; and thereby placed in the hands of operators and their sales agents a means to effectuate their purpose of selling a frame in addition to the picture already sold to the customers;

With the result of misleading and deceiving a substantial number of the purchasing public into an erroneous belief that such representations were true, and into the purchase of said products, whereby trade was diverted unfairly to them from their competitors:

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

Mr. Marshall Morgan for the Commission.

Nash & Donnelly, of Washington, D. C. for Frank F. Woelfel, Fred E. Willis, R. D. Minyard, Ray Pietz, O. D. Redd, Clayton G. Brown, F. H. Munger and George Westphal.

Mr. William D. Sabiston, Jr., of Carthage, N. C., for C. W. Short, E. B. Cook, S. B. Hunsucker, Jewel Long, Kathryn Maciborski, J. L. McLean, Paul F. Nelson, Mrs. C. W. Short, H. B. Short, Mrs. E. B. Cook, E. W. Hunsucker, J. E. Liles, Bertie Mae Long, W. B. Lovings, J. L. Maciborski, R. E. Murphey (M. E. Slusser), Gladys E. Powell, Leslie E. Powell, Al C. Sachs, Belle Short and E. D. Short.

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 parties named in the caption hereof and more particularly hereinafter designated 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, Frank F. Woelfel, is an individual, trading as Woelfel Studio, having his principal offices and place of business at 806 West Washington Boulevard in the city of Chicago, State of Illinois, and he directs and controls the business policies and activities of said Woelfel Studio in carrying out the acts and practices hereinafter alleged.

Respondents, Frank F. Woelfel and Fred E. Willis, are individuals, trading as States Finance Company, with their offices and principal place of business at 104 North Halstead Street, Chicago, Ill. Respondent, Woelfel owns, dominates and controls said States Finance Company,

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which is operated for the account of Woelfel Studio by respondent, Willis States Finance Company serves as a collection agency and medium for Woelfel Studio in collecting various balances due from purchasers of pictures and frames therefor sold by Woelfel Studio as will be more fully hereinafter shown. The States Finance Company and Woelfel Studio are operated out of the same building in Chicago, Ill., but the address used for States Finance Company is 104 North Halstead Street, and the address used for Woelfel Studio is 806 West Washington Boulevard, Chicago, Ill.

Respondent, R. E. Hardy, is an individual, trading as Aetna Portrait Company, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, H. L. Fellers, is an individual, trading as United Art Company, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, F. E. Findlay, is an individual, trading as Royal Art Distributor, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and who formerly traded as Royal Art Studios, 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondents, L. R. Grim and C. W. Short, are individuals, trading as Modernistic Art Company with their offices and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such are associated with and are representatives of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, Orville A. Hime, is an individual, trading as Windsor Studio, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, William R. Klaus, is an individual, trading as Atlas Portrait Company, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio. His home address is Asheville, N. C.

Respondent, Alfred F. McCants, is an individual, trading as Real Art Studio, with his office and principal place of business at 2233 West 109th Street, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, R. D. Minyard, is an individual, trading as Central Art Company, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, Minyard, also uses the following addresses: Mexico, Mo.; 448 South Washington Street, Danville, Ill.; and 829 Main Street, Danville, Ill.

Respondent, C. S. Orr, is an individual, trading as Windsor Studio, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and formerly trading as Paris Portrait Company, with his office and principal place of business at 806 West Washington

Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, Ray Pietz, is an individual, trading as National Arts Association, with his principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, O. D. Redd, is an individual, trading as Modern Art Company, and also trading as Central Art Company with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, J. H. Robinson, is an individual, trading as American Art Association, and formerly trading as Buckeye Art Studio, whose office and principal place of business is 806 West Washington Boulevard, Chicago, Ill., and whose home address is 1433 Walnut Street, Cincinnati, Ohio, and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, Arthur G. Russell, is an individual, trading as Continental Arts Association, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, Otto F. Schneider, is an individual, trading as Royal Art Studios, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, A. M. Thompson, is an individual, trading as Advance Portrait Company, whose office and principal place of business is 806 West Washington Boulevard, Chicago, Ill., and as such is associated with, and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, Hal Thompson, is an individual, trading as Continental Arts Association, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

Respondent, R. Ware, is an individual, trading as Superior Art Association, and also trading as Standard Art Studio, with his office and principal place of business at 806 West Washington Boulevard, Chicago, Ill., and as such is associated with and is a representative of respondent, Frank F. Woelfel, trading as Woelfel Studio.

The above-named respondents, H. L. Fellers, F. E. Findlay, L. R. Grim, R. E. Hardy, Orville A. Hime, William R. Klaus, Alfred F. McCants, R. D. Minyard, C. S. Orr, Ray Pietz, O. D. Redd, J. H. Robinson, Arthur G. Russell, Otto F. Schneider, C. W. Short, A. M. Thompson, Hal Thompson and R. Ware, are hereinafter on occasion referred to as respondent representatives.

Respondents, C. Belgard, Bob Bergin, Clayton G. Brown, B. F. Cobb, 717 Parker Street, Jacksonville, Fla.; E. B. Cook, Box #367, Carthage, N. C., % C. W. Short; Mrs. E. B. Cook, Peterstown, W. Va.; J. P. Conrad, 717 Parker Street, % B. F. Cobb, Jacksonville, Fla.; L. E. Cox, 112 N. Daniels Street, Springfield, Ill.; Leo Crowder, H. F. Dindinger, 432 Corona Street, Denver, Colo.; C. G. Frye, J. Alene Frye, James F. Cautney,

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% O. D. Redd, 806 West Washington Boulevard, Chicago, Ill.; J. L. Gilmore, Box #367, Carthage, N. C., % C. W. Short; George E. Grabow, Mary Granata, Troy Gravette, H. Guteman, G. B. Harshbarger, 123 Dodge Street, Palatka, Fla.; C. E. Heard, F. H. Herd, M. Hollingsworth, Rufus Hudson, E. W. Hunsucker, Box #367, Carthage, N. C., % C. W. Short; S. B. Hunsucker, Ellen Lanning, Morris A. Lee, J. E. Liles, 1706 Pendleton Street, Columbia, S. C.; Bertie Mae Long, Box #367, Carthage, N. C., % C. W. Short; Jennell Long, Jewel Long, W. B. Lorkup, W. B. Lovings, Box # 367, Carthage, N. C., % C. W. Short; J. L. Maciborski, Box #367, Carthage, N. C., % C. W. Short; Kathryn Maciborski, Box #367, Carthage, N. C., % C. W. Short; George McCullough, Delmer McLaughlin, Mrs. Delmer McLaughlin, J. L. McLean, F. H. Munger, R. E. Murphey, General Delivery, Greensboro, N. C.; Paul F. Nelson, Dorothy Notzen, Frank Parker, Gladys E. Powell, Box #367, Carthage, N. C., % C. W. Short; Leslie E. Powell, Box #367, Carthage, N. C., % C. W. Short; Bill Reed, F. Y. Robinson, Mrs. J. H. Robinson, Al C. Sachs, 1435 W. Lynwood Avenue, San Antonio, Tex.; J. C. Rosser, Route #3, Carthage, N. C.; R. T. Sherrod, 717 Parker Street, Jacksonville, Fla., % B. F. Cobb; Belle Short, Box #367, Carthage, N. C., % C. W. Short; Mrs. C. W. Short, Box #367, Carthage, N. C., % C. W. Short; E. D. Short, Box #367, Carthage, N. C., % C. W. Short; H. B. Short, Box #367, Carthage, N. C., % C. W. Short; Reba Stone, W. G. Wagner, George Westphal, Harold Wolcott, Alonzo Williams, 123 Dodge Street, Palatka, Fla., % G. B. Harshbarger; and R. M. Ziebell, are individuals, and are sales agents and employees of one or more of the respondents, and hereinafter on occasion are referred to as respondent sales agents.

All of said individual respondent sales agents maintain their principal office and place of business at 806 West Washington Boulevard, Chicago, Ill.

All of the respondents are now, and have been for more than three years last past, engaged in the sale and distribution of tinted or colored enlargements or tinted or colored miniatures of photographs or snapshots, and frames therefor. Respondents cause, and at all times mentioned herein have caused, said products, when sold, to be transported from the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business respondents have and are now engaged in direct and substantial competition with various corporations, partnerships and individuals likewise engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of tinted or colored enlargements and tinted or colored miniatures of photographs or snapshots and frames therefor, with corporations, partnerships and individuals engaged in the sale and distribution of genuine original oil paintings, miniatures and water-color paintings in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. Respondents, during the three years or more last past, have entered into and carried out various understandings, agreements, combinations and conspiracies with each other and with divers other persons, whose names are to the Commission unknown, to sell tinted or colored enlargements and tinted or colored miniatures of photographs or snapshots, and frames therefor, to the purchasing public through the use of false, misleading and deceptive acts, methods and practices.

PAR. 4. In the course and conduct of said enterprise, said respondent, Frank F. Woelfel, an individual, trading as Woelfel Studio, is engaged in the business of producing and distributing colored or tinted enlargements and miniatures of photographs and snapshots, and the sale of frames therefor, and in the sale and distribution thereof he directs and controls the policies, affairs and activities of the Woelfel Studio and exercises a substantial measure of direction and control over the organization, management, policies, operation and financing of the remaining respondents herein in carrying out the unfair methods of competition and unfair and deceptive acts and practices herein alleged.

Associated with said respondent, Woelfel, are various operators, associates or representatives who, through the medium of various and sundry trade names, offer for sale, sell and distribute said respondent's products to the consuming public. Respondent representatives and respondent sales agents are such operators, associates or representatives of said respondent. The respondent representatives employ numerous persons in various capacities, such as "crew managers," "road managers," "proof-passers," "delivery men" and salesmen or sales agents, who contact the purchasing public in the sale, distribution and delivery of the products produced by the respondent, Woelfel, and sold and distributed by the respondent, Woelfel, and the respondent representatives. Respondent sales agents are connected with respondent, Woelfel, and the respondent representatives in selling and delivering capacity in connection with the sale and distribution of said respondent, Woelfel's products.

PAR. 5. Pursuant to said understandings, agreements, combinations and conspiracies and in furtherance thereof, each and every one of said respondents, acting in concert and cooperation with each other and with divers other persons whose names are to the Commission unknown, have engaged in various unfair and deceptive acts and practices in commerce and various unfair methods of competition in commerce, of which the following are typical:

1. In buying respondents' products, purchasers and prospective purchasers believe that they are contracting or dealing with duly constituted representatives or sales agents of existing studios or art companies whose names appear on the various contract forms, order blanks, or identification certificates produced by said representatives or sales agents.

In truth and in fact, the names of such studios or art companies are wholly fictitious in that there are no such studios or art companies in existence, but to the contrary these are merely trade names used by the various respondent representatives engaged in the sale of products produced and distributed by Woelfel Studio. These various contract forms, order blanks and identification certificates give the telephone number, street and cable address of Woelfel Studio as their own. Respondent representatives and respondent sales agents do not in any way operate art companies, art associations or studios, nor do they in any manner engage in the business of making, enlarging or the tinting of photographs. The Woelfel Studio's products are sold by such agents, representatives and canvassers operating under various fictitious names, thereby misleading the public as to the real name of the manufacturer of the product. Respondent representatives and respondent's sales agents are furnished with identification certificates and credentials which are signed by one of the fictitious studios or art companies. These are exhibited by respondent representatives and respondent sales agents when interviewing various prospective purchasers.

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Equipment, including catalogs, order blanks, daily report forms, receipts, and, in many instances, sample cases enclosing samples of respondent's products, is furnished by respondent, Woelfel, to said respondent representatives and respondent sales agents. Respondent, Woelfel, in many instances, causes orders or contracts for his products, to be entered on printed forms provided by him for that purpose. These order blanks are contracts containing respondent, Woelfel's address and a fictitious name or trade name of the respondent representative through whom the order is secured. Occasionally said contracts and forms are printed with a blank left in which to insert such fictitious trade names. When an order is secured, said order blanks or contracts are signed by the respondent representative or respondent sales agent securing the order as "representative," "advertising representative," "agent," or some similar capacity on a line provided therefor.

Among and typical of the form or order blank or contract and the form of certificate used by the respondents under the trade names mentioned herein, and under various other trade names to the Commission unknown, are the following:

(Form of order blank or contract)

MODERNISTIC

Art Co.

No. 12850
806 W. Washington Blvd.
Chicago, Ill., U.S.A.

Cable Address
"WOLSTU"

..... & 193
Post Office State Date

You will please make for the undersigned, from the Photograph delivered to your representative this day,, finely finished Painting and deliver the same to me on or about the day of, 19.., the painting to cost me \$..... Amount paid your representative \$....., leaving a balance of \$....., which I agree to pay at the time of delivery. THE ABOVE PRICE DOES NOT INCLUDE FRAMES OR GLASS COUNTER-MANDS NOT ACCEPTED.

This order is given you upon the further consideration that your company will deliver the paintings so ordered in suitable frames, which the undersigned is entitled to accept upon payment of a reasonable price, if the frames are satisfactory. In the event the undersigned does not accept the frames and pay for same, they are to be delivered forthwith to your company's deliveryman.

Received by
Representative Customer

Form A.

A PHOTOGRAPH IS A TREASURE DEAR—HAVE "YOURS" TAKEN ONCE A YEAR.

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40 F. T. C.

(Form of Certificate)

CONTINENTAL ARTS ASSOCIATION
806 W. WASHINGTON BLVD.

CHICAGO, ILLINOIS.

EXQUISITONE PORTRAITURE

This Certificate

entitled M. to one of our Hand Finished Exquisitone Portraits in Water Colors 10 X 15 inches in size as a conditional combination offer for the purpose of extending our business.

The only requirement is that you purchase the frame for this portrait from us.

Basic outlines or the foundation of this portrait will be shown by our representative shortly. He will have with him a finished Exquisitone Portrait and catalogue of appropriate frames. At the time of your selection about one-half of the amount will be required as deposit, enabling you to pay the balance on delivery of the frame and portrait.

CONTINENTAL ARTS ASSOCIATION

By.....

Character Portraiture of Personal Distinction

The foregoing business arrangement is used by the respondents for the purpose of evading liability to purchasers for various false and misleading statements and representations which are made in the sale of respondent, Woelfel's products, and to give prestige to the various trade names used by respondent representatives and respondent sales agents. The so-called "Oil paintings," "hand painted portraits," "Exquisitone portraitures," "oil paintings on silk," "enlarged colored photographs," or "miniatures" produced, sold and distributed by respondents are not portraits, miniatures or paintings finished or produced by hand in oil colors in any sense of the word, but, to the contrary, are merely cheap, quickly made, enlarged photographic reproductions costing in the neighborhood of \$1.25 each, which are tinted, or colored, by the use of pastel or crayon, water color or other powdered pigments soluble in water, sprayed upon the enlarged photographic reproduction in solution largely through the use of a mechanical air brush and compressed air.

2. Respondents exhibit to purchasers and prospective purchasers samples of attractive colored and finished specimens of the purported type of work to be done. Prospective purchasers are told that they may obtain similar "paintings," "oil paintings," "miniatures," or "portraits" from respondents at a "reduced price," "advertising price," "special introductory price," for the "cost of production," or in some cases, "absolutely free."

In truth and in fact, the so-called portraits or tinted photographic reproductions produced, sold and distributed by respondents are different from and greatly inferior in quality, workmanship and appearance to the samples exhibited by respondents when obtaining orders for such products. In truth and in fact, such products are not sold or delivered at "reduced price," "advertising price," "special introductory price," for the "cost of production" or "absolutely free" but, to the contrary, the price at which respondents offer and sell unframed tinted photographic reproductions is

in excess of and above the regular and customary price for which said products usually and customarily sell in the ordinary course of business.

3. Said respondents, in some instances, induce the customer to lend them a photograph or kodak snapshot of the party or parties whose portrait is to be "hand painted" and represent that such photograph is to be used as a model or guide by the artist who is to "paint" the "portrait" or that an artist will make a "sketch" therefrom and that said photograph or kodak snapshot will be returned to the purchaser with the completed work. In other instances, respondents represent that they maintain an "art association," "art studio" or similar institution, in which highly skilled artists copy the photographs or snapshots by hand in oil colors so as to furnish the customer with a hand painted portrait or hand painted miniature in oil paints, whichever is desired. Respondents further represent to the prospective purchaser that the so-called "portrait" or "oil painting" will be finished in oil paints by hand on a durable background, such as linen or silk.

In truth and in fact, respondents are not now conducting, and never have conducted, an art association, an art studio or similar institution, and such institutions are not now, and have not been during the times mentioned herein, owned or operated by the respondents herein. On the contrary, the business conducted by the respondents in the production, distribution and sale of said portraits and frames is and has been nothing more, in fact, than a commercial business enterprise, selling to the purchasing public for profit cheap colored or tinted photographic enlargements or miniatures, and frames therefor. The use by respondents of the terms "art association," "art studio" and other terms of similar import and meaning misleads and deceives the purchasing public as to the character of the business actually conducted by the respondents, and has caused the purchasing public to confuse respondents' business with various organizations of similar name or designation which conduct an "art association," "art studio" or "art company," and which are properly designated as such.

In truth and in fact, the products produced by respondents are not portraits or oil paintings as such terms are understood, finished in oil by hand on linen, silk, or other similar fabric, but, to the contrary, are made with water colors, as hereinabove described, on a type of photographic print paper containing no linen or silk materials but so finished that the surface has the appearance of cloth.

4. Respondents represent to purchasers that certain frames offered for sale are gold-plated and that said frames contain very high quality, unbreakable imported glass fronts.

In truth and in fact, said frames are not gold plates but are made of wood colored with a yellow-like substance having the appearance of gold, and the glass fronts used in said frames are of domestic origin.

5. When an order is secured, the delivery of the finished product is made at a subsequent date by a respondent representative or a respondent sales agent, generally known to the trade as a "follow-up" or "delivery man," or some individual associated with respondents other than the respondent or associate who secured the original order. The person making the delivery is represented by the respondents to be a "field artist" or "instructing artist." The picture is presented to the purchaser in a frame of unusual type of octagonal, convex shape, regardless of whether or not a frame has been previously ordered. Such frame and picture are of a type and shape

that if purchaser does not buy a frame from respondents he will find great difficulty in obtaining a frame to fit the picture from any other source. In the event the purchaser objects to the quality, design or high price of the frame or does not desire to purchase the frame, although in most instances, he has been previously advised that there is no obligation to buy a frame, he is for the first time informed that a frame for the product may not be purchased from any source other than through the respondents; that the portrait will not hold its colors or be of any value unless it is framed; and that the customer has agreed to "protect" and "exhibit" the portrait and consequently under such agreement is obligated to buy a frame. The respondents, in many instances, refuse to deliver the completed picture, regardless of whether or not it has been paid for in full, or even to return the original photograph loaned by the customer until a frame is ordered or a claimed balance due is paid in full.

In truth and in fact, the sales agent represented by respondents to be a "field artist" or "instructing artist" is not an artist in the sense that such term is ordinarily understood by the consuming public. On the contrary, said so-called "artist" is nothing more than a delivery man or frame salesman or follow-up man operating for and on behalf of respondents. Purchasers are not advised, and there is no such understanding or agreement in connection with said contracts, that photographs or snapshots loaned or submitted by purchasers are to be retained by respondents until payment of any sum alleged by respondents to be due them. On the contrary, purchasers are advised by respondents that photographs lent to respondents will be returned by respondents at the time the finished product is submitted, regardless of whether or not such product or a frame therefor, is purchased. Respondents conceal and have concealed from the purchasers at the time the so-called "portrait" is ordered the fact that the finished product will be cut in an unusual octagonal shape, and will be delivered in a frame of unusual octagonal, convex form and shape; and that it will be impossible for the purchasers thereafter to obtain a frame to fit said portrait from any source except from or through respondents at prices fixed by respondents.

6. The said respondents in other instances further represent to prospective customers that their "company" is putting on an advertising campaign to get it established in the customer's community; respondents' method of advertising is to induce the customers' to "take a chance" by drawing from a number of envelopes containing slips of paper, one of which is a so-called "lucky coupon" or "lucky certificate." Respondents further represent that the customer who draws the so-called "lucky coupon" or "lucky certificate" is to receive a \$25.00 hand painted oil portrait for only \$6.95. (At various times similar offers are made at different prices.) The said envelopes containing said slips are so manipulated by respondents that each prospective customer invariably draws a "lucky coupon" or "certificate," of which the following is typical:

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ROYAL ART STUDIOS

No. 1568

For the purpose of advertising and extending our business the original holder of this

RED SEAL CERTIFICATE

(S E A L)

Is entitled to

receive our new opalescent painting under the special privileges outlined by our representative.

Issued to Royal Art Studios.

Various other types of certificates not specifically set out herein are used by respondent representatives and respondent sales agents in carrying out the said so-called drawing contest scheme, and the representations and sales methods used in furthering the scheme sometimes vary with different sales.

The holders of said "Red Seal Certificates" or other so-called "lucky coupons" are led by the false statements and representations of respondents, and by the "fake" drawings in which the holders were "lucky," to believe that said coupon or certificate places the holder at a distinct advantage in purchasing a painting or portrait, and such holders are thereby induced to enter into contracts for the purchase of a so-called "painting" or "portrait." In truth and in fact, said coupon or certificate gives the holder thereof no advantage in price whatsoever, for practically all purchasers are permitted to secure a "lucky coupon" or "certificate," and all purchasers may purchase said "paintings" or "portraits" at the price used by respondents in making a so-called "special introductory offer." In truth and in fact, this procedure which is known to the trade as the "draw" is merely a sales scheme used to gain entry into prospective customers' homes and to secure from them a photograph or snapshot, and thus more easily facilitate the sale of a picture and frame.

7. At a later date, when the "follow-up" man or frame salesman appears with the finished picture framed as aforesaid, various representations are used to induce the customer to execute a promissory note for the balance due made payable to the fictitious trade name under which the particular respondent operates. Said note is "transferred" by respondent representative or sales agent to Woelfel Studio, which organization credits the amount of the sale to the account of the respondent under whose trade name or organization the sale is made. Respondent, Woelfel, then "transfers" the note to States Finance Company with the statement, "endorsed without recourse" appearing thereon. In case of controversy with the purchaser of any picture or frame, where such purchaser has given a note for the unpaid balance due on such picture or frame, the respondent to whom such note was given makes it a practice of avoiding any further responsibility in connection with the contract by referring the purchaser to States Finance Company and thus creating the impression in the mind of the purchaser that by reason of the fact that the purchaser has given a note now owned by States Finance Company, the respondent has been removed from the situation and is no longer involved in any contractual relationship with the purchaser. In this connection, the following and

other statements of similar import are used by States Finance Company in connection with such transactions:

We explained in a previous letter * * * that we are strictly a finance company and have nothing whatever to do with the transactions of any other organization. When you signed a note in the amount of \$. . . you received certain merchandise and on the strength of your signature we paid for that merchandise at the time we procured the note. The entire obligation is now directly to us and we must look to you for entire settlement.

The above obligation has been turned over to us by (here is used trade name of respondent representative making sale). All payments must be made to States Finance Company.

In connection with these and similar representations respondent, Woelfel, trading as States Finance Company, advises the purchaser that the "company" has bought the note of the purchaser or customer, has paid a consideration therefor, is an innocent purchaser thereof and looks to the customer for the payment of the note.

In truth and in fact, States Finance Company and Woelfel Studio, while represented to be different business entities, are and have been one and the same, each being owned, managed, operated and controlled out of the same building in Chicago, by respondent, Woelfel. Respondent, Woelfel, trading as States Finance Company does not buy the notes in question by discount or otherwise and has not paid Woelfel Studio any consideration therefor since the respondent, Woelfel, is one and the same person, trading under both trade names Woelfel Studio and States Finance Company. The purchaser of a picture or frame who gives a note for an unpaid balance upon discovery of the inferior quality of the "painting" and the frame thus is led to believe that he is unable to deal with the respondent with whom he contracted, but must deal with an innocent purchaser for value who is in no wise responsible for the representations made, or a breach of the original contract. Accordingly, purchasers have no opportunity of objecting to the quality of the merchandise delivered and are subjected to harassment and pressure through threats of various kinds.

In further connection with the operation of his business plan as the same relates to the collection of money alleged to be due for pictures and frames, respondent, Woelfel, through his collection agency, States Finance Company, resorts to various methods of frightening, intimidating and harassing purchasers in the further payment of money alleged to be due for pictures and frames. In this connection respondent, Woelfel, trading as States Finance Company, makes a practice of writing offensive letters to purchasers of pictures or frames. The letters are issued in serial form, a particular form or number in the series being used to cover a given situation, the failure to pay the note being treated, at first, as an oversight. The following among other statements, were, and are, being made in letters written by States Finance Company to purchasers of pictures from the respondents:

* * * we will be reluctantly obliged to turn the matter over to a collection bureau
 * * *. This may cause you considerable embarrassment, as well as extra expense,
 * * *.

In many instances purchasers are harassed, frightened and intimidated into paying amounts of money to the respondents for which said purchasers are not legally obligated.

The aforesaid false and misleading statements, representations, acts, practices and methods used by the respondents in connection with the conduct of their business enterprise, as aforesaid, are not all inclusive, but are merely illustrative of the character and type of statements, representations, acts, practices and methods used by respondents to mislead and deceive members of the purchasing public, and to induce the purchase of their said products.

PAR. 6. A crayon is a pencil-shaped piece of colored clay, chalk or charcoal used for drawing upon paper. A crayon drawing is the act or art of drawing with crayons. A drawing is a representation produced by the art of drawing; a work of art produced by pen, pencil or crayon. The pastel, in art, is a colored crayon made of pigments ground with chalk and compounded with water into a sort of paste. A drawing made with a colored chalk or crayon is called a pastel, as is also the art of drawing with colored crayons.

A painting is a likeness, image, or scene depicted with paints without the aid of photography. A water color is a painting with pigments for which water, and not oil, is used as a solvent. A portrait, in its ordinarily accepted meaning, is a picture of a person drawn from life, especially a picture or representation of a face; a likeness, particularly in oil. An oil painting is a painting done by hand with brushes in plastic oil colors on canvas, linen or other material, without the aid of photography.

PAR. 7. In the course and conduct of their business, respondents' selling and distributing methods are directed primarily to accomplish the sale of a picture frame at an exorbitant price, and respondents' various activities and representations in securing contracts for portraits are used to enable respondents to contact the purchaser for an opportunity to sell picture frames of cheap and inferior quality at prices which are far in excess of the prices at which frames of similar quality usually and customarily sell for in the ordinary course of business.

PAR. 8. Each of said respondents herein, has acted and does act, in concert and cooperation with one or more of the other respondents herein in doing and performing the acts and practices herein alleged and in furtherance of said understandings, agreements, combinations and conspiracies.

PAR. 9. The use by the respondents of the aforesaid acts, practices and methods in connection with the offering for sale and sale of said products in commerce, as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive the purchasing public concerning the quality and value of respondents' products and the nature of the business conducted by respondents, and has led, and does lead, purchasers erroneously and mistakenly to believe that the representations and implications so made and used by respondents are true, and causes a substantial number of the purchasing public to purchase said products under the mistaken and erroneous belief that they are securing high grade, quality portraits, paintings, oil paintings or miniatures and picture frames of exceptional value.

The use by respondents of the aforesaid acts, practices and methods has the tendency and capacity to, and does, unfairly divert trade to respondents from their competitors engaged in the sale and distribution of genuine original oil paintings, and tinted or colored enlargements or miniatures of photographs and snapshots in commerce among and between the various States of the United States and in the District of Columbia, who truthfully represent their said products. As a consequence thereof, substantial

injury has been done, and is now being done by respondents to competitors in said commerce.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, including said understandings, agreements, combinations and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 2, 1941, issued its complaint in this proceeding, and on March 10, 1942, issued its amended complaint, charging the respondents named in the caption hereof with the use of unfair methods of competition in commerce in violation of the provisions of said act. After certain respondents filed their answer in this proceeding, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by these respondents through their counsel and by Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon 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 as to the respondents executing said stipulation without the presentation of argument or the filing of briefs, counsel for said respondents expressly waiving the filing of report upon the evidence by the trial examiner. Certain respondents answered admitting some of the allegations of fact set forth in the amended complaint, and other of the respondents filed admission answers. The respondents filing partial or full admission answers waived hearings, the filing of the trial examiner's report upon the evidence, and all intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on said amended complaint, answers thereto, and said stipulation as to the facts, 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. (a) Respondent, Frank F. Woelfel, is an individual, trading as Woelfel Studio and having his principal office and place of business at 806 West Washington Boulevard, Chicago, Ill. Said respondent, trading as Woelfel Studio, is now, and for several years last past has been, engaged in the production, sale, and distribution, among other things, of colored enlargements or miniatures of photographs and snapshots and the sale of frames for such pictures.

•(b) Respondent, Fred E. Willis, an individual, is a brother-in-law of respondent, Woelfel, and for more than three years last past has been em-

ployed by respondent, Woelfel, as office manager, bookkeeper, and accountant for the Woelfel Studio, handles its funds, has charge of the office employees, and conducts various other office, business, and financial affairs of said studio. He has conducted, and now conducts, the operations of a collection agency known as States Finance Company. All of these activities of respondent, Willis, are carried on from the offices of Woelfel Studio at 806 West Washington Boulevard, Chicago, Ill.

(c) The respondents described in this subparagraph (hereinafter frequently referred to as "operators") are engaged, directly and through their respective employees, in the sale and distribution to members of the consuming public of products of the Woelfel Studio purchased from the said Woelfel. Except as otherwise stated in this subparagraph, each of these operators uses the offices of respondent, Woelfel, as the address for and designation of the location of the business carried on by him under a trade name, or otherwise, in the products of the Woelfel Studio.

(c-1) Respondent, C. W. Short, is an individual, trading and doing business as Modernistic Art Company.

(c-2) Respondent, R. D. Minyard, is an individual, who formerly traded as Central Art Company and now trades as Modern Art Company.

(c-3) Respondent, Ray Pietz, is an individual, who formerly traded as National Arts Association and now trades as National Art Distributor.

(c-4) Respondent, O. D. Redd, is an individual, who formerly traded as Central Art Company and now trades as Modern Art Company.

(c-5) Respondent, Frank H. Munger, is an individual, who has traded under various names, including his own.

(c-6) Respondent, Clayton G. Brown, is an individual who formerly used the offices of respondent Woelfel as the address for and designation of the location of his business but who now trades as Clayton G. Brown Art Service, with his office and principal place of business at 296 Broad Street, Salamanca, New York.

(d) The respondents described in this subparagraph are, or have been for a number of years last past, employees of operators and have aided, assisted, and cooperated with such operators in selling and distributing Woelfel Studio products to members of the consuming public. Various of these respondents have served in different capacities, such as "crew managers," "road managers," "proof passers," "delivery men," "salesmen," and "sales agents." These respondents (hereinafter frequently referred to as "sales agents") have used, or now use, the Woelfel Studio, 806 West Washington Boulevard, Chicago, Ill., as the address for and designation of the location of the business represented by them. These respondents are E. B. Cook; L. E. Cox; E. W. Hunsucker; S. B. Hunsucker; J. E. Liles; Bertie Mae Long; Jewel Long; W. B. Lovings; J. L. Maciborski, who also uses the name J. L. McLean and who is referred to in the complaint by both names; Kathryn Maciborski; M. E. Slusser, who is referred to in the complaint as R. E. Murphey and who uses that name; Paul F. Nelson; Gladys E. Powell; Leslie E. Powell; Al C. Sachs; Belle Short; Mrs. C. W. Short; E. D. Short; and H. B. Short.

(e) As to the other respondents named in the complaint, because of failure to secure service upon them or for other reasons appearing in the record affecting their inclusion in this proceeding, the following respondents are not hereafter referred to in these findings: R. E. Hardy, H. L. Fellers, F. E. Findlay, L. R. Grim, Orville A. Hime, William R. Klaus, Alfred F. McCants, C. S. Orr, J. H. Robinson, Arthur G. Russell, Otto F.

Schneider, A. M. Thompson, Hal Thompson, R. Ware, C. Belgard, Bob Bergin, B. F. Cobb, Mrs. E. B. Cook, J. P. Conrad, Leo Crowder, H. F. Dindinger, C. G. Frye, J. Alene Frye, James F. Gautney, J. L. Gilmore, George E. Grabow, Mary Granata, Troy Gravette, H. Guteman, G. B. Harshbarger, C. E. Heard, F. H. Herd, M. Hollingsworth, Rufus Hudson, Ellen Lanning, Morris A. Lee, Jennell Long, W. B. Lorkup, George McCullough, Delmer McLaughlin, Mrs. Delmer McLaughlin, Dorothy Notzen, Frank Parker, Bill Reed, F. Y. Robinson, Mrs. J. H. Robinson, J. C. Rosser, R. T. Sherrod, Reba Stone, W. G. Wagner, George Westphal, Harold Wolcott, Alonzo Williams, and R. M. Ziebell.

PAR. 2. In the course and conduct of their business in the sale and distribution of the products of the Woelfel Studio, respondents herein (except as otherwise specifically stated) have caused such products, when sold, to be transported from the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia, and 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. Respondent, Fred E. Willis, in his capacity as an employee of respondent, Woelfel, has aided, assisted, and cooperated in maintaining and carrying on a course of trade in commerce in the products of the Woelfel Studio; and in his conduct of the debt collection business designated as States Finance Company, more particularly hereinafter described, has maintained a current of trade in commerce among and between various States of the United States.

PAR. 3. The several respondents herein have been, and are now, engaged in direct and substantial competition with various corporations, partnerships, and individuals engaged in the sale and distribution in commerce between and among the various States of the United States and the District of Columbia of tinted or colored enlargements or miniatures of photographs or snapshots, genuine oil paintings and miniatures, water color paintings, and frames for such pictures.

PAR. 4. (a) In carrying out the plan and practice for the sale of the products of respondent, Woelfel, various operators have adopted and employed trade names such as United Art Company, Atlas Portrait Company, Modernistic Art Company, Windsor Studio, Superior Artists Association, Royal Art Studio, Real Art Portrait Company, Windsor Portrait Service, American Art Association, Modern Art Company, Central Art Company, and National Art Association. With the consent and active assistance of respondent Woelfel, operators have used the Chicago address of the Woelfel Studio as the address of the businesses conducted by them under the trade names used by them. Respondent, Woelfel, had the authority to, and did, receive and open mail addressed to the trade names used by respondent operators. Such of the complaints received in this correspondence as Woelfel could handle, he did handle by writing letters on behalf of respondent operators on their trade name stationery kept in his office, signing such correspondence with the particular trade name to which the complaint was addressed. Such of his correspondence as Woelfel could not handle, he forwarded to the operator to whom it was addressed. Respondent operators used various contract forms, order blanks, and credentials made up in the particular trade name used by them for contacting and dealing with members of the consuming public. Typical of the form of the order blank used by respondent operators is the following:

MODERNISTIC
Art Co.

No. 12850
806 W. Washington Blvd.
Chicago, Ill., U. S. A.

Cable Address
"WOLSTU"

....., 193—
Post Office State Date

You will please make for the undersigned, from the Photograph delivered to your representative this day,; finely finished Painting and deliver the same to me on or about the day of, 19.., the painting to cost me \$. Amount paid your representative \$., leaving a balance of \$., which I agree to pay at the time of delivery.

THE ABOVE PRICE DOES NOT INCLUDE FRAMES OR GLASS COUNTER-MANDS NOT ACCEPTED.

This order is given you upon the further consideration that your company will deliver the paintings so ordered in suitable frames, which the undersigned is entitled to accept upon payment of a reasonable price, if the frames are satisfactory. In the event the undersigned does not accept the frames and pay for same, they are to be delivered forthwith to your company's deliveryman.

Received by
Representative Customer

(b) As a result of the use by respondent operators and their respective sales agents of the aforesaid trade names with the business address of 806 West Washington Boulevard, Chicago, Ill., purchasers and prospective purchasers were led to believe that they were contracting or dealing with duly constituted representatives or sales agents of an actually existing and operating art studio, art association, or art company the name and address of which appeared on documents employed by said operators and their sales agents. As a result of the belief so engendered, purchasers and prospective purchasers have confused the character of the business operated by said operators and their sales agents with that of various organizations of similar name and designation but which, like Woelfel Studio, are actually conducting an art studio. The respondent operators have, through the use of such trade names and the business address furnished by respondent Woelfel, obtained prestige and standing with members of the purchasing public. As a further result of the plan followed in the sale of the products of Woelfel Studio, respondents, Frank F. Woelfel, Fred E. Willis, R. D. Minyard, Ray Pietz, O. D. Redd, Frank H. Munger, and Clayton G. Brown have been enabled to evade liability to purchasers for the statements, representations, and sales methods used by them and their sales agents in connection with the sale and distribution of the said products of Woelfel Studio.

(c) In truth and in fact, none of respondent operators or their sales agents has actually owned, operated, or conducted, directly or indirectly,

any art studio, art institute, art company, or place of business where colored enlargements or miniatures of photographs or snapshots are made at 806 West Washington Boulevard, Chicago, Ill., or at any other place, or has owned, operated, or controlled the photographic equipment and paraphernalia essential in producing such enlargements or miniatures, or has had in his employ or under his control or direction any persons skilled in producing the products offered for sale by them. Although the respective trade names and the Chicago address used by respondent operators indicate an existing business conducted by them, in truth and in fact the business operations conducted at Woelfel Studio, 806 West Washington Boulevard, Chicago, Ill., are conducted solely by respondent, Woelfel, who possesses the equipment and paraphernalia and employs the personnel necessary for making the products sold by him to respondent operators and by such operators and their sales agents to members of the consuming public.

PAR. 5. (a) The plan for selling and distributing products of the Woelfel Studio includes the conduct of the operations of a collection agency known as States Finance Company by respondent, Fred E. Willis. The operators have made it a practice to have purchasers of pictures and frames sold by them execute notes for any balance due on such purchases. These notes are usually executed upon printed forms bearing the trade name of the operator and the address "806 West Washington Boulevard, Chicago, Illinois." Through understanding with respondent Woelfel, operators have delivered or assigned and delivered such notes taken from their customers to States Finance Company and transmitted such notes from various other States to the States Finance Company in Chicago, Ill., for collection, and in pursuance of this plan, States Finance Company has furnished to operators printed envelopes for the use of their customers in remitting installment payments to States Finance Company. In instances where makers of the notes fail or refuse to pay or unduly delay payments on notes delivered by operators to the States Finance Company for collection, the States Finance Company addresses communications to such debtors seeking payment. For this purpose it uses a series of form letters which are mailed from Chicago, Ill., to debtors in other States. Various of these form letters contain statements such as:

We cannot understand your failure to reply to our previous letters relative to your past due obligation. Your note was accepted in good faith, and we are sure that you have been unable to make payment because of conditions beyond your control. In any event we are entitled to our money or a prompt explanation as to why we have not received remittance.

* * * * *

We explained in a previous letter * * * we are strictly a finance company and have nothing whatever to do with the transactions of any other organization. When you signed a note in the amount of you received certain merchandise, and on the strength of your signature we paid for that merchandise at the time we procured the note. The entire obligation is now directly to us and we must look to you for entire settlement. * * *

(b) As a matter of fact, said notes are delivered to the States Finance Company with or without endorsement, and said company makes a charge for each note sent it for collection whether or not collection is successfully made. Operators with satisfactorily established credit maintain running accounts with respondent Woelfel. These accounts are credited with

amounts collected by States Finance Company on notes placed by them with States Finance Company for collection and their accounts are debited with the charges for Woelfel Studio products sold to them. No separate set of books is kept by States Finance Company, and respondent, Willis, keeps the operators' accounts on books of the Woelfel Studio. All monies of Woelfel Studio and States Finance Company are deposited in the bank in the name of Woelfel Studio and any amounts due operators on account of the collection of notes or as a result of the aforesaid running accounts kept with them are paid by check of the Woelfel Studio. Although States Finance Company is operated from the offices of the Woelfel Studio, it uses the address "104 North Halstead Street, Chicago, Illinois," but this address is in fact a side entrance to the Woelfel Studio, the main entrance being 806 West Washington Boulevard, Chicago, Ill.

(c) The use of representations by States Finance Company such as those set out above has the capacity and tendency to induce, and in fact has induced, makers of notes placed with the States Finance Company for collection to believe that said company is an innocent holder for value of the notes and that the maker must look to that company in connection with matters and questions relating to the products in the settlement for which the note was given. In truth and in fact the States Finance Company has not paid any sum or given anything of value for the notes on which it seeks payment; said notes actually continue to be the property of the operator in whose favor they were originally executed; and in the event of failure to collect the notes they are ultimately returned to the operator who secured them and who stands any loss involved. The true function and purpose of the States Finance Company, was, and is, to aid and assist in the business operations conducted by the several respondents in the sale and distribution of products of the Woelfel Studio.

PAR. 6. (a) Respondent operators and the various sales agents employed by them in different capacities such as "crew managers," "road managers," "proof passers," "delivery men," "salesmen," or "sales agents," in making and seeking to make sales of Woelfel Studio products to members of the purchasing public, designate and describe the pictures being offered as "paintings" or "portrait paintings," and in instances where an order is secured use a contract form for such order similar to the form heretofore set out in subparagraph (a) of paragraph 4 hereof. In the course of their dealings with members of the purchasing public, respondent operators and their sales agents have exhibited to purchasers and prospective purchasers purported samples of the type of work being offered and said pictures on occasion have been described by such respondents as "paintings" or "oil paintings" or "portrait paintings" or "paintings finished in oil by hand," and as being sold or delivered at a "reduced price" or an "advertising price," as a "special introductory offer," or at the "cost of production." On occasion, various respondent operators or sales agents, in obtaining orders for pictures, make the above representations in connection with the use of a "draw" in the operation of which the customer is induced to take a "chance" by drawing from a number of envelopes containing slips of paper, one being a so-called "lucky coupon" or "lucky certificate." It is represented that the purchaser who draws the so-called "lucky coupon" or "lucky certificate" is entitled to receive a \$25 or a \$30 hand-painted painting or hand-painted portrait for only \$6.95 or some comparable sum (at various times such offers are made at varying prices). The said envelopes are so manipulated by respondent operators or their

sales agents that an acceptable customer invariably draws a "lucky coupon" or "lucky certificate."

(b) In truth and in fact the Woelfel Studio products exhibited to customers or prospective customers by respondent operators or their sales agents as samples or specimens are carefully selected products. In various instances, due to the acceptance from customers of photographs or snapshots which are represented by operators or their sales agents as being suitable but which are photographically inferior and fundamentally incapable of being used for producing good enlargements or miniatures, respondent Woelfel is unable to produce from such photographs or snapshots a finished product equal in appearance to the sample which has been displayed to the purchaser. A painting is understood by artists, photographers, and the general public as an original representation by a painter of a design, image, or object on a surface by means of paint, either pastel, water color, or oil, a freehand image painted directly on the surface without the intervention of any mechanical means such as a camera. A water color is a painting with pigments for which water and not oil is used as a solvent. The so-called paintings sold and distributed by respondents are not paintings and are not finished in oil by hand. Such pictures do not conform to the established belief of the public as to what constitutes a painting, nor do said pictures constitute paintings as understood by artists who paint pictures or by photographers who color photographs. The pictures sold by respondents are in fact colored photographs, enlargements or miniatures, as the case may be, produced by making a photographic negative of the photograph furnished by the customer through the use of special photographic equipment. An enlargement, or a reduction in the case of a miniature, is then made from the negative on especially prepared paper which will take liquid color. The photographic enlargement or miniature thus made is then colored with the use of water color or other powdered pigments soluble in water sprayed upon the photographic reproduction through the use of an air brush operated by compressed air, and a portion of the colors is supplied through the use of a hand brush. The so-called "draw" is a deceptive scheme conceived for the sole purpose of inducing prospective purchasers to believe that if they draw so-called "lucky coupons" or "lucky certificates" they are thereby placed in a position of distinct financial advantage in purchasing a "painting" or "portrait." Said coupon or certificate gives the holder thereof no advantage in price whatever over any other purchaser. The pictures sold by operators or their sales agents, either by the use of the "draw" or otherwise, are not, and have not been, sold at any "reduced price" or "advertising price," at any "special introductory offer," or "at the cost of production." Said pictures do not have, and have not had, any \$25 or \$30 sales price or value or any sales price or value approximating such sums. On the contrary, the prices at which sales are made are the regular and customary prices at which such pictures are sold in the ordinary course of business.

PAR. 7. In various instances respondent operators and their sales agents make no reference or mention of the frame at the time a customer is being solicited to order a picture. When a sale is made, a second sales agent or "delivery man" calls upon the customer at a later date with the finished picture mounted, as a rule, in an expensive type of frame, and endeavors to sell the customer this frame for the picture. Pictures and frames produced by Woelfel Studio and thus offered by operators and their sales agents are generally hexagonal in shape, with a raised or convex surface. Various

customers have assumed at the outset that the frame would be included in the price quoted by the first sales agent. If the customer objects to or refuses to purchase the frame on account of its price, quality, or design, the customer on occasion is informed by the "delivery man" that a frame for the picture cannot be purchased from any source other than through his company, that the company he represents manufactures the only frame that will fit the picture, that the picture will not hold its color or be of any value unless it is framed. While frames such as those sold by respondents may be obtainable from frame manufacturers, such frames are not ordinarily obtainable in photographic supply stores or other stores accessible to the consuming public; and in the event of the failure or refusal of a customer to purchase a frame, respondents do not make it a practice to inform the customer where a frame can be obtained. In the cases of respondents, Frank F. Woelfel, Fred E. Willis, R. D. Minyard, Ray Pietz, O. D. Redd, Frank Munger, and Clayton G. Brown, on occasions where a customer finally refuses to buy a frame from the second sales agent or "delivery man," such sales agent in some instances has refused to deliver the completed picture regardless of whether or not it has been paid for in full, and on occasion has refused to return the original photograph loaned by the customer until the frame is ordered. In these cases there has been no agreement or understanding to the effect that photographs or snapshots loaned or submitted by purchasers are to be retained by respondents until a frame is purchased or payment is made of any sum claimed to be due. On the contrary, purchasers are advised that photographs loaned or submitted by them will be returned at the time the finished picture is submitted. The practice of supplying pictures cut into unusual shape and fitted into frames of corresponding unusual shape and design for which suitable substitute frames are difficult to obtain in the event respondents' frame is refused, and the practice of withholding delivery of a picture paid for in whole or in part or refusing the return of the photograph or snapshot supplied by the customer until a frame is purchased from respondents, are calculated to force the customer into buying something he did not originally intend to buy; namely, a frame, and these sales plans place in the hands of operators and their sales agents a means to effectuate their purpose of thus selling a frame in addition to the picture already sold to the customer.

PAR. 8. The means and methods used by respondents, as aforesaid, constitute a well coordinated plan for selling and distributing Woelfel Studio products to the public, and the several respondents have participated and cooperated therein, as heretofore found, to induce and promote the distribution of such products.

PAR. 9. The use by respondents of the aforesaid methods and false and misleading statements and representations has had, and now has, a tendency and capacity to, and does, mislead and deceive a substantial number of the purchasing public into an erroneous and mistaken belief concerning respondents' business and an erroneous and mistaken belief that such statements, representations, and implications are true. As a result of the erroneous and mistaken belief so induced, a substantial portion of the public has purchased respondents' said products, and as a consequence thereof trade has been diverted unfairly to respondents from their competitors who are likewise engaged in the sale and distribution of similar products in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices, 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 amended complaint of the Commission, a stipulation as to the facts entered into between certain respondents herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, providing, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon said respondents its findings as to the facts and its conclusion based thereon and an order disposing of the proceeding, and the answers of certain other of respondents admitting various allegations of fact set forth in the amended complaint and waiving further hearings as to said facts and all intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Frank F. Woelfel, Fred E. Willis, R. D. Minyard, Ray Pietz, O. D. Redd, Frank H. Munger, and Clayton G. Brown, individuals, 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 tinted or colored photographs, or enlargements or miniatures of photographs or snapshots, and of frames therefor, do forthwith cease and desist from:

1. Representing in any manner, directly or by implication, that colored or tinted photographs, photographic enlargements, or reductions are paintings.

2. Using the terms "oil painting," "portrait painting," "hand painted," or "hand painted portrait," or the word "painting," either alone or in conjunction with any other words or terms, to designate, describe, or refer to colored or tinted photographs, photographic enlargements or reductions, or other pictures produced from a photographic base or impression.

3. Using a "draw" or "draw contest" or so-called "lucky coupons" or "lucky certificates," or any similar device, plan, or scheme, so as to represent, indicate, or imply that any customer will obtain any substantial discount or reduction in the price of any picture or pictures.

4. Representing, in connection with pictures being offered or sold in the regular course of business at the usual and customary prices therefor, that such pictures are being offered or sold at a reduced price as an advertising offer or introductory offer, or representing in any manner that a purchaser is receiving an advantage in price not available to all purchasers.

5. Representing that a picture to be made and delivered will be equal in quality and appearance to any sample displayed to the customer unless in fact the picture thereafter delivered is of the same quality, design, and workmanship as said sample.

6. Using trade names consisting of or including terms such as "Art

Studios," "Art Institute," "Art Association," or any other fictitious name of similar import, unless the respondent using such name or names actually owns, operates, conducts, or controls an organization or establishment of the character indicated and comprehended by the trade name so used.

7. Misrepresenting or authorizing, permitting, or cooperating in the misrepresentation of the financial responsibility, prestige, or standing of respondents, or any of them, or of the character or extent of such business, by falsely claiming to be connected with an operating established house or by deceptively using the business address of such established house as and for a business allegedly operated by respondents, or any of them, and from misrepresenting through the use of fictitious trade names and misleading State and post office addresses the place, character, and extent of the business actually conducted.

8. Concealing from or failing to disclose to customers at the time pictures are ordered that the finished picture when delivered will be so shaped and designed that it can be used only in a specially designed, odd-style frame that cannot ordinarily be obtained in stores accessible to the consuming public, and that it will be difficult or impossible to obtain a frame to fit the picture from any source other than respondents.

9. Representing that States Finance Company, or any similar collection agency operated by or for respondents, is an innocent purchaser for value without notice of notes for unpaid balances due on pictures or frames sold to the consuming public by respondents, or has in good faith discounted such notes or paid out any money or given anything of value in connection with the alleged purchase of such notes.

10. Failing or refusing, in cases where pictures have been ordered, completed, and paid for, to deliver to the customer the completed picture or return the photograph or snapshot previously loaned by the customer for use in producing the picture.

It is further ordered, That respondents, C. W. Short, E. B. Cook, L. E. Cox, E. W. Hunsucker, S. B. Hunsucker, J. E. Liles, Bertie Mae Long, Jewel Long, W. B. Lovings, J. L. Maciborski, also known as J. L. McLean, Kathryn Maciborski, M. E. Slusser, also known as R. E. Murphey, Paul F. Nelson, Gladys E. Powell, Leslie E. Powell, Al C. Sachs, Belle Short, Mrs. C. W. Short, E. D. Short, and H. B. Short, individuals, 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 tinted or colored photographs, photographic enlargements or miniatures of photographs or snapshots, and of frames therefor, do forthwith cease and desist from the acts and practices forbidden in paragraphs numbered 1 to 9 inclusive, set out above.

It is further ordered, That for reasons appearing in the findings as to the facts herein this proceeding be, and hereby is, closed as to respondents, R. E. Hardy, H. L. Fellers, F. E. Findlay, L. R. Grin, Orville A. Hime, William R. Klaus, Alfred F. McCants, C. S. Orr, J. H. Robinson, Arthur G. Russell, Otto F. Schneider, A. M. Thompson, Hal Thompson, R. Ware, C. Belgard, Bob Bergin, B. F. Cobb, Mrs. E. B. Cook, J. P. Conrad, Leo Crowder, H. F. Dindinger, C. G. Frye, J. Alene Frye, James F. Gautney, J. L. Gilmore, George E. Grabow, Mary Granata, Troy Gravette, H. Gute-man, G. B. Harshbarger, C. E. Heard, F. H. Herd, M. Hollingsworth, Rufus Hudson, Ellen Lanning, Morris A. Lee, Jennell Long, W. B. Lorkup, George McCullough, Delmer McLaughlin, Mrs. Delmer McLaughlin,

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Dorothy Notzen, Frank Parker, Bill Reed, F. Y. Robinson, Mrs. J. H. Robinson, J. C. Rosser, R. T. Sherrrod, Reba Stone, W. G. Wagner, George Westphal, Harold Wolcott, Alonzo Williams, and R. M. Ziebell, 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 respondents shall, within 60 days after the service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

HAPPY HOSTESS CANDY COMPANY, INC., AND HARRY RACHLIN, PRESIDENT OF HAPPY HOSTESS CANDY COMPANY, INC.

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

Docket 4842. Complaint, Sept. 29, 1942—Decision, Feb. 8, 1945

Where a corporation and an individual, its president and general manager, engaged in interstate sale and distribution of various kinds of candy, including its "Vanity Fair," "Cow Boy Bunny," and "Brazil Nut" assortments, which were so packed and assembled as to involve use of games of chance, gift enterprizes or lottery schemes when sold and distributed to the consuming public under such arrangements, as typical, that chance selection of certain numbers on a ten section, 550 hole punch board secured the customer for the 2 cents paid, one half pound "Picture Package" box of candy, the last punch in each of the first 9 sections received a one-pound "Picture Package," and the last punch on the board received the two-pound "Framed Picture Package," others receiving nothing for their money—

Sold and distributed such assortments to jobbers and wholesalers, and thereby supplied to and placed in the hands of others the means of conducting a lottery in the sale of their products in accordance with aforesaid sales plans; contrary to an established public policy of the United States Government and in competition with others who did not use any sales method involving chance or contrary to public policy;

With the result that many persons were attracted by said sales plan and the element of chance therein, and were thereby induced to buy and sell their candy in preference to that of said competitors, and with tendency and capacity thereby unfairly to divert trade in commerce from said competitors to them:

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

As respects the denial of the president of a corporation charged along with it with the use of lottery methods in sale and distribution of candy, of any individual responsibility for such corporate acts, and his assertion that as a member of its Board of Directors, he opposed and voted against the use of such methods, but that the policy of the company was determined by the majority of the Board: Where it appeared that for some eleven years immediately preceding the organization of the corporation in question, he was the vice president of the B Candy Company of which he and his wife owned about 45 percent of the stock; that after the issuance of a complaint against said company by the Commission charging it with the use of lottery methods, but before the issuance of a cease and desist order, he and his wife sold their stock therein; that among the incorporators of the present corporation and officers thereof and members of its Board were two former salesmen of said B Candy Company who had a substantial following in the trade for punch board deals, and participated in the organization and operation of the instant company upon the understanding and condition that it would engage in the sale of punch-board deals; and that he and his wife owned more than half the stock; the Commission concluded that any objections to punchboard deals by said individual were *pro forma* only and that in fact he aided, cooperated with, and assisted said corporate concern in such acts and practices.

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

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

Mr. Oscar Salenger, of Chicago, Ill., for Happy Hostess Candy Co., Inc.

Mr. Solomon Axelrod, of Chicago, Ill., for Harry Rachlin.

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 Happy Hostess Candy Company, Inc., a corporation, and Harry Rachlin, an individual, and President, of Happy Hostess Candy Company, Inc., 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, Happy Hostess Candy Company, 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 615-17 South Peoria Street, Chicago, Ill.

Respondent, Harry Rachlin, is the president and a director, of respondent, Happy Hostess Candy Company, Inc., and formulates, controls and directs its policies and practices. Respondent, Harry Rachlin, has his offices at the same address as that of the corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged:

Respondents are now, and for more than six months last past, have been, engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondents cause and have caused said candy when sold to be transported from their place of business in the city of Chicago, Ill., to purchasers thereof at their respective points of location in various States of the United States other than Illinois and in the District of Columbia. There is now and has been for more than six months last past a course of trade by respondents in such candy in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business, respondents are and have been in competition with corporations and with partnerships and individuals engaged in the sale and distribution of candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers, jobbers and retail dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises or lottery schemes when sold and distributed to the consuming public. One of said assortments is hereinafter described for the purpose of showing the method used by respondents and is as follows:

This assortment includes 32 boxes of candy and a punch board.

Appearing on the face of the punch board is the following legend:

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Complaint

VANITY FAIR ASSORTMENT

Numbers

25-50-75-100-125-150-175-200-225

250-275-300-325-350-375-400-425

450-475-500-525-550 Each Receive $\frac{1}{2}$ Lb.

Picture Package

(Picture
of
Girl)Last Sale in Each of First
9 Sections Receives
1 Lb. Picture PackageLast Sale on Board Receives
2 Lb. Framed Picture Package.2¢
Per Sale

Said candy is distributed to the purchasing public in accordance with the foregoing legend in the following manner: Sales are 2¢ each and when a punch is made a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on said board but the numbers are not arranged in numerical sequence and said punches and numbers are arranged in ten sections. The board bears a statement informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a box of candy and the last sale in each of the first nine sections completely sold entitles the purchaser to receive a larger box of candy and the last punch on the board entitles the purchaser to receive a 2 pound box of candy. A customer who does not qualify by obtaining one of the specified numbers or the last punch in a section or the last punch on the board receives nothing for his money. The boxes of candy are worth more than 2¢ each and the purchaser who obtains a number calling for one of the boxes of candy 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 separated from the board. The candy is thus distributed to purchasers of punches from the board wholly by chance.

The respondents furnish and have furnished various punch board and candy assortments for use in the sale and distribution of their candy by means of a game of chance, gift enterprise or lottery scheme. Such punch board and candy assortments are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondents' candy, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their candy and the sales of said candy by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of candy to the purchasing public by the method or plan hereinabove set forth involves a game of chance or the sale of a chance to procure candy at prices much less than the normal retail price thereof. Many persons, firms and corporations who sell and distribute candy in competition with respondents, as above alleged, do not use any method or

methods involving a game of chance or the sale of a chance to win something by chance, or any other method contrary to public policy. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their candy and in the element of chance involved therein and are thereby induced to buy and sell respondents' candy in preference to the candy of said competitors who do not use the same or equivalent methods. The use of said method by respondents 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 respondents from their said competitors who do not use the same or equivalent methods.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair 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 29, 1942, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce 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' 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 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 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. (a) Respondent, Happy Hostess Candy Company, Inc., is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business at 615-17 South Peoria Street, Chicago, Ill. It is now, and since its organization in November 1941 has been, engaged in the sale and distribution of various kinds of candy.

(b) Respondent, Harry Rachlin, an individual, is president and general manager of Happy Hostess Candy Company, Inc., with his office and principal place of business at 615-17 South Peoria Street, Chicago, Ill. The other officers of said company are Fred W. Findeisen, vice president; Norman Brown, second vice president; Robert Rachlin (a brother of respondent, Harry Rachlin), treasurer; and Oscar Salenger, secretary.

PAR. 2. In the course and conduct of the aforesaid business the respond-

ents cause their said candy, when sold to jobbers and wholesale dealers, to be transported from their place of business in Chicago, Ill., to said purchasers at their respective points of location in States other than the State of Illinois, and maintain, and have maintained, a course of trade in said candy in commerce between and among various States of the United States.

PAR. 3. Respondent, Harry Rachlin, has denied any individual responsibility for the acts charged in the complaint herein and asserted that in his capacity as a member of the board of directors he opposed and voted against the use of lottery methods in the sale and distribution of candy, but the policy of the company in using such methods was determined by the majority of the board of directors, which board consists of the aforesaid officers of the corporation. For some 11 years immediately preceding the organization of the Happy Hostess Candy Company, Inc., respondent, Harry Rachlin, was the vice president of the Boulevard Candy Company and he and his wife owned about 45 percent of the stock in that company. After the issuance of a complaint against the Boulevard Candy Company by this Commission charging it with the use of lottery methods in the sale and distribution of candy, but before the issuance of an order to cease and desist from the use of such methods, Rachlin and his wife sold their stock in said company. Among the incorporators of the Happy Hostess Candy Company, Inc., were Fred W. Findeisen and Norman Brown, formerly employees of the Boulevard Candy Company and now vice president and second vice president, respectively, of the corporate respondent herein. Findeisen and Brown were active in the sales department of the Boulevard Candy Company and each has a substantial following in the trade for punchboard deals (assortments of candy accompanied by a lottery device for use in distributing said candy to the public). In the case of Findeisen this following was said to amount to about \$150,000 in sales. The participation of Findeisen and Brown in the organization and operation of the Happy Hostess Candy Company, Inc., was upon the understanding and condition that the new company would engage in the sale of punchboard deals. At the time of the first hearings in this proceeding, Harry Rachlin owned 10 percent of the stock of the corporate respondent; his brother, Robert Rachlin, owned 15 percent; the secretary of the company, Oscar Salenger, owned 10 percent; and Mrs. Harry Rachlin owned the remainder. Some months later, at the time of the last hearing in this proceeding, the secretary of the company testified that there had been some changes in the stock ownership and respondent, Harry Rachlin, then owned 15 percent of the stock and his wife 42½ percent. Mrs. Rachlin has not been actively connected with the management of the company and her stockholdings therein are said to constitute merely an investment. Upon the basis of the record in this case the Commission concludes that any objections to punchboard deals by respondent, Harry Rachlin, were pro forma only and that in fact said respondent aided, cooperated with, and assisted the corporate respondent in the various acts and practices herein found.

PAR. 4. (a) In the course and conduct of the aforesaid business, the respondents sell and distribute assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when said candy is sold and distributed to the consuming public. For the purpose of illustrating said assortments, respondents' "Vanity Fair Assortment" is described herein. This assortment includes 32 boxes

Findings

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of candy (22 $\frac{1}{2}$ -pound boxes, 9 1-pound boxes, and 1 2-pound box), and a punchboard. On the face of the punchboard is the following legend:

VANITY FAIR ASSORTMENT
NUMBERS

25-50-75-100-125-150-175-200-225

250-275-300-325-350-375-400-425

450-475-500-525-550 Each Receive

$\frac{1}{2}$ lb. PICTURE PACKAGE

Last Sale in Each of First

9 Sections Receives

1 lb. PICTURE PACKAGE

<p>2¢ Per Sale</p>

LAST SALE ON BOARD RECEIVES

2 lb. FRAMED PICTURE PACKAGE

The candy in said assortment was intended to be, and frequently was, distributed to the purchasing public in accordance with the legend on the punchboard. Sales are 2¢ each, and when a punch is made a number is disclosed. The numbers concealed in the punches of said board 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 punches and numbers are arranged in 10 sections on the board. The legend on the board informs purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a $\frac{1}{2}$ -pound box of candy, that the last punch in each of the first 9 sections completely sold entitles the purchaser to receive a 1-pound box of candy, and that the last punch on the board entitles the purchaser to receive a 2-pound box of candy. A customer who does not qualify by purchasing one of the specified numbers, the last punch in a section, or the last punch on the board, receives nothing for his money. The boxes of candy are worth more than 2¢ each, and the purchaser who obtains a number calling for one of the boxes of candy receives the candy for 2¢. The numbers are effectively concealed from purchasers and prospective purchasers until a punch has been made, and the candy is thus distributed to purchasers of the punches wholly by chance.

(b) Respondents have sold and distributed various other candy assortments and punchboards, including a "Cowboy Bunny Assortment" and a "Brazil Nut Assortment," all of which are similar to the assortment above described and vary from it only in detail. Said assortments and punchboards were intended for use in the sale and distribution of said candy by means of a game of chance, gift enterprise, or lottery scheme.

PAR. 5. The aforesaid assortments and sales plans, and others similar thereto, are used in the sale of candy to the purchasing public in accordance with the sales plans furnished by respondents. Respondents thus supply to and place in the hands of others a means of conducting a lottery in the sale of their products. The use by respondents of such sales plans in the sale of their candy, and the sales of such candy by and through the use thereof and with the aid of such sales plans, is a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 6. There are persons, firms, and corporations who sell and distribute candy in competition with respondents and who do not use any method involving a game of chance or the sale of a chance to win something by chance, or any other method contrary to public policy. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their candy and the element of chance therein, and are thereby induced to buy and sell respondents' candy in preference to the candy of said competitors who do not use the same or equivalent methods. The use of such plans and methods by respondents, because of the element of chance contained therein, has the tendency and capacity unfairly to divert trade in commerce between and among the various States of the United States to respondents from their said competitors who do not use the same or equivalent methods.

CONCLUSION

The aforesaid acts and practices of respondents 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 answers of respondents, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, 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, Happy Hostess Candy Company, Inc., its officers, representatives, agents and employees, and respondent, Harry Rachlin, 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 candy or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy or other merchandise so packed and assembled that sales of said candy or other merchandise to the public are to be made or, due to the manner in which such candy or other merchandise is packed and assembled at the time it is sold by respondents, may be made by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others punchboards, push or pull cards, or other lottery devices, either with assortments of candy or other merchandise or separately, which said punchboards, push or pull cards, or other lottery devices are to be used, or may be used, in selling or distributing said candy or other merchandise to the public.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That 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

MAYO BROTHERS VITAMINS, INC., TRADING IN ITS OWN NAME AND IN THE NAME OF MAYO BROS., AND IRBY L. MAYO, ORAN FRANK F. MAYO, AND PAUL T. MURRY, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION

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

Docket 5044. Complaint, Sept. 10, 1943—Decision, Feb. 9, 1945

Where a corporation and its three officers, engaged in the interstate sale and distribution of their "Mayo Bros. Vitamin B Complex," "Mayo Bros. Vitamin B₁" and "Mayo Bros. Family Formula"; through advertisements in newspapers and other periodicals, circulars, leaflets, pamphlets and other printed material, and by radio broadcasts, directly and by implication—

- (a) Falsely represented that human health and well-being require vitamins in addition to the supply ordinarily obtained in a well-balanced diet;
- (b) Represented that sickness, lackadaisical, run-down and nervous conditions, mental and physical sluggishness, lack of energy, fatigue, lack of coordination, and lessened physical capacity are usually due to a deficiency of B Complex vitamins, and that the use of their preparations would effectively overcome such conditions, bring about immediate and quick restoration of energy and health, and result in calmer and steadier nerves, better coordination, greater physical capacity, new strength, and higher mental efficiency;

The facts being that conditions above referred to are not ordinarily due to a deficiency of B Complex vitamins; while some may be due to a deficiency of Vitamin B₁, which cases their preparations might have a tendency to overcome, any beneficial results would arise only after continuous and long usage; their preparations contained insufficient quantities of B Complex vitamins other than B₁ to exercise any beneficial effect on conditions involving deficiency of such other vitamins; and any relief afforded in any condition by the use of their preparations would not be immediate or quick;

- (c) Falsely represented that the use of said preparations would eliminate the ill effects of hurried eating, intense work, and hard play, and would insure health and vitality;
- (d) Represented falsely that physicians consider molasses as a potent source of food minerals, and that two tablespoonfuls of the preparation "Mayo Bros. Family Formula" supplied the daily requirements of iron, manganese, and iodine;
- (e) Represented through use of words "Mayo Brothers" in their corporate name and "Mayo Bros." in the trade names of their products, and such statements—notwithstanding disclaimer of being connected with any other organization—as " * * * scientific research and careful study was carried on for months before this High Potency B. Complex was ready to be offered to the public and worthy of bearing the name and trade-mark of Mayo Bros. * * *" "No need to tell you that a line of vitamins bearing this name—means more business and more profits for you . . ." "A Great NAME, A Great PRODUCT, a Great SALES PLAN, Announcing MAYO BROS. FAMILY FORMULA," that they were connected with the well-known and highly regarded Mayo Clinic of Rochester, Minnesota, commonly referred to as Mayo Brothers, or that the aforesaid individual officers were members of the family of brothers who founded the clinic, or that their said preparations were produced or sponsored by the clinic;

When in fact neither they nor their said business was associated or connected with the Mayo Clinic, the said individuals were not members of the family of the two brothers who founded it, and their preparations were not produced or sponsored by the Mayo Clinic;

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 by reason of such beliefs to purchase their 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. R. P. Bellinger for the Commission.

Mr. Sylvan Y. Allen, of Los Angeles, Calif., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Mayo Brothers Vitamins, Inc., a corporation, trading in its own name and in the name of Mayo Bros., and Irby L. Mayo, Oran Frank F. Mayo, and Paul T. Murry, individually, and as officers of said 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, Mayo Brothers Vitamins, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California, trading in its own name and in the name of Mayo Bros., with its principal place of business at Room 526, Los Angeles Stock Exchange Building, 639 South Spring Street in Los Angeles, Calif. Respondents, Irby L. Mayo, Oran Frank F. Mayo and Paul T. Murry, are president, vice president and secretary-treasurer, respectively, of the corporate respondent, with the same post office address as that of said corporate respondent. Said individual respondents have at all times mentioned herein, dominated and controlled the acts and practices of the corporate respondent. For several years last past the respondents have been engaged in the sale and distribution of certain preparations designated as Mayo Bros. Vitamin B. Complex, Mayo Bros. Vitamin B₁, and Mayo Bros. Family Formula.

PAR. 2. In the course and conduct of their aforesaid business, the respondents have disseminated, and have caused their 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 have caused 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 inserted in newspapers and other peri-

odicals and by means of circulars, leaflets, pamphlets and other printed material and by radio broadcasts, are the following:

No matter what your diet, how rich in food energy, you and the great majority of our people use up food vitamins faster than the body can be supplied by means of the food we eat. Hence concentrated vitamins, pure vitamins that act quickly to restore energy, are necessary to your health and well being. * * * B Complex is truly the miracle worker among vitamins.

Buy a supply today and take them today, so that tomorrow you may feel better and do better * * * Of all the vitamins, B Complex has been found to be of greatest value for immediate energy, calmer nerves, better coordination, a greater physical capacity. * * * it will give most people an immediate physical pickup * * * you discover new strength and higher mental efficiency.

* * * Insure the victory for health * * * B Complex for its immediate health results * * *

If you are sick-lackadaisical, run down, nervous, sluggish mentally and physically, you may have a Vitamin B Complex deficiency * * *

If today's job leaves you easily fatigued, if the strain of events make you unduly nervous, if on the whole, you are not enjoying FULL, buoyant good health, DON'T OVERLOOK the possibility of a B Complex deficiency * * * because you people need steady nerves, robust health, energy to "Keep 'Em Flying" * * * for energy, health, vitality * * *.

* * * we eat hurriedly, we work tensely, we play hard. All this is a severe drain on our nerves * * *.

MAYO BROS. FAMILY FORMULA

AS A BASE, the nutritionally established value of Molasses—Physicians recognize molasses as a potent source of food minerals. * * * Now you can have in two teaspoonfuls of a pleasant tasting tonic the complete known daily vitamin requirements of * * * Iron, Manganese and Iodine.

PAR. 3. Through the use of the statements and representations herein above set forth, and others similar thereto not specifically set out herein respondents have represented, directly and by implication, that human health and well being require vitamins in addition to the supply ordinarily obtained in a well balanced diet; that sickness, lackadaisical, run-down and nervous conditions, mental and physical sluggishness, lack of energy, fatigue, lack of coordination, and a lessened physical capacity are usually due to a deficiency of B Complex Vitamins; that the use of respondents' preparations will effectively overcome such conditions, bring about immediate and quick restoration of energy and health, resulting in calmer and steadier nerves, better coordination, greater physical capacity, new strength and higher mental efficiency; that the use of said products will eliminate the ill effects of hurried eating, intense work and hard play and will insure health and vitality; that physicians consider molasses as a potent source of food minerals and that two tablespoonfuls of the preparation Mayo Brothers Family Formula supplies the daily requirements of iron, manganese and iodine.

PAR. 4. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, human health and well being do not ordinarily require vitamins in addition to the supply thereof obtained in a well balanced diet. Sickness, lackadaisical, run-down and nervous conditions, mental and physical sluggishness, lack of energy,

fatigue, lack of coordination and lessened physical capacity are not ordinarily or usually associated with or due to a deficiency of B Complex Vitamins. Some of said conditions may be due to a deficiency of Vitamin B₁. In such cases, respondents' products might have a tendency to overcome such conditions, but any beneficial results would arise only after continuous and long usage. In conditions where there is a deficiency of B Complex vitamins, other than Vitamin B₁, there are insufficient quantities of these vitamins in respondents' preparations to exercise any significant beneficial effect. Any relief afforded in any condition by the use of respondents' products will not be immediate or quick. Their use will not eliminate the ill effects of hurried eating, intense work or hard playing and will not insure health and vitality. Physicians do not consider molasses as a potent source of food minerals since the amount of minerals provided in the quantity of molasses ordinarily consumed is insignificant. Two tablespoonfuls of respondents' preparation Family Formula Supportive Vitamin provides only a small fraction of the daily requirements of iron, manganese and iodine.

PAR. 5. The respondents have also disseminated false and misleading advertising in promoting the sale of their products in the manner and by the means aforesaid by and through the use of the corporate name "Mayo Brothers Vitamins, Inc.," their trade name "Mayo Bros." and the name "Mayo Bros." as a trade name for their various products, alone, and in connection with advertising matter of which the following is typical:

We planned for years, while the public waited patiently—now they are here. MAYO BROTHERS VITAMINS * * *

* * * scientific research and careful study was carried on for months before this High Potency B. Complex was ready to be offered to the public and worthy of bearing the name and trade-mark of Mayo Bros. * * *

* * * Mayo Brothers share with medical authorities and the United States Government the opinion that vitamins are food in concentrated, vital, energy form.

Get started on Mayo Brothers Vitamins Family Formula * * * Mayo Brothers latest scientific achievement, Vitamin Family Formula is now available to the public * * * you will rely on Mayo Brothers name and trade-mark for vitamins * * *.

No need to tell you that a line of vitamins bearing this name . . . means more business and more profits for you . . .

Here is a brand name that has REAL QUALITY APPEAL.

A Great NAME
A Great PRODUCT
A Great SALES PLAN

Announcing
MAYO BROS. FAMILY FORMULA.

PAR. 6. Through the use of such statements and representations as set out in paragraph 5 hereof, and others similar thereto not specifically set out herein, and through and by means of the said use of the name "Mayo Bros." respondents represent, directly and by implication, that they are or their said business is associated with or connected with the well-known and highly regarded Mayo Clinic of Rochester, Minn., Commonly referred to throughout the United States as Mayo Bros., or that the individual respondents are members of the family of the internationally known

brothers who founded the said Clinic or that respondent's said preparations are produced or sponsored by the said Clinic.

PAR. 7. In truth and in fact, neither respondents nor their said business is associated or connected with the Mayo Clinic; the individual respondents are not members of the family of the two brothers who founded the Mayo Clinic and, if related to them at all, such kinship is too remote to be recognized, and respondents' preparations are not produced or sponsored by the Mayo Clinic.

PAR. 8. The use by respondents of the aforesaid false, deceptive and misleading statements and representations disseminated as aforesaid, with respect to their said preparations, together with the use as aforesaid of the name Mayo Bros. in connection with the advertising and sale of said preparations has had the capacity and tendency to and did mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken beliefs that such false statements and representations were true and that some association or connection existed between respondents and the Mayo Bros. Clinic of Rochester, Minn., and because of such erroneous and mistaken beliefs to purchase substantial quantities of respondents' said preparations.

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 September 10, 1943, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the respondents filed their answer in this proceeding, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for 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 or in opposition to the charges stated in the complaint and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. 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 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, Mayo Brothers Vitamins, Inc., was issued a corporate charter by the State of California about October 30, 1941. From that date until some time in August 1942 the said corporate respond-

ent operated its business and traded in its own name and in the name of Mayo Bros., having its principal place of business in Room 526, Los Angeles Stock Exchange Building, 639 South Spring Street, Los Angeles, Calif. Respondents, Irby L. Mayo, Oran Frank F. Mayo, and Paul T. Murry were, and are, the only officers of the said corporate respondent and have, or had, the same address. The said individual respondents, during all of said period, dominated and controlled the acts and practices of the said corporate respondent and with the corporate respondent were engaged in the sale and distribution of certain preparations designated as Mayo Bros. Vitamin B Complex, Mayo Bros. Vitamin B₁, and Mayo Bros. Family Formula. The said corporate respondent did not file with the State of California its annual report for the year 1942, and has not paid the required State franchise tax for the year 1943. By virtue thereof, in accordance with the laws of California, its corporate charter has been automatically suspended, but may be reinstated at any time upon submission of a proper report as aforesaid and payment of the said tax, with accrued interest and penalties; and the said corporation has not been technically dissolved.

PAR. 2. In the course and conduct of their aforesaid business, by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, the respondents disseminated, and caused the dissemination of, false advertisements concerning their said preparations for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said preparations in commerce as aforesaid. 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 insertions in newspapers and other periodicals, by means of circulars, leaflets, pamphlets, and other printed material, and by radio broadcasts, are the following:

No matter what your diet, how rich in food energy, you and the great majority of our people use up food vitamins faster than the body can be supplied by means of the food we eat. Hence concentrated vitamins, pure vitamins that act quickly to restore energy, are necessary to your health and well being. * * * B Complex is truly the miracle worker among vitamins.

Buy a supply today and take them today, so that tomorrow you may feel better and do better * * *. Of all the vitamins, B Complex has been found to be of greatest value for immediate energy, calmer nerves, better coordination, a greater physical capacity. * * * it will give most people an immediate physical pickup * * * you discover new strength and higher mental efficiency.

* * * Insure the victory for health * * * B Complex for its immediate health results * * *.

If you are sick—lackadaisical, run down, nervous, sluggish mentally and physically, you may have a Vitamin B Complex deficiency * * *.

If today's job leaves you easily fatigued, if the strain of events make you unduly nervous, if on the whole, you are not enjoying FULL, buoyant good health, DON'T OVERLOOK the possibility of a B Complex deficiency * * * because you people need steady nerves, robust health, energy to "Keep 'Em Flying" * * * for energy, health, vitality * * *.

* * * * *

* * * we eat hurriedly, we work tensely, we play hard. All this is a severe drain on our nerves * * *.

* * * * *

MAYO BROS. FAMILY FORMULA

AS A BASE, the nutritionally established value of Molasses—Physicians recognize molasses as a potent source of food minerals. * * * Now you can have in two teaspoonfuls of a pleasant tasting tonic the complete known daily vitamin requirements of * * * Iron, Manganese and Iodine.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein respondents have represented, directly and by implication, that human health and well-being require vitamins in addition to the supply ordinarily obtained in a well-balanced diet; that sickness, lackadaisical conditions, run-down and nervous conditions, mental and physical sluggishness, lack of energy, fatigue, lack of coordination, and a lessened physical capacity are usually due to a deficiency of B Complex vitamins; that the use of respondents' preparations will effectively overcome such conditions, bring about immediate and quick restoration of energy and health, and result in calmer and steadier nerves, better coordination, greater physical capacity, new strength, and higher mental efficiency; that the use of said preparations will eliminate the ill effects of hurried eating, intense work, and hard play, and will insure health and vitality; that physicians consider molasses as a potent source of food minerals and that two tablespoonfuls of the preparation Mayo Bros. Family Formula supplies the daily requirements of iron, manganese and iodine.

PAR. 4. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, human health and well-being do not ordinarily require vitamins in addition to the supply thereof obtained in a well-balanced diet. Sickness, lackadaisical conditions, run-down and nervous conditions, mental and physical sluggishness, lack of energy, fatigue, lack of coordination, and lessened physical capacity are not ordinarily or usually associated with or due to a deficiency of B Complex vitamins. Some of said conditions may be due to a deficiency of Vitamin B₁. In such cases, respondents' preparations might have a tendency to overcome such conditions, but any beneficial results would arise only after continuous and long usage. In conditions where there is a deficiency of B Complex vitamins other than Vitamin B₁, there are insufficient quantities of these vitamins in respondents' preparations to exercise any significant beneficial effect. Any relief afforded in any condition by the use of respondents' preparations will not be immediate or quick. Their use will not eliminate the ill effects of hurried eating, intense work, or hard playing, and will not insure health and vitality. Physicians do not consider molasses as a potent source of food minerals, since the amount of minerals provided in the quantity of molasses ordinarily consumed is insignificant. Two tablespoonfuls of respondents' preparation Family Formula Supportive Vitamin provides only a small fraction of the daily requirements of iron, manganese, and iodine.

PAR. 5. The respondents have also disseminated false and misleading advertisements in promoting the sale of their preparations in the manner and by the means aforesaid by and through the use, alone and in connection with advertising matter, of the corporate name "Mayo Brothers Vitamins, Inc.," their trade name "Mayo Bros.," and the name "Mayo Bros." as a trade name for their various preparations. Typical of these advertisements are the following:

We planned for years, while the public waited patiently—now they are here. MAYO BROTHERS VITAMINS * * *

* * * * *

* * * scientific research and careful study was carried on for months before this High Potency B Complex was ready to be offered to the public and worthy of bearing the name and trade-mark of Mayo Bros. * * *

* * * * *

* * * Mayo Brothers share with medical authorities and the United States Government the opinion that vitamins are food in concentrated, vital, energy form.

* * * * *

Get started on Mayo Brothers Vitamins Family Formula * * * Mayo Brothers latest scientific achievement, Vitamin Family Formula is now available to the public * * * you will rely on Mayo Brothers name and trade-mark for vitamins * * *

* * * * *

No need to tell you that a line of vitamins bearing this name . . . means more business and more profits for you . . .

Here is a brand name that has REAL QUALITY APPEAL.

* * * * *

- A Great NAME
- A Great PRODUCT
- A Great SALES PLAN

Announcing

MAYO BROS. FAMILY FORMULA

PAR. 6. In connection with the use of some of the advertising representations quoted in paragraph 5 hereof, the respondents have stated that they were not connected with any other organization; nevertheless, through the use of such statements and representations as set out in paragraph 5 above, and others similar thereto not specifically set out herein, and through and by means of the said use of the name Mayo Bros., respondents represented, directly and by implication, that they were, or their said business was, associated with or connected with the well-known and highly regarded Mayo Clinic of Rochester, Minn., commonly referred to throughout the United States as Mayo Brothers, or that the individual respondents are members of the family of the internationally known brothers who founded the said clinic, or that respondents' said preparations were produced or sponsored by the said clinic.

PAR. 7. In truth and in fact, neither respondents nor their said business is, or was, associated or connected with the Mayo Clinic; the individual respondents are not members of the family of the two brothers who founded the Mayo Clinic, or if related to them at all, such kinship is too remote to be recognized; and respondents' preparations are not, and were not, produced or sponsored by the Mayo Clinic.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements and representations with respect to their said preparations 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 and representations are true, and because of such erroneous and mistaken beliefs to purchase respondents' said preparations.

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 answer of 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 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, Mayo Brothers Vitamins, Inc., a corporation, its officers, representatives, agents, and employees, and respondents, Irby L. Mayo, Oran Frank F. Mayo, and Paul T. Murry, individually, and as officers of Mayo Brothers Vitamins, Inc., 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 their medicinal preparations designated Mayo Bros. Vitamin B Complex, Mayo Bros. Vitamin B₁, and Mayo Bros. Family Formula, or any other preparations of substantially similar composition or possessing substantially similar properties, under whatever name sold, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, 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 implication:

(a) That human health and well-being require vitamins in addition to the supply ordinarily obtained in a well-balanced diet.

(b) That sickness or conditions described as lackadaisical, run-down or nervous, mental or physical sluggishness, lack of energy, fatigue, lack of coordination, and lessened physical capacity are usually or ordinarily associated with or are due to a deficiency of B Complex vitamins.

(c) That respondents' preparations Mayo Bros. Vitamin B Complex and Mayo Bros. Vitamin B₁, or either of them, have any significant therapeutic value in the treatment of the conditions described in paragraph (b) above; *provided, however*, that this shall not prevent a representation that long and continued use of said preparations may tend to overcome the conditions named in (b) above in the unusual instance where such conditions are due to a Vitamin B₁ deficiency.

(d) That said vitamin preparations have any value in eliminating the ill effects of hurried eating, intense work, or hard play, or will insure health or vitality.

(e) That the use of said vitamin preparations will afford immediate or prompt relief for any condition.

(f) That two tablespoonfuls, or any approximately equivalent amount of respondents' preparation Mayo Bros. Family Formula will furnish the known daily requirements of iron, manganese, and iodine, or more than a small fraction of such requirements.

(g) Through the use of the words "Mayo Bros.," or any simulation thereof, in the corporate or trade name of any of respondents or in the name for any of said preparations, or in any other manner, that said preparations were produced or sponsored by the Mayo Clinic of Rochester, Minn., or the founders thereof; provided, however, that this shall not prevent the use of the words "Mayo Bros." if respondents clearly, conspicuously, and unequivocally disclose in immediate conjunction therewith that they are not connected in any manner with said Mayo Clinic.

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 respondents' 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 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

JAMES J. FUNSTEN DOING BUSINESS AS FUNSTEN COMPANY; SAN XAVIER FISH PACKING COMPANY; AND PACIFIC MARINE PRODUCTS COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUB-SEC. (c) OF SEC. 2 OF ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5131. Complaint, Feb. 15, 1944—Decision, Feb. 12, 1945

Where an individual who had long been engaged as the exclusive sales agent of two corporations packing and canning sea food, in which he and his wife owned a controlling stock interest, and which sold their products (a) through intermediaries to whom they customarily paid commissions or brokerage fees for their services, and (b) through said individual's organization, to which they paid 10 cents per case for its services;

Paid or granted as sales agent for said corporations, in connection with the interstate sale and distribution to buyers of said sea food products, whether under their own labels, or unlabeled, or under buyers' labels, brokerage fees or other compensation, which amounted customarily to 5 percent of the net price of the sea food products purchased, and which said individual charged to and collected from the corporation whose product he had sold:

Held, That such paying and granting of brokerage or other compensation to buyers on their own purchases, constituted violations of subsection (c) of Section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.
Pillsbury, Madison & Sutro, of San Francisco, Calif., 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, James J. Funsten, is an individual, trading as Funsten Company, with his principal office and place of business located at 260 California Street, San Francisco, Calif. (this respondent is hereinafter designated as Funsten Co.), is engaged, and for many years prior hereto has engaged, as the exclusive sales agent of two packing and canning corporations over which he, together with his wife, Florence Funsten, exercises financial control, namely, the San Xavier Fish Packing Co. of Monterey, Calif., and the Pacific Marine Products Co. of Astoria, Oreg. The respondent sells and distributes exclusively for these two corporations canned salmon, tuna, sardines, fish oil and fish meal and other sea food products. Such commodities are hereinafter designated as sea food products.

PAR. 2. Respondent, San Xavier Fish Packing Company, is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at Monterey, Calif. The respondent corporation is now engaged, and for many years prior hereto has engaged, in the business of packing, canning, distributing and selling food products. The respondent sells and distributes its sea food products through its exclusive sales agent, Funsten Company. Respondent, James J. Funsten, and respondent's wife, Florence Funsten, own a controlling stock interest in this corporation.

PAR. 3. Respondent, Pacific Marine Products Co., is a corporation, organized and existing under the laws of the State of Oregon, with its principal office and place of business located at Astoria, Oreg. The respondent is now engaged, and for many years prior hereto has engaged, in the business of packing, canning, distributing and selling other sea food products, which it sells and distributes through its exclusive sales agent, Funsten Company. James J. Funsten and his wife, Florence Funsten, own a controlling stock interest in this corporation.

PAR. 4. The respondents, San Xavier Fish Packing Company and Pacific Marine Products Company, sell and distribute their sea food products exclusively through their sales agent, Funsten Co., but by two separate and distinct methods: first, through intermediaries who act as the respective respondents' agents in negotiating the sale of their sea food products at respondents' price and terms, and for which services such intermediaries are customarily paid commissions or brokerage fees; second, the respondents sell their sea food products through the Funsten Co. directly to buyers on and for their own accounts. Some of such buyers designate themselves as brokers but are paid directly or indirectly on their own purchases of sea food products, commissions or brokerage fees, usually in the amount of 5 percent of the net purchase price of the sea food products purchased.

Respondent, Funsten Co., is paid by San Xavier Fish Packing Company and the Pacific Marine Products Company the sum of 10¢ per case for its services as sales agent in selling and distributing canned fish foods for and in behalf of the two respective corporations mentioned.

To distinguish their sea food products from the sea food products sold by competitors and to facilitate sales, each of the packer respondents utilizes registered and unregistered trade-marks and brands for the various sea food products it sells and distributes, which brands and trade-marks are generally known as packer's or seller's brands. Representative of such brands are: "Golden Eagle," "Silver Beauty," "Sierra," "San Xavier," "AAA," "Triple A," "Salaroc" and "Skipanon."

The respondents also sell their sea food products unlabeled or unbranded, and under the labels or brands of some of their buyers, which labels or brands are generally known to the trade as private or buyer's brands.

Some of such buyers who utilize registered and unregistered private labels and brands incorrectly designate themselves as brokers. Such private brand buyers are primarily engaged in the purchase and sale of sea food products in their own names and for their own accounts.

PAR. 5. The respondents San Xavier Fish Packing Company and Pacific Marine Products Company in the course and conduct of their said business since June 19, 1936, have sold and distributed a substantial portion of their sea food products through their exclusive sales agent, Funsten

Co., directly to buyers who are located in States other than the States in which the respective respondents are located, and as a result of said sales and the respective respondents' instructions such sea food products are shipped and transported across State lines to buyers who are located in the various States of the United States.

PAR. 6. The respondent, Funsten Co., as sales agent for San Xavier Fish Packing Company and Pacific Marine Products, since June 19, 1936, in connection with the interstate sale and distribution of sea food products for and on behalf of the said two respective respondent principals has sold said sea food products in its own name to numerous buyers, and has been and is now paying, or has paid or granted, directly or indirectly, to such buyers commissions, brokerage fees or other compensation or allowances, or discounts in lieu thereof, sometimes under respondents' own labels, sometimes unlabeled, and sometimes under their respective buyers' labels.

A representative, but by no means complete, list of buyers who since June 19, 1936, have purchased sea food products from the respondent for their own account and for resale, and who have received and accepted, and who are now receiving and accepting, from said seller respondents on their respective purchases of sea food products, directly or indirectly, commissions, brokerage fees or allowances and discounts in lieu of brokerage fees, is as follows:

William H. Stanley, Inc.,
New York, N. Y.

John T. Leonard,
Charleston, S. C.

Griffith-Durney Company,
San Francisco, Calif.

James A. Seley & Company,
Los Angeles, Calif.

Walter M. Field & Company,
San Francisco, Calif.

The respondent, Funsten Co., customarily pays such buyers a commission or brokerage fee of 5 percent of the net price of the sea food products purchased by them, and charges to and collects said commission or brokerage fee from one or the other of the respective corporations whose product he has sold.

PAR. 7. The paying and granting by respondents, San Xavier Fish Packing Company and Pacific Marine Products Company, directly or indirectly through their sales agent, respondent, Funsten Co., and the transmission and payment by it, to the buyers of said sea food products, of commissions, brokerage or other compensation and allowances or discounts in lieu thereof on their own purchases, and the acts and practices of each of the respective respondents in promoting their sales of sea food products by such payments as set forth above, are 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 February 15, 1944, issued and thereafter served its complaint in this proceeding upon the re-

spondents named in the caption hereof, charging them with violation of the provisions of subsection (c) of Section 2 of said act, as amended.

After the issuance of the complaint herein and the filing of the respondents' answer and supplemental answer, wherein 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, this matter 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, James J. Funsten, is an individual, trading as Funsten Company, with his principal office and place of business located at 260 California Street, San Francisco, Calif. This respondent, hereinafter frequently referred to as Funsten Company, is engaged, and for many years last past, has been engaged, as the exclusive sales agent of two packing and canning corporations over which he, together with his wife Florence Funsten, exercises financial control, namely, the San Xavier Fish Packing Company of Monterey, Calif., and the Pacific Marine Products Company of Astoria, Oreg. As exclusive sales agent for these two corporations, the Funsten Company sells and distributes the canned salmon, tuna, sardines, fish oil and fish meal and other sea food products produced by them. These products are hereinafter frequently referred to as sea food products.

PAR. 2. Respondent, San Xavier Fish Packing Company, is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at Monterey, Calif. This respondent is now engaged, and for many years last past has been engaged, in the business of packing, canning, distributing and selling sea food products. It sells and distributes its sea food products through its exclusive sales agent, Funsten Company. Respondent, James J. Funsten, and respondent's wife, Florence Funsten, own a controlling stock interest in this corporation.

PAR. 3. Respondent, Pacific Marine Products Company, is a corporation, organized and existing under the laws of the State of Oregon, with its principal office and place of business located at Astoria, Oreg. This respondent is now engaged, and for many years last past has been engaged, in the business of packing, canning, distributing and selling sea food products. It sells and distributes such products through its exclusive sales agent, Funsten Company. James J. Funsten and his wife, Florence Funsten, own a controlling stock interest in this corporation.

PAR. 4. (a) The respondents, San Xavier Fish Packing Company and Pacific Marine Products Company, sell and distribute their sea food products through Funsten Company by two separate and distinct methods: First, through intermediaries who act as the respective respondents' agents in negotiating the sale of their sea food products at respondents' price and terms, and for which services such intermediaries are customarily paid commissions or brokerage fees; Second, the respondents sell their sea food products through the Funsten Company directly to buyers on and for their own accounts. Some of such buyers designate themselves as brokers

but are paid, directly or indirectly, commissions or brokerage fees, usually in the amount of 5 percent of the net purchase price on their own purchases of sea food products.

(b) Respondent, Funsten Company, is paid by San Xavier Fish Packing Company and the Pacific Marine Products Company the sum of 10¢ per case for its services as sales agent in selling and distributing sea food products for and in behalf of these corporations.

(c) To distinguish their sea food products from the sea food products sold by competitors and to facilitate sales, each of the packer respondents utilizes registered and unregistered trade-marks and brands for the various sea food products it sells and distributes, which brands and trade-marks are generally known as packer's or seller's brands. Representative of such brands are: "Golden Eagle," "Silver Beauty," "Sierra," "San Xavier," "AAA," "Triple A," "Salaroc" and "Skipanon."

(d) The respondents also sell their sea food products unlabeled or unbranded, and under the labels or brands of some of their buyers, which labels or brands are generally known to the trade as private or buyer's brands. Some of such buyers who utilize registered and unregistered private labels and brands incorrectly designate themselves as brokers. Such private brand buyers are primarily engaged in the purchase and sale of sea food products in their own names and for their own accounts.

PAR. 5. Respondents, San Xavier Fish Packing Company and Pacific Marine Products Company, in the course and conduct of their said business since June 19, 1936, have sold and distributed a substantial portion of their sea food products through their exclusive sales agent, Funsten Company, directly to buyers who are located in States other than the States in which the respective respondents are located, and as a result of said sales and the respective respondents' instructions such sea food products are shipped and transported across State lines to buyers who are located in the various States of the United States.

PAR. 6. Respondent, Funsten Company, as sales agent for San Xavier Fish Packing Company and Pacific Marine Products Company, since June 19, 1936, in connection with the interstate sale and distribution of sea food products for and on behalf of the said two respective respondent principals has sold said sea food products in its own name to numerous buyers, and has been and is now paying, or has paid or granted, directly or indirectly, to such buyers commissions, brokerage fees or other compensation or allowances, or discounts in lieu thereof, sometimes under respondents' own labels, sometimes unlabeled, and sometimes under their respective buyers' labels. A representative, but by no means complete, list of buyers who since June 19, 1936, have purchased sea food products from the respondents for their own account and for resale, and who have received and accepted, and who are now receiving and accepting, directly or indirectly, from said seller respondents on their respective purchases of sea food products, commissions, brokerage fees or allowances and discounts in lieu of brokerage fees, is as follows:

William H. Stanley, Inc.,
New York, N. Y.

John T. Leonard,
Charleston, S. C.

Griffith-Durney Company,
San Francisco, Calif.

James A. Seley & Company,
Los Angeles, Calif.

Walter M. Field & Company,
San Francisco, Calif.

Respondent, Funsten Company, customarily pays such buyers a commission or brokerage fee of 5 percent of the net price of the sea food products purchased by them, and charges to and collects said commission or brokerage fee from one or the other of the respective corporations whose product he has sold.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings as to the facts, the Commission finds that the paying and granting by respondents, San Xavier Fish Packing Company and Pacific Marine Products Company, directly or indirectly, through their sales agent, respondent, Funsten Company, and the transmission and payment by said Funsten Company of Commissions, brokerage or other compensation and allowances or discounts in lieu thereof, to the buyers of said sea food products on their own purchases, constitute violations by the respondents herein 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 answer of the respondents, which answers admit all material allegations of the complaint to be true and waive all other intervening procedure and further hearings as to said facts; and the Commission having made its findings as to the facts and conclusion that respondents, James J. Funsten, an individual, doing business as Funsten Company, San Xavier Fish Packing Company, a corporation, and Pacific Marine Products Company, a corporation, have violated the provisions of subsection (c) of Section 2 of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936, (the Robinson-Patman Act) (U.S.C. Title 15, Sec. 13).

It is ordered, That the respondent James J. Funsten, an individual, doing business as Funsten Company, his representatives, agents and employees, and respondents, San Xavier Fish Packing Company, a corporation and Pacific Marine Products Company, a corporation, their respective officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale and distribution of sea food products or other commodities, in commerce as commerce is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying or granting anything of value as a commission or brokerage, or any compensation, allowance or discount in lieu thereof, to any purchaser upon purchases for his own account, or to any agent, representative or other intermediary acting in fact for or in behalf of or subject to the direct or indirect control of the purchaser to whom sale is made.

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 the order.

IN THE MATTER OF

DURAKOTE PAINT CORPORATION, AND PHILIP H. EISGRAU,
CELE EISGRAU, NATHAN PASHMAN, AND THEODORE
SHAPIRO, AS OFFICERS THEREOF

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

Docket 5018. Complaint, July 28, 1943—Decision, Feb. 24, 1945

Where a corporation engaged in the interstate sale and distribution of paint and paint products, and its four officers, who owned all its stock, and of whom two were engaged as partners under a trade name in the manufacture of paint and paint products which they sold to it; through advertisements circulated to purchasers and prospective purchasers in various states, including form letters—

- (a) Represented that they had for sale a limited quantity of their "Durakote Outside White Paint," worth \$3.25 a gallon, which was being offered at a special or sacrifice price of \$1.85 a gallon; that it was a high-grade paint, superior in quality to the most expensive brands of outside white paint; and was durable and dried to a hard finish within a few hours and was capable of enduring the severest exposure without cracking, chipping, or flaking; and that the supply thereof was limited to a few gallons stored in a warehouse;

The facts being that the quantity thereof was not limited as so specified, but orders received were filled by them in unlimited quantities; the price of \$1.85 a gallon was not a sacrifice or reduced price for said paint but was the usual price charged by them therefor; said paint was not of a quality similar to paint regularly sold at \$3.25 a gallon nor superior in quality and composition to the most expensive brands of outside paint; would not endure severest exposure without cracking, chipping, or flaking and did not dry hard within a few hours; and

- (b) Represented that the said corporation was a manufacturer of paints, enamels, varnishes, and allied specialties and manufactured the paint sold under the brand name "Durakote";

The facts being that said corporation was not a manufacturer but, instead, was a sales organization engaged solely in the sale and distribution of paint and paint products manufactured by its two stockholders above referred to; and orders for paint received by it were transmitted to said individuals, who filled them by shipping direct to purchasers and charged the cost of paint shipped, to the account of aforesaid corporation;

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

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

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

Mr. Merle P. Lyon and *Mr. Clark Nichols* for the Commission.
Kaplan & Kaplan, 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 Com-

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mission, having reason to believe that Durakote Paint Corporation, a corporation, and Philip H. Eisgrau, Cele Eisgrau, Nathan Pashman and Theodore Shapiro, 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, Durakote Paint Corporation, is a corporation, organized and doing business under the laws of the State of New York, with its principal office and place of business located at 1775 Broadway, New York, N. Y. Said corporate respondent is now, and for more than one year last past has been, engaged in the sale and distribution of paints and paint products in commerce among and between the various States of the United States, and in the District of Columbia.

Respondents, Philip H. Eisgrau, Cele Eisgrau, Nathan Pashman and Theodore Shapiro, are respectively president, vice president, secretary and treasurer of Durakote Paint Corporation. Said individual respondents own all of the issued and outstanding stock of the corporate respondent herein, and control and direct the policies, activities and business operations of said corporate respondent.

Respondent, Philip H. Eisgrau, is president of Durakote Paint Corporation, and has his office and principal place of business at 1775 Broadway, New York, N. Y.

Respondent, Cele Eisgrau, is vice president of Durakote Paint Corporation, and is the wife of respondent, Philip H. Eisgrau. She resides at 1326 Beach-25th Street, Far Rockaway, Brooklyn, N. Y.

Respondents, Nathan Pashman and Theodore Shapiro, in addition to holding the offices of secretary and treasurer, respectively, of Durakote Paint Corporation, are also engaged as copartners in the manufacture of paint and paint products under the name and style of Dutch Masters Paint & Varnish Co., and have their principal office and place of business at 35 Wythe Avenue, Brooklyn, N. Y.

Respondent, Durakote Paint Corporation, by virtue of exclusive contractual agreements with respondents, Nathan Pashman and Theodore Shapiro, as owners of Dutch Masters Paint & Varnish Co., has for upwards of one year or more last past offered for sale and sold paint called "Genuine Durakote Outside White Paint" manufactured for it by Dutch Masters Paint & Varnish Co. Said paint, when sold to members of the consuming public by said Durakote Paint Corporation, is shipped and transported from the place of business of respondents, Nathan Pashman and Theodore Shapiro in Brooklyn, N. Y., to the purchasers and users thereof located in various States of the United States other than the State of New York, and in the District of Columbia.

All of the respondents herein have maintained, and now maintain, a course of trade in said paint and paint 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 their said business, and for the purpose of inducing the purchase of said products, it has been and is the practice of respondents to mail letters and advertising literature to purchasers and prospective purchasers located in various States of the United States and in the District of Columbia, and therein to make representations with respect to the price, quality and manufacture of said products and with respect to the status and character of the business conducted by

respondent Durakote Paint Corporation. Typical of said representations so made are the following:

In our warehouse, we have 100 gallons of high grade Genuine Durakote Outside White Paint in five gallon steel buckets, guaranteed to be *clean fresh stock* in perfect condition which we will sacrifice for \$1.85 per gallon, delivered, freight prepaid; similar quality usually sold at \$3.25 per gallon.

This material is superior in quality and composition to the most expensive made well known brands of Outside White. Its unusual high quality makes it ideal for inside and outdoor painting on wood, metal, concrete, brick or over old paint. It covers *solid* in one coat, brushes easily and dries hard within a few hours to a beautiful smooth finish that is easily washable. Endures severest exposure without cracking, chipping or flaking. It may be tinted with ordinary oil colors and thinned with turpentine.

Due to the war effort and raw material shortages, further supplies may not be available for civilian use. . . .

May we have your order for all or *any part* of this lot by return mail?

Yours very truly,

Durakote Paint Corporation.

Manufacturers of Paints-Enamels-Varnishes & Allied Specialties.

Through and by means of the foregoing statements and others of similar import and meaning, respondents have represented and implied that they have a limited quantity of paint for sale worth \$3.25 a gallon but offered at a sacrifice price of \$1.85 a gallon, in order to dispose of it; that this paint is a high grade paint, superior in quality to the most expensive brands of outside white paint; that it is durable and dries to a hard finish and is capable of enduring the severest exposure without cracking, chipping or flaking; that the supply of this paint is limited to a few gallons stored in a warehouse, and that it may be impossible to obtain further quantities as soon as this supply is exhausted; and that respondent, Durakote Paint Corporation, is a manufacturer of paints, enamels, varnishes and allied specialties, and is the manufacturer of the Genuine Durakote Outside White Paint featured in its advertisements.

PAR. 3. The aforesaid statements and representations are false, misleading and deceptive. Respondent, Durakote Paint Corporation, is not a manufacturer of paints, enamels, varnishes and allied specialties, and does not own or maintain a warehouse for the storage of paint and allied products. It purchases its paint from Dutch Masters Paint & Varnish Co. of Brooklyn, N. Y., and shipments are made direct to the individual consumers from the factory of said company in Brooklyn, N. Y. Respondent, Durakote Paint Corporation, is merely a sales agent or outlet for the distribution of the paint products of Dutch Masters Paint & Varnish Co., and fills all orders through said company. Orders received are not limited to 100 gallons or any other amount, but are filled in the regular course of business in unlimited quantities, and solicitations of orders are made to many prospective customers located in various widely scattered States of the United States.

Furthermore, \$1.85 per gallon is not a sacrifice or reduced price for said Durakote Outside White Paint, but is the usual, regular and customary price of said paint. Said paint is not of a quality similar to paint regularly sold at \$3.25 per gallon, and is not superior in quality and composition to the most expensive made well known brands of Outside White Paint. It will not endure severest exposure without cracking, chipping or flaking,

and does not dry hard within a few hours. There is no immediate prospect of shortages in supply of said paint, and the war effort and raw material shortages have not diminished the available supply of said paint.

Furthermore, the steel buckets in which said paint is shipped and which are represented to contain five gallons do not in fact contain five gallons of paint, but contain substantially less than five gallons, so that the cost to the purchaser is more than the \$1.85 per gallon delivered price specified in respondent's advertisements.

PAR. 4. The use by the respondents of the foregoing false and misleading statements and representations regarding the price, quality and manufacture of their paint products and the status and character of the business conducted by respondent Durakote Paint Corporation, has had and now has, the capacity and tendency to, and does, mislead a substantial portion of the purchasing public into the mistaken and erroneous belief that said statements and representations are true, and causes a substantial portion of the purchasing public, because of such mistaken and erroneous beliefs, to purchase said paints and paint products.

PAR. 5. 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 July 28, 1943, issued and subsequently served its complaint in this proceeding on the respondents, Durakote Paint Corporation, a corporation, and Philip H. Eisgrau, Cele Eisgrau, Nathan Pashman, and Theodore Shapiro, individually, and as officers of Durakote Paint Corporation, 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 the answers of the respondents 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 briefs filed in support of the complaint and in opposition thereto (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Durakote Paint Corporation, is a corporation, organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business located at 1775 Broadway, New York, N. Y. Said corporate respondent is now, and for several years last past has been, engaged in the sale and distribution of paint and paint products in commerce among and between the various States of the United States and in the District of Columbia.

Respondent, Philip H. Eisgrau, is president of respondent, Durakote Paint Corporation, and has his office and principal place of business at 1775 Broadway, New York, N. Y.

Respondent, Cele Eisgrau, is vice president of respondent, Durakote Paint Corporation, and is the wife of respondent, Philip H. Eisgrau. She resides at 1326 Beach-25th Street, Far Rockaway, Brooklyn, N. Y.

Respondents, Nathan Pashman and Theodore Shapiro, are secretary and treasurer, respectively, of respondent, Durakote Paint Corporation, and are also engaged in the manufacture of paint and paint products as copartners under the name and style of Dutch Masters Paint & Varnish Co., and have their principal office and place of business at 35 Wythe Avenue, Brooklyn, N. Y.

Said individual respondents own all of the issued and outstanding capital stock of said corporate respondent and control and direct the policies, activities, and business operations of said corporate respondent.

PAR. 2. In the course and conduct of its business the respondent, Durakote Paint Corporation, is engaged in the sale and distribution of paint under the trade or brand name of "Durakote," which paint is manufactured for it by the Dutch Masters Paint & Varnish Co. Said paint, when sold, is transported from the place of business of the Dutch Masters Paint & Varnish Co. in Brooklyn, N. Y., to purchasers thereof located in various other States of the United States.

All of said respondents have maintained, and now maintain, a course of trade in said paint and paint products in commerce among and between various States of the United States.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of said paint products, the respondents have made false, deceptive, and misleading statements and representations with respect to the status and character of the business conducted by the respondent, Durakote Paint Corporation, and with respect to the price and quality of said paint products through advertising material circulated by means of the United States mails to purchasers and prospective purchasers located in various States of the United States. Typical of such advertising material is a form letter with reference to respondents' Durakote Outside White Paint which was distributed by the United States mails to industrial users of paint and which reads as follows:

In our warehouse, we have 100 gallons of high grade Genuine Durakote Outside White Paint in five gallon steel buckets, guaranteed to be *clean fresh stock* in perfect condition which we will sacrifice for \$1.85 per gallon, delivered, freight prepaid; similar quality usually sold at \$3.25 per gallon.

This material is superior in quality and composition to the most expensive made well known brands of Outside White. Its unusual high quality makes it ideal for inside and outdoor painting on wood, metal, concrete, brick or over old paint. It covers *solid* in one coat, brushes easily and dries hard within a few hours to a beautiful smooth finish that is easily washable. Endures severest exposure without cracking, chipping or flaking. It may be tinted with ordinary oil colors and thinned with turpentine.

Due to the war effort and raw material shortages, further supplies may not be available for civilian use. . . .

May we have your order for all or *any part* of this lot by return mail?

Yours very truly,

Durakote Paint Corporation.

Manufacturers of Paints-Enamels-Varnishes & Allied Specialties.

Through and by means of the foregoing statements and others of similar import not specifically set out herein, respondents have represented that they have a limited quantity of Durakote Outside White Paint for sale worth \$3.25 a gallon which is being offered at a special or sacrifice price of \$1.85 a gallon; that this paint is a high-grade paint, superior in quality to the most expensive brands of outside white paint; that it is durable and dries to a hard finish within a few hours and is capable of enduring the severest exposure without cracking, chipping, or flaking; that the supply of this paint is limited to a few gallons stored in a warehouse; and that the respondent, Durakote Paint Corporation, is a manufacturer of paints, enamels, varnishes, and allied specialties and is the manufacturer of the paint sold under the brand name "Durakote."

PAR. 4. The aforesaid statements and representations are false, misleading and deceptive. The quantity of paint which the respondents had for sale was not limited to the specified amounts set out in respondents' advertising material, but, instead, such advertising material soliciting orders was distributed to many prospective customers and orders received were filled by the respondents in unlimited quantities. The price of \$1.85 a gallon was not a sacrifice or reduced price for said Durakote paint but was the usual, regular, and customary price charged by respondents for said paint. Said paint is not of a quality similar to paint regularly sold at \$3.25 a gallon and is not superior in quality and composition to the most expensive brands of outside paint. It will not endure severest exposure without cracking, chipping or flaking and does not dry hard within a few hours.

Respondent, Durakote Paint Corporation, is not a manufacturer of paints, enamels, varnishes, and allied specialties but, instead, is a sales organization engaged solely in the sale and distribution of paint and paint products manufactured by the respondents, Nathan Pashman and Theodore Shapiro, trading as Dutch Masters Paint & Varnish Co. When orders for paint are received by the respondent, Durakote Paint Corporation, they are transmitted to the respondents, Nathan Pashman and Theodore Shapiro, trading as Dutch Masters Paint & Varnish Co., who in turn fill said orders by shipping direct to the purchasers thereof and charge the cost of said paint, when shipped; to the account of the Durakote Paint Corporation.

PAR. 5. The use by the respondents of the foregoing false and misleading statements and representations regarding the price, quality, and manufacture of their paint products and the status and character of the business conducted by the respondent, Durakote Paint Corporation, has had, and now has, the capacity and tendency to mislead a substantial portion of the purchasing public into the mistaken and erroneous belief that said statements and representations are true and causes a substantial portion of the purchasing public, because of such mistaken and erroneous beliefs, to purchase said paints and paint products.

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

It is ordered, That the respondents, Durakote Paint Corporation, a corporation, and its officers, and Philip H. Eisgrau, Cele Eisgrau, Nathan Pashman, and Theodore Shapiro, individually, and as officers of Durakote Paint 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 paints, enamels, varnishes, and allied specialties in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing as a customary or regular price or value of any of respondents' paints or paint products, any price or value which is in fact in excess of the price at which said paints or paint products are customarily offered for sale and sold in the normal and usual course of business.

2. Representing directly or by implication that respondents are making a special offer of a limited quantity of paints or paint products when such offer is made available to purchasers generally and orders received are filled without limitation.

3. Representing directly or by implication that paints or paint products which are offered for sale at the usual and customary prices therefor are being sold at special or reduced prices; or in any other manner representing that a purchaser is receiving an advantage in price or other consideration not ordinarily available.

4. Representing that respondents' outside paints are of a quality comparable with paints regularly selling at \$3.25 or more per gallon or that said paints are superior in quality or composition to the most expensive brands of outside paint.

5. Representing that respondents' paints or paint products will endure severest exposure without cracking, chipping, or flaking.

6. Representing that respondents' outside paint will dry hard within a few hours or within any period of time less than that normally required.

7. Representing directly or by implication that the respondent, Durakote Paint Corporation, is a manufacturer of paints, enamels, varnishes, or allied specialties when the activities of such corporation are confined to those of a sales organization engaged in the sale and distribution of paints and paint products manufactured by persons or concerns other than said corporation.

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

Syllabus

IN THE MATTER OF
VITAMIN PRODUCTS COMPANY

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

Docket 4733. Complaint, Mar. 17, 1942—Decision, Feb. 28, 1945

Where an individual engaged in the interstate sale and distribution of various preparations designated as "Catalyn," "Vitamin A Complex," "Vitamin B Complex," "Vitamin C Complex," "Vitamin D Complex," "Vitamin E Complex," "Vitamin F Complex," "Vitamin G Complex," "V-P Organic Mineral Tablets," "Cerol," "V-P Phosphate," "Cerodyn" (also referred to as "Cerolyn" and "V. P. Fortified Wheat Germ") and "Viable Acidophilus Yeast"; through advertisements, periodicals, circulars, leaflets, pamphlets and other advertising literature, directly and by implication—

(a) Represented that the preparation "Catalyn" contained a sufficient supply of multiple vitamin concentrates to constitute a competent dietary supplement in the treatment of any vitamin deficiency disease and a competent nutritional and corrective treatment for the prevention and cure of various diseases and conditions including acidosis, anemia, angina pectoris, backwardness in children, Bright's disease, change of life, chorea, colds, constipation, cystitis, dropsy, enlarged glands, enlarged prostate gland, goiter, hardening of the arteries, headache, heart trouble, high blood pressure, infectious diseases, insomnia, low blood pressure, and various other ailments and conditions therein set forth;

The facts being that said preparation, taken as directed, did not furnish sufficient vitamins, with the exception of vitamin D and to a limited extent vitamin A, to have any therapeutic value in the treatment of vitamin deficiency or the prevention of vitamin deficiency diseases, and was not a competent dietary supplement in the building of normal vitality and resistance, nor a competent treatment for the diseases and conditions set forth by him;

(b) Falsely represented, through use of the slogans "Catalyn for Health," and "Catalyn—Nature's Source of Vitality," that said preparation would bring health to the user and could be relied upon so to do, that it could be relied upon to produce vitality, that it was a product of nature, and that the results obtained by the use thereof were miraculous, and, by designating the preparation as "This life-and-health-building product," that consumption of the product would insure life and health to the user;

(c) Falsely represented that said "Vitamin A Complex" was a competent nutritional and corrective treatment for the prevention and cure of such diseases or conditions as retarded appetite, growth and development, disturbed dental and bone development, susceptibility to infections, slow healing of reticulo-endothelium and epithelium, infections of eye, ear, genito-urinary tract, and sinus, and tonsilitis, pneumonia, tuberculosis, diarrhea, difficult delivery, interference with successful reproduction and lactation, pernicious anemia, secondary anemia, kidney and bladder disorders, degeneration of the nervous system, and atrophy of organs and glands including liver, testes, spleen, thyroid, pituitary, salivary, and others;

(d) Falsely represented that said "Vitamin B Complex" was a competent nutritional and corrective treatment for the prevention and cure of diseases or conditions such as susceptibility to infections due to lowered resistance, diabetes mellitus, functional disorders including atrophy or pathological enlargement of adrenals, brain, gonads, heart, kidneys, liver, ovaries, pancreas, pituitary gland, spleen, testes,

thymus and thyroid glands, tendency to functional gastro-intestinal disorders such as ulcers, degeneration of the nervous system, anemia, disturbances of reproductive cycle, dental caries, predisposition to allergic conditions, all forms of neuritis and others;

- (e) Falsely represented that said "Vitamin C Complex" was a competent nutritional and corrective treatment for the prevention and cure of such conditions as diseases of the blood vessels and capillaries, diseases of gums, tooth degeneration, joint and bone changes, mucous membrane hemorrhages, destruction of bone marrow, tendency to epithelial lesions, increased susceptibility to infections, retarded growth and loss of weight, physical weakness, depression and irritability, development of heart weakness, increased weight and enlargement of spleen, liver, stomach, intestines and kidneys, atrophy of glands, development of arthritis and rheumatic tendencies, complications of pregnancy, possible sterility, lowered glucose tolerance, cataract, and pre-disposition to allergic conditions, and sprue and others;
- (f) Represented that said "Vitamin D Complex" was a competent nutritional and corrective treatment for the prevention and cure of diseases or conditions such as improper mineral metabolism, retarded growth, enlarged liver, kidneys, spleen, instability and irritability of nervous system and tissues, muscular weakness, constipation, pyorrhea, parathyroid dysfunction, and menstrual disorders; and that it increased resistance to infection especially against tuberculosis;

The facts being that while said preparation might be of some value in the treatment of defective metabolism of calcium and phosphorus, which occurs in connection with diseases such as rickets and osteomalacia, it was not a preventive and corrective treatment for such diseases or conditions as those listed above;

- (g) Falsely represented that the preparation "Vitamin E," including his preparation "Vitamin E Complex," was a competent nutritional and corrective treatment for the prevention and cure of such diseases or conditions as loss of weight, retarded growth, weakness, paralysis, lowered resistance to infection, particularly to infantile paralysis, sterility (temporary in female—permanent in male), falling hair, and alteration of the texture of the hair and possible tendency to malignancies;
- (h) Falsely represented that the preparation "Vitamin F"—an expression not accepted by scientists as a designation for any substance—and his preparation "Vitamin F Complex" was a competent nutritional and corrective treatment for the prevention and cure of such diseases or conditions as epidermal manifestations including ridged and split fingernails, eczematous condition, dermatitis, scurf, dandruff, and hemorrhagic spots on the skin, brittleness and falling out of hair, impairment of endocrine glands, impairment of visceral organs, particularly the kidneys, lowered resistance to allergies, susceptibility to Vitamin D poisoning, loss of sex instincts, lowered resistance to infections, particularly tuberculosis, cessation of growth, severe renal manifestations and sterility;
- (i) Falsely represented that his "Vitamin G Complex" was a competent nutritional and corrective treatment for the prevention and cure of diseases or conditions such as underdevelopment, retarded growth and malnutrition, eye disorders, incipient pellagra, secondary anemia, cutaneous changes, neuritis, loss of hair, sprue, interference with normal skin respiration, alimentary tract disorders, degeneration of the liver, renal manifestations, and severe pellagra and severe nerve and spinal degeneration;
- (j) Represented in connection with his "V. P. Organic Mineral Tablets" that a deficiency of the alkali minerals—sodium, potassium, manganese and calcium—will cause many of the symptoms of vitamin deficiency; that in general the function of vitamins is to promote mineral metabolism; that "V. P. Organic Mineral Tablets" in combination with his "Vitamin F Complex" acted to restore a normal balance between the sympathetic and parasympathetic nervous systems; and that the two

preparations were effective in the treatment of gastro-intestinal disorders which lead to ulcers, and of angina pectoris;

The facts being that said combination of his preparations could not accomplish such therapeutic results and a deficiency of the alkaline minerals named will not cause the symptoms of vitamin deficiency, except possibly some of the manifestations of Vitamin D deficiency; and in general the function of vitamins is not to promote mineral metabolism;

- (k) Represented falsely that his product "Cerol" was a wheat germ oil which was a competent treatment for sterility in the female; and a competent treatment for the prevention of sterility in the male; and that when taken during gestation, it would prevent hyperemesis and cause childbirth to become a relatively simple physiological process and render unnecessary the use of oxytocic drugs;
- (l) Represented falsely in connection with "V. P. Phosphade," that the ordinary diet was deficient in phosphates; that said preparation, by supplying the phosphate radical, was effective in eliminating calcium accumulations in the tissues and blood vessel walls, and thereby was effective in the treatment of high blood pressure, hardening of the arteries, heart trouble, stiffness of the joints and symptoms of premature old age;
- (m) Falsely represented that his preparation "Cerodyn," also referred to as "Cerolyn" and "V. P. Fortified Wheat Germ," was a competent nutritional and corrective treatment for improving resistance to colds and improving physical stamina, including lessening of fatigue, improving mental functions and physical condition generally; that the preparation would correct inability to concentrate and inability to sleep because of nervous tension; that a general function of vitamins is to facilitate mineral assimilation and metabolism; and that the practice of using various refined artificially colored or ripened foods has reduced the vitamin intake in many cases to the vanishing point;
- (n) Represented falsely that his preparation "Viable Atidophilus Yeast" produced lactic acid by fermentation of carbohydrates, such as ordinary nutritional starches or cereals, and thereby restricted the growth of undesirable microorganisms in the alimentary tract; that the preparation offered a convenient means of supplying lactic acid; and was an effective treatment for halitosis;
- (o) Falsely represented that general visceral atrophy, infection of alimentary tract, kidney, bladder, sinuses, middle ear and lingual abscesses were observed in connection with Vitamin A deficiency in man, and that "Vitamin A Concentrate" possessed great effectiveness in the treatment of puerperal septicemia (blood poisoning) through misleadingly paraphrasing and distorting certain statements from the second edition of Sherman and Smith on "The Vitamins," and through false and misleading references thereto;
- (p) Represented falsely that synthetic vitamins have been shown by accepted authorities not to be capable of curing or relieving disease due to our symptoms of vitamin deficiency in the diet;
- (q) Represented that the measurement of vitamin content or activity in units cannot be considered a dependable test of the value of vitamins for human beings, but that the worth and value of vitamin concentrates must be established by means of clinical tests made on human patients;

The facts being that the validity of the established method of expressing the vitamin content or activity of vitamin preparation intended for administration to human beings in terms of units based on animal tests made with the products is accepted by recognized authorities;

With capacity and tendency to mislead and deceive a substantial number of the purchasing public into the erroneous belief that such false representations were true and to induce it because of such belief, to purchase 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.

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

Mr. William L. Pencke for the Commission.

Poss, Toelle & Schuler and *Mr. Charles Swidler*, 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 Royal Lee, an individual, trading under the name of Vitamin Products 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, Royal Lee, is an individual, trading under the name Vitamin Products Company, with his principal office and place of business at 2023 West Wisconsin Avenue in the city of Milwaukee and State of Wisconsin. Respondent is now, and for more than three years last past has been, engaged in the sale and distribution of various preparations in commerce among and between the various States of the United States. Among such preparations are the preparations designated and advertised as Catalyn, Vitamin A Complex, Vitamin B Complex, Vitamin C Complex, Vitamin D Complex, Vitamin E Complex, Vitamin F Complex, Vitamin G Complex, V. P. Organic Mineral, Cerol, V. P. Phosphate, Cerodyn, also called Cerolyn and Fortified Wheat Germ, and Viable Acidophilus Yeast.

Respondent causes said preparations, when sold, to be transported from his place of business in the State of Wisconsin to purchasers thereof located in various other States of the United States. At all times mentioned herein respondent has maintained a course of trade in said medicinal preparations in commerce among and between the various States of the United States.

PAR. 2. 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 products 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 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, disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements in periodicals, and by circulars, leaflets, pamphlets and other advertising literature, are the following:¹

¹ The advertising matter which is set out at length at this point in the balance of Par. 2 of the complaint, is also set forth verbatim in the findings, *infra* at pages 151 et seq., and is accordingly omitted here in the interest of brevity.

PAR. 3. Through the use of the statements, representations and advertisements hereinabove set forth [See preceding footnote], and others of similar import not specifically set out herein, all of which purport to be descriptive of the nutritional and therapeutic properties of the respondent's preparations, respondent has represented, and does now represent, directly and by implication, as follows:

1. *Representations as to Catalyn.* That the preparation "Catalyn" contains a sufficient supply of multiple vitamin concentrates, so as to be a competent dietary supplement in the treatment of vitamin deficiency diseases, and a competent nutritional and corrective treatment for the prevention and cure of such diseases and conditions as acidosis, anemia, angina pectoris, backward children, Bright's disease, change of life, chorea, colds, constipation, cystitis, dropsy, enlarged glands, enlarged prostate gland, goiter, hardening of the arteries, headache, heart trouble, high blood pressure, infectious diseases, insomnia, low blood pressure, low vitality, menopause, mucous colitis, nervousness, ovary and menstrual disorders, illness of pregnancy, prostate gland disorders, pyorrhea, teeth disorders, tired feeling, diseases of tonsils, tuberculosis, underweight, overweight, difficult urination, congested liver, cardiac asthma, dizzy spells, dizziness, liver blotches, gastric disturbance, nervous indigestion, frequent urination, choking spells, sinus infection, chronic (low grade) infections, sinus trouble, leg ulcers, varicose veins, etc.

By the use of the slogan "Catalyn for Health" respondent represents that said preparation will bring health to the user and that it can be relied upon to produce health.

By the use of the slogan "Catalyn—Nature's Source of Vitality" respondent represents that Catalyn can be relied upon to produce vitality and that it is a product of nature.

Respondent represents that the results obtained by the use of Catalyn are miraculous and by designating the preparation as "This life-and health-building product" he represents that the consumption of the product will insure life and health to the user.

2. *Representations as to Vitamin A Complex.* That the preparation "Vitamin A Complex" is a competent nutritional and corrective treatment for the prevention and cure of diseases or conditions such as retarded appetite, growth and development, disturbed dental and bone development, susceptibility to infections, slow healing of Reticulo-endothelium and Epithelium, infection of eye including corneal ulcers and degeneration of eyes, infection of ear, infection of genitourinary tract, tonsillitis, pneumonia, tuberculosis, diarrhea, infection of sinus, difficulty of delivery of young, interference with successful reproduction and lactation, pernicious anemia, secondary anemia, gastritis, bronchitis, kidney and bladder disorders, calculi, nephritis, cystitis, excessive growth of lymphoid tissues, degeneration of the nervous system, atrophy of organs and glands including liver, testes, spleen, thyroid, pituitary and salivary.

3. *Representations as to Vitamin B Complex.* That the preparation "Vitamin B Complex" is a competent nutritional and corrective treatment for the prevention and cure of diseases or conditions such as susceptibility to infections due to lowered resistance, Diabetes Mellitus, Functional Disorders including atrophy or pathological enlargement of adrenals, brain, gonads, heart, kidneys, liver, ovaries, pancreas, pituitary gland, spleen, testes, thymus and thyroid glands, tendency to functional gastro-intestinal disorders such as ulcers, indigestion, tendency to mus-

cular paralysis, loss of weight and vigor, stunted growth, tendency to edematous conditions, fall in body temperature, degeneration of the nervous system, anemia, disturbances of reproductive cycle, dental caries, predisposition to allergic conditions, and all forms of neuritis.

4. *Representations as to Vitamin C Complex.* That the preparation "Vitamin C Complex" is a competent nutritional and corrective treatment for the prevention and cure of diseases or conditions such as diseases of the blood vessels and capillaries, diseases of gums, tooth degeneration, joint and bone changes, mucous membrane hemorrhages, destruction of bone marrow, tendency to epithelial lesions, increased susceptibility to infections, retarded growth and loss of weight, physical weakness, depression and irritability, rapid respiration and heart action, blood degeneration, development of heart weakness, increased weight and enlargement of spleen, liver, stomach, intestines and kidneys, atrophy of glands, including reduced secretion of adrenals and thyroid gland, development of arthritis and rheumatic tendencies, development of edematous conditions, complications of pregnancy, tendency to raise temperature, possible sterility, lowered glucose tolerance, cataract, predisposition to allergic conditions and sprue.

5. *Representations as to Vitamin D Complex.* That the preparation "Vitamin D Complex" is a competent nutritional and corrective treatment for the prevention and cure of diseases or conditions such as improper mineral metabolism, increases resistance to infection, especially against tuberculosis, retarded growth, enlarged liver, kidneys, spleen, instability and irritability of nervous system and tissues, muscular weakness, constipation, pyorrhea, parathyroid dysfunction and mental disorders.

6. *Representations as to Vitamin E (Vitamin E Complex).* That the preparation "Vitamin E," including respondent's preparation Vitamin E Complex, is a competent nutritional and corrective treatment for the prevention and cure of such diseases or conditions as loss of weight, retarded growth, weakness, paralysis, lowered resistance to infection, particularly to infantile paralysis, sterility (temporary in female—permanent in male), falling hair, and alteration of the texture of the hair and possible tendency to malignancies.

7. *Representations as to Vitamin F (Vitamin F Complex).* That the preparation "Vitamin F," including respondent's preparation Vitamin F Complex, is a competent nutritional and corrective treatment for the prevention and cure of such diseases or conditions as epidermal manifestations including rigid and split fingernails, eczematous condition, dermatitis, scurf, dandruff, and hemorrhagic spots on the skin, brittleness and falling out of hair, impairment of endocrine glands, particularly the pituitary glands, impairment of visceral organs, particularly the kidneys, lowered resistance to allergies, susceptibility to Vitamin D poisoning, loss of sex instincts, lowered resistance to infections, particularly to tuberculosis, cessation of growth, severe renal manifestations and sterility.

8. *Representations as to Vitamin G Complex.* That the preparation "Vitamin G Complex" is a competent nutritional and corrective treatment for the prevention and cure of diseases or conditions such as underdevelopment, retarded growth and malnutrition, eye disorders, incipient pellagra, secondary anemia, cutaneous changes, neuritis, loss of hair, sprue, interference with normal skin respiration, alimentary tract disorders including gastroenteritis, degeneration of the liver, renal manifestations, in-

cluding cystitis, hemorrhagic conditions of the urine, severe pellagra and severe nerve and spinal degeneration.

9. *Representations as to V. P. Organic Mineral Tablets.* Respondent represents that a deficiency of the alkali minerals—sodium, potassium, magnesium and calcium—will cause many of the symptoms of vitamin deficiency; that in general the function of vitamins is to promote mineral metabolism; that V. P. Organic Mineral Tablets in combination with the preparation designated by respondent as Vitamin F. Complex acts to restore a normal balance between the sympathetic and parasympathetic nervous systems; that these two preparations are effective in the treatment of gastrointestinal disorders which lead to ulcers and of angina pectoris.

10. *Representations as to Cerol.* Respondent represents that the preparation Cerol is wheat germ oil which is a competent treatment for sterility in the female; is a competent treatment for the prevention of sterility in the male; that when taken during gestation it will prevent hyperemesis and cause childbirth to become a relatively simple physiological process and render unnecessary the use of oxytocic drugs.

11. *Representations as to V. P. Phosphade.* Respondent represents that the ordinary diet is deficient in phosphates; that his preparation, V. P. Phosphade, by supplying the phosphate radical, is effective in eliminating calcium accumulations in the tissues and blood vessel walls, and thereby is effective in the treatment of high blood pressure, hardening of the arteries, heart trouble, stiffness of the joints and symptoms of premature old age.

12. *Representations as to Cerodyn, also called Cerolyn, and V. P. Fortified Wheat Germ.* Respondent represents that the preparation which he has sold under the designation Cerodyn, Cerolyn and V. P. Fortified Wheat Germ is a competent nutritional and corrective treatment for improving resistance to colds and influenza, improving physical stamina, including lessening of fatigue, improving mental functions and physical condition generally; that the preparation will correct inability to concentrate and inability to sleep because of nervous tension; that a general function of vitamins is to facilitate mineral assimilation and metabolism; that the practice of using various refined artificially colored or ripened foods has reduced the vitamin intake in many cases to the vanishing point.

13. *Representations as to Viable Acidophilus Yeast.* Respondent represents that the preparation "Viable Acidophilus Yeast" produces lactic acid by fermentation of carbohydrates such as ordinary nutritional starches or cereals, and thereby restricts the growth of undesirable microorganisms in the alimentary tract; that the preparation affords a convenient means of supplying lactic acid; that the preparation is an effective treatment for halitosis.

14. *Representations as to vitamins generally.* Respondent has paraphrased certain statements appearing on page 282 of the book "The Vitamins" by Sherman and Smith (2nd edition), in such a way as to represent that general visceral atrophy, infection of alimentary tract, kidney, bladder, sinuses, middle ear and lingual abscesses were observed in connection with Vitamin A deficiency in man.

Furthermore, respondent has paraphrased other statements appearing on page 282 of the aforesaid publication in such manner as to constitute a representation that Vitamin A Concentrate possessed great effectiveness in the treatment of puerperal septicemia (blood poisoning).

Under the advertisement as to what is a vitamin, respondent has represented that a vitamin is a nutritional factor whose absence or deficiency

from the diet is responsible for the development of a known or definable syndrome and whose restoration to the diet will cure the disease syndrome and relieve symptoms of deficiency except when degeneration prevents recovery, and that synthetic vitamins have been shown by accepted authorities not to be capable of curing or relieving such disease or symptoms of deficiency.

Respondent has represented in an advertisement entitled "The Proof of the Pudding Is In The Eating" that measurement of vitamin content or activity in units cannot be considered a dependable test of the value of vitamins for human beings but that the worth and value of vitamin concentrates must be established by means of clinical tests made on human patients.

PAR. 4. The aforesaid advertisements and representations, as well as many others of similar import which have not been specifically set out herein are grossly exaggerated, false, misleading and untrue in the following particulars:

1. *With respect to Catalyn.* In truth and in fact, the preparation designated as Catalyn, except as to Vitamin D and to a limited extent to Vitamin A, taken as directed, does not furnish a sufficient, adequate supply of vitamins to have any therapeutic value or effect in the treatment of vitamin deficiency of the body or the prevention of vitamin deficiency diseases, and is not a competent dietary supplement in the building of normal vitality and resistance. Furthermore, said preparation is not a competent treatment for the diseases and conditions such as acidosis, anemia, angina pectoris, backward children, Bright's disease, change of life, chorea, colds, constipation, cystitis, dropsy, enlarged glands, enlarged prostate gland, goiter, hardening of the arteries, headache, heart trouble, high blood pressure, infectious diseases, insomnia, low blood pressure, low vitality, menopause, mucous colitis, nervousness, ovary and menstrual disorders, illness of pregnancy, prostate gland disorders, pyrorrhea, disorders of the teeth, tired feeling, diseases of the tonsils, tuberculosis, underweight, overweight, difficult urination, congested liver, cardiac asthma, dizzy spells, dizziness, liver blotches, gastric disturbance, nervous indigestion, frequent urination, choking spells, sinus infection, chronic (low grade) infections, leg ulcers, varicose veins.

In truth and in fact, the use of Catalyn will not bring health to the user and cannot be relied upon to produce health.

In truth and in fact, the user of Catalyn cannot be relied upon to produce vitality and is not a product of Nature, but is a preparation compounded by man.

In truth and in fact, the results which may be obtained by the use of Catalyn are not miraculous. Said preparation will not insure life and health to the user.

2. *With respect to Vitamin A Complex.* In truth and in fact, the preparation designated as Vitamin A Complex is not a competent nutritional and corrective treatment for the prevention and cure of diseases or conditions such as retarded appetite, growth and development, disturbed dental and bone development, susceptibility to infections, slow healing of Reticulo-endothelium and Epithelium, infection of eye including corneal ulcers and degeneration of eyes, infection of ear, infection of genitourinary tract, tonsillitis, pneumonia, tuberculosis, diarrhea, infection of sinus, difficulty of delivery of young, interference with successful reproduction and lactation, pernicious anemia, secondary anemia, gastritis, bronchitis,

kidney and bladder disorders, calculi, nephritis, cystitis, excessive growth of lymphoid tissues, degeneration of the nervous system, atrophy of organs and glands including testes, liver, spleen, thyroid, pituitary and salivary.

3. *With respect to Vitamin B Complex.* In truth and in fact, the preparation designated as Vitamin B Complex is not a competent nutritional and corrective treatment for the prevention and cure of diseases or conditions such as susceptibility to infections due to lowered resistance, diabetes mellitus, functional disorders including atrophy, or pathological enlargement of adrenals, brain, gonads, heart, kidneys, liver, ovaries, pancreas, pituitary gland, spleen, testes, thymus and thyroid glands, tendency to functional gastro-intestinal disorders such as ulcers, indigestion, tendency to muscular paralysis, loss of weight and vigor, stunted growth, tendency to edematous conditions, fall in body temperature, degeneration of the nervous system, anemia, disturbances of reproductive cycle, dental caries, predisposition to allergic conditions and all forms of neuritis.

Said preparation may be of some value in the treatment of Vitamin B₁ deficiency neuritis which may occur in connection with beriberi, pellagra, pregnancy and chronic alcoholism.

4. *With respect to Vitamin C Complex.* In truth and in fact the preparation designated as Vitamin C Complex is not a competent nutritional and corrective treatment for the prevention and cure of such diseases as diseases of the blood vessels and capillaries, diseases of gums, tooth degeneration, joint and bone changes, mucous membrane hemorrhages, destruction of bone marrow, tendency to epithelial lesions, increased susceptibility to infections, retarded growth and loss of weight, physical weakness, depression and irritability, rapid respiration and heart action, blood degeneration, development of heart weakness, increased weight and enlargement of spleen, liver, stomach, intestines and kidneys, atrophy of glands, including reduced secretion of adrenals and thyroid gland, development of arthritis and rheumatic tendencies, development of edematous conditions, complications of pregnancy, tendency to raise temperature, possible sterility, lowered glucose tolerance, cataract, predisposition to allergic conditions and sprue.

5. *With respect to Vitamin D Complex.* In truth and in fact the preparation designated as Vitamin D Complex is not a competent nutritional and corrective treatment for the prevention and cure of such diseases or conditions as defective mineral metabolism, decreased resistance to infection, especially against tuberculosis. Furthermore, respondent's preparation is not a competent treatment for the cure or prevention of retarded growth, enlarged liver, kidneys, spleen, instability and irritability of nervous system and tissues, muscular weakness, constipation, pyorrhea, parathyroid dysfunction and mental disorders.

Said preparation may be of some value in the treatment of defective metabolism of calcium and phosphorus, which occurs in connection with diseases such as rickets and osteomalacia.

6. *With respect to Vitamin E Complex.* In truth and in fact neither Vitamin E nor the preparation designated by the respondent as Vitamin E Complex is a competent nutritional treatment for or preventive of diseases or conditions such as loss of weight, retarded growth, weakness, paralysis, lowered resistance to infection, particularly to infantile paralysis, sterility (temporary in female—permanent in male), falling hair and alteration of the texture of the hair and possible tendency to malignancies.

7. *With respect to Vitamin F Complex.* In truth and in fact neither

Vitamin F nor the preparation designated by the respondent as Vitamin F Complex is a competent nutritional treatment for or preventive of diseases or conditions such as epidermal manifestations including rigid and split fingernails, eczematous condition, dermatitis, scurf, dandruff and hemorrhagic spots on the skin, brittleness and falling out of hair, impairment of endocrine glands, particularly the pituitary glands, impairment of visceral organs, particularly the kidneys, lowered resistance to allergies, susceptibility to Vitamin D poisoning, loss of sex instincts, lowered resistance to infections, particularly to tuberculosis, cessation of growth, severe renal manifestations and sterility. Furthermore, the term Vitamin F is not an expression accepted by scientists as a designation for any substance.

8. *With respect to Vitamin G.* In truth and in fact the preparation designated as Vitamin G is not a competent nutritional and corrective treatment for the prevention of underdevelopment, retarded growth and malnutrition, eye disorders, incipient pellagra, secondary anemia, cutaneous changes, neuritis, loss of hair, sprue, interference with normal skin respiration, alimentary tract disorders including gastro-enteritis, degeneration of the liver, renal manifestations including cystitis, hemorrhagic conditions of the urine, severe pellagra and severe nerve and spinal degeneration.

9. *With respect to V. P. Organic Mineral Tablets.* In truth and in fact a deficiency of the alkaline minerals including sodium, potassium, magnesium and calcium, will not cause the symptoms of vitamin deficiency, except possibly some of the manifestations of Vitamin D deficiency, and in general the function of vitamins is not to promote mineral metabolism. Furthermore, V. P. Organic Mineral Tablets in combination with the preparation designated by respondent as Vitamin F and Vitamin F Complex cannot restore a normal balance between the sympathetic and parasympathetic nervous system and these two preparations are not effective either singly or in combination with each other in the treatment of gastrointestinal disorders including ulcers or of angina pectoris.

10. *With respect to Cerol.* In truth and in fact the preparation designated as Cerol is not a competent nutritional and corrective treatment for sterility in the female; in the prevention of sterility in the male; that it will not when taken during gestation prevent hyperemesis and cause childbirth to become a relatively simply physiological process and render unnecessary the use of oxytocic drugs.

11. *With respect to V. P. Phosphate.* In truth and in fact the preparation designated as V. P. Phosphate is not a competent nutritional and corrective treatment for a diet deficient in phosphates, and by supplying the phosphate radical is not effective in eliminating calcium accumulations in the tissues and blood vessel walls, and is not thereby effective in the treatment of high blood pressure, hardening of the arteries, heart trouble, stiffness of the joints and symptoms of premature old age.

12. *With respect to Cerodyn, also called Cerolyn, and V. P. Fortified Wheat Germ.* In truth and in fact the preparation designated as Cerodyn, also called Cerolyn, and V. P. Fortified Wheat Germ, is not a competent nutritional and corrective treatment for improving resistance to colds and influenza, improving physical stamina, including lessening of fatigue, improving mental functions and physical condition generally; will not correct inability to concentrate and inability to sleep because of nervous tension; a general function of vitamins is not to facilitate mineral assimilation and metabolism and the practice of using various refined artificially

colored or ripened foods has not reduced the vitamin intake in many cases to the vanishing point.

13. *With respect to Viable Acidophilus Yeast.* In truth and in fact the preparation designated as Viable Acidophilus Yeast is not a competent nutritional and corrective treatment for producing lactic acid by fermentation of carbohydrates such as ordinary nutritional starches or cereals and will not thereby restrict the growth of undesirable microorganisms in the alimentary tract; that it does not afford a convenient means of supplying lactic acid and that it is not an effective treatment for halitosis.

14. *With respect to vitamins generally.* In truth and in fact, the representations presented by the paraphrasing of certain statements on page 282 of the book entitled "The Vitamins" by Sherman and Smith (2nd edition) are false and misleading in that general visceral atrophy, infection of alimentary tract, kidney, bladder, sinuses, middle ear and lingual abscesses were not observed in connection with Vitamin A deficiency in man, but the above symptoms or conditions were in fact observed in connection with experimental animals maintained on a diet deficient in Vitamin A. This fact is clearly set forth in the context which respondent used in preparing the paraphrased statement. Furthermore, the paraphrase of the statement appearing on page 282 of the aforesaid publication representing that Vitamin A Concentrate possesses great effectiveness in the treatment of puerperal septicemia (blood poisoning) is false in that said statement is immediately followed in said publication by the following qualification: "It is clear that impressive as are the results described, they are too few in number to allow the deduction that this form of treatment is specific in its nature for septicemia."

In truth and in fact, it has been demonstrated and accepted by authorities that synthetic vitamins are capable of curing or relieving the diseases or symptoms of deficiency caused by a diet deficient in the respective vitamins with an effectiveness equal to that resulting from the administration of the same vitamin obtained from a natural source.

In truth and in fact, the established method of expressing the vitamin content or activity of vitamin preparations intended for administration to human beings is in terms of units based on animal tests made with the products and the validity of such tests and of such method of expressing vitamin content or activities are accepted by recognized authorities.

PAR. 5. The use by the respondent of the foregoing false and deceptive statements and representations, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and to induce a substantial number of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's preparations.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 17, 1942, issued and subsequently

served its complaint in this proceeding upon the respondent named in the caption hereof, 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, certain facts and exhibits were stipulated into the record in lieu of testimony in support of or in opposition to the charges in the complaint, all intervening procedure was waived, and the stipulated evidence and exhibits were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, the stipulated evidence and exhibits (the filing of briefs and oral argument having been waived), 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, Royal Lee, is an individual, trading as Vitamin Products Company with his principal office and place of business at 2023 West Wisconsin Avenue, Milwaukee, Wis. He is now, and for more than three years last past has been, engaged in the sale and distribution of various products, including preparations designated and advertised as Catalyn, Vitamin A Complex, Vitamin B Complex, Vitamin C Complex, Vitamin D Complex, Vitamin E Complex, Vitamin F Complex, Vitamin G Complex, V-P Organic Mineral Tablets, Cerol, V-P Phosphate, Cerodyn (also referred to as Cerolyn and V. P. Fortified Wheat Germ) and Viable Acidophilus Yeast.

(b) In carrying on his aforesaid business, respondent causes said preparations when sold to be transported from his place of business in Milwaukee, Wis., to purchasers at their points of location in various other States of the United States, 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.

PAR. 2. (a) In the course and conduct of his aforesaid business, respondent has disseminated and has caused the dissemination of false advertisements concerning his said preparations by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and has disseminated and has caused 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 said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. The dissemination of some of said false advertisements was discontinued by respondent in 1939 and the dissemination of others was discontinued subsequent thereto. 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 periodicals and by circulars, leaflets, pamphlets and other advertising literature are those hereinafter set forth.

(b) Respondent's advertisements of the preparation designated "Catalyn" included the following:

"Catalyn" tablets were developed for the purpose of supplying a multiple vitamin concentrate in convenient form, which would be effective as a dietary supplement in the treatment of any vitamin deficiency disease, or for use in preventing deficiency disease and building the normal vitality and resistance that is the result of complete nutrition. * * *

LIST OF AILMENTS

For Which "CATALYN" is Recommended
And Case Report Index

Acidosis, Anemia, Angina Pectoris, Backward Children, Bright's Disease, Change of Life, Chorea, Colds, Constipation, Cystitis, Dropsy, Enlarged Glands, Enlarged Prostate Gland, Goiter (simple and Toxic), Hardening of the Arteries, Headache, Heart Trouble, High Blood Pressure, Infectious Diseases, Insomnia, Low Blood Pressure, Low Vitality, Menopause, Mucous Colitis, Nervousness, Ovary and Menstrual Disorders, Pregnancy, Illness of Pregnancy, Prostrate, Pyorrhea, Teeth, Tired Feeling, Tonsils, Tuberculosis.

(Detailed representations with respect to the above ailments in the advertisement have been omitted.)

CASE REPORTS

Convincing Evidence of the Merits of
"Catalyn"

Under the caption, "CASE REPORTS—Convincing Evidence of the Merits of 'Catalyn,'" respondent represents that his preparation "Catalyn" is a competent cure or treatment for various conditions, ailments or diseases, including many conditions, ailments or diseases referred to above, and in addition the following: underweight, overweight, difficult urination, congested liver, cardiac asthma, dizzy spells, dizziness, liver blotches, gastric disturbance, nervous indigestion, frequent urination, choking spells, and sinus infection.

Such persons, taking "Catalyn" will soon notice a marked improvement in their vitality, resulting in more definite reactions to the physician's treatment.

This is particularly true of chronic (low grade) infections, sinus trouble, leg ulcers, varicose veins, etc.

"CATALYN" For Health

CATALYN—Nature's Source of Vitality

Anything as miraculous in its performance as "Catalyn" naturally invites condemnation by certain critics who apparently believe they are competent to express opinions without investigation.

These critics by their unreasonable attitude and unwarranted propaganda are responsible for the unnecessary suffering and death of those persons who are thereby denied the knowledge of this life and health-building product.

(c) Respondent's advertisements of the preparation designated "Vitamin A Complex" included the following:

VITAMIN A COMPLEX

Apparent Function:

1. Necessary to normal function and integrity of—

Tissues of epiblastic origin; Epithelial tissues (Wound healing hastened, resistance to infections raised); Nervous system.

2. Necessary to maintenance of normal cell metabolism, such as: Cell respiration; Blood cell generation (Platelets).
3. Necessary to formation and integrity of periodontal tissue.
4. Promotes growth, feeling of well-being and longevity.
5. Essential to successful reproduction.
6. Prevents keratinization of tissues.

Possible Results of Deficiency;

7. Retarded appetite, growth and development (due to interference with assimilation).
8. Disturbed dental and bone development (atrophy).
9. Susceptibility to infections as well as slow healing of the following:
Reticulo-endothelium; Epithelium, due to degenerative change in structures of skin and mucosa.
10. Presence (due to lowered resistance) of—
Infections of eye (corneal ulcers) and degeneration of eyes (xerophthalmia, keratomalacia, night blindness, total blindness); Infections of ear (otitis media); Infections of genitourinary tract; Infections of mucous tract (tonsillitis); Infections of respiratory tract (pneumonia, tuberculosis); Infections of gastrointestinal tract (diarrhea); Infections of sinuses.
11. Presence of keratinizations and metaplasia of—
Epithelium; Genitourinary tract (making for difficult delivery of young); Mucous tract; Respiratory tract; Glands.
12. Interference with successful reproduction and lactation (loss of sex impulse); Sterility in the female by failure of ovulation or resorption of fetus; Sterility in the male by temporary injury to seminiferous epithelium; Prolonged gestation, retained and diseased placenta, difficult delivery.
13. Development of—
Pernicious anemia; Secondary anemia; Rickets (in conjunction with Vitamin D deficiency); Gastritis; Bronchitis.
14. Development of kidney and bladder disorders (metaplasias) and renal dysfunction; Formation of stones (calculi); Nephritis; Cystitis.
15. Excessive growth of lymphoid tissue.
16. Degeneration of the nervous system—dulling or perversion of special senses.

Results of Absence:

17. Atrophy of organs and glands (testes, liver, spleen, thyroid, pituitary and salivary).
18. Degenerative skeletal muscle lesions develop.
19. Ophthalmia, xerophthalmia, keratomalacia, conjunctivitis or kerato-conjunctivitis.
20. Death.

(d) Respondent's advertisements of the preparation designated "Vitamin B Complex" included the following:

VITAMIN B COMPLEX

Apparent Function:

1. Stimulates and promotes appetite and normal digestion.
2. Promotes optimal growth (increases height and vigor).
3. Necessary to maintenance of normal metabolic processes such as: Carbohydrate metabolism (lactic acid excesses); Cell respiration; Tissue respiration.
4. Necessary to normal pregnancy and lactation.

Findings

5. Maintains nervous function.
6. Stimulates digestive secretions, including insulin.
7. Necessary to maintenance of muscle tonus.
8. Prevents toxicosis from protein components in high meat diets.

Possible Results of Deficiency:

9. Susceptibility to infections due to lowered resistance.
10. Disturbed carbohydrate metabolism (Diabetes Mellitus) (lactic acid excesses, slow or labored respiration).
11. Functional disorders, atrophy or pathological enlargement of adrenals, brain, gonads, heart (heart block and bradycardia), kidneys, liver, ovaries, pancreas, pituitary gland, spleen, testes, thymus and thyroid glands—goiter.
12. Tendency to functional gastrointestinal disorders (Intestinal immobility, loss of tonus, constipation, lack of gastric secretions, ulcers, impaired appetite [anorexia] and digestion).
13. Tendency to muscle paralysis (loss of tone).
14. Loss of weight and vigor, stunted growth and emaciation.
15. Tendency to edematous conditions.
16. Fall in body temperature.
17. Degeneration of central nervous system (impaired nerve function, convulsions, tetany).
18. Anemia.
19. Disturbances of reproductive cycle (sterility—atrophy of seminiferous tubules, loss of libido, anestrus—hemorrhage at partus and abortions).
20. Dental caries.
21. Predisposes to allergic conditions.

Results of Absence:

22. Beriberi.
23. Peripheral and other forms of neuritis (polyneuritis).
24. Death.

(e) Respondent's advertisements of the preparation designated "Vitamin C Complex" included the following:

VITAMIN C COMPLEX

Apparent Function:

1. Essential to health and integrity of endothelial tissues (raises resistance to infections).
2. Essential to proper development of teeth.
3. Essential to oxygen metabolism.
4. Regeneration of blood cells.
5. Maintains proper blood-clotting time.

Possible Results of Deficiency:

6. Tendency to structural tissue changes:
 - (a) Diseases of blood vessels and capillaries (fragility, hemorrhages, tendency to bruise easily, "black and blue spots," purpura hemorrhagica), (varicosities).
 - (b) Diseases of gums (hemorrhages, sore gums), (pyorrhoea).
 - (c) Tooth degeneration (Necrosis, caries).
 - (d) Joint and bone changes (Decalcification, friability).
 - (e) Mucous membrane hemorrhages.
 - (f) Destruction of bone marrow.

7. Tendency to epithelial lesions (ulcerations of mouth, intestines, etc.).
8. Increased susceptibility of reduced resistance to infections.
9. Retarded growth and loss of weight.
10. Physical weakness, depression and irritability.
11. Rapid respiration and heart action.
12. Blood degeneration (Tendency to certain types of anemia, reduced hemoglobin, destruction of bone marrow).
13. Development of heart weakness.
14. Increased weight and enlargement of spleen, liver, stomach, intestines and kidneys.
15. Atrophy or hypertrophy of glands;
 - (a) Reduced secretion of adrenals;
 - (b) Morbid secretion of thyroid (toxic goiter).
16. Development of arthritis (Rheumatic tendency).
17. Development of edematous conditions.
18. Complications of pregnancy and lactation as well as ill effects to new born (Abortions).
19. Tendency to raised temperature.
20. Possible Sterility.
21. Lowered glucose tolerance.
22. Cataract.
23. Predisposes to allergic conditions.

Results of Absence:

24. Scurvy.
25. Sprue.
26. Death.

(f) Respondent's advertisements of the preparation designated "Vitamin D Complex" included the following:

VITAMIN D COMPLEX

Apparent Function:

1. Essential to proper mineral metabolism; absorption from alimentary tract, utilization (health and calcification of bone and teeth) (Antirachitic action) and excretion of calcium and phosphorus.
2. Necessary to successful pregnancy and lactation.
3. Necessary for normalizing and reducing time of labor.
4. Necessary to maintain blood platelets at normal level.
5. Maintains normal coagulation time of blood.
6. Maintains growth (longitudinal bone growth).
7. Aids in maintaining muscle tone.
8. Increases strength of capillaries.
9. Related to hormonal function.
10. Increases resistance to infections (especially against tuberculosis).
11. Necessary to normal respiratory function.

Possible Results of Deficiency:

12. Rickets and osteomalacia (improper calcification of bone).
13. Growth retarded.
14. Enlargement of liver, kidney and spleen.
15. Instability and irritability of nervous system and tissues.

Findings

16. Decreases resistance to infections.
17. Muscular weakness, constipation and reduced motility of gastro-intestinal tract.
18. Increased tendency to dental caries and defective teeth (improper calcification) (pyorrhea).
19. Parathyroid dysfunction (Enlargement).
20. Menstrual disorders, cessation of ovulation, uterine atrophy, difficult childbirth due to deformities in pelvic development.

Results of Absence:

21. Osteoporosis.
22. Rickets.

(g) Respondent's advertisements of the preparation designated "Vitamin E Complex" included the following:

VITAMIN E

Apparent Function:

1. Necessary to reproduction in both male and female (necessary to prevent irreparable sterility in male).
2. Necessary to maintenance of mental alertness.
3. Necessary to growth and vigor.
4. Possibly to prevent carcinoma.
5. Necessary to resistance to infections.
6. Possibly to prevent paralysis of young (from E-deficient mothers).
7. Vermifuge (possibly due to associated principles).
8. Some influence on the endocrines (pituitary, anterior pituitary).

Possible Results of Deficiency:

9. Loss of weight, retarded growth, weakness.
10. Wasting of muscles, paralysis.
11. Lowered resistance in infections (particularly to infantile paralysis).
12. Sterility (temporary in female—interference with placental function), (Permanent in male—irreparable seminiferous epithelial injury).

Results of Absence:

13. Severe paralysis.
14. Disturbances of latter stages of pregnancy producing sterility (fetal resorption and habitual abortion).
15. Roughness, falling out (alopecia) and altering of the texture of the hair.
16. Possible tendency to malignancies.

(h) Respondent's advertisements of the preparation designated "Vitamin F Complex" included the following:

VITAMIN F

Apparent Functions:

1. Necessary to healthy epidermis (Protection against infection).
2. Maintains normal growth and reproduction.
3. May be necessary to maintain normal blood sugar (Possibly related to Insulin secretion).
4. Necessary to cell respiration.
5. Necessary to hair health.
6. Necessary to brain function and probably to function of other nerve tissue,

Possible Results of Deficiency:

7. Epidermal manifestations (Ridged and split fingernails, eczematous conditions, dermatitis—infantile and allergic, scurf, dandruff and hemorrhagic spots on the skin).
8. Brittleness and falling out of hair (Alopecia).
9. Involvement of endocrine glands (pituitary in particular).
10. Involvement of visceral organs (particularly kidneys).
11. Lowers resistance to allergies.
12. Susceptibility to Vitamin D poisoning.
13. Loss of sex instinct.
14. Lowered resistance to infections (Tuberculosis in particular).

Results of absence:

15. Cessation of growth and subsequent death.
16. Severe renal manifestations (Hematuria, albuminuria and severe nephritis).
17. Sterility (Impaired and irregular ovulation with interference with mechanism of labor in the female), (Loss of sex potentia with eventual sterility in the male).

(i) Respondent's advertisements of the preparation designated "Vitamin G Complex" included the following:

VITAMIN G COMPLEX

Apparent Function:

1. Necessary to growth and development.
2. Necessary to cell respiration.
3. As growth stimulus promotes normal repair processes and thereby delays senility.
4. Necessary to blood regeneration.

Possible Results of Deficiency:

5. Underdevelopment and retarded growth from malnutrition.
6. Eye disorders (conjunctivitis).
7. Incipient pellagra.
8. Abnormally slow regeneration of erythrocytes (secondary anemia).
9. Cutaneous changes (pellagic symptoms, mild dermatitis).
10. Nerve lesions and irritability (Neuritis).
11. Loss of hair (alopecia).
12. Sprue.
13. Interferes with normal skin respiration.
14. Alimentary tract disorders (Gastroenteritis, stomatitis, digestive disturbances).
15. Fatty infiltration and degeneration of the liver.
16. Renal manifestations (Cystitis, Hemorrhagic conditions of the urine, stones—renal calculi).

Results of Absence:

17. Gastrointestinal disturbances (Gastroenteritis, stomatitis, ulcerative colitis, diarrhea, nausea, vomiting, achlorhydria).
18. Cessation of growth.
19. Eye disorders (keratinization, severe conjunctivitis, ophthalmia cataracts).
20. Severe pellagra.
21. Severe nerve and spinal degeneration (Mental disorders, hyperirritability).
22. Death.

(j) Respondent's advertisements of the preparation designated "V-P Organic Mineral Tablets" included the following:

The alkali minerals—sodium, potassium, magnesium and calcium—also, if deficient, cause many of the symptoms of vitamin deficiency. This is because in general the function of vitamins is to promote mineral metabolism. * * *

* * * Vitamin F and "V-P" Organic Mineral tablets act to mobilize both calcium and potassium in the tissue fluids and restore a normal balance of power between the sympathetics and parasympathetics. This probably explains the benefit of this treatment for both gastrointestinal disorders that lead to ulcers, and the obvious benefits in most angina pectoris cases, for the latter has been identified as a condition of irritability of areas supplied by the vagus, and quite recently substantial evidence has been offered to show that the pain attacks in angina pectoris are really cramps of the oesophagus.

(k) Respondent's advertisements of the preparation designated "Cerol" included the following:

The clinical use of wheat germ oil for the treatment of sterility in the female and as a preventive of sterility in the male has been attended with considerable success. * * *

* * * Such a course of treatment is ideal for the mother during gestation and lactation periods. There will be no hyperemesis, and the delivery becomes a relatively simple process of normal physiology that is an object lesson to those who have not had the opportunity to observe the action of vitamins under these circumstances. The necessity of oxytocic drugs is eliminated, no doubt, because we are supplying better nutrition to the pituitary. * * *

(l) Respondent's advertisements of the preparation designated "V-P Phosphade" included the following:

Because the ordinary diet not only is deficient in Vitamins, but also lacks certain phosphates we have prepared "V.P. Phosphade" to supply the phosphate radical to aid "Catalyn" in eliminating the calcium accumulations in the tissues and blood vessel walls likely to be present in conditions of high blood pressure, hardening of the arteries and heart trouble. These calcium accumulations also are the cause of stiffness of the joints and many other indications of premature old age.

Without the "V.P. Phosphade" removal of these deposits is a slow process, as the rate of removal is limited by the amount of phosphoric radical taken into the system in food. Results are obtained so much quicker when the "V.P. Phosphade" is used that the saving in "Catalyn" more than offsets the cost of the "V.P. Phosphade."

(m) Respondent's advertisements of the preparation designated "Cero-dyn," also referred to as "Cerolyn" and "V.P. Fortified Wheat Germ," included the following:

* * * Its use will ordinarily show improvement in resistance to colds, improved physical stamina (less fatigue), better mental function (as shown by school marks in children) and a generally improved physical condition. * * *

* * * A general function of vitamins is to facilitate mineral assimilation and metabolism and therefore it is evident that mineral deficiency can be a secondary consequence of vitamin deficiency. * * * The practice of using refined sugar, flour and other cereals, artificially colored and ripened fruits and vegetables, etc., that may have had their vitamin content further diminished through storage, has reduced the vitamin intake in many cases to the vanishing point. As a result, even before we experience the more severe consequences of deficiency, we become easily fatigued (physically and mentally), cannot concentrate, may be unable to sleep or rest because of nervous tension, lose our normal powers of resistance and become a victim of every cold or "flu" epidemic. * * *

(n) Respondent's advertisements of the preparation designated "Viable Acidophilus Yeast" included the following:

VARIABLE
ACIDOPHILUS
YEAST

A new PALATABLE Yeast that produces lactic acid by fermentation of carbohydrates, and thereby restricts the growth of undesirable microorganisms in the alimentary system.

This yeast differs from ordinary yeast in that it does not form alcohol or CO₂.

The daily use of two wafers before breakfast with a glass of hot water is suggested for halitosis of intestinal origin and to improve elimination.

It affords a convenient means of supplying lactic acid, the sources heretofore of which have been only such foods as acidophilus milk, buttermilk and sauerkraut. * * * Acidophilus yeast, however, does not require a specialized carbohydrate like this, but it will form lactic acid from any of the ordinary nutritional starches or cereals.

(o) Respondent's advertisements relating generally to vitamins included the following:

* * * "The Vitamins" by Sherman and Smith (Second Edition).

On page 282 it is stated that in 20 to 72% of the tests and deficiency of Vitamin A results were—general visceral atrophy, infection of alimentary tract, kidney, bladder, sinuses, middle ear and lingual abscesses.

On this page is also found the statement that 14 patients treated with Vitamin A concentrate for puerperal septicemia (blood poison), 13 recovered; whereas of 18 cases occurring in the same hospital the previous year, and which were not so treated (with Vitamin A), all died.

WHAT IS A VITAMIN?

Here's our definition:

A vitamin is that nutritional factor whose absence or deficiency from the diet is responsible for the development of a known definable syndrome, and WHOSE RESTORATION TO THE DIET SCHEDULE WILL CURE THE DISEASE AND RELIEVE SYMPTOMS OF DEFICIENCY, except when degeneration prevents recovery.

Synthetic or "pure" vitamins will NOT meet this acid test. The facts are published by accepted authorities and available to anyone who cares to dig them out of the medical journals.

THE PROOF OF THE PUDDING IS IN THE EATING

WE INVITE COMPARISON of V-P Vitamin Complexes in your practice. The ULTIMATE TEST of any commercial concentrate is the results that YOU as a physician can obtain with it, irrespective of the knowledge of its chemistry. We were warming ourselves with coal hundreds of years before we knew it contained carbon. Patients with "incurable" deficiency diseases are responding today to V-P vitamin concentrates of unknown chemistry.

A clinical test of our B Complex in heart arrhythmias, our C Complex is an infectious case of our "Catalyn" in a case of low vitality will serve to convince you of the superiority of a NATURAL product gleaned from multiple FOOD sources in order to retain

the priceless "unknown factors" vitally necessary for the delicate balance of the complete vitamin complex.

One important finding that has upset previous notions is that a given vitamin product with a specified "unit content" may be very effective for one species of animal and of little or no effect for another species. The practical effect of this discovery is that the units up to now used to measure vitamin content can no longer be considered a dependable measure of merit.

PAR. 3. (a) Through the use of the statements, representations and advertisements set out in the preceding paragraph, and others of similar import not specifically set out therein, all of which purport to be descriptive of the nutritional and therapeutic properties of said preparations, the respondent has represented directly and by implication as follows:

(b) As to Catalyn: That the preparation "Catalyn" contains a sufficient supply of multiple vitamin concentrates to constitute a competent dietary supplement in the treatment of vitamin deficiency diseases and a competent nutritional and corrective treatment for the prevention and cure of such diseases and conditions as acidosis, anemia, angina pectoris, backward children, Bright's disease, change of life, chorea, colds, constipation, cystitis, dropsy, enlarged glands, enlarged prostate gland, goiter, hardening of the arteries, headache, heart trouble, high blood pressure, infectious diseases, insomnia, low blood pressure, low vitality, menopause, mucous colitis, nervousness, ovary and menstrual disorders, illness of pregnancy, prostate gland disorders, pyorrhea, teeth disorders, tired feeling, diseases of tonsils, tuberculosis, underweight, overweight, difficult urination, congested liver, cardiac asthma, dizzy spells, dizziness, liver blotches, gastric disturbances, nervous indigestion, frequent urination, choking spells, sinus infection, chronic (low grade) infections, sinus trouble, leg ulcers and varicose veins. By the use of the slogan "Catalyn for Health" respondent represents that said preparation will bring health to the user and that it can be relied upon to produce health. By the use of the slogan "Catalyn—Nature's Source of Vitality" respondent represents that Catalyn can be relied upon to produce vitality and that it is a product of nature. Respondent represents that the results obtained by the use of Catalyn are miraculous and by designating the preparation as "This life- and health-building product" he represents that the consumption of the product will insure life and health to the user.

(c) As to Vitamin A Complex: That the preparation "Vitamin A Complex" is a competent nutritional and corrective treatment for the prevention and cure of diseases or conditions such as retarded appetite, growth and development, disturbed dental and bone development, susceptibility to infections, slow healing of reticulo-endothelium and epithelium, infection of eye including corneal ulcers and degeneration of eyes, infection of ear, infection of genito-urinary tract, tonsillitis, pneumonia, tuberculosis, diarrhea, infection of sinus, difficulty of delivery of young, interference with successful reproduction and lactation, pernicious anemia, secondary anemia, gastritis, bronchitis, kidney and bladder disorders, calculi, nephritis, cystitis, excessive growth of lymphoid tissues, degeneration of the nervous system, atrophy of organs and glands including liver, testes, spleen, thyroid, pituitary and salivary.

(d) As to Vitamin B Complex: That the preparation "Vitamin B Complex" is a competent nutritional and corrective treatment for the prevention and cure of diseases or condition such as susceptibility to infections

due to lowered resistance, diabetes mellitus, functional disorders including atrophy or pathological enlargement of adrenals, brain, gonads, heart, kidneys, liver, ovaries, pancreas, pituitary gland, spleen, testes, thymus, and thyroid glands, tendency to functional gastro-intestinal disorders such as ulcers, indigestion, tendency to muscular paralysis, loss of weight and vigor, stunted growth, tendency to edematous conditions, fall in body temperature, degeneration of the nervous system, anemia, disturbances of reproductive cycle, dental caries, predisposition to allergic conditions, and all forms of neuritis.

(e) As to Vitamin C Complex: That the preparation "Vitamin C Complex" is a competent nutritional and corrective treatment for the prevention and cure of diseases or conditions such as diseases of the blood vessels and capillaries, diseases of gums, tooth degeneration, joint and bone changes, mucous membrane hemorrhages, destruction of bone marrow, tendency to epithelial lesions, increased susceptibility to infections, retarded growth and loss of weight, physical weakness, depression and irritability, rapid respiration and heart action, blood degeneration, development of heart weakness, increased weight and enlargement of spleen, liver, stomach, intestines and kidneys, atrophy of glands, including reduced secretion of adrenals and thyroid gland, development of arthritis and rheumatic tendencies, development or edematous conditions, complications of pregnancy, tendency to raise temperature, possible sterility, lowered glucose tolerance, cataract, predisposition to allergic conditions and sprue.

(f) As to Vitamin D Complex: That the preparation "Vitamin D Complex" is a competent nutritional and corrective treatment for the prevention and cure of diseases or conditions such as improper mineral metabolism, increases resistance to infection, especially against tuberculosis, retarded growth, enlarged liver, kidneys, spleen, instability and irritability of nervous system and tissues, muscular weakness, constipation, pyorrhea, parathyroid dysfunction and menstrual disorders.

(g) As to Vitamin E Complex: That the preparation "Vitamin E," including respondent's preparation "Vitamin E Complex," is a competent nutritional and corrective treatment for the prevention and cure of such diseases or conditions as loss of weight, retarded growth, weakness, paralysis, lowered resistance to infection, particularly to infantile paralysis, sterility (temporary in female—permanent in male), falling hair, and alteration of the texture of the hair and possible tendency to malignancies.

(h) As to Vitamin F Complex: That the preparation "Vitamin F," including respondent's preparation "Vitamin F Complex," is a competent nutritional and corrective treatment for the prevention and cure of such diseases or conditions as epidermal manifestations including ridged and split fingernails, eczematous condition, dermatitis, scurf, dandruff, and hemorrhagic spots on the skin, brittleness and falling out of hair, impairment of endocrine glands, particularly the pituitary glands, impairment of visceral organs, particularly the kidneys, lowered resistance to allergies, susceptibility to Vitamin D poisoning, loss of sex instincts, lowered resistance to infections, particularly to tuberculosis, cessation of growth, severe renal manifestations and sterility.

(i) As to Vitamin G Complex: That the preparation "Vitamin G Complex" is a competent nutritional and corrective treatment for the prevention and cure of diseases or conditions such as underdevelopment, retarded growth and malnutrition, eye disorders, incipient pellagra, secondary anemia, cutaneous changes, neuritis, loss of hair, sprue, interference with

normal skin respiration, alimentary tract disorders including gastroenteritis, degeneration of the liver, renal manifestations, including cystitis, hemorrhagic conditions of the urine, severe pellagra and severe nerve and spinal degeneration.

(j) As to V.P. Organic Mineral Tablets: Respondent represents that a deficiency of the alkali minerals—sodium, potassium, magnesium and calcium—will cause many of the symptoms of vitamin deficiency; that in general the function of vitamins is to promote mineral metabolism; that "V.P. Organic Mineral Tablets" in combination with the preparation designated by respondent as "Vitamin F Complex" acts to restore a normal balance between the sympathetic and parasympathetic nervous systems; that these two preparations are effective in the treatment of gastrointestinal disorders which lead to ulcers and of angina pectoris.

(k) As to Cerol: Respondent represents that the preparation "Cerol" is wheat germ oil which is a competent treatment for sterility in the female; is a competent treatment for the prevention of sterility in the male; that when taken during gestation it will prevent hyperemesis and cause childbirth to become a relatively simple physiological process and render unnecessary the use of oxytocic drugs.

(l) As to V.P. Phosphate: Respondent represents that the ordinary diet is deficient in phosphates; that his preparation, "V.P. Phosphate," by supplying the phosphate radical, is effective in eliminating calcium accumulations in the tissues and blood vessel walls, and thereby is effective in the treatment of high blood pressure, hardening of the arteries, heart trouble, stiffness of the joints and symptoms of premature old age.

(m) As to Cerodyn, also referred to as Cerolyn and V.P. Fortified Wheat Germ: Respondent represents that the preparation which he has sold under the designation "Cerodyn," "Cerolyn," and "V.P. Fortified Wheat Germ" is a competent nutritional and corrective treatment for improving resistance to colds and improving physical stamina, including lessening of fatigue, improving mental functions and physical condition generally; that the preparation will correct inability to concentrate and inability to sleep because of nervous tension; that a general function of vitamins is to facilitate mineral assimilation and metabolism; that the practice of using various refined artificially colored or ripened foods has reduced the vitamin intake in many cases to the vanishing point.

(n) As to Viable Acidophilus Yeast: Respondent represents that the preparation "Viable Acidophilus Yeast" produces lactic acid by fermentation of carbohydrates such as ordinary nutritional starches or cereals, and thereby restricts the growth of undesirable micro-organisms in the alimentary tract; that the preparation affords a convenient means of supplying lactic acid; that the preparation is an effective treatment for halitosis.

(o) As to Vitamins generally: Respondent has paraphrased certain statements appearing on page 282 of the book "The Vitamins" by Sherman and Smith (2nd Edition), in such a way as to represent that general visceral atrophy, infection of alimentary tract, kidney, bladder, sinuses, middle ear and lingual abscesses were observed in connection with Vitamin A deficiency in man. Furthermore, respondent has paraphrased other statements appearing on page 282 of the aforesaid publication in such manner as to constitute a representation that Vitamin A Concentrate possessed great effectiveness in the treatment of puerperal septicemia (blood poisoning). Under the advertisement as to what is a vitamin, respondent has represented that a vitamin is a nutritional factor whose absence or

deficiency from the diet is responsible for the development of a known or definable syndrome and whose restoration to the diet will cure the disease syndrome and relieve symptoms of deficiency except when degeneration prevents recovery, and that synthetic vitamins have been shown by accepted authorities not to be capable of curing or relieving such diseases or symptoms of deficiency. Respondent has represented in an advertisement entitled "The Proof of the Pudding is in The Eating" that measurement of vitamin content or activity in units cannot be considered a dependable test of the value of vitamins for human beings but that the worth and value of vitamin concentrates must be established by means of clinical tests made on human patients.

PAR. 4. (a) The aforesaid advertisements and representations are grossly exaggerated, false, misleading and untrue as hereinafter set forth.

(b) In truth and in fact respondent's preparation designated as "Catalyn," except as to Vitamin D and to a limited extent to Vitamin A, taken as directed, does not furnish a sufficient, adequate supply of vitamins to have any therapeutic value or effect in the treatment of vitamin deficiency of the body or the prevention of vitamin deficiency diseases, and is not a competent dietary supplement in the building or normal vitality and resistance. Furthermore, said preparation is not a competent treatment for diseases and conditions such as acidosis, anemia, angina pectoris, backward children, Bright's disease, change of life, chorea, colds, constipation, cystitis, dropsy, enlarged glands, enlarged prostate gland, goiter, hardening of the arteries, headache, heart trouble, high blood pressure, infectious diseases, insomnia, low blood pressure, low vitality, menopause, mucous colitis, nervousness, ovary and menstrual disorders, illness of pregnancy, prostate gland disorders, pyorrhea, disorders of the teeth, tired feeling, diseases of the tonsils, tuberculosis, underweight, overweight, difficult urination, congested liver, cardiac asthma, dizzy spells, dizziness, liver blotches, gastric disturbance, nervous indigestion, frequent urination, choking spells, sinus infection, chronic (low grade) infections, leg ulcers, varicose veins, etc. The use of Catalyn will not bring health to the user and cannot be relied upon to produce health. The use of Catalyn cannot be relied upon to produce vitality and is not a product of Nature, but is a preparation compounded by man. The results which may be obtained by the use of Catalyn are not miraculous. Said preparation will not insure life and health to the user.

(c) In truth and in fact respondent's preparation designated as "Vitamin A Complex" is not a competent nutritional and corrective treatment for the prevention and cure of diseases or conditions such as retarded appetite, growth and development, disturbed dental and bone development, susceptibility to infections, slow healing of reticulo-endothelium and epithelium, infection of eye including corneal ulcers and degeneration of eyes, infection of ear, infection of genito-urinary tract, tonsillitis, pneumonia, tuberculosis, diarrhea, infection of sinus, difficulty of delivery of young, interference with successful reproduction and lactation, pernicious anemia, secondary anemia, gastritis, bronchitis, kidney and bladder disorders, calculi, nephritis, cystitis, excessive growth of lymphoid tissues, degeneration of the nervous system, atrophy of organs and glands including testes, liver, spleen, thyroid, pituitary and salivary.

(d) In truth and in fact respondent's preparation designated as "Vitamin B Complex" is not a competent nutritional and corrective treatment for the prevention and cure of diseases or conditions such as susceptibility

to infections due to lowered resistance, diabetes mellitus, functional disorders including atrophy, or pathological enlargement of adrenals, brain, gonads, heart, kidneys, liver, ovaries, pancreas, pituitary gland, spleen, testes, thymus and thyroid glands, tendency to functional gastro-intestinal disorders such as ulcers, indigestion, tendency to muscular paralysis, loss of weight and vigor, stunted growth, tendency to edematous conditions, fall in body temperature, degeneration of the nervous system, anemia, disturbance of reproductive cycle, dental caries, predisposition to allergic conditions and all forms of neuritis. Moreover, the dosage indicated by respondent is not sufficient to be effective in the treatment of Vitamin B deficiency neuritis which may occur in connection with beriberi, pellagra, pregnancy and chronic alcoholism.

(e) In truth and in fact respondent's preparation designated as "Vitamin C Complex" is not a competent nutritional and corrective treatment for the prevention and cure of such diseases as diseases of the blood vessels and capillaries, diseases of gums, tooth degeneration, joint and bone changes, mucous membrane hemorrhages, destruction of bone marrow, tendency to epithelial lesions, increased susceptibility to infections, retarded growth and loss of weight, physical weakness, depression and irritability, rapid respiration and heart action, blood degeneration, development of heart weakness, increased weight and enlargement of spleen, liver, stomach, intestines and kidneys, atrophy of glands, including reduced secretion of adrenals and thyroid gland, development of arthritic and rheumatic tendencies, development of edematous conditions, complications of pregnancy, tendency to raise temperature, possible sterility, lowered glucose tolerance, cataract, predisposition to allergic conditions and sprue.

(f) In truth and in fact respondent's preparation designated as "Vitamin D Complex" is not a competent nutritional and corrective treatment for the prevention and cure of such diseases or conditions as defective mineral metabolism, decreased resistance to infection, especially against tuberculosis. Furthermore, respondent's preparation is not a competent treatment for the cure or prevention of retarded growth, enlarged liver, kidneys, spleen, instability and irritability of nervous system and tissues, muscular weakness, constipation, pyorrhea, parathyroid dysfunction and menstrual disorders. Said preparation may be of some value in the treatment of defective metabolism of calcium and phosphorus, which occurs in connection with diseases such as rickets and osteomalacia.

(g) In truth and in fact neither "Vitamin E" nor the respondent's preparation designated as "Vitamin E Complex" is a competent nutritional treatment for or preventive of diseases or conditions such as loss of weight, retarded growth, weakness, paralysis, lowered resistance to infection, particularly to infantile paralysis, sterility (temporary in female—permanent in male), falling hair and alteration of the texture of the hair and possible tendency to malignancies.

(h) In truth and in fact neither "Vitamin F" nor respondent's preparation designated as "Vitamin F Complex" is a competent nutritional treatment for or preventive of diseases or conditions such as epidermal manifestations including ridged and split fingernails, eczematous condition, dermatitis, scurf, dandruff and hemorrhagic spots on the skin, b ittliness, and falling out of hair, impairment of endocrine glands, particularly the pituitary glands, impairment of visceral organs, particularly the kidneys, lowered resistance to allergies, susceptibility to Vitamin D poisoning, loss

of sex instincts, lowered resistance to infections, particularly to tuberculosis, cessation of growth, severe renal manifestations and sterility. Furthermore, the term "Vitamin F" is not an expression accepted by scientists as a designation for any substance.

(i) In truth and in fact respondent's preparation designated as "Vitamin G Complex" is not a competent nutritional and corrective treatment for the prevention of underdevelopment, retarded growth and malnutrition, eye disorders, secondary anemia, cutaneous changes, neuritis, loss of hair, sprue, interference with normal skin respiration, alimentary tract disorders including gastro-enteritis, degeneration of the liver, renal manifestations including systitis, hemorrhagic conditions of the urine, severe pellagra and severe nerve and spinal degeneration.

(j) In truth and in fact respondent's preparation designated as "V.P. Organic Mineral Tablets," in combination with the preparation designated by respondent as "Vitamin F" and "Vitamin F Complex," cannot restore a normal balance between the sympathetic and parasympathetic nervous systems and these two preparations are not effective either singly or in combination with each other in the treatment of gastro-intestinal disorders including ulcers or of angina pectoris. A deficiency of the alkaline minerals, including sodium, potassium, magnesium and calcium, will not cause the symptoms of vitamin deficiency, except possibly some of the manifestations of Vitamin D deficiency, and in general the function of vitamins is not to promote mineral metabolism.

(k) In truth and in fact respondent's preparation designated as "Cerol" is not a competent nutritional and corrective treatment for sterility in the female; in the prevention of sterility in the male; and it will not when taken during gestation prevent hyperemesis and cause childbirth to become a relatively simple physiological process and render unnecessary the use of oxytocic drugs.

(l) In truth and in fact respondent's preparation designated as "V.P. Phosphate" is not a competent nutritional and corrective treatment for a diet deficient in phosphates, and by supplying the phosphate radical is not effective in eliminating calcium accumulations in the tissues and blood vessel walls, and is not thereby effective in the treatment of high blood pressure, hardening of the arteries, heart trouble, stiffness of the joints and symptoms of premature old age.

(m) In truth and in fact respondent's preparation designated as "Cerodyn," also called "Cerolyn" and "V.P. Fortified Wheat Germ," is not a competent nutritional and corrective treatment for improving resistance to colds, improving physical stamina, including lessening of fatigue, improving mental functions and physical condition generally; will not correct inability to concentrate and inability to sleep because of nervous tension; a general function of vitamins is not to facilitate mineral assimilation and metabolism and the practice of using various refined artificially colored or ripened foods has not reduced the vitamin intake in many cases to the vanishing point.

(n) In truth and in fact respondent's preparation designated as "Viable Acidophilus Yeast" is not a competent nutritional and corrective treatment for producing lactic acid by fermentation of carbohydrates such as ordinary nutritional starches or cereals and will not thereby restrict the growth of undesirable micro-organisms in the alimentary tract, it does not afford a convenient means of supplying lactic acid and it is not an effective treatment for halitosis.

(o) In truth and in fact the representations made by the respondent through the paraphrasing of certain statements on page 282 of the book entitled "The Vitamins" by Sherman and Smith (2nd edition) are false and misleading in that general visceral atrophy, infection of alimentary tract, kidney, bladder, sinuses, middle ear and lingual abscesses were not observed in connection with Vitamin A deficiency in men, but the above symptoms or conditions were in fact observed in connection with experimental animals maintained on a diet deficient in Vitamin A. This fact is clearly set forth in the context which respondent used in preparing the paraphrased statement. Furthermore, the paraphrase of the statement appearing on page 282 of the aforesaid publication representing that Vitamin A Concentrate possesses great effectiveness in the treatment of puerperal septicemia (blood poisoning) is false in that said statement is immediately followed in said publication by the following qualification: "It is clear that impressive as are the results described, they are too few in number to allow the deduction that this form of treatment is specific in its nature for septicemia." It has been demonstrated and accepted by authorities that synthetic vitamins are capable of curing or relieving the diseases or symptoms of deficiency caused by a diet deficient in the respective vitamins with an effectiveness equal to that resulting from the administration of the same vitamin obtained from a natural source. The established method of expressing the vitamin content or activity of vitamin preparations intended for administration to human beings is in terms of units based on animal tests made with the products and the validity of such tests and of such method of expressing vitamin content or activities are accepted by recognized authorities.

PAR. 5. (a) The use by respondent of the foregoing false and deceptive statements and representations disseminated as aforesaid has the capacity and tendency to mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true and to induce a substantial number of the purchasing public, because of such erroneous and mistaken 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, and certain facts and exhibits stipulated into the record (further hearing as to the facts and all intervening procedure having been waived), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Royal Lee, an individual, trading as Vitamin Products 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 the preparations hereinafter named, or any preparations of substantially similar composition or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from directly or indirectly:

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

(a) That respondent's preparation "Catalyn" when taken as directed, constitutes a competent dietary supplement for or has any therapeutic value in the treatment of any vitamin deficiency disease except such as are due to a deficiency of Vitamins A or D.

(b) That respondent's preparation "Catalyn" is a competent nutritional or corrective treatment for the prevention or cure of acidosis, anemia, angina pectoris, backward children, Bright's disease, change of life, chorea, colds, constipation, cystitis, dropsy, enlarged glands, enlarged prostate gland, goiter, hardening of the arteries, headache, heart trouble, high blood pressure, infectious diseases, insomnia, low blood pressure, low vitality, menopause, mucous colitis, nervousness, ovary and menstrual disorders, illness of pregnancy, prostate gland disorders, pyorrhea, teeth disorders, tired feeling, diseases of tonsils, tuberculosis, underweight, overweight, difficult urination, congested liver, cardiac asthma, dizzy spells, dizziness, liver blotches, gastric disturbance, nervous indigestion, frequent urination, choking spells, sinus infection, chronic (low grade) infections, leg ulcers, or varicose veins.

(c) That the use of respondent's preparation "Catalyn" will insure vitality or health to the user, or that said preparation is a product of Nature.

(d) That respondent's preparation "Vitamin A Complex" is a competent nutritional or corrective treatment for the prevention or cure of retarded appetite, growth, or development, disturbed dental or bone development, susceptibility to infections, slow healing of reticulo-endothelium or epithelium, eye infection, including corneal ulcers or degeneration of eyes, infection of ear, infection of genito-urinary tract, tonsillitis, pneumonia, tuberculosis, diarrhea, infection of sinus, difficulty of delivery of young, interference with successful reproduction or lactation, pernicious anemia, secondary anemia, gastritis, bronchitis, kidney or bladder disorders, calculi, nephritis, cystitis, excessive growth of lymphoid tissues, degeneration of the nervous system or atrophy of organs or glands, including liver, testes, spleen, thyroid, pituitary, and salivary.

(e) That respondent's preparation "Vitamin B Complex" is a competent nutritional or corrective treatment for the prevention or cure of susceptibility to infections due to lowered resistance, diabetes mellitus, functional disorders, including atrophy or pathological enlargement of adrenals, brain, gonads, heart, kidneys, liver, ovaries, pancreas, pituitary gland, spleen, testes, thymus and thyroid glands, tendency to functional gastro-intestinal disorders such as ulcers, indigestion, tendency to muscular paralysis, loss of weight or vigor, stunted growth, tendency to edematous conditions, fall in body temperature, degeneration of nervous system, anemia, disturbances of reproductive cycle, dental caries, predisposition to allergic conditions, or neuritis.

(f) That respondent's preparation "Vitamin C Complex" is a compe-

tent nutritional or corrective treatment for the prevention or cure of diseases of the blood vessels or capillaries, diseases of gums, tooth degeneration, joint or bone changes, mucous membrane hemorrhages, destruction of bone marrow, tendency to epithelial lesions, increased susceptibility to infections, retarded growth and loss of weight, physical weakness, depression and irritability, rapid respiration and heart action, blood degeneration, development of heart weakness, increased weight or enlargement of spleen, liver, stomach, intestines or kidneys, atrophy of glands, including reduced secretion of adrenals or thyroid gland, development of arthritic or rheumatic tendencies, development of edematous conditions, complications of pregnancy, tendency to raise temperature, possible sterility, lowered glucose tolerance, cataract, predisposition to allergic conditions, or sprue.

(g) That respondent's preparation "Vitamin D Complex" is a competent nutritional or corrective treatment for the prevention or cure of defective mineral metabolism (except in cases of defective metabolism of calcium or phosphorus occurring in connection with diseases such as rickets and osteomalacia), decreased resistance to infection, especially tubercular infection, retarded growth, enlarged liver, kidneys or spleen, instability or irritability of nervous system or tissue, muscular weakness, constipation, pyorrhea, parathyroid dysfunction, or menstrual disorders.

(h) That respondent's preparation "Vitamin E" or "Vitamin E Complex" is a competent nutritional treatment for or preventive of loss of weight, retarded growth, weakness, paralysis, lowered resistance to infection, particularly to infantile paralysis, sterility (temporary in female—permanent in male), falling hair, alteration of the texture of the hair, or possible tendency to malignancies.

(i) That respondent's preparation "Vitamin F" or "Vitamin F Complex" is a competent nutritional treatment for or preventive of epidermal manifestation, including ridged or split fingernails, eczematous condition, dermatitis, scurf, dandruff, hemorrhagic spots on the skin, brittleness or falling out of hair, impairment of endocrine glands, particularly the pituitary glands, impairment of visceral organs, particularly the kidneys, lowered resistance to allergies, susceptibility to Vitamin D poisoning, loss of sex instincts, lowered resistance to infections, particularly to tuberculosis, cessation of growth, severe renal manifestations, or sterility.

(j) That respondent's preparation "Vitamin G Complex" is a competent nutritional treatment for or preventive of underdevelopment, retarded growth, malnutrition, eye disorders, secondary anemia, cutaneous changes, neuritis, loss of hair, sprue, interference with normal skin respiration, alimentary tract disorders, including gastro-enteritis, degeneration of the liver, renal manifestations, including cystitis, hemorrhagic conditions of the urine, severe pellagra, or severe nerve or spinal degeneration.

(k) That respondent's preparation "V.P. Organic Mineral Tablets" or respondent's preparation "Vitamin F Complex" singly or together will restore normal balance between the sympathetic and parasympathetic nervous systems, or constitute an effective treatment for gastro-intestinal disorders, including ulcers, or angina pectoris.

(l) That respondent's preparation "Cerol" is a competent nutritional or corrective treatment for sterility in the female, or for the prevention of sterility in the male, or that it will prevent hyperemesis during the period of gestation, or will cause childbirth to become a relatively simple physiological process or render unnecessary the use of oxytocic drugs.

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(m) That respondent's preparation "V.P. Phosphade" is a competent nutritional or corrective treatment for a diet deficient in phosphates, or that it will be effective in eliminating calcium accumulations in the tissues and blood vessel walls, or constitute an effective treatment for high blood pressure, hardening of the arteries, heart trouble, stiffness of the joints, or symptoms of premature old age.

(n) That respondent's preparation "Cerodyn" (also referred to as "Cerolyn" and "V.P. Fortified Wheat Germ") is a competent nutritional or corrective treatment for improving resistance to colds, increasing physical stamina, lessening fatigue, improving mental functions or physical condition generally, or for preventing inability to concentrate or to sleep because of nervous tension.

(o) That respondent's preparation "Viable Acidophilus Yeast" is a competent nutritional or corrective treatment for producing lactic acid by fermentation or carbohydrates or restricting the growth of undesirable micro-organisms in the alimentary tract; or that it constitutes an effective treatment for halitosis.

(p) That a synthetic vitamin is incapable of curing or relieving diseases or symptoms of vitamin deficiency as effectively as a like vitamin obtained from respondent's preparations.

(q) That any recognized scientific or medical publication contains statements or conclusions concerning the effects of vitamin deficiencies or the effectiveness of vitamins in the treatment of diseases or conditions which are different from the import of the statements or conclusions actually contained in such publication.

2. Disseminating or causing to be disseminated, by any means, any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any of said preparations, which advertisement contains any of the representations prohibited in paragraph 1 above.

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
SCIENTIFIC APPARATUS MAKERS OF AMERICA ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 3092. Order, March 2, 1945

Modified order, in accordance with four decrees below referred to, in proceeding in question, in which original order issued on August 25, 1941, 33 F. T. C. 1130, and in which the Circuit Court of Appeals for the 7th Circuit, on February 29, 1944, in *Eugene Dietzgen Co. et al. v. Federal Trade Commission*, 142 F. (2d) 321, 38 F. T. C. 840, rendered its opinion, and on May 3, 1944 modified the same on denial of rehearing, and on May 22, 1944 entered four separate decrees by which the Commission's said order to cease and desist was, with respect to said petitioning respondent only, modified, affirmed, and enforced—

Requiring said petitioning respondents, and their officers, etc., to cease and desist from entering into or carrying out any understanding, etc., to restrict, restrain, monopolize, hinder or suppress competition in the sale and distribution in commerce of prepared tracing papers, tracing cloths, drawing tools, and various other articles used by surveyors, engineers, builders, the drafting profession and others, as in said order set out, by doing any of the acts or things therein specified; and from doing any of such acts or things pursuant to any such understanding, etc.; including among said acts, etc., thus prohibited, the fixing and maintaining of prices, and terms and conditions of sale, and the exchanging of information among themselves with respect to prices, etc., as therein set out; and

Requiring respondent association, the Surveying-Drafting-Coaters Section of the Scientific Apparatus Makers of America, its manager, etc., to cease and desist from aiding and assisting the members of respondent association in carrying out or engaging in any of the acts and practices theretofore set forth; and particularly through rules and regulations designed to prevent price deviations, and receipt and dissemination of price lists all as in said order in detail specified.

Mr. Everett F. Haycraft and *Mr. Reuben J. Martin* for the Commission.
Hewes, Prettyman, Awalt & Smiddy, of Washington, D. C., for Scientific Apparatus Makers of America, *Carl S. Hallauer*, *R. E. Gillmor*, and *John M. Roberts*.

Gerdes & Montgomery, of New York City, for *Karl L. Keller* and *Keuffel & Esser Co.*

Mr. Howard P. Beckett, of Philadelphia, Pa., for Surveying-Drafting-Coaters Section of the Scientific Apparatus Makers of America, *Arthur L. Parker*, *Paul J. Bruning*, and *Frederick Post Co.*, and, along with—

Mr. Robert J. Holmes, of Boston, Mass., for *W. A. Berger*, and *Mayer, Magaziner & Brunswick*, of Philadelphia, Pa., for *Charles W. Speidel* and *Walter A. Kohn*.

Pam, Hurd & Reichmann, of Chicago, Ill., and *Mr. William E. Lamb*, of Washington, D. C., for *R. Fred Allin* and *Eugene Dietzgen Co.*

Mr. Thomas H. Fisher and *Mr. Arthur Fisher*, of Chicago, Ill., for *Huey Co.*, *Economy Blue Print Products, Inc.*, and *United States Blue Print Paper Co.*

Mr. Richard W. Thorington, of Philadelphia, Pa., for *Alphonse A. Brunner*, *Jacob H. Weil*, *Edwin H. Weil*, and *Manfred Krauskopf*.

Pope, Ballard & Loos, of Washington, D. C., for *The C. F. Pease Co.*

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of 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 examiner 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 had violated the provisions of the Federal Trade Commission Act, and having entered an order to cease and desist herein on August 25, 1941; and

Thereafter the respondents, (1) Keuffel & Esser Company and Karl Keller, (2) Charles Bruning Company, Inc., The Frederick Post Company, Chas. W. Speidel & Company, J. H. Weil & Company, Paul J. Bruning, W. A. Berger, Arthur L. Parker; and the Charles Bruning Company, Inc., The Frederick Post Company and J. H. Weil & Company, as members of the Scientific Apparatus Makers of America, a corporate association; (3) The C. F. Pease Company; and (4) Eugene Dietzgen Company, filed in the United States Circuit Court of Appeals for the Seventh Circuit their four separate petitions for a review of the Commission's said order to cease and desist entered on August 25, 1941. Thereafter, the Circuit Court of Appeals for the Seventh Circuit entered four separate decrees by which the Commission's said order to cease and desist entered on August 25, 1941, was, with respect to the petitioning respondents only, modified, affirmed and enforced; and

It appearing to the Commission that of the respondents who filed their petitions for review of the Commission's said order to cease and desist with the Circuit Court of Appeals for the Seventh Circuit only one of said respondents, namely, Eugene Dietzgen Company, filed a petition for certiorari, which said petition was denied by the Supreme Court of the United States on October 9, 1944, and that the time for filing petitions for certiorari as to the remaining said petitioners expired on August 22, 1944; and

The Commission having considered the record herein issues this its modified order to cease and desist in accordance with the decrees of the United States Circuit Court of Appeals for the Seventh Circuit entered on May 22, 1944, as to those respondents who filed petitions for review before said Court:

It is ordered, That the respondents, Keuffel & Esser Company and Karl Keller, their officers, directors, representatives, agents and employees; Charles Bruning Company, Inc., The Frederick Post Company, Charles W. Speidel and Walter A. Kohn, trading as Chas. W. Speidel & Company, Jacob H. Weil, Edwin H. Weil and Manfred R. Krauskopf, trading as J. H. Weil & Company, Paul J. Bruning, W. A. Berger, Arthur L. Parker; and the Charles Bruning Company, Inc., The Frederick Post Company, and J. H. Weil & Company, as members of the Scientific Apparatus Makers of America, a corporate association, and their officers, directors, representatives, agents and employees; The C. F. Pease Company, its officers, directors, representatives, agents and employees; and Eugene Dietzgen Company, its 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, *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:*

1. Fixing and maintaining, or agreeing to fix and maintain the prices at which said products will be sold by them.

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.

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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.

Syllabus

IN THE MATTER OF
WEBSTER UNIVERSITYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5171. Complaint, June 2, 1944—Decision, Mar. 6, 1945*

Where a corporation engaged in the competitive interstate sale and distribution of correspondence courses of study and instruction with office and principal place of business in Atlanta, Georgia, incorporated under the laws of South Dakota and Delaware and which had been incorporated originally under the laws of Georgia and also the District of Columbia, under charters which had expired—

(a) Represented through statements in catalogs, letterheads, leaflets, circulars and other advertising material that it was an educational institution of higher learning, having adequate buildings, equipment and facilities for appropriate instruction in the arts and sciences and learned professions, including law, medicine and theology, and that it had a competent faculty of learned persons who were engaged in the instruction of resident students as well as nonresident students by correspondence, and that the academic degree indicated after the name of each faculty member in its catalog and other advertising material represented high scholastic attainment, and was obtained through appropriate study and instruction at an accredited institution of higher learning;

The facts being that it was a correspondence school conducted by its president from his law office, consisting of three small rooms in an office building in the aforesaid city; its faculty had long consisted of said individual and members of his immediate family, who had not qualified as instructors in a university by completing appropriate courses of study and instruction at an accredited institution of higher learning, and the other members of his faculty, whose names were set forth in its catalogues were individuals residing in various states who were engaged in professions and occupations other than teaching, many of whom had never resided in or visited the State of Georgia and some of whom had died; and in most instances the degrees appended to the names of faculty members in his catalogues were not conferred by any accredited institution of higher learning in recognition of scholastic attainment, but were conferred upon them by him, or by institutions of like character, without adequate study or instruction;

(b) Represented as aforesaid that its said courses of instruction were adequate to give students high scholastic standing; and that his said professional courses were adequate to equip students to practice the learned professions; and that students pursuing such courses earned credits and, upon their completion, were granted degrees that were recognized and accepted by accredited institutions of higher learning and by duly established accrediting agencies;

The facts being that said courses consisted of multigraphed lessons and text books on the subjects purported to be taught, and questionnaires; in a number of instances, the president furnished the answers to the questions or references to the book and page where they could be found; said materials and methods were wholly inadequate to qualify any student to receive credits or a degree recognized or accepted by accredited educational institutions or by duly established accrediting agencies; and such credits and degrees were not so recognized or accepted; and the professional courses given by him were wholly insufficient to enable the student to engage in a profession;

- (c) Represented through use of the phrase "duly chartered under State laws," in its catalogues and otherwise, that the school was approved and its credits were recognized by the State Board of Education of the State of Georgia and the other states in which it had obtained charters;

The facts being that the Georgia charter under which it had operated its school had lapsed more than two years prior to filing of the complaint, and the school had never been inspected, approved or recognized by any appropriate board or agency in any of the states where it had been chartered; and

- (d) Falsely represented and implied, through the use of the word "University" in its corporate name and advertising material, that it was an institution of higher learning as that term is understood in the educational world, with a competent faculty and adequate equipment and facilities, and power to give credits to its students and to be recognized degrees upon its graduates;

With the effect of misleading and deceiving prospective students and the purchasing public into the erroneous belief that such representations were true, and that it was an institution of higher learning; and of causing them because of such erroneous belief, to buy its courses, thereby diverting trade to it from its competitors who did not misrepresent their schools, to the serious injury of substantial competition in commerce:

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

Mr. J. L. York for the Commission.

Mr. Jay D. Bradley, of Atlanta, Ga., and *Mr. Charles H. Rowan, Jr.*, 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 Webster University, 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, Webster University, is a corporation, organized and existing under the laws of the State of South Dakota and Delaware, with its office and principal place of business at 121½ Luckie Street, in the city of Atlanta, Ga. Respondent was incorporated originally in the State of Georgia and under the name and style of Peoples National University, but the name of respondent was changed to Webster University under date of October 24, 1929. Said original charter expired on April 5, 1942, and has not been renewed. Respondent was likewise incorporated in the District of Columbia but such charter has also expired.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the sale and distribution of correspondence courses of study and instruction to purchasers thereof located in the various States of the United States and in the District of Columbia; and respondent causes and has caused its correspondence courses, when so sold, to be transported through the United States mail from its principal place of business in Atlanta, Georgia, to such purchasers thereof in the various States of the United States other than the State of Georgia, and in the District of Co-

lumbia. There is now, and has been for several years last past, a course of trade and commerce by said respondent in said correspondence courses between and among the States of the United States and in the District of Columbia, and said courses of study and instruction have been and are pursued by means of correspondence through the United States mail. In the course and conduct of its business respondent is, and was at all times herein referred to, in substantial competition with other corporations, individuals, firms, schools and universities likewise engaged in the sale and distribution of correspondence courses of study and instruction in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business, as aforesaid, solicits the purchase of its correspondence courses by means of catalogues, letterheads, leaflets, circulars and other advertising material circulated by mail among prospective students or members of the public generally in the various States of the United States other than the State of Georgia, and in the District of Columbia. In all of said advertising material respondent seeks and has sought to induce prospective students and members of the public to purchase its correspondence courses by representing and implying in substance as follows:

1. That respondent is an educational institution of higher learning, having adequate buildings, equipment and facilities for appropriate instruction in the arts and sciences, and learned professions, including law, medicine and theology.

2. That respondent has a competent faculty of learned persons who are engaged in the instruction of resident students as well as nonresident students by correspondence and that the academic degree indicated after the name of each faculty member in respondent's catalogues and other advertising material represents high scholastic attainment and was obtained through appropriate study and instruction at an accredited institution of higher learning.

3. That said courses of instruction are adequate to give students high scholastic standing; and that said professional courses are adequate to equip students to carry on and practice the learned professions. That students pursuing such courses earn credits and upon their completion are granted degrees that are recognized and accepted by accredited institutions of higher learning and by duly established accrediting agencies.

4. That respondent's institution is approved and that its credits are recognized by the State Board of Education of the State of Georgia and the other States in which it obtained charters because of the representation in its catalogues and otherwise that it is duly chartered under State laws.

Through the use of the word "University" in its corporate name and in its advertising material, respondent represents and implies that it is an institution of higher learning, as that term is understood in the educational world, offering appropriate instruction in the arts and sciences and in one or more of the special branches of learning, such as law, theology and medicine; that respondent has a faculty of instructors competent to teach said subjects and that the members of such faculty possess degrees conferred by accredited colleges and universities for study and scholastic attainment; that said respondent maintains adequate equipment and facilities, including classrooms, buildings, libraries and laboratories for the use of resident students and faculty members; and that said respondent is empowered to give credits to its students and confer degrees upon its graduates that are

recognized and accepted generally by accredited institutions of higher learning and by duly established accrediting agencies.

PAR. 4. In truth and in fact, the foregoing representations and statements made by respondent are false, deceptive and misleading in the following respects:

1. Respondent is not an educational institution of higher learning, but is a correspondence school conducted by respondent's president from his law office consisting of three small rooms in an office building in Atlanta, Ga. Respondent has no buildings, laboratories, libraries or other equipment suitable for the teaching of resident students.

2. Respondent has no faculty of learned persons as instructors in the arts and sciences, in postgraduate courses, or in any of the special branches of learning, such as law, medicine or theology. Respondent's faculty now consists, and for many years last past has consisted, of respondent's president and members of his immediate family who have not qualified as instructors in a university by completing appropriate courses of study and instruction at an accredited institution of higher learning. The members of respondent's faculty whose names are set forth in its catalogues in addition to respondent's president and his immediate family are individuals residing in various States of the United States who are engaged in professions and occupations other than teaching. Many of them have never resided in or visited the State of Georgia and in some instances the names of deceased persons were included by respondent in its catalogues and other advertising material as active instructors. In most instances the degrees appended to the names of faculty members in respondent's catalogues were not conferred by any accredited institution of higher learning in recognition of scholastic attainment, but were conferred upon them by respondent, or by institutions of like character, without adequate study or instruction.

3. The courses given by respondent consist of multigraphed lessons and text books on the respective subjects purported to be taught and questionnaires; and in a number of instances respondent has furnished the answers to the questions asked or references to the book and page where such answers can be found. Such materials and methods of study and instruction are wholly inadequate to qualify any student to receive credits or a degree that is recognized or accepted by accredited institutions of higher learning or by duly established accrediting agencies, and such credits and degrees are not and have not been so recognized or accepted. The professional courses given by respondent are of the same character and are wholly insufficient to enable the student to engage in or practice a profession.

4. The use of the phrase "duly chartered under State laws" has a tendency to lead and in fact has led a number of prospective purchasers of respondent's courses into the belief that the respondent corporation was chartered under the laws of the State of Georgia and had been inspected and approved by the State Board of Education, and that its credits were recognized by said Board. In truth and in fact, the charter under which respondent had operated its school issued by the duly authorized authority in the State of Georgia had lapsed more than two years prior to the filing of this complaint. Respondent's school has never been inspected, approved or recognized by any appropriate State government board or agency either in the States of Georgia, Delaware or South Dakota, or in the District of Columbia.

PAR. 5. The use of the word "University" by respondent in its corporate name and in its catalogues and other advertising material, and the statements, representations and implications contained therein that respondent is an institution of higher learning, with adequate faculty, equipment and facilities for instructing resident and nonresident students in the courses therein described; the representation and implication that the members of its faculty possess degrees conferred upon them by accredited institutions of higher learning for high scholastic attainment and that they are well equipped to teach the respective courses described in respondent's catalogues and other advertising material; that respondent's courses are adequate to give students high scholastic standing; that its professional courses are adequate to equip students to carry on and practice the learned profession, and that respondent is authorized to give credits and confer degrees that are recognized and accepted by accredited institutions and duly established accrediting agencies, all are calculated to, and do, have the capacity and tendency to, and do mislead and deceive prospective students and the purchasing public by creating the erroneous belief that the statements and representations made by respondent are true, and that respondent is an institution of higher learning; and to cause a substantial number of such prospective students and the purchasing public, acting on such erroneous belief, to buy said correspondence courses, thereby diverting trade to said respondent from its competitors who do not misrepresent their schools, equipment or facilities or courses of study and instruction, their faculties or the value of credits given or degrees conferred by them, and thereby doing serious injury to substantial competition in said commerce.

PAR. 6. The aforesaid acts and practices of 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 June 2, 1944, issued, and on June 6, 1944, served its complaint in this proceeding upon respondent, Webster University, a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts or 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 amended 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, Webster University, is a corporation, organized and existing under the laws of the State of South Dakota and Delaware, with its office and principal place of business at 121½ Luckie Street, in the city of Atlanta, Ga. Respondent was incorporated originally in the State of Georgia and under the name and style of Peoples National University, but the name of respondent was changed to Webster University under date of October 24, 1929. Said original charter expired on April 5, 1942, and has not been renewed. Respondent was likewise incorporated in the District of Columbia but such charter has also expired.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the sale and distribution of correspondence courses of study and instruction to purchasers thereof located in the various States of the United States and in the District of Columbia; and respondent causes and has caused its correspondence courses, when so sold, to be transported through the United States mail from its principal place of business in Atlanta, Georgia, to such purchasers thereof in the various States of the United States other than the State of Georgia, and in the District of Columbia. There is now, and has been for several years last past, a course of trade and commerce by said respondent in said correspondence courses between and among the States of the United States and in the District of Columbia, and said courses of study and instruction have been and are pursued by means of correspondence through the United States mail. In the course and conduct of its business respondent is, and was at all times herein referred to, in substantial competition with other corporations, individuals, firms, schools and universities likewise engaged in the sale and distribution of correspondence courses of study and instruction in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business, as aforesaid, solicits the purchase of its correspondence courses by means of catalogues, letterheads, leaflets, circulars and other advertising material circulated by mail among prospective students or members of the public generally in the various States of the United States other than the State of Georgia, and in the District of Columbia. In all of said advertising material respondent seeks and has sought to induce prospective students and members of the public to purchase its correspondence courses by representing and implying in substance as follows:

1. That respondent is an educational institution of higher learning, having adequate buildings, equipment and facilities for appropriate instruction in the arts and sciences, and learned professions, including law, medicine and theology.

2. That respondent has a competent faculty of learned persons who are engaged in the instruction of resident students as well as nonresident students by correspondence and that the academic degree indicated after the name of each faculty member in respondent's catalogues and other advertising material represents high scholastic attainment and was obtained through appropriate study and instruction at an accredited institution of higher learning.

3. That said courses of instruction are adequate to give students high scholastic standing; and that said professional courses are adequate to equip students to carry on and practice the learned professions. That

students pursuing such courses earn credits and upon their completion are granted degrees that are recognized and accepted by accredited institutions of higher learning and by duly established accrediting agencies.

4. Through the use of the representation in its catalogues and otherwise that it is "duly chartered under State laws," the respondent represents that its school is approved and that its credits are recognized by the State Board of Education of the State of Georgia and the other States in which it has obtained charters.

Through the use of the word "University" in its corporate name and in its advertising material, respondent represents and implies that it is an institution of higher learning, as that term is understood in the educational world, offering appropriate instruction in the arts and sciences and in one or more of the special branches of learning, such as law, theology and medicine; that respondent has a faculty of instructors competent to teach said subjects and that the members of such faculty possess degrees conferred by accredited colleges and universities for study and scholastic attainment; that said respondent maintains adequate equipment and facilities, including classrooms, buildings, libraries and laboratories for the use of resident students and faculty members; and that said respondent is empowered to give credits to its students and confer degrees upon its graduates that are recognized and accepted generally by accredited institutions of higher learning and by duly established accrediting agencies.

PAR. 4. In truth and in fact, the foregoing representations and statements made by respondent are false, deceptive and misleading in the following respects:

1. Respondent is not an educational institution of higher learning, but is a correspondence school conducted by respondent's president from his law office consisting of three small rooms in an office building in Atlanta, Ga. Respondent has no buildings, laboratories, libraries or other equipment suitable for the teaching of resident students.

2. Respondent has no faculty of learned persons as instructors in the arts and sciences, in postgraduate courses, or in any of the special branches of learning, such as law, medicine or theology. Respondent's faculty now consists, and for many years last past has consisted, of respondent's president and members of his immediate family who have not qualified as instructors in a university by completing appropriate courses of study and instruction at an accredited institution of higher learning. The members of respondent's faculty whose names are set forth in its catalogues in addition to respondent's president and his immediate family are individuals residing in various States of the United States who are engaged in professions and occupations other than teaching. Many of them have never resided in or visited the State of Georgia and in some instances the names of deceased persons were included by respondent in its catalogues and other advertising material as active instructors. In most instances the degrees appended to the names of faculty members in respondent's catalogues were not conferred by any accredited institution of higher learning in recognition of scholastic attainment, but were conferred upon them by respondent, or by institutions of like character, without adequate study or instruction.

3. The courses given by respondent consist of multigraphed lessons and text books on the respective subjects purported to be taught and questionnaires; and in a number of instances respondent has furnished the answers to the questions asked or references to the book and page where such an-

swers can be found. Such materials and methods of study and instruction are wholly inadequate to qualify any student to receive credits or a degree that is recognized or accepted by accredited institutions of higher learning or by duly established accrediting agencies, and such credits and degrees are not and have not been so recognized or accepted. The professional courses given by respondent are of the same character and are wholly insufficient to enable the student to engage in or practice a profession.

4. The use of the phrase "duly chartered under State laws" has a tendency to lead and in fact has led a number of prospective purchasers of respondent's courses into the belief that the respondent corporation was chartered under the laws of the State of Georgia and had been inspected and approved by the State Board of Education, and that its credits were recognized by said Board. In truth and in fact, the charter under which respondent had operated its school issued by the duly authorized authority in the State of Georgia had lapsed more than two years prior to the filing of this complaint. Respondent's school has never been inspected, approved or recognized by any appropriate State government board or agency in any of the States where it has been chartered.

PAR. 5. The use of the word "University" by respondent in its corporate name and in its catalogues and other advertising material, and the statements, representations and implications contained therein that respondent is an institution of higher learning, with adequate faculty, equipment and facilities for instructing resident and nonresident students in the courses therein described; the representation and implication that the members of its faculty possess degrees conferred upon them by accredited institutions of higher learning for high scholastic attainment and that they are well equipped to teach the respective courses described in respondent's catalogues and other advertising material; that respondent's courses are adequate to give students high scholastic standing; that its professional courses are adequate to equip students to carry on and practice the learned professions, and that respondent is authorized to give credits and confer degrees that are recognized and accepted by accredited institutions and duly established accrediting agencies, all are calculated to, and do, have the capacity and tendency to, and do mislead and deceive prospective students and the purchasing public by creating the erroneous belief that the statements and representations made by respondent are true, and that respondent is an institution of higher learning; and to cause a substantial number of such prospective students and the purchasing public, acting on such erroneous belief, to buy said correspondence courses, thereby diverting trade to said respondent from its competitors who do not misrepresent their schools, equipment or facilities or courses of study and instruction, their faculties or the value of credits given or degrees conferred by them, and thereby doing serious injury to substantial competition in said commerce.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Webster University, 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 correspondence courses in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "University" or any abbreviation or simulation thereof, as a part of respondent's corporate name or as a part of the name of respondent's school.

2. Representing, in any manner, directly or by implication, that respondent's school is a university.

3. Representing, directly or by implication, that respondent is an educational institution of higher learning or has adequate buildings, equipment or facilities for appropriate instruction in the arts and sciences, or in the learned professions, including law, medicine and theology.

4. Representing, directly or by implication, that respondent has a competent faculty of learned persons who are engaged in the instruction of resident students as well as nonresident students by correspondence or that the academic degree indicated after the name of each faculty member in respondent's catalogues and other advertising material represents high scholastic attainment or was obtained through appropriate study and instruction at an accredited institution of higher learning.

5. Representing, directly or by implication, that the courses of instruction offered by respondent are adequate to give students high scholastic standing or that said professional courses are adequate to equip students to carry on or practice the learned professions; or that students pursuing such courses earn credits or upon their completion are granted degrees that are recognized or accepted by accredited institutions of higher learning or by duly established accrediting agencies.

6. Representing, directly or by implication, that respondent's school is approved or that its credits are recognized by the State Board of Education of the State of Georgia or of any of the States in which it obtained charters, through statements in its catalogues or advertising material that respondent is duly chartered under State laws or through any other means or instrumentality.

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
EUGENE CLEMENT D' ART, TRADING AS VICTORY
COAL SAVER MFG. CO.

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

Docket 5076. Complaint, Nov. 2, 1943—Decision, Mar. 8, 1945

Where an individual engaged in the interstate sale and distribution of his "Victory Coal Saver" chemical powder for use on coal, composed of about 90 percent common salt and small percentages of potassium permanganate and other substances, and contained in 8-ounce packages which sold usually for \$1.00 each—

(a) Represented, directly or by implication, through advertisements in circulars, circular letters and other advertising literature, that the use of his product would effect savings up to fifty percent in coal consumption; increase the heat supplied by coal; cause coal to burn more slowly, evenly and thoroughly; reduce smoke and ash; and prevent the formation of soot in chimneys and aid in the removal of soot already formed;

The facts being, as established by an examination and analysis by the United States Bureau of Mines together with the testimony of the Bureau's expert who prepared the report thereon, that said product was wholly incapable of producing any of the results above claimed therefor;

(b) Represented as aforesaid, that the product or the principal ingredient therein had been endorsed or approved by the United States Bureau of Mines for use in preventing and removing soot;

The facts being that neither said product nor any ingredient thereof had been endorsed or approved by said Bureau; while salt, when properly used in sufficiently high concentrations, is recognized by the Bureau as an effective soot remover, the amount provided by his product was so small as to be valueless from a practical viewpoint, since, to be effective, approximately eighty times the amount of salt provided by a package of the product would have to be used for each ton of coal treated;

(c) Falsely represented or implied, through the use of the words "Coal Saver" in his trade name and the designation of his product, that use thereof would effect a saving in coal consumption;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to 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. J. Earl Cox*, trial examiner.

Mr. Merle P. Lyon and *Mr. Clark Nichols* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Eugene Clement d'Art, an individual, trading as Victory Coal Saver Mfg. Co., hereinafter referred to as the

respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, is an individual, trading under the name and style of Victory Coal Saver Mfg. Co., with his office and principal place of business located at 32 North Pearl Street, Albany, N. Y. Respondent is now, and for approximately one year last past has been, engaged in the sale and distribution of a chemical preparation designated "Victory Coal Saver," advertised and recommended by respondent for use in increasing the calorific value of coal, and thereby effecting a saving in fuel consumption. Said preparation is composed of approximately 90 percent sodium chloride or common salt, with a small percentage of potassium permanganate and other minerals.

PAR. 2. In the course and conduct of his said business, respondent causes said product, when sold, to be shipped from his 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 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 promoting the sale of said "Victory Coal Saver," respondent has made false, misleading and deceptive representations by means of pamphlets, circulars, and other advertising literature disseminated through the United States mails. Among and typical of the representations made by the respondent are the following:

Save Coal Now—when you need it most, when the Nation needs it most. Victory Coal Saver brings you savings of 30 to 50 percent on coal. More Heat with Less Coal

Victory Coal Saver causes the fuel to burn more slowly, evenly, intensely and thoroughly, actually giving more heat with less coal

Victory Coal Saver retards combustion, at the same moment generating oxygen. As a result coal burns more slowly, intensely and thoroughly. Waste of combustible gases and substance is eliminated. Less Coal Generates More Heat

Savings with a coal water heater or small stove, properly managed, average 40 to 50%

Savings with a furnace properly managed average 20 to 30% during the day, as high as 60% at night.

You can earn \$5.00 in 20 minutes with very little labor, and do so repeatedly through treating all the coal you use with Victory Coal Saver.

The U. S. Bureau of Mines advises:

"Ingredient A prevents formation of soot in chimneys and preventing soot from forming cuts down coal bills. Ingredient A also helps get rid of soot already formed. Investigation shows Ingredient A becomes volatilized and forms a vapor which settles on the surface of soot, reducing its ignition temperature to 166 degrees. At 166 degrees the soot catches fire and burns away."

In its report the U. S. Bureau of Mines names the ingredient. In order to protect our formula, we have replaced the actual name by "Ingredient A."

The U. S. Bureau of Mines cannot be wrong. The U. S. Bureau of Mines' verdict cannot be disputed. In purchasing Victory Coal Saver you not only secure the savings and benefits mentioned by the U. S. Bureau of Mines but the additional action of three more ingredients.

PAR. 4. By and through the use of the foregoing statements and representations the respondent has represented and now represents, directly and by implication, that the use of his product "Victory Coal Saver" will effect savings of 30 to 50 percent in the consumption of coal, will cause coal to burn more slowly, evenly, intensely, and thoroughly, will give more heat with less coal, will retard combustion, generate oxygen, eliminate waste of combustible gases and substance, and increase the calorific value of coal.

Respondent has also thereby represented, directly and by implication, that treatment of coal with "Victory Coal Saver" will result in savings averaging from 40 to 50 percent with a properly managed coal water heater or small stove, and savings averaging from 20 to 30 percent with a properly managed furnace during the day, and as high as 60 percent at night, and will enable an individual to earn \$5.00 in 20 minutes and to do so repeatedly with very little labor.

Respondent has also represented, directly and by implication, that an agency of the United States Government, the U. S. Bureau of Mines, has endorsed the use of said product or the principal ingredient thereof and has advised that said "Ingredient A" prevents formation of soot in chimneys or gets rid of soot already formed, and reduces the ignition temperature of soot to 166 degrees and causes it to catch fire and burn away.

PAR. 5. In truth and in fact, respondent's product "Victory Coal Saver" will not measurably affect the heat, smoke, ash or gases resulting from the burning of coal or increase the calorific value thereof. Its use will not cause savings of 30 to 50 percent or any other percentage of savings on coal; will not create more heat with less coal; will not cause the fuel to burn more slowly, evenly, intensely and thoroughly; will not retard combustion, generate oxygen, or eliminate waste or combustible gases or substance; will not cause average savings of 40 to 50 percent or any other percentage with a coal water heater or small stove under any conditions; will not cause average savings of 20 to 30 percent with a furnace during the day, or as high as 60 percent at night, or any other appreciable savings under any conditions of care and management. Treating coal with "Victory Coal Saver" will not enable a person to earn \$5.00 in 20 minutes, or any other amount of money, or to do so repeatedly by the use of "Victory Coal Saver."

The so-called "Ingredient A" in respondent's product is common salt, which in sufficiently high concentrations may be an effective soot remover. However, in the quantity recommended by respondent in the treatment of coal with "Victory Coal Saver," which is equivalent to 22 pounds per ton of coal treated, or 1% of the weight of coal treated, said "Ingredient A" will not cause any effective reduction in the formation of soot or eliminate soot already formed. The use of common salt or "Ingredient A" will not reduce the ignition temperature of soot to 166 degrees.

The use by respondent of the trade names "Victory Coal Saver" and "Victory Coal Saver Mfg. Co." is misleading and deceptive in that they imply to the consuming public that the use of said product will effect a saving in coal consumption, when such is not the fact.

PAR. 6. The use by the respondent of the foregoing false, misleading and deceptive representations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous and mistaken belief that said representations are true, and into the purchase of substantial quanti-

ties of respondent's product because of such erroneous and mistaken beliefs.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 2, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Eugene Clement d' Art, an individual, trading as Victory Coal Saver Mfg. Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer to the complaint, testimony and other evidence in support of the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it (no evidence being offered by respondent), and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony and other evidence, report of the trial examiner upon the evidence, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Eugene Clement d' Art, is an individual, who for a period of a year or more immediately preceding November 22, 1943, was engaged in business under the trade name "Victory Coal Saver Mfg. Co.," with his office and principal place of business located at 32 North Pearl Street, Albany, N. Y. Respondent was engaged in the sale and distribution of a product designated by him as "Victory Coal Saver," a chemical preparation designed for use on coal.

PAR. 2. Respondent caused his product, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondent maintained a course of trade in his product in commerce among and between various States of the United States.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his product, respondent advertised the product by means of circulars, circular letters, and other advertising literature distributed among prospective purchasers. In these advertisements respondent represented, directly or by implication, that the use of his product would effect savings up to fifty percent in coal consumption; increase the heat supplied by coal; cause coal to burn more slowly, more evenly and more thoroughly; reduce smoke and ash; prevent the formation of soot in chimneys and aid in the removal of soot already formed; and that the product or the principal ingredient therein had been endorsed or approved

by the United States Bureau of Mines for use in preventing and removing soot.

PAR. 4. Respondent's product, which was in powdered form, was composed of approximately 90 percent sodium chloride (common salt) and small percentages of potassium permanganate and other substances. The product was packaged and sold to the public in 8-ounce packages which sold usually for \$1.00 each. The directions supplied by respondent for the use of the product were as follows:

DIRECTIONS

TO TREAT ONE TON: Dissolve contents of Standard \$1.00 Package in 4 gallons warm water: Sprinkle evenly over coal.

TO TREAT LARGER QUANTITIES: Use contents of Standard \$1.00 Package dissolved in 4 gallons warm water per ton, i.e., to treat two tons, contents of two Standard \$1.00 Packages in 8 gallons of warm water, etc.

TO TREAT SOFT COAL: Use twice the amount of water indicated above. (Comm. Ex. 1)

PAR. 5. At the request of the Commission the product was examined and analyzed by the United States Bureau of Mines, and the report of the Bureau forms a part of the record in the present proceeding, together with the testimony of the Bureau's expert who prepared the report. This evidence establishes that the product was wholly incapable of producing any of the results claimed for it by respondent. The use of the product did not effect any saving in coal consumption, nor did it increase the heat supplied by coal. The product was incapable of causing coal to burn more slowly, more evenly, or more thoroughly. It had no effect upon smoke or ash. It was likewise incapable of preventing the formation of soot or aiding in the removal of soot.

Nor has the product or any ingredient therein been endorsed or approved by the United States Bureau of Mines for use in the prevention or removal of soot or for any other purpose. While salt, when properly used in sufficiently high concentrations, is recognized by the Bureau as an effective soot remover, the amount provided by respondent's product was so small as to be without significance and wholly valueless from a practical viewpoint. To be effectual, approximately eighty times the amount of salt provided by a package of the product would have to be used for each ton of coal treated.

PAR. 6. The Commission therefore finds that the representations made by respondent with respect to his product, as set forth in paragraph 3 hereof, were erroneous and misleading. Moreover, the words "Coal Saver," used by respondent to designate and describe his product and as a part of respondent's trade name, constituted within themselves an erroneous and misleading representation, in that they represented or implied that the use of the product would effect a saving in coal consumption.

PAR. 7. The use by respondent of these erroneous and misleading representations had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's product and the results which might be obtained through the use thereof, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of the product as a result of the erroneous and mistaken belief so engendered.

Order

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 briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Eugene Clement d' Art, individually, and trading as Victory Coal Saver Mfg. Co., or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's product designated "Victory Coal Saver," or any other product of substantially similar composition or possessing substantially similar properties, under whatever name sold, do forthwith cease and desist from:

1. Representing, directly or by implication, that said product will effect any saving in coal consumption or increase the heat supplied by coal.

2. Representing, directly or by implication, that said product will cause coal to burn more slowly, more evenly, or more thoroughly.

3. Representing, directly or by implication, that said product will reduce smoke or ash.

4. Representing, directly or by implication, that said product prevents the formation of soot or removes or aids in the removal of soot.

5. Representing, directly or by implication, that said product or any ingredient therein has been endorsed or approved by the United States Bureau of Mines.

6. Using the words "Coal Saver," or any other word or words of similar import, as a part of respondent's trade name, or to designate, describe, or refer to respondent's product.

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

OTTO A. KOHL, CLARKE VAN METER AND MARVIN M.
COBB, TRADING AS CHICK BED COMPANY

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

Docket 5181. Complaint, June 17, 1944—Decision, Mar. 8, 1945

Where three individuals engaged in the interstate sale and distribution of a litter or floor covering for poultry and brooder houses designated as "Chick Bed"; through advertisements in newspapers and periodicals, circulars, leaflets and other advertising material —

Represented that their product constituted an effective preventive of poultry diseases; that use thereof in poultry and brooder houses would cause chicks or poultry to be healthy and free from disease; that said product was an effective germicide when used as directed, and would prevent the growth of disease germs; and that its use was a competent and effective treatment for coccidiosis, saved disease losses and increased egg production;

The facts being that, while said product was absorptive and tended to dry conditions in poultry houses, thereby aiding in the control of diseases, it was not a preventive thereof; and other aforesaid claims were similarly false and misleading;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and to induce said public, because of such belief, to purchase their said product:

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. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Elliott, Shuttleworth & Ingersoll, of Cedar Rapids, Ia., 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 Otto A. Kohl, an individual, Clarke Van Meter and Marvin M. Cobb, individuals and trustees, are copartners, trading as Chick Bed 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. Otto A. Kohl, is an individual, Clarke Van Meter and Marvin M. Cobb, are individuals and are trustees, under trust agreement between Otto A. Kohl dated April 21, 1941. The said Otto A. Kohl, Clarke Van Meter, trustee, and Marvin M. Cobb, trustee, are copartners, trading as Chick Bed Company with their office and principal place of business located at 96 B Avenue, N. E., in the city of Cedar Rapids, State of Iowa.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution of a litter or floor covering for poultry and brooder houses designated as Chick Bed. In the course and conduct of the aforesaid business, respondents cause said product when sold to be transported from their source of supply in Fernley, Nev., and from their place of business in the State of Iowa to purchasers thereof 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 in commerce between and among the various States of the United States.

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 and misleading advertisements, concerning their said product by the United States mails and various other means in commerce as "commerce" is defined in the Federal Trade Commission Act. Respondents have also disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements, concerning their said product 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 herein set forth, by the United States mails, by advertisements inserted in newspapers and periodicals and by means of circulars, leaflets and other advertising material, are the following:

CHICK BED is not a cure for diseased chickens but an economically preventative for diseases. Grow your chicks free from Disease.

Let the MAGIC OF CHICK BED Keep Your Flock Healthy and Save you Labor.

CHICK BED . . . prevents disease . . . free your FLOCK FROM COCCIDIOSIS.

CHICK BED assures you a dryer chicken house. This in turn reduces bacterial multiplication to a minimum.

CHICK BED helps to prevent coccidiosis and other poultry diseases. Bacterial germs will not multiply in CHICK BED.

You would gladly pay twice the price of CHICK BED for its disease preventive values alone.

This year, save labor, disease losses, and at the same time get more eggs by using Chick-Bed—indorsed by leading poultry authorities from coast to coast.

In connection with their advertising claims, respondents have made use of testimonial letters containing representations of which the following is typical:

We have had 200 chicks on Chick Bed for the past two weeks and have found that it will do everything that you advertised it to do.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, respondents represent that their product constitutes an effective preventative of poultry diseases; that the use thereof as a litter or floor covering in poultry and brooder houses will cause chicks or poultry occupying such houses to be healthy and free from disease; that its use is a competent and effective

treatment for coccidiosis; that said product is an effective germicide when used as directed and will prevent the growth of disease germs; that its use saves labor, disease losses and increases egg production and that said product has been indorsed and approved by the leading poultry authorities throughout the United States.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, respondents' product Chick Bed is not a preventative of poultry diseases and its use as a litter or floor covering in poultry or brooder houses will not cause chickens or poultry enclosed in said houses to be healthy and free from disease. It is not a competent or effective treatment for coccidiosis. Said product is not an effective germicide in use. The use of said product will not save labor, disease losses or increase egg production. It has not been indorsed and approved by the recognized leaders of the poultry industry all over the United States.

PAR. 6. The use by respondents of the aforesaid false, misleading and deceptive statements, representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public through the erroneous and mistaken belief that said statements and representations are true and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief, to purchase respondents' said product.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 17th day of June, 1944, issued and subsequently served its complaint in this proceeding upon the respondents Otto A. Kohl, an individual, Clarke Van Meter and Marvin M. Cobb, individuals and trustees, copartners, trading as Chick Bed Company, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On July 27, 1944, 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 Tyrrel M. Ingersoll, counsel for 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 specifically waived the filing of a 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 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. Otto A. Kohl, is an individual; Clarke Van Meter and Marvin M. Cobb, are individuals and are trustees, under trust agreement with Otto A. Kohl dated April 21, 1941. The said Otto A. Kohl, Clarke Van Meter, trustee, and Marvin M. Cobb, trustee, are copartners, trading as Chick Bed Company with their office and principal place of business located at 96 B Avenue, N. E., in the city of Cedar Rapids, State of Iowa.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution of a litter or floor covering for poultry and brooder houses designated as Chick Bed. In the course and conduct of the aforesaid business, respondents cause said product, when sold, to be transported from their source of supply in Fernley, Nev., and from their place of business in the State of Iowa to purchasers thereof 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 in commerce between and among the various States of the United States.

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 and misleading advertisements concerning their said product by the United States mails and various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product, 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 herein set forth, by the United States mails, by advertisements inserted in newspapers and periodicals and by means of circulars, leaflets and other advertising material, are the following:

CHICK BED is not a cure for diseased chickens but an economical preventative for diseases. Grow your chicks free from Disease.

Let the MAGIC OF CHICK BED Keep Your Flock Healthy and Save you Labor.

CHICK BED . . . prevents disease . . . free your FLOCK FROM COCCIDIOSIS.

CHICK BED assures you a dryer chicken house. This in turn reduces bacterial multiplication to a minimum.

CHICK BED helps to prevent Coccidiosis and other poultry diseases. Bacterial germs will not multiply in CHICK BED.

You would gladly pay twice the price of CHICK BED for its disease preventive values alone.

This year, save labor, disease losses, and at the same time get more eggs by using Chick-Bed—indorsed by leading poultry authorities from coast to coast.

In connection with their advertising claims, respondents have made use of testimonial letters containing representations of which the following is typical:

We have had 200 chicks on Chick Bed for the past two weeks and have found that it will do everything that you advertised it to do.

PAR. 4. Through the use of the foregoing statements and representations and others of a similar import not specifically set out herein, respondents represented that their product constituted an effective preventive of poultry diseases; that the use thereof as a litter or floor covering in poultry and brooder houses would cause chicks or poultry occupying such houses to be healthy and free from disease; that its use was a competent and effective treatment for coccidiosis; that said product was an effective germicide when used as directed and would prevent the growth of disease germs; that its use saved disease losses and increased egg production.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact respondents' product, Chick Bed, is not a preventive of poultry disease, although said product is absorbent and tends to dry conditions in poultry houses, thereby aiding in the control of diseases. Its use as a litter in poultry or brooder houses will not cause chickens or poultry enclosed in said houses to be healthy and free from diseases. It is not a competent or effective treatment for coccidiosis, and the use of said product will not save disease losses or increase egg production. Said product does not have specific or effective germicidal or antiseptic properties in use.

PAR. 6. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said product.

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 in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and a stipulation as to the facts entered into between the respondents and 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 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, Otto A. Kohl, Clarke Van Meter, and Marvin M. Cobb, jointly or severally, trading as Chick Bed Company or under any other name or names, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of their product, Chick

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Bed, 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 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) That said product constitutes a preventive of poultry diseases; provided however, this paragraph shall not be construed as preventing respondents from representing that said product used as a floor litter is absorbent, and tends to dry conditions in poultry houses, thereby aiding in the control of poultry diseases;

(2) That the use of said product as a litter or floor covering in poultry or brooder houses will cause chicks or poultry occupying such houses to be healthy or free from disease;

(3) That the use of said product is a competent and effective treatment for coccidiosis;

(4) That said product is an effective germicide in use;

(5) That the use of said product will prevent poultry disease losses or increase egg production.

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.

Order

IN THE MATTER OF
AURINE COMPANY, INC.

MODIFIED ORDER TO CEASE AND DESIST

Docket 3993. Order, March 12, 1945

Modified order in proceeding in question in which original order issued on June 26, 1940, 31 F.T.C. 292, requiring respondent, its officers, etc., in connection with the offering, etc., of its preparation "Aurine," to cease and desist from disseminating advertisements which represent said preparation as a cure or remedy for deafness or partial deafness or as having any therapeutic value in the treatment thereof, or as a competent or effective treatment for said condition or for ringing or buzzing head noises due to hardened wax in the ear, etc., and from representing that it makes refunds to dissatisfied purchasers, etc., as in order set forth.

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

Mr. Frank E. Gettleman, of Chicago, Ill., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission and the answer of respondent, and the matter having been set for hearing, a stipulation of facts was dictated into the record in lieu of the taking of testimony in support of the charges stated in the complaint and in opposition thereto, the filing of briefs and the filing of a trial examiner's report having been expressly waived, and the Commission having duly made and issued its findings as to the facts, conclusion and order to cease and desist dated June 26, 1940, and the Commission having further considered said order to cease and desist heretofore issued and being of the opinion that the public interest requires that a modified order to cease and desist should be issued in said cause, and the Commission having given due notice to the respondent to show cause on December 21, 1944, why this case should not be reopened for the purpose of modifying said order to cease and desist, and the Commission having considered the matter and the record herein and having issued its order modifying said order in certain respects, issues this its modified order to cease and desist.

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

(a) That said preparation is a cure or remedy for or has any therapeutic value in the treatment of deafness or partial deafness;

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(b) That said preparation is a competent or effective treatment for deafness or partial deafness, or ringing or buzzing head noises due to hardened or coagulated wax in the ear;

(c) That the use of said preparation will materially benefit or relieve temporary deafness or ringing or buzzing head noises due to an accumulation of wax in the ear, except that its use will soften such wax and thereby facilitate its removal by other means.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

3. Representing that respondent makes refunds to dissatisfied purchasers of said preparation when it does not in fact maintain a definite policy and practice of making such refunds.

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
WILLIAM H. HOWE

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

Docket 5089. Complaint, Nov. 30, 1943—Decision, Mar. 13, 1945

Where an individual engaged in the interstate sale and distribution of his "Lady Ashton Foot Ease," active ingredients of which were saponified coconut and palm oils and sodium carbonate, added to the mixture in the form of soap flakes and soap powder, along with 1 1/10 percent pine oil, with water as a carrier for the active ingredients; through advertisements on cards, folders, circulars and by means of radio continuities, directly and by implication—

Represented falsely that his said product, when used as directed, would completely remove foot callouses and relieve all painful conditions of the feet; the facts being that said product would not dissolve or remove callouses; its effect, when used as directed with a warm foot bath, was temporarily to soften the outer layers of callouses, some of which might be removed when followed by massage as directed, and while such use might result in temporary relief for tired and aching feet, or temporarily relieve foot discomfort, such results were in substantial part due to the warm foot bath and massage;

With tendency and capacity to mislead and deceive a substantial number of the purchasing public into the mistaken belief that such false representations were true and thereby induce their purchase 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.

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

Mr. B. G. Wilson for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that William H. Howe, 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, William H. Howe, is an individual, having his office and principal place of business at 122 Jewett Street, Lowell, Mass.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the sale and distribution of a preparation designated as "Lady Ashton Foot Ease," in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes his said preparation, when sold, to be shipped from his said place of business in the State of Massachusetts 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 his said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business and for the purpose of inducing the purchase of his said preparation, respondent has disseminated and is disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said preparation by United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, deceptive and misleading statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by means of cards, folders, circulars and radio continuities, are the following:

Do you have painful callouses on your feet? Try LADY ASHTON FOOT EASE! It's beneficial in removing callouses without making feet sore. * * * Relief assured after three nights' treatment.

If your feet hurt or you have callouses, try LADY ASHTON FOOT EASE! It's guaranteed! Three nights' treatment must give relief.

Thousands of women have found relief from tired, aching feet with LADY ASHTON FOOT EASE!

Try today's modern remedy for tired, aching feet... LADY ASHTON FOOT EASE! * * * effective cream * * * is also an effective, painless way of removing callouses.

Weary, overworked feet respond like magic to Lady Ashton Foot Ease... a modern, effective remedy * * *.

Banish foot discomfort from your life! Get welcome relief from foot fatigue and painful callouses with LADY ASIITON FOOT EASE.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, the respondent represents and has represented, directly and by implication, that said preparation, used as directed, will completely remove foot callouses and prevent their recurrence and will relieve all painful conditions of the feet.

PAR. 5. The foregoing statements and representations disseminated by the respondent in the manner aforesaid, are false, misleading and deceptive. In truth and in fact, while the use of said preparation will tend to temporarily soften the outer layers of foot callouses, it will not be effective in removing callouses or preventing their recurrence. Respondent's preparation will have a soothing effect upon tired feet, but will not relieve or otherwise affect many painful foot conditions. Various types of pain in the feet are caused by structural defects in which cases no benefit of any nature will be derived through the use of said preparation.

PAR. 6. The use by respondent of the foregoing false, deceptive and misleading statements has had and now has the capacity and tendency to, and

does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's 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 November 30, 1943, issued and subsequently served its complaint in this proceeding upon William H. Howe, an individual, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint (respondent not having filed answer thereto) testimony and other evidence in support of 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, 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 make this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent William H. Howe is an individual having his office and principal place of business at 122 Jewett Street, Lowell, Mass.

PAR. 2. Respondent is now, and for more than two years last past has been engaged in the sale and distribution of a preparation designated "Lady Ashton Foot Ease." He causes his said preparation, when sold, to be shipped from his place of business in the State of Massachusetts to purchasers thereof at their points of location in States other than the State of Massachusetts, and has maintained a course of trade in his said preparation in commerce between and among various States of the United States.

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 preparation by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and caused the dissemination of false advertisements concerning his said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparation in commerce, as "commerce" is defined 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 above set forth by means of cards, folders, circulars, and radio continuities, are the following:

Do *you* have painful callouses on your feet? Try LADY ASHTON FOOT EASE! It's beneficial in removing callouses without making feet sore * * * Relief assured after three nights' treatment (Comm. Ex. 2).

* * * * *

If your feet hurt or you have callouses, try LADY ASHTON FOOT EASE! It's guaranteed! Three night's treatment must give relief (Comm. Ex. 3).

* * * * *

Thousands of women have found relief from tired, aching feet with LADY ASHTON FOOT EASE! (Comm. Ex. 4).

* * * * *

Try today's modern remedy for tired, aching feet . . . LADY ASHTON FOOT EASE! * * * effective cream, * * * is also an effective, painless way of removing callouses (Comm. Ex. 5).

* * * * *

Weary, overworked feet respond like magic to Lady Ashton Foot Ease . . . a modern, effective remedy * * * (Comm. Ex. 11-A).

* * * * *

Banish foot discomfort from your life! Get welcome relief from foot fatigue and painful callouses with LADY ASHTON FOOT EASE * * * (Comm. Ex. 6).

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import and meaning, respondent has represented, directly and by implication, that Lady Ashton Foot Ease, when used as directed, will completely remove foot callouses and relieve all painful conditions of the feet. The Commission does not find, however, that respondent's preparation is represented as relieving structural defects in the feet, as charged in the complaint.

PAR. 5. The aforesaid advertisements and representations concerning callouses and painful conditions of the feet are grossly exaggerated, false, misleading, and untrue. Respondent's preparation, Lady Ashton Foot Ease, has as active ingredients about $3\frac{1}{2}$ percent coconut oil, $3\frac{1}{2}$ percent palm oil, $1\frac{1}{2}$ percent sodium carbonate, and $1\frac{1}{10}$ percent pine oil. The coconut and palm oils and the sodium carbonate are saponified, being added to the mixture in the form of soap flakes and soap powder. The carrier for the active ingredients is water. This product, when applied to the feet, will not dissolve or remove callouses. Its effect, when used as directed with a warm foot bath, is to temporarily soften the outer layers of any callouses, and when followed by massage as directed, some of the outer layers of the callouses may be removed. The use of respondent's product as directed may result in temporary relief for tired and aching feet, or may temporarily relieve foot discomfort. These results, however, are in substantial part due to the warm foot bath and massage directed to be used in connection with respondent's preparation.

PAR. 6. The use by respondent of the aforesaid false, deceptive and misleading statements and representations, disseminated as aforesaid, has had the capacity and tendency to mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and to induce a substantial number of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, testimony and other evidence 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 respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, William H. Howe, an individual, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of Lady Ashton Foot Ease, or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from directly or indirectly.

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

(a) That respondent's said preparation will remove callouses, or assist in their removal in excess of temporarily softening the outer layers of such callouses.

(b) That respondent's said preparation will relieve foot discomforts or tired, aching feet in excess of possibly affording temporary relief from such symptoms when used with foot bath and massage.

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 preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 1 above.

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

H. BOKER & CO., 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 4121. Complaint, Apr. 26, 1940—Decision, Mar. 14, 1945*

Where the words "Boy Scout," "Scout" and "Scouting" had long since acquired a secondary meaning as referring to the equipment and activities of the Boy Scouts of America, which had devised and sponsored, among their articles, a pocket knife suitable for the outdoor activities of the boy members of the organization, referred to as a "Scout Knife" and marked in some form or manner with the words "Scout" or "Boy Scout"; and thereafter a corporation and its subsidiary, engaged, respectively, in the interstate sale and distribution, and the manufacture of pocket knives—including certain knives originally made by a concern eventually merged with said manufacturing subsidiary—

Sold said knives bearing the inscription "Scout Knife" or "Junior Scout," and originally "Boy Scout," notwithstanding the fact that aforesaid products had not been and were not manufactured or distributed under the supervision of the Boy Scouts of America and had not been, and were not, products approved, endorsed, or sponsored by that organization, and were not a part of its standard equipment;

With capacity and tendency to mislead and deceive a substantial number of the purchasing public into the erroneous belief that said knives were sponsored by the Boy Scouts of America, and were a part of their standard equipment and thereby induce their purchase 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. Carrel F. Rhodes for the Commission.

Dwight, Harris, Koegel & Caskey, of New York City, for respondents.

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 order of the Commission dated June 21, 1944, as follows:

This proceeding coming on to be considered by the Federal Trade Commission upon a stipulation as to the facts dated May 1, 1941, entered into by counsel for the respondent *H. Boker & Co., Inc.*, a New York corporation, and *H. Boker & Co., Inc.*, a New Jersey corporation, and *W. T. Kelley*, Chief Counsel for the Commission, which provides, among other things, that the complaint heretofore issued in this matter may be amended by changing the complaint, which alleges the name of the New York corporation as *H. Boker & Company, Inc.*, to show the correct name of the New York corporation, which is *H. Boker & Co., Inc.*, and to show *H. Boker & Co., Inc.*, a New Jersey corporation, as a party respondent and that *H. Boker & Co., Inc.*, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, may be made and named a party respondent in this proceeding; and the Commission having duly considered said stipulation 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 striking out the word "company" in the name of the New York corporation wherever it appears in the name of said corporation in said complaint and by substituting for the word "company" the abbreviation "Co.," and by adding after the name of the New York corporation, *H. Boker & Co., Inc.*, the phrase "a New York corporation";

It is further ordered, That *H. Boker & Co., Inc.*, a New Jersey corporation, be, and it hereby is, made and named a party respondent in this proceeding and the complaint herein is amended and supplemented by

mission, having reason to believe that H. Boker & Co., Inc., a New York corporation, and H. Boker & Co., Inc., a New Jersey 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, H. Boker & Co., Inc., is a New York 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 101 Duane Street, in the city of New York, in the State of New York.

Respondent, H. Boker & Co., Inc., the New Jersey corporation, has its office and principal place of business at 101 Duane Street in the city of New York, N. Y., and it is an affiliate of respondent H. Boker & Co., Inc., the New York corporation.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in manufacturing, advertising and offering for sale, and selling various articles of cutlery, among other things a pocket knife designated and marked as a "SCOUT KNIFE" and a knife on one blade of which appears the words "Junior Scout," and the two words separated by respondents' trade-mark design of a tree. Respondents cause its said products, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located in States of the United States other than the State of New York, 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 1910 an organization known as The Boy Scouts of America was incorporated under the laws governing the District of Columbia, and later was reincorporated by special Act of Congress. Its purpose was, in general, to organize the boys of the United States and teach them discipline, patriotism, courage, habits of observation, self-control and ability to care for themselves in all exigencies of life.

In furtherance of this purpose and both to attract the boys of the Nation to the movement and to insure safe, adequate and adaptable equipment, the organization adopted, and has since maintained, the policy of devising and planning a great many articles of equipment and supervising their manufacture and distribution through licensing and otherwise authorizing those with whom it would enter into arrangements for such manufacture and distribution.

From the beginning the equipment so approved and sponsored has been designated and marked, and the activities of the boy members of the organization have been uniformly referred to, by use of the words "Boy Scout," "Scout," and "Scouting," so that these words have long ago acquired a secondary meaning as referring to the equipment and activities of The Boy Scouts of America.

inserting the words "and H. Boker & Co., Inc., a New Jersey corporation," immediately following the name and description of the New York corporation wherever the name of the New York corporation appears in said complaint and by changing the word "respondent" to "respondents" and by changing the singular to the plural wherever necessary in referring to the respondents and by adding the following subparagraph to paragraph 1 of said complaint:

"Respondent H. Boker & Co., Inc., the New Jersey corporation, has its office and principal place of business at 101 Duane Street in the city of New York, New York, and it is an affiliate of respondent H. Boker & Co., Inc., the New York corporation."

Among the articles of equipment so devised and whose production and distribution is so supervised is a pocket knife of a design and of material and workmanship suitable for the outdoor activities of the boy members of the organization. This knife has been uniformly referred to as a "Scout Knife," has been marked in some form or manner with the words "Scout" or "Boy Scout," with or without other marks and insignia identifying it as a part of the standard equipment of The Boy Scouts of America.

PAR. 4. The knives manufactured and sold by respondents, as alleged and described in paragraph 2 hereof, have been and are of such general design and appearance as, when marked or labeled by the use of the words "Scout," "Junior Scout," or "Boy Scout," or any other marks or insignia characteristic of or identifying them with, The Boy Scouts of America, would have, have had and have the capacity and tendency to induce the purchasing public to believe that respondents' said knives have been and are approved, endorsed or sponsored by The Boy Scouts of America and are a part of the standard equipment of that organization; and to cause, and have caused, a substantial part of the public to purchase respondents' said knives because of such belief.

PAR. 5. In truth and in fact, respondents' said knives have not been and are not manufactured or distributed under the supervision of The Boy Scouts of America, have not been and are not approved, endorsed or sponsored by that organization, nor are they a part of its standard equipment.

PAR. 6. There is a marked preference on the part of a substantial portion of the purchasing public for products which are sponsored or approved by The Boy Scouts of America over products which are not so sponsored or approved.

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 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, 1940, issued and subsequently served its complaint in this proceeding upon respondent, H. Boker & Co., Inc., a New York corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of said act. After said respondent filed its answer, a stipulation dated May 1, 1941, was executed and pursuant thereto, by order entered June 21, 1944, the complaint was amended by adding as a respondent, H. Boker & Co., Inc., a New Jersey corporation, and in other particulars as set out in said order. By said stipulation it was further agreed that a statement of facts signed and executed by the respondent corporations or their counsel and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding. It was further stipulated and agreed that the Commission might, without notice to respondents, amend the complaint to conform with the facts stipulated and proceed without briefs or oral argument to dispose of this proceeding and enter its order to cease and desist against the respondents in substantially the same form as the order to cease and desist issued by the Commission in Docket 3466, Adolph Kastor & Bros., Inc., a cor-

poration, in the event that the Circuit Court of Appeals affirmed the said order and certiorari to the United States Supreme Court was not applied for within the period of time permitted by law. The Circuit Court affirmed said order¹ and it became final on February 27, 1944. On June 19, 1944, the Commission approved the stipulation herein, and thereafter this proceeding regularly came on for final hearing before the Commission on said amended complaint, answer, and stipulation; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (a) Respondent, H. Boker & Co., Inc., a New York 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 101 Duane Street, New York, N. Y. Said respondent has owned all the outstanding stock of H. Boker & Co., Inc., a New Jersey corporation, since the organization of the latter in 1916.

(b) Respondent, H. Boker & Co., Inc., a New Jersey corporation, is a corporation organized and existing under the laws of the State of New Jersey, with its office and principal place of business at 101 Duane Street, New York, N. Y.

PAR. 2. In 1915 H. Boker & Co., Inc. (New York), acquired all the assets of Carl F. Boker, trading as Hermann Boker & Co., at 101 Duane Street, New York, N. Y. As a part of this acquisition H. Boker & Co. (New York) secured all the outstanding stock of the Valley Forge Cutlery Company, a New Jersey corporation organized about 1899, which stock had been owned by Carl F. Boker since some time prior to 1909. This stock was held by H. Boker & Co. (New York) until the merger of Valley Forge Cutlery Company with H. Boker & Co., Inc. (New Jersey), in 1927. From the date of its acquisition of the stock of the Valley Forge Cutlery Company until the aforesaid merger, H. Boker & Co., Inc. (New York), was the sole selling agent for all products manufactured by said Valley Forge Cutlery Company, and has at all times since said merger been the sole selling agent for all products manufactured by H. Boker & Co., Inc. (New Jersey). From 1911 until it merged with H. Boker & Co., Inc. (New Jersey), the Valley Forge Cutlery Company manufactured a pocket knife and inscribed thereon the term "Boy Scout," except that beginning in 1920 said inscription was changed from "Boy Scout" to "Scout Knife." At all times since said merger H. Boker & Co., Inc. (New Jersey), has continued to manufacture a pocket knife bearing the inscription "Scout Knife." From 1920 to the date of said merger Valley Forge Cutlery Company also manufactured a pocket knife on one blade of which was inscribed the term "Junior Scout," and after its merger with H. Boker & Co., Inc. (New Jersey), the latter continued the manufacture of said knife bearing the inscription "Junior Scout" until about the year 1930.

PAR. 3. In the course and conduct of their aforesaid business, respondents have sold said knives to jobbers and retail dealers, and pursuant to such sales have shipped and do ship such knives, or cause them to be shipped, to the purchasers thereof at their respective locations in States other than the States of origin of the shipments, and maintain, and have

¹ Opinion and decision of the court is reported in 138 F. (2d) 824, 37 F. T. C. 818. For case before Commission, see 31 F. T. C. 1044.

maintained, a course of trade in such knives in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. (a) In 1910 an organization known as the Boy Scouts of America was incorporated under the laws of the District of Columbia and later reincorporated by special Act of Congress. The Boy Scout movement commenced in England some time prior to 1907 and spread to the United States about 1907. Many groups known as Boy Scouts of America were organized throughout the United States between the years 1907 and 1910, and the movement grew rapidly during that period. The incorporation of the Boy Scouts of America in 1910 resulted in the absorption and coordination of these various groups throughout the country into one centralized organization. The purpose of such organization was in general to organize the boys of the United States and to teach them discipline and patriotism; to encourage habits of self-control, and to teach them to care for themselves in all exigencies of life.

(b) In furtherance of these purposes and to attract the boys of the nation to the movement and to insure safe, adequate, and adaptable equipment, the Boy Scouts of America adopted and has since maintained the policy of devising and planning many articles of equipment and supervising the manufacture and distribution thereof through licensing and otherwise authorizing those with whom it entered into arrangements for such manufacture and distribution. From the beginning, equipment so approved and sponsored has been designated and marked, and the activities of the boy members of the organization have been uniformly referred to by the use of the words "Boy Scout," "Scout," and "Scouting," so that these words long ago acquired a secondary meaning as referring to the equipment and activities of the Boy Scouts of America. Among the articles of equipment so devised, the production and distribution of which is so supervised, is a pocket knife of design, material, and workmanship suitable for the outdoor activities of the boy members of the organization. This knife has been uniformly referred to as a "Scout Knife" and has been marked in some form or manner with the words "Scout" or "Boy Scout," with or without other marks and insignia identifying it as a part of the standard equipment of the Boy Scouts of America.

PAR. 5. Respondents' knives manufactured and distributed as aforesaid have not been, and are not, manufactured or distributed under the supervision of the Boy Scouts of America and have not been, and are not, approved, endorsed, or sponsored by that organization, nor are they a part of its standard equipment.

PAR. 6. There is a marked preference on the part of a substantial portion of the purchasing public for products which are sponsored or approved by the Boy Scouts of America as compared with products which are not so sponsored or approved. Respondents' said knives as heretofore described have been, and are, of such general design and appearance that use of the words "Scout," "Junior Scout," or "Boy Scout," or any other marks or insignia characteristic of or identifying them with the Boy Scouts of America would have, has had, and has, the capacity and tendency to mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that respondents' said knives have been, and are, approved, endorsed, or sponsored by the Boy Scouts of America and are a part of the standard equipment of that organization, and to induce a substantial part of the public to purchase respondents' said knives as a result of such erroneous belief.

CONCLUSION

The aforesaid acts and practices of respondents 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 amended complaint of the Commission, the answer of respondent H. Boker & Co., Inc., a New York corporation, and the stipulation as to the facts entered into between W. T. Kelley, Chief Counsel for the Federal Trade Commission, and H. Boker & Co., Inc., a New York corporation, and H. Boker & Co., Inc., a New Jersey corporation, 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 said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents H. Boker & Co., Inc., a New York corporation, and H. Boker & Co., Inc., a New Jersey corporation, their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of knives in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Marking or labeling said knives, or the containers or coverings in which they are enclosed or display cards to which they are attached or on which they are displayed, with the words "Scout," or "Boy Scout," or "Junior Scout," or with any emblem or symbol adopted and used by the Boy Scouts of America to designate or symbolize that organization or the activities of its members.

2. Marking, designating, or describing knives as "Scout," "Boy Scout," or "Junior Scout."

3. Using, in any manner, any mark, symbol, or emblem adopted and used by the Boy Scouts of America to represent or identify that organization or the activities of its members.

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

ARTHUR M. FLORMAN AND LEO FLORMAN TRADING
AS A. M. FLORMAN & BRO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS
AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 4227. Complaint, Aug. 7, 1940—Decision, Mar. 19, 1945

Where two individuals engaged in New York City as commission resident buyers of millinery for some 40 retailer millinery and department stores in various States—in competition with buying offices maintained in said center by similar millinery dealers and department stores, and with "Fee" buyers regularly employed and compensated by such organizations—through locating and placing with a particular one of a large number of manufacturers and sellers of millinery competitively engaged in said city, orders which met the general requirements as to style, price, etc. of particular customers and which, along with invoice, bill, delivery and other necessary documents of sale, specified the name of the purchaser and recorded the transaction as though he had made the purchase in person—

Received and accepted from said manufacturers and sellers, commissions consisting of a certain percentage of the sales prices agreed upon between each of them and said individuals in the orders for merchandise placed by latter for their principals, which said manufacturers transmitted, paid and delivered to said individuals on the purchases of merchandise by the aforesaid 40 retail millinery and department stores who were the actual purchasers in such transactions and in whose behalf said individuals were in fact acting:

Held, That such receipt of remuneration in the form of commissions from competitive sellers, manufacturers and wholesalers from whom said individuals purchased millinery and other commodities for such buyers or client buyers, was in violation of the provisions of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.
Kaufman & Cronan, of New York City, 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, 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. Respondents, Arthur M. Florman and Leo Florman, are individuals, trading under the name A. M. Florman & Bro. with their principal office and place of business located at 134 West 32nd Street, New York, N. Y. Said respondents, Arthur M. Florman and Leo Florman, are engaged in business as commission resident buyers of millinery. In the course of their said business, respondents act as purchasing agents for and

in behalf of approximately 40 retail millinery and department stores located in the several States of the United States.

The manner of operation of respondents' business consists in receiving from one of said retail millinery or department stores a request to order certain millinery having general specifications as to size, color, style, quantity and approximate price. Respondents locate a millinery manufacturer, and on behalf of the proposed purchaser place an order for millinery meeting the general requirements of the initial request. The order upon the manufacturer specifies the name of the purchaser and an order blank, invoice, bill, delivery and other necessary documents of sale all record the transaction between the manufacturer and the purchaser as though the purchaser has made the purchase in person.

New York City is the center of the millinery industry in the United States and retail millinery dealers and department stores located in other States of the United States undergo the expenditure of a certain proportion of their dollar sales volume to cover the cost of purchasing millinery from the millinery center in New York City. In the course and conduct of their business respondents are in direct competition with buying offices maintained in New York City by millinery dealers and department stores located in various States of the United States, and with buyers known as "Fee" buyers who are regularly employed and compensated by retail milliners and department stores from other States buying in New York City.

Among the retailers of millinery for whom respondents act as buying agents are Sydney Fruhman, doing business as Sydney Fruhman Millinery Company, Dallas, Tex.; Bradshaw Millinery Company, Charlotte, N. C.; A. W. Cox Department Store, Parkersburg, W. Va.; Friedlander Corporation, Moultrie, Ga.; R. C. Brown, Norfolk, Va.; Gordon's Department Store, Winona, Miss.; Haig Millinery, Warren, Iowa; Handelman Bros., Marlin, Tex.; J. N. McCracken, Billings, Mont.; L. B. Murphy, Casper, Wyo.; Gorin's, Inc., Fall River, Mass.; K. Wolins, Tyler, Tex.; H. E. Norland, Burwell, Nebr.; Golden Rule Store, Shadron, Nebr.; The Fashion, Waycross, Ga.; Fair Store, Lexington, Ky.; and J. P. Croff, Rexburg, Idaho.

PAR. 2. In the course and conduct of their business respondents place orders for millinery with 25 or more manufacturers of millinery located in New York City. Among such manufacturers are the following: Alben Hat Company, Dandy Hat Company, Gildor Hat Company, Gold Seal Hat Company, Sam Way, Inc., Braeburn Company, Wel-rose Hat Corporation, Elwyn Hat Company, Wank & Levine, Atlas Hat Company, Salfair, Inc., M. Barsky, Melvina Hat Company, Parad Hat Company, Jeanar Hat Company, Climax Hat Company, King Innovations Company, Georgeman Hats, Greenburg Bros., Joe-Marr Hat Company, Jaymore Hats, Kass Bros. Mfg. Co., Inc., and Biltmore Hat Corporation.

The manufacturers named in this paragraph are hereinafter referred to as "sellers."

PAR. 3. Each of said sellers is engaged in the sale of millinery to the retailer principals of respondents, Arthur M. Florman and Leo Florman, and to other customers in States other than the State of New York, pursuant to which sales, millinery is shipped and caused to be transported by each of said sellers into and through various States of the United States to their respective customers. Said sellers are fairly typical and representative members of a large group of manufacturers and sellers engaged in

selling their merchandise in interstate commerce to retailer clients of respondents, Arthur M. Florman and Leo Florman, and to competitors of said respondents, being the buying offices and "Fee" buyers maintained in New York City by retail milliners and department stores doing business in other States of the United States.

In the course of the purchasing transactions by the respondents, Arthur M. Florman and Leo Florman, under the name A. M. Florman & Bro., as set forth in paragraph 1 hereof, said sellers have since June 19, 1936, transmitted, paid and delivered and do transmit, pay and deliver to said respondents, Arthur M. Florman and Leo Florman, under the name A. M. Florman & Bro., commissions, the same being a certain percentage of the sales prices agreed upon between each of the said sellers and the respondents in the orders for merchandise placed by the respondents for their principals; and said respondents since June 19, 1936, have received and accepted and are receiving and accepting such commissions on purchases of merchandise by some 40 retail millinery and department stores who are the actual purchasers in such transactions, and in whose behalf said Arthur M. Florman and Leo Florman have been and are in fact acting.

PAR. 4. The foregoing acts and practices are 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. 15), The Federal Trade Commission on August 7, 1940, 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 the respective respondents in due course filed their answer to said complaint, in which answer the respondents denied that their acts and practices were in violation of subsection (c) of section 2 of the Clayton Act as amended. Thereafter the respective respondents, through their counsel, requested and received permission from the Commission to withdraw their original answer and to file in lieu thereof an answer admitting all material allegations of fact set forth in said complaint, and waiving all intervening procedure as to said facts, and expressly waiving the filing of briefs and oral argument.

Thereafter, this proceeding regularly 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. That respondents, Arthur M. Florman and Leo Florman, are individuals, trading under the name A. M. Florman & Bro. with their principal office and place of business located at 134 West 32nd Street, New York, N. Y. Said respondents, Arthur M. Florman and Leo Florman, are engaged in business as commission resident buyers of millinery. In the course of their said business, respondents act as purchasing agents

for and in behalf of approximately 40 retail millinery and department stores located in the several States of the United States.

That the manner of operation of respondents' business consists in receiving from one of said retail millinery or department stores a request to order certain millinery having general specifications as to size, color, style, quantity and approximate price. Respondents locate a millinery manufacturer, and on behalf of the proposed purchaser place an order for millinery meeting the general requirements of the initial request. The order upon the manufacturer specifies the name of the purchaser, and an order blank, invoice, bill, delivery and other necessary documents of sale all record the transactions between the manufacturer and the purchaser as though the purchaser has made the purchase in person.

That New York City is the center of the millinery industry in the United States and retail millinery dealers and department stores located in other States of the United States undergo the expenditure of a certain proportion of their dollar sales volume to cover the cost of purchasing millinery from the millinery center in New York City. In the course and conduct of their business respondents are in direct competition with buying offices maintained in New York City by millinery dealers and department stores located in various States of the United States, and with buyers known as "Fee" buyers who are regularly employed and compensated by retail milliners and department stores from other States buying in New York City.

That among the retailers of millinery for whom respondents act as buying agents are Sydney Fruhman, doing business as Sydney Fruhman Millinery Company, Dallas, Tex.; Bradshaw Millinery Company, Charlotte, N. C.; A. W. Cox Department Store, Parkersburg, W. Va., Friedlander Corporation, Moultrie, Ga.; R. C. Brown, Norfolk, Va.; Gordon's Department Store, Winona, Miss.; Haig Millinery, Warren, Iowa; Handelman Bros., Marlin, Tex.; J. N. McCracken, Billings, Mont.; L. B. Murphy, Casper, Wyo.; Gorin's, Inc., Fall River, Mass.; K. Wolins, Tyler, Tex.; H. E. Norland, Burwell, Nebr.; Golden Rule Store, Shadron, Nebr.; The Fashion, Waycross, Ga.; Fair Store, Lexington, Ky.; and J. P. Groff, Rexburg, Idaho.

PAR. 2. That in the course and conduct of their business respondents place orders for millinery with a large number of manufacturers of millinery located in New York City. Among and representative of such manufacturers are the following: Alben Hat Company, Dandy Hat Company, Gildor Hat Company, Gold Seal Hat Company, Sam Way, Inc., Braeburn Company, Wel-rose Hat Corporation, Elwyn Hat Company, Wank & Levine, Atlas Hat Company, Salfair, Inc., M. Barsky, Melvina Hat Company, Parad Hat Company, Jeanar Hat Company, Climax Hat Company, King Innovations Company, Georgeman Hats, Greenburg Bros., Joe-Marr Hat Company, Jaymore Hats, Kass Bros. Mfg. Co., Inc., and Biltmore Hat Corporation.

The manufacturers named in this paragraph are hereinafter referred to as "sellers."

PAR. 3. That each of said sellers is engaged in the sale of millinery to the retailer principals of respondent, Arthur M. Florman and Leo Florman, and to other customers in States other than the State of New York, pursuant to which sales, millinery is shipped and caused to be transported by each of said sellers into and through various States of the United States to their respective customers. Said sellers are fairly typical and represen-

tative members of a large group of manufacturers and sellers engaged in selling their merchandise in interstate commerce to retailer clients of respondents, Arthur M. Florman and Leo Florman and to competitors of said respondents, being the buying offices and "Fee" buyers maintained in New York City by retail milliners and department stores doing business in other States of the United States.

That in the course of the purchasing transactions by the respondents, Arthur M. Florman and Leo Florman, under the name A. M. Florman & Bro., as set forth in paragraph 1 hereof, said sellers have since June 19, 1936, transmitted, paid and delivered and do transmit, pay and deliver to said respondents, Arthur M. Florman and Leo Florman, under the name A. M. Florman & Bro., commissions, the same being a certain percentage of the sales prices agreed upon between each of the said sellers and the respondents in the orders for merchandise placed by the respondents for their principals; and said respondents since June 19, 1936, have received and accepted and are receiving and accepting such commissions on purchases of merchandise by some 40 retail millinery and department stores who are the actual purchasers in such transactions, and in whose behalf said Arthur M. Florman and Leo Florman have been and are in fact acting.

CONCLUSION

From the aforesaid facts and circumstances the Commission concludes that respondents, Arthur M. Florman and Leo Florman, individually, and trading as A. M. Florman & Bro., are engaged as agents, buying representatives, or other intermediaries in the purchase of millinery from representative competitive sellers, manufacturers and wholesalers of millinery and have acted in fact for or in behalf of, or under the direct or indirect control of, such buyers in purchasing millinery from said representative competitive sellers, manufacturers, and wholesalers, and that in the course of such commerce and while acting in fact as agents, buying representatives or other intermediaries in connection with the buying of millinery or other commodities for such purchasers did receive remuneration in the form of commissions, brokerage fees, or otherwise, from such representative competitive sellers, manufacturers, and wholesalers from whom respondents purchased such millinery and other commodities for such buyers or client buyers in violation of 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 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U.S.C. Title 15, Sec. 13).

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, Arthur M. Florman and Leo Florman, individually and trading as A. M. Florman & Bro., which answer admits all of 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 conclusion herein that said respondents, Arthur M. Florman and Leo Florman, individually, and trading as A. M. Florman & Bro., 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 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U.S.C. Title 15, Sec. 13).

It is ordered, That the respondents, Arthur M. Florman and Leo Florman, individually, and trading as A. M. Florman & Bro., or under any other name, jointly or severally, their agents, employees, and representatives, directly or through any corporate or other device in or in connection with the purchasing of millinery or other commodities in commerce as "commerce" is defined in the aforesaid Clayton Act as amended do forthwith cease and desist from:

Receiving or accepting directly or indirectly anything of value as brokerage, commission, or other compensation or any allowance or discount in lieu thereof from any seller on or in connection with purchases made from such seller (a) when such purchases are made for respondents' own account or (b) when such purchases are made as agent or buying representative of the purchaser or (c) when in making such purchases respondents are acting in fact for or in behalf of or are subject to the direct or indirect control of the purchaser.

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

Complaint

IN THE MATTER OF
DRI-KLEEN COMPANY

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

Docket 5103. Complaint, Dec. 17, 1943—Decision, Mar. 19, 1945

Where two individuals engaged in the interstate sale and distribution of their "Dri-Kleen" powder, recommended for use, after addition of water thereto by the user, in the cleaning of all fabrics, including dresses, suits, drapes, hats, rugs and upholstery—

Represented through the use of the word "Dri-Kleen" in their trade name and the words "dry cleaner" in their advertising in newspapers and periodicals of national distribution, pamphlets, form letters and other advertising matter, directly and by implication, that their said product, or the solution made in accordance with the directions for its use, was a dry cleaning agent with solvents other than water, and would effectively clean and remove dirt, grease and stains from all fabrics and wearing apparel;

When in fact the product in question, or the solution made therewith, was not a dry cleaning agent as understood from the words "dry cleaning," and "dry cleaner," as well as the phonetic term "Dri-Kleen"—long used in the trade and understood by the public as referring to a method of cleaning fabrics with solvents other than water—but was a wet cleaner, being an alkaline detergent or water soluble product, which would not effectively clean and remove grease spots and many other stains from all fabrics;

With the effect of placing in the hands of dealers a means whereby they were enabled to mislead and deceive members of the purchasing public, and of misleading prospective purchasers into the erroneous belief that such representations and designations were true, and with tendency and capacity to induce the purchase of said product by reason 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.

Mr. S. F. Rose for the Commission.

Kegan & Kegan, 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 Walter Belinky and Samuel Barth, individuals and copartners, trading as Dri-Kleen 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. Respondents, Walter Belinky and Samuel Barth, are individuals and copartners, trading as Dri-Kleen Company with their office and principal place of business located at 325 West Huron Street, Chicago, Ill.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the sale and distribution of a powder product, to which water is added by the user, designated "dr-kleen," recommended for use in the cleaning of all fabrics, including, among other things, dresses, suits, drapes, hats, rugs and upholstery. Respondents sell their product to dealers for resale to the purchasing public. They cause their said product, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various States of the United States other than the State of Illinois and in the District of Columbia. Respondents maintain, and at all times herein mentioned, have maintained a course of trade in said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have adopted and used as a trade name, the name "Dri-Kleen Company." Under this name respondents conduct their business and offer for sale and sell said product.

The words "dry clean," "dry cleaning" and "dry cleaner," as well as the phonetic term "dri-clean," have long been used in the trade and are understood by a substantial portion of the purchasing public to designate, describe and refer to a method of cleaning fabrics or textiles with solvents other than water.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their said product, respondents have made false and misleading statements and representations with respect to their said product by means of newspaper and nationally distributed magazine advertising, by pamphlets, form letters and other advertising matter distributed among prospective purchasers, and on the labels placed on the containers in which said product is sold and distributed. Among and typical of such false and misleading representations are the following:

Genuine dri-kleen for all fabrics

The improved scientific home cleaner that cleans all fabrics safely, easily, economically!

This amazingly effective, scientific, soluble-crystal dry cleaner magically and almost instantly cleans dresses, suits, ties, hats, drapes, rugs, upholstery—ALL FABRICS...

PAR. 5. Through the use of the words "dri-kleen" in their trade name and the use of the words "dry cleaner" in their advertising, respondents have represented and now represent, directly and by inference, that their said product, or the solution made in accordance with the directions for use of said product, is a dry cleaning agent with solvents other than water and that it will effectively clean and remove dirt, grease and stains from all fabrics and wearing apparel.

PAR. 6. Such representations on the part of the respondents are false and misleading. In truth and in fact, the respondents' product, or the solution made in accordance with the directions for its use, is a wet cleaner, being an alkaline detergent or water soluble product. Said product will not effectively clean and remove grease spots and many other stains from all fabrics.

Through the use of the word "Dri-Kleen" in their trade name and otherwise, and the use of the words "dry cleaner" in their advertising matter

as above alleged, the respondents have placed in the hands of dealers a means and instrumentality whereby such dealers are enabled to mislead and deceive the members of the purchasing public.

PAR. 7. The use by the respondents of their said trade name and the designations and representations, as set forth herein, in connection with the offering for sale and selling their said product, has had, and now has, the tendency and capacity to, and does mislead purchasers and prospective purchasers into the erroneous and mistaken belief that such representations and designations are true, and to induce the purchase in said commerce of said product on account 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 the 17th day of December, A.D., 1943, issued, and subsequently served its complaint in this proceeding upon respondents, Walter Belinky and Samuel Barth, individually and as copartners, trading as Dri-Kleen 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 complaint and the filing of respondents' answer, the Commission by order entered herein, granted respondents' 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. Respondents, Walter Belinky and Samuel Barth, are individuals and copartners, trading as Dri-Kleen Company with their office and principal place of business located at 325 West Huron Street, Chicago, Ill.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the sale and distribution of a powder product, to which water is added by the user, designated "dri-kleen," recommended for use in the cleaning of all fabrics, including, among other things, dresses, suits, drapes, hats, rugs and upholstery. Respondents sell their product to dealers for resale to the purchasing public. They cause their said product when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various States of the United States other than the State of Illinois and in the District of Columbia. Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have adopted and used as a trade name, the name "Dri-Kleen Company." Under this name respondents conduct their business and offer for sale and sell said product.

The words "dry clean," "dry cleaning" and "dry cleaner," as well as the phonetic term "dri-kleen," have long been used in the trade and are understood by a substantial portion of the purchasing public to designate, describe and refer to a method of cleaning fabrics or textiles with solvents other than water.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their said product, respondents have made false and misleading statements and representations with respect to their said product by means of newspaper and nationally distributed magazine advertising, by pamphlets, form letters and other advertising matter distributed among prospective purchasers, and on the labels placed on the containers in which said product is sold and distributed. Among and typical of such false and misleading representations are the following:

Genuine dri-kleen for all fabrics.

The improved scientific home cleaner that cleans all fabrics safely, easily, economically!

This amazingly effective, scientific, soluble-crystal dry cleaner magically and almost instantly cleans dresses, suits, ties, hats, drapes, rugs, upholstery—ALL FABRICS

PAR. 5. Through the use of the words "dri-kleen" in their trade name and the use of the words "dry cleaner" in their advertising, respondents have represented and now represent, directly and by inference, that their said product, or the solution made in accordance with the directions for use of said product, is a dry cleaning agent with solvents other than water and that it will effectively clean and remove dirt, grease and stains from all fabrics and wearing apparel.

PAR. 6. Such representations on the part of the respondents are false and misleading. In truth and in fact, the respondents' product, or the solution made in accordance with the directions for its use, is a wet cleaner, being an alkaline detergent or water soluble product. Said product will not effectively clean and remove grease spots and many other stains from all fabrics.

Through the use of the word "Dri-Kleen" in their trade name and otherwise, and the use of the words "dry cleaner" in their advertising matter as above set forth, the respondents have placed in the hands of dealers a means and instrumentality whereby such dealers are enabled to mislead and deceive the members of the purchasing public.

PAR. 7. The use by the respondents of their said trade name and the designations and representations, as set forth herein, in connection with the offering for sale and sale of their said product, has had, and now has, the tendency and capacity to and does mislead purchasers and prospective purchasers into the erroneous and mistaken belief that such representations and designations are true, and the tendency and capacity to induce the purchase of said product on account thereof.

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 and the answer of respondents, in which answer respondents admit all of the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearings as to said facts, 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 respondents, Walter Belinky and Samuel Barth, individually, and trading as Dri-Kleen 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 offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' cleaning preparation now designated Dri-Kleen, or any other preparation of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from:

1. Using the term "dry clean" or the simulation "dri-kleen," or any other term of similar import, as a part of respondents' trade name, or to designate, describe, or refer to respondents' preparation; or otherwise representing, directly or by implication, that said preparation is a dry cleaner or that the use of said preparation constitutes dry cleaning.

2. Representing, directly or by implication, that respondents' preparation will remove stains or grease spots from all fabrics or all wearing apparel.

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
**CALLIE E. MORRIS, DOING BUSINESS AS CONTROL
 PRODUCTS COMPANY**

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

Docket 3340. Complaint, Mar. 18, 1941¹—Decision, Mar. 20, 1945

Where an individual engaged in the interstate sale and distribution of his "Control Flow and Adjuster" device for colonic and vaginal irrigations, consisting of a long rubber hose to be attached directly to the water faucet and with attachments for the two uses above indicated, but with no provision for regulating intake; along with which he supplied for use therewith medicated tablets designated "Clentol Antiseptic Nodules," containing sodium borate, sodium bicarbonate, sodium chloride, D. C. aluminum phosphate, and aromatic antiseptics; through advertisements in newspapers and periodicals and circulars, leaflets, pamphlets and other advertising literature—

(a) Represented that use of said device constituted a cure or remedy for constipation, piles, fistula, proctitis, colitis and all intestinal and rectal diseases, gallstones, kidney and bladder trouble, cystitis, Bright's disease, consumption, cancer, appendicitis, rheumatism, lumbago, varicose veins, swollen legs and ankles, yellow jaundice, gastric ulcers, and enlarged prostate gland; and

(b) Represented that use thereof constituted a cure and competent treatment for various vaginal disorders, that it was safe to use in colonic and vaginal irrigations, and that aforesaid tablets used in conjunction with said device had bactericidal effects;

The facts being that said device had no therapeutic value other than the temporary relief from constipation afforded by an ordinary enema, but did not constitute a competent or proper treatment therefor due to inability to regulate intake and because of high pressure of water direct from the faucet, by reason of which use thereof would be dangerous and might result in bursting the upper part of the colon when used for colonic irrigation; in the case of appendicitis or any ulcerous condition, the use of undue pressure within the colon might be sufficient to perforate the intestine and cause peritonitis, with resulting death; while use thereof for vaginal irrigation or douche would tend to force fluid and possible infection into the womb and Fallopian tubes, resulting in an infectious condition which might be dangerous to life; and tablets in question under conditions of use of said device would be of no value whatsoever; and

(c) Failed to reveal facts material in the light of aforesaid representations in that use of said device for colonic or vaginal irrigation might result in serious and irreparable injury when used as aforesaid;

With capacity and tendency to mislead and deceive, and 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 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.

Before *Mr. John W. Addison* and *Mr. Miles J. Furnas*, trial examiners—
Mr. Carrel F. Rhodes 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 Callie E. Morris, an individual, doing business under the trade name of Control Products 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 thereto would be in the public interest hereby issues its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Callie E. Morris, is an individual, doing business under the trade name of Control Products Company with his principal place of business located at 927 Putnam Avenue, Brooklyn, N. Y. Respondent is now, and for several years last past has been, engaged in the sale and distribution of a device designated as "Control Flow and Adjustor," which device is designed for use in connection with colonic and vaginal irrigations. Respondent causes said device when sold to be transported from respondent's 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 device 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, 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 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 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, misleading and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinbefore set forth by United States mails and by advertisements in newspapers and periodicals are the following:

A LIGHT

To internal sickness and hidden diseases! Know HOW waste and poisons are removed from the body and blood-stream; diseases destroyed and a clear skin maintained by Internal Hydrotherapy "WATER CURE." Marvelous results in Prostate Gland Trouble. Dormant glands and weak vitality restored by the "CURE." The "Primer on Health," with details concerning the Control Flow and Adjuster Technique (patented) to use for taking the "CURE"—FREE to those in poor health. Write for your copy.

Destroy The Disease
Control Products Company
927 Putnam Avenue Brooklyn, New York

RESTORATION

for internal sickness and hidden diseases! Know HOW waste and poisons are removed from the body and blood-stream; diseases destroyed and a clear skin maintained by In-

Complaint

40 F. T. C.

ternal Hydrotherapy "WATER CURE." Marvelous results in Prostate Gland trouble. Dormant glands and weak vitality restored by the "CURE." The "Primer on Health," with details concerning the Control Flow and Adjuster Technique (patented) to use for taking the "CURE"—FREE to those in poor health. Write for your copy.

Destroy The Disease
Control Products Company
927 Putnam Avenue Brooklyn, New York

In addition to the advertisements disseminated in newspapers and periodicals the respondent also disseminates by United States mail and by various other means an advertising circular designated "Primer on Health" which circular is usually mailed or distributed to persons answering advertisements appearing in various newspapers and periodicals. In said circular by means of descriptive statements and by extracts from purported testimonial letters, the respondent represents that the use of his device, Control Flow and Adjustor, is a cure or remedy for constipation, piles, fistula, proctitis, colitis, and all intestinal and rectal diseases, gallstones, kidney and bladder trouble, cystitis, Bright's disease, consumption, cancer, appendicitis, rheumatism, lumbago, varicose veins, swollen legs and ankles, yellow jaundice, gastric ulcers, enlarged prostate gland, and various vaginal disorders; that use of said device will keep the blood stream clear of poisons and obstructions and gives a smooth and continuous circulation of the blood through the vessels; and that said device is harmless to use.

PAR. 3. By the use of the above statements and representations and others similar thereto not specifically set out herein, the respondent represents that the use of his device, Control Flow and Adjustor, will remove waste and poisons from the body and blood stream, restore dormant glands and weak vitality, and beneficially affect the circulation of the blood. Respondent further represents that the use of said device constitutes a cure or remedy for constipation, piles, fistula, proctitis, colitis, and all intestinal and rectal diseases, gallstones, kidney and bladder trouble, cystitis, Bright's disease, consumption, cancer, appendicitis, rheumatism, lumbago, varicose veins, swollen legs and ankles, yellow jaundice, gastric ulcers, enlarged prostate gland, and vaginal disorders; and that it constitutes a competent and effective treatment for such diseases and conditions. Respondent further represents that said device is harmless and may be safely used in colonic and vaginal irrigations.

PAR. 4. The aforesaid representations used and disseminated by the respondent as aforesaid are grossly exaggerated, false and misleading. The use of said device will not clear the body of waste and poisons from the body or blood stream and will have no value in restoring dormant glands or increasing vitality or beneficially affecting circulation of the blood. The therapeutic value of respondent's device is limited to the temporary relief of constipation to the extent of that obtained by an ordinary enema, but would not be a competent or proper treatment for such condition because if used as directed by the respondent, it would have a tendency to accustom the bowels to enemas and cause the enema habit and because of the danger involved in such use as hereinafter set forth. The use of said device has no therapeutic value in the treatment of piles, fistula, proctitis, colitis or any intestinal or rectal diseases, gallstones, kidney and bladder disorders, cystitis, Bright's disease, consumption, cancer, appendicitis, rheu-

matism, lumbago, varicose veins, swollen legs and ankles, yellow jaundice, gastric ulcers, enlarged prostate gland, or various vaginal disorders. Respondent's device consists of a long rubber hose which is attached directly to the water faucet and has attachments for use both as a vaginal douche and colonic irrigation. By reason of the inability to regulate intake and because of the high pressure from the use of water direct from the faucet, the use of this device would be dangerous for either colonic or vaginal irrigation. The medicated tablet which respondent recommends for use in his device would be of no value whatsoever under the conditions of use of this device.

PAR. 5. 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 the consequences which may result from the use of said device 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 by reason of the inability to control the amount of intake of water and by reason of the high pressure produced by using this device directly connected to the water faucet. Such use might result in bursting the upper part of the colon when used for colonic irrigation and when used for vaginal irrigation or douche the pressure would tend to force fluid into the womb and fallopian tubes causing salpingitis and when infection is present in the vaginal cavity may force such infection into the fallopian tubes and cause peritonitis.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements with respect to his device 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 respondent's said device.

PAR. 7. The foregoing 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 21, 1938, issued, and subsequently served, its complaint in this proceeding upon the respondent, Callie E. Morris, an individual, doing business under the trade name of Control Products Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the filing of respondent's answer to said complaint, the Commission, on March 18, 1941, issued and subsequently served its amended complaint upon said respondent, charging him with the use of unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. Thereafter, testimony and other evidence in support of, and in opposition to, the allegations of said amended 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 said amended complaint, testimony and other evidence, report and supplemental report of the trial examiner upon the evidence and exceptions filed thereto, and briefs in support of the complaint (respondent not having filed brief and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Callie E. Morris, is an individual, doing business under the trade name of Control Products Company, with his principal place of business located at 927 Putnam Avenue, Brooklyn, N. Y. Respondent is now, and for several years last past has been, engaged in the sale and distribution of a device designated as "Control Flow and Adjuster," which device is designed and used in connection with colonic and vaginal irritations. Respondent causes said device, when sold, to be transported from his place of business in the State of New York 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 device in commerce among and between the various States of the United States.

PAR. 2. 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 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 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, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements inserted in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

1. That the use of said device constitutes a cure or remedy for constipation, piles, fistula, proctitis, colitis and all intestinal and rectal diseases, gallstones, kidney and bladder trouble, cystitis, Bright's disease, consumption, cancer, appendicitis, rheumatism, lumbago, varicose veins, swollen legs and ankles, yellow jaundice, gastric ulcers, enlarged prostate gland, and various vaginal disorders, and that it constitutes a competent and effective treatment for such diseases and conditions.

2. That respondent's device is safe to use in colonic and vaginal irrigations.

PAR. 3. Respondent's device "Control Flow and Adjuster" consists of a long rubber hose which is attached directly to the water faucet and has attachments for use both as a vaginal douche and for colonic irrigation. By reason of the inability to regulate intake and because of high pressure

from use of water direct from the faucet, the use of this device would be dangerous and might result in bursting the upper part of the colon when used for colonic irrigation. A variation in the flow at the opening of the water system will cause increase in pressure before the individual using this device will become aware of it except by bodily discomfort. In the case of appendicitis or any ulcerous condition, the use of undue pressure within the colon might be sufficient to perforate the intestine and cause peritonitis, with resulting death. The use of this device for vaginal irrigation or douche would be dangerous, as it would tend to force fluid into the womb and fallopian tubes and may force infection, when present in the vaginal cavity, into the fallopian tubes, resulting in an infectious condition which might be dangerous to life.

The therapeutic value of respondent's device is limited to the temporary relief of constipation to the extent of that obtained by an ordinary enema, but the use of said device would not be a competent or proper treatment for such condition because of the danger involved in its use. The use of this device has no therapeutic value in the treatment of piles, fistula, colitis, gallstones, kidney and bladder trouble, cystitis, Bright's disease, consumption, cancer, appendicitis, rheumatism, lumbago, varicose veins, swollen legs and ankles, yellow jaundice, gastric ulcer, enlarged prostate gland, or various vaginal disorders.

Respondent also supplies a medicated tablet, designated "Clentol Antiseptic Nodules," which he recommends for use in his device. These tablets contain sodium borate, sodium bicarbonate, sodium chloride, D. C. aluminum phosphate, and aromatic antiseptics. These ingredients have a tendency to cause alkalinization and slight astringency but have no bactericidal effects. Under conditions of use of this device, such tablets would be of no value whatsoever.

PAR. 4. In addition to the representations hereinabove set forth, respondent is also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated fail to reveal facts material in the light of such representations and fail to reveal that the use of said device for colonic or vaginal irrigation under conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious and irreparable injury to health by supplying sufficient pressure, when used as a colonic irrigation, to burst or perforate the intestine, particularly when appendicitis or an ulcerous condition is present, resulting in peritonitis, or when used for vaginal irrigation or douche, to force infection, when present in the vaginal cavity, into the fallopian tubes, resulting in an infectious condition which might be dangerous to life.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his device disseminated as hereinabove 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 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 respondent's said device.

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 de-

ceptive 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, 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 upon the evidence and exceptions filed thereto, and briefs filed by counsel for the Commission; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Callie E. Morris, an individual, doing business under the trade name of Control Products Company, or doing business 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 device known as "Control Flow and Adjuster," or any other device of substantially similar construction or performing substantially similar functions, whether sold under the same name or under any other name, do forthwith cease and desist from:

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

a. That the use of respondent's device constitutes a competent or proper treatment for constipation.

b. That the use of respondent's device has any therapeutic value in the treatment of piles, fistula, colitis, gallstones, kidney and bladder trouble, cystitis, Bright's disease, consumption, cancer, appendicitis, rheumatism, lumbago, varicose veins, swollen legs and ankles, yellow jaundice, gastric ulcer, enlarged prostate gland, or vaginal disorders.

c. That respondent's device may be safely used in colonic or vaginal irrigations.

d. That the use of respondent's device in conjunction with respondent's Clentol Antiseptic Nodules or any other tablets of similar composition has bactericidal effects or any other therapeutic value.

2. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act which advertisement fails to reveal that the use of respondent's device for colonic irrigation by attaching said device directly to the water faucet may result in sufficient pressure to burst or perforate the intestine, particularly when appendicitis or an ulcerous condition is present, resulting in peritonitis or other serious or irreparable injury to health.

3. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act which advertisement fails to reveal that the use of respondent's device for vaginal irrigation or douche by attaching said device directly to the water faucet may result in sufficient pressure to force infection, when present in the vaginal cavity, into the fallopian tubes, resulting in an infectious condition which may cause serious and irreparable injury to health.

4. 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 and the respective subdivisions thereof or which fails to comply with the requirements set forth in paragraphs 2 and 3 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
NATIONAL RETAIL TEA & COFFEE MERCHANTS
ASSOCIATION, INC. ET AL.

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

Docket 4776. Complaint, June 25, 1942—Decision, Mar. 20, 1945

Where an association, the members of which consisted of about 170 "home service merchants" engaged in various States in the sale of tea, coffee, toilet preparations and other items of household use,—usually differing in package sizes and labels from those customarily sold in retail stores, and obtained from concerns which package such merchandise especially for "home service merchants"—to members of the consuming public, through salesmen or routemen who operated trucks and other vehicles from door to door, displayed samples of merchandise and of the premiums to be given with the purchase of certain quantities thereof and took orders for delivering then or at a later date; and members thereof; its secretary; and an individual, engaged as a home service merchant in New Orleans, and chairman of local group of home service merchants, members of said association, in said city—Acted cooperatively to shut off competition considered objectionable by virtue of price cutting and failure to maintain suggested retail prices on assorted brands of the association and others, without distinction, in accordance with association policy, and to exercise control of prices at which "home service merchants" sold merchandise to the public, through persistently making known, directly and through their association, to suppliers of objectionable competitors, their opposition to latter's price cutting or other practices not in harmony with association policies, and requesting refusal by such suppliers of further sales thereto; and through use of their collective weight and influence secured the cooperation of the sources of supply patronized by them in preventing "price cutters" or competitors whom they considered otherwise objectionable, from securing supplies of merchandise from manufacturers and distributors who catered to the special needs of "home service merchants";

With the capacity, tendency and effect of hindering, lessening, and restraining competition among and between home service merchants, and of hindering and preventing home service merchants who were not members of said association from obtaining supplies of merchandise needed in their business, and of otherwise restraining and lessening competition in the sale and distribution of merchandise commonly handled by home service merchants, and thereby depriving the purchasing public of the benefits which normally flow from free competition among them:

Held, That such acts and practices were all to the prejudice of the public, and had a dangerous tendency to hinder, and did actually hinder and prevent, competition among and between such merchants, and their competitors and prospective competitors in the sale of tea, coffee, toilet preparations, household specialties, and other articles of merchandise; unreasonably restrained such commerce; and constituted unfair methods of competition in commerce.

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

Mr. Floyd O. Collins for the Commission.

Castle, Williams & McCarthy, of Chicago, Ill., for National Retail Tea & Coffee Merchants Ass'n, Inc., *Oliver J. Corbett* and *Mother Hubbard Products Co., Inc.*

Mr. Ernest J. Robin, of New Orleans, La., for Henry C. Kepler.

Henican, Bethea, James & Cleveland, of New Orleans, La., for Trico Coffee Co., Inc.

Wright & Livingston, of Newark, N. Y., for Commercial Laboratories, Inc.

Dinsmore, Shohl, Sawyer & Dinsmore, of Cleveland, Ohio, for Procter & Gamble Distributing Co.

Miller, Mack & Fairchild, of Milwaukee, Wis., for West Bend Aluminum 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 individuals and corporations named in the caption hereof, 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, National Retail Tea & Coffee Merchants Association, Inc., hereinafter referred to as respondent association, is a membership corporation organized under the laws of the State of Illinois with its principal office and place of business located at 1441 Merchandise Mart in the city of Chicago, in said State. Said respondent association was organized in 1916 for the mutual benefit of its members, consisting of more than 200 corporations, individuals and partnerships known as home service merchants located throughout the several States of the United States, engaged in the sale of tea, coffee, household specialties, toilet preparations and other items of household merchandise to the consuming public on what is known as the home delivery and premium plan of merchandising, by which said products are sold and delivered to consumers located in various States of the United States by means of salesmen or routemen operating trucks and other vehicles from door-to-door or house-to-house, and who display samples of merchandise and premiums to be given with the purchase of certain quantities of merchandise and take orders for said merchandise to be delivered then or at a later date by said salesmen or routemen.

The said members of respondent association in the course and conduct of their respective businesses, purchase the products sold by them from manufacturers or wholesale distributors thereof, located throughout the several States of the United States in States other than those in which said members are doing business, causing said products when thus purchased, to be shipped in interstate commerce from the respective places of business of the manufacturers or wholesale distributors thereof to the said members.

The affairs of the respondent association are conducted by a board of directors of twelve members and a group of officers consisting of a president, vice president, second vice president, treasurer and secretary, all of whom are elected by the members of respondent association annually except the secretary, who is employed by the board of directors.

Respondent, Oliver J. Corbett, for more than ten years has been and now is secretary of respondent association, and gives his full time to the business of the association for which he is paid a salary derived from the annual dues collected from the members, and other sources. Respondent, Corbett, performs the usual duties of a trade association secretary, en-

rolling members, organizing group and annual meetings of the members and the board of directors, which functions mostly through an executive committee. Among other things, respondent Corbett supervises the compilation and publication of two trade magazines, one of which, "The Te-cup," is the official organ of respondent association and regularly distributed to the members thereof, and which contains numerous advertisements of manufacturers of items of approved merchandise sold and distributed by the members of said association to the consuming public as hereinbefore described. The other trade magazine published by respondent, Corbett, is known as "Between Ourselves," and is sold to the members for distribution to the consuming public. Said publication contains advertisements of brands approved or owned by respondent association.

Respondent, Henry C. Kepler, is an individual, doing business under the style and firm name of Try-Me Coffee Mills, with his principal office and place of business located at 1014 France Street, New Orleans, La. Said respondent is a member of respondent association and is engaged in roasting, grinding and selling coffee, and also in the sale and distribution of household specialties as a home service merchant to purchasers and consumers thereof located in States other than the State of Louisiana.

The respondent, Trico Coffee Company, Inc., is a corporation, organized under the laws of the State of Louisiana with its principal office and place of business located at 1025 Felicity Street in the city of New Orleans, in said State. Said respondent is a member of respondent association and is engaged in the sale and distribution of tea, coffee and household specialties as a home service merchant to purchasers and consumers thereof located in States other than the State of Louisiana.

PAR. 2. Respondent, Commercial Laboratories, Inc., is a corporation, organized under the laws of the State of New York with its principal office and place of business located at Newark, in said State. Said respondent sells and distributes to home service merchants a line of toilet preparations and household specialties manufactured for it by C. H. Stuart and Company, of which it is a subsidiary.

Respondent, Mother Hubbard Products Company, Inc., is a corporation, organized under the laws of the State of Illinois, with its principal office and place of business located at 1222 West Madison Street, in the city of Chicago, in said State. Said respondent sometimes operates under the trade name of G. A. Goodrich and Company and manufactures, processes or packages a line of household specialties and other products which it sells and distributes to home service merchants.

Respondent, Procter & Gamble Distributing Company, is a corporation, organized under the laws of the State of Ohio, with its principal office and place of business located in the Gwynn Building in the city of Cincinnati, in said State. Said respondent is engaged in the distribution of a line of household specialties to home service merchants.

Respondent, West Bend Aluminum Company, is a corporation, organized under the laws of the State of Wisconsin, with its principal office and place of business located at West Bend, in said State. Said respondent is engaged in the manufacture of kitchen utensils and other household specialties, and in the sale of such products to home service merchants.

All the respondent corporations described in this paragraph regularly sell substantial quantities of their respective products to the members of respondent association, causing said products, when sold, to be transported from their respective places of business to the purchasers thereof located in

States other than the place of manufacture or sale, and there has been and is now a constant recurring course of interstate commerce in said products throughout the several States of the United States.

PAR. 3. For more than one year last past and continuing to the present time, said respondents have been and now are engaged in an understanding, combination and conspiracy to suppress competition and restrain trade in commerce in the sale and distribution of tea, coffee, household specialties, toilet preparations and other items of household merchandise. Pursuant to, and in the enforcement of said understanding, combination and conspiracy, said respondents have been and now are concertedly and cooperatively engaged in the following methods, acts and practices, to wit:

(a) Respondent, Corbett, and the respondent association have attempted to and have persuaded, coerced and induced home service merchants and their salesmen or routemen operating in various sections of the United States to conform to certain rules, practices and policies promulgated and recommended by respondent association for its members, providing, among other things, that competing home service merchants and their salesmen or routemen, in reselling tea, coffee, household specialties, toilet preparations and other items of merchandise, shall adhere to and maintain the prices fixed or recommended by the respondent association or the manufacturers or distributors thereof from whom such products or merchandise has been purchased;

(b) Respondents have attempted to and have prevented home service merchants and their salesmen or routemen who do not conform to the rules, practices and policies promulgated and recommended by respondent association, from obtaining tea, coffee, household specialties, toilet preparations and other items of merchandise necessary to the conduct of their business as home service merchants, either by refusing to sell or refraining from selling their products or merchandise to said home service merchants, or by persuading and coercing other manufacturers and distributors of such products or merchandise, to refrain from selling their products or merchandise to such home service merchants;

(c) Respondents have attempted to and have hindered and prevented former salesmen or routemen of members of respondent association from engaging in the business of home service merchants on their own account or as salesmen or routemen with other home service merchants by boycotting and blacklisting such former employees or the home service merchants by whom they are employed or from whom they purchase merchandise, and thus preventing them from obtaining tea, coffee, household specialties, toilet preparations and other items of merchandise required in the conduct of their business as home service merchants; and

(d) The respondents named in paragraph 2 hereof have cooperated with respondent association, its officers, directors and members in the enforcement of their said rules, practices and policies by refusing to sell and refraining from selling the said products manufactured and distributed by them to home service merchants or others upon request or demand of said officers, directors and members of respondent association.

PAR. 4. Said understanding, combination, agreement and conspiracy and the acts done and performed, and being done and performed thereunder, and pursuant thereto, as hereinbefore described, have had and now have the effect of preventing corporations, partnerships and individuals from engaging in interstate commerce except upon conditions imposed by respondent Corbett and respondent association, and unlawfully restricting

and restraining the movement of tea, coffee, household specialties, toilet preparations and other items of merchandise in commerce between and among the several States of the United States, and more particularly have had and now have the effect of restraining, restricting and lessening competition in commerce between and among the individuals, partnerships and corporations engaged as home service merchants in the business of selling tea, coffee, household specialties, toilet preparations and other items of merchandise from house-to-house; of restraining, diminishing, curtail and suppressing competition among manufacturers and processors of household specialties, toilet preparations and other items of merchandise commonly sold by home service merchants; of preventing individuals, partnerships and corporations desiring to operate a business of selling tea, coffee, household specialties, toilet preparations and other items of merchandise from house-to-house from having an opportunity to do so; of injuring and destroying the business of selling tea, coffee, household specialties, toilet preparations and other items of merchandise from house-to-house; and of depriving the purchasing public of the benefits which normally flow from competition between and among persons, partnerships and corporations engaged as home service merchants in the business of selling said products from house-to-house.

PAR. 5. The acts and practices of the respondents, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented competition between and among respondents and between and among respondents and competitors and prospective competitors of respondents in the sale of tea, coffee, household specialties, toilet preparations and other items of merchandise in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce, and constitute unfair methods of competition in commerce within the 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 June 25, 1942, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of this complaint and the filing of answers thereto by certain respondents, 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 complaint, answer, testimony and other evidence, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (a) Respondent, National Retail Tea & Coffee Merchants Association, Inc., (hereinafter frequently referred to as the associ-

tion) is a membership corporation, organized and existing under the laws of the State of Illinois, with its principal office and place of business located in the Merchandise Mart Building, Chicago, Ill. This association was organized in 1916 for the mutual benefit of its members and its membership consists of approximately 170 corporations, individuals, or partnerships located in various States of the United States and there engaged in the sale of tea, coffee, household specialties, toilet preparations, and other items of household use to members of the consuming public. Its members are known as "home service merchants" and sell to the consuming public on a home-delivery and premium plan of merchandising. Under this plan the merchandise distributed by such merchants is sold and delivered to consumers by salesmen or routemen operating trucks and other vehicles from door to door. These salesmen display samples of merchandise and of the premiums to be given with the purchase of certain quantities of merchandise and take orders for merchandise to be delivered then or at a later date by said salesmen. The affairs of the association are conducted by a board of directors and a group of officers consisting of a president, vice president, second vice president, treasurer, and secretary, all of whom are elected annually by members of the association, except the secretary, who is employed by the board of directors.

(b) Respondent, Oliver J. Corbett, is now, and for more than ten years last past has been, secretary of the National Retail Tea & Coffee Merchants Association, Inc. He devotes his full time to the business of said association, enrolling members, organizing group and annual meetings of members, and otherwise attending to the affairs of the association. He supervises the compilation and publication of two trade magazines, one of which "The Tecup" is the official organ of the association and is regularly distributed to the members thereof, and the other, known as "Between Ourselves," is sold to association members for distribution to members of the consuming public.

(c) Respondent, Henry C. Kepler, is an individual, trading as Try-Me Coffee Mills, with his principal office and place of business at 1016 France Street, New Orleans, La. He is a home service merchant, is a member of the National Retail Tea & Coffee Merchants Association, and is chairman of a local group of home service merchants in New Orleans, members of the association.

(d) Respondent, Trico Coffee Company, Inc., has its office and place of business at 1025 Felicity Street, New Orleans, La. It is a home service merchant and was a member of the National Retail Tea & Coffee Merchants Association during a portion of the time mentioned in the complaint.

(e) Respondent, Commercial Laboratories, Inc., is a corporation, organized and existing under the laws of the State of New York, with its principal office and place of business in Newark, N. Y. It sells and distributes to home service merchants a line of toilet preparations and household specialties manufactured by its parent, C. H. Stuart & Company.

(f) Respondent, Mother Hubbard Products Company, Inc., is a corporation, organized and existing under the laws of the State of Illinois, with its principal office and place of business at 1222 West Madison Street, Chicago, Ill. It also operates under the trade name G. A. Goodrich Company and is engaged in the sale and distribution of a line of household specialties and other products to home service merchants.

(g) Respondent, The Procter & Gamble Distributing Company, is a corporation, organized and existing under the laws of the State of Ohio,

with its principal office and place of business in the Gwynn Building, Cincinnati, Ohio. It is engaged, among other things, in the distribution of a line of soap products to home service merchants.

(h) Respondent, West Bend Aluminum Company, is a corporation, organized and existing under the laws of the State of Wisconsin, with its principal office and place of business in West Bend, Wis. Until Government control of aluminum required suspension of such use of aluminum, it was engaged, among other things, in the manufacture, sale, and distribution of kitchen utensils and other household specialties to home service merchants.

PAR. 2. Respondents, Commercial Laboratories, Inc., Mother Hubbard Products Company, Inc., The Procter & Gamble Distributing Company, and West Bend Aluminum Company, in the course and conduct of their respective businesses, cause, and have caused, their products, when sold, to be transported from their respective places of business to the purchasers thereof located in States other than the State in which their respective places of business are located, and maintain, and have maintained, a course of trade in their respective products in commerce among and between the several States of the United States. The members of the National Retail Tea & Coffee Merchants Association, Inc., in the course and conduct of their respective businesses as home service merchants, purchase the products of various manufacturers or distributors located in States other than the States in which their respective businesses are located, and cause such products, when thus purchased, to be shipped to them, across State lines, from the places of business of the manufacturers or distributors from whom such purchases are made.

PAR. 3. The merchandise distributed by "home service merchants" usually differs in package sizes and labels from that customarily sold in retail stores and readily available from many sources. Such special size and label merchandise is obtained from certain concerns that package it especially for "home service merchants." The association considered it desirable that members deal, insofar as possible, in merchandise on which the manufacturer or distributor suggested and cooperated in maintaining retail prices. This policy, as shown by the record, is indicated in the response made by the association to an inquiry from a member concerning certain products. On March 10, 1938, the Allison Coffee Company of Los Angeles, Calif., wrote the secretary of the association in part:

Do you know if the retail price given in the circulars is maintained as we are adverse to handling any item that is being "footballed" around (Comm. Ex. 10).

The reply made by the office of the secretary, Mr. Corbett, dated March 21, 1938, stated in part:

You may be sure that the retail price mentioned in the circular is maintained. Mr. Corbett accepts only those items on which a definite resale price is maintained (Comm. Ex. 11).

Some of the cooperation respecting price maintenance and opposition to price cutting in or out of the association membership is indicated by communications in the nature of complaints by association members. On November 17, 1938, a member, Rex Coffee & Tea Company of St. Louis, Mo., wrote the secretary of the association about the acceptance of a member without submitting his name to the local group concerned, and stated:

* * * We have reference to one party in particular whose name appeared on our list and from past experience we know him to be a "cutter" and one who does not adhere to prices which are asked to be kept. Kindly advise on this also (Comm. Ex. 15).

In replying to the Rex Coffee & Tea Company on November 21, 1938, Mr. Corbett said that they should be familiar with the procedure followed, which involved action on all applications for membership by the executive committee, and that:

* * * I should have appreciated your giving me the name of the party you have in mind so that I could check into the matter further and give you the name of the person who endorsed him for membership (Comm. Ex. 19-B).

In writing to Mr. Corbett on November 14, 1940, the Advance Aluminum Castings Corporation, in response to an inquiry made by Mr. Corbett on behalf of a member who had complained about the prices at which a retail store was selling the products of this manufacturer, explained that the retail store was handling a lower-priced line of their products than was the complaining member of the association, and stated in part:

We have been very careful in insisting that these established list prices be maintained, so that there would be no conflict between our department store and the tea and coffee trade (Comm. Ex. 25).

PAR. 4. (a) Action taken to shut off competition considered objectionable is shown in an incident involving one Alfred M. Lobre in New Orleans, La. Lobre had been employed as a salesman by Try-Me Coffee Mills, New Orleans, La., an association member. He left the employment of Try-Me; whereupon, on September 9, 1938, Try-Me wrote Commercial Laboratories, Inc., of Newark, N. Y., that Lobre, operating under the name of New Orleans Import Company or National Coffee Company, was attempting to take the customers he had formerly served away from Try-Me, and stated:

* * * I will appreciate very much if you will cooperate with me and not sell him any merchandise for the time being (Comm. Ex. 35).

Under date of September 16, 1938, Commercial Laboratories, Inc., replied to this request indicating that the New Orleans Import Company was an old, well-established concern and asking that Try-Me Coffee Mills check into the situation thoroughly, but stated:

* * * if this firm is not a legitimate merchandiser and is taking over your salesmen and attempting to do you harm we want to know about that, and we will also give you protection (Comm. Ex. 44).

Try-Me Coffee Mills replied on September 16, 1938, in more detail to Commercial Laboratories, Inc., and stated:

I have the cooperation of all the firms I am now doing business with and certainly will appreciate it if you will cooperate with me (Comm. Ex. 36).

Commercial Laboratories, Inc., replied on September 22, 1938, expressed appreciation for the explanation of what had occurred, stated that it had filled one order for the New Orleans Import Company (National Coffee Company) but:

Under the circumstances, if they place any more orders with us we will refuse to sell them unless they cut off their unfair tactics (Comm. Ex. 45).

At this point Try-Me took steps to prevent Lobre from becoming a member of the association. On September 19, 1938, it advised the association that the New Orleans Import Company had gone into the retail tea and coffee business as National Coffee Company, had employed one of its salesmen named Alfred Lobre who was soliciting his former customers for the new concern, and that probably an application would be made for membership in the association. He stated in part:

They are not living up to our rules by employing my salesman and I understand from Mr. Riley that they are after a couple of his men and under these circumstances if their application is presented I would appreciate if you will cancel same (Comm. Ex. 37).

To this the secretary of the association, Mr. Corbett, replied on September 22, 1938, stating in part:

We certainly will not admit anyone to membership employing the tactics of the New Orleans Import Company. If you find that they are using any merchandise that is packed for members of the Association you will render me a great favor by reporting this so that I can take it up with the manufacturers (Comm. Ex. 14).

Apparently Commercial Laboratories, Inc., wanted information about the Lobre situation from another source, and on November 15, 1938, wrote to Trico Coffee Company setting out in detail what had occurred between it and Try-Me concerning the New Orleans Import Company, asking for an impartial opinion, and saying in part:

We, of course, want to be fair to all parties and to protect "fair trade practices," and we wrote Mr. Kepler accordingly (Comm. Ex. 46-A).

Trico Coffee Company, Inc., replied to Commercial Laboratories on November 17, 1938, in some detail and concluded by stating:

If you can legally refuse, or fail to sell them, it would be to our mutual advantage ultimately. Please understand that we are in no way involved, or interested in the situation as it stands today. We are writing along these lines because it may affect us in the future, either through the N. O. Import Company or through such men as Mr. Lobre going into business for themselves (Comm. Ex. 58).

Try-Me evidently decided that more pressure was needed on Commercial Laboratories, Inc., and on November 17, 1938, wrote the secretary of the association, stating in part:

Referring to your letter of September 22, you asked me to report to you any Company that would ship the New Orleans Import Co., operating under the name of The National Coffee Co.

The Commercial Laboratories has made one shipment before Mr. Lobre left my employ, and they promised that they would not ship any more at that time, but they are now trying to secure an additional order and I believe that they may consider selling them if they do not hear from you (Comm. Ex. 39).

On November 21, 1938, the secretary of the association, Mr. Corbett, replied to the above request, stating:

In accordance with your letter of November 17th, we have written to Commercial Laboratories, Inc., in regard to Mr. Lobre.

Enclosed is a copy of our letter and we feel sure that you may count on Mr. Wingard's cooperation in this matter (Comm. Ex. 17).

Mr. Corbett's letter to Commercial Laboratories, Inc., reads:

Mr. Henry C. Kepler of the Try-Me Coffee Mills, New Orleans, Louisiana, reports that Mr. Lobre left his employ in order to engage in his own business. Mr. Lobre's methods of doing business are not in accordance with our ethics and he is not eligible for membership in our Association.

We should very much appreciate your investigating this man should he attempt to order merchandise from you.

Your cooperation in this matter will be greatly appreciated (Comm. Ex. 16).

On November 21, 1938, Commercial Laboratories, Inc., replied to Mr. Corbett concerning the New Orleans matter and stated in part:

We are protecting the interests of all of the Dealers in that vicinity against this party. If occasion ever arises, you may assure any Dealer that they will get full cooperation from us against price-cutters and other unfair Trade Practices from unscrupulous dealers (Comm. Ex. 47).

(b) Another aspect of the Lobre situation arose the following year. On September 20, 1939, Mr. Corbett wrote an association member in New Orleans the Trico Coffee Company, Inc., as follows:

Thanks so much for your suggestion that we write to Mr. Alfred L. Lobre, 932 Lizardi Street, New Orleans, Louisiana.

An application blank and letter regarding the Association have gone forward to Mr. Lobre today (Comm. Ex. 20).

Apparently an application was received from Mr. Lobre, and on November 6, 1939, Mr. Corbett wrote Try-Me Coffee Mills in part as follows:

Would appreciate your mailing us a formal letter of protest against the application for membership in the Association, of Alfred L. Lobre, 900 Lizardi Street, New Orleans.

This is necessary in order that the matter may be presented to the Executive Committee when they meet here in Chicago on January 11th (Comm. Ex. 21).

To which Try-Me replied under date of December 9, 1939, stating in part:

Enclosed you will find the formal letter of protest, you asked for. Thank you for letting me know of this. Hoping you and the Board members will see my point of view in this matter (Comm. Ex. 40).

The basis for objection as disclosed in the letter of protest from Try-Me includes the following:

This man being a former employee of mine is going over his former routes, cutting prices, and doing everything unethical to gain the customers (Comm. Ex. 41).

PAR. 5. (a) Action taken to eliminate or restrain competition and prevent price cutting is shown in the case of the J. J. Sbisá Coffee Company. On February 3, 1941, the secretary of the association, Mr. Corbett, wrote identical letters to respondents, Mother Hubbard Products Company,

Inc. (trading as G. A. Goodrich Company), Commercial Laboratories, Inc., The Procter & Gamble Distributing Company, and West Bend Aluminum Company which read as follows:

There is a situation which exists in the city of New Orleans, of which I am confident you are not aware. The purpose of this letter is to acquaint you with the facts in the matter.

The following business houses in New Orleans:

J. J. Sbisa
Dittmann Coffee Company
Liberty Coffee Company
Binder Coffee Company

have been purchasing merchandise from your good concern and have been underselling other merchants using similar merchandise from your company.

Knowing the fine reputation your firm has for fair dealings with the members of the Association, I am sure that you will not tolerate this situation.

I do want you to know that this is not a letter of protest from the members of the Association, or from the New Orleans Group—It is just a friendly letter from me, prompted by the knowledge of the fine business practices of your good company and the feeling that you would want to know of this condition.

If there is any further information that you require, I shall be very happy to supply it. I shall appreciate hearing from you with reference to this matter (Comm. Ex. 26).

(b) The course of events which followed in the case of Commercial Laboratories, Inc., was its response on February 5, 1941, advising that it had done business with only one of the four concerns named, J. J. Sbisa, and was surprised to learn that he was an offender. The letter continued:

Fortunately, our Mr. MacClennan is on his way to New Orleans at the present time and will be there the latter part of this month. I am sending him your letter and asking him to talk with Mr. Sbisa and try to straighten the matter out. If Mr. Sbisa will not fall in line and work with the other merchants down there, we will certainly discontinue selling him as we want to give the legitimate Tea and Coffee Route Merchants proper protection and cooperation.

I am very grateful to you for calling this situation to my attention, and if you ever hear of any other cases around the country please let me know at once (Comm. Ex. 50).

This was followed by a letter of February 18, 1941, from Mr. MacClennan to the president of Commercial Laboratories, Inc., reading in part:

* * * Have checked up on this Sbisa—what he does is buys mdse. then talks to men working for other companys, points out to them where they can make the long profit if they go in for themselves and buy their coffee from him (That's where he cleans up). He sells our stuff at cost or less to start them off.

If we sell him we cannot sell Watkins Martinson Kepler & McBeuth.

West Bend has cut him out. I think we should too. Loose his orders or something (Comm. Ex. 51).

Commercial Laboratories, Inc., then wrote J. J. Sbisa Coffee Company on March 6, 1941, stating:

It has been brought to our attention that you have been using unfair trade practices in the handling of our merchandise and under the circumstances, we will be unable to ship you anything more.

We understand that you have been underselling other Route Merchants who are handling our products as well as using other unethical methods. We have a reputation for fair dealing with all Route Merchants and we can not tolerate such practices (Comm. Ex. 65).

Evidently Sbisa replied to the above letter, because Commercial Laboratories on March 17, 1941, wrote him:

I have your letter of March 11th and do not want to get into any controversy over the matter in question.

It is my suggestion that you join your local Association. Just who is at the head of it, I do not know.

I feel sure that if you worked in cooperation with the other Tea men with whom you are in competition, that there would be no further trouble (Comm. Ex. 66).

And on July 9, 1941, Commercial Laboratories, Inc., wrote J. J. Sbisa Coffee Company:

Your letter of June 19th was duly received but has been unanswered because the writer has been out of town and it has been awaiting his attention.

Regret to advise that we cannot fill your order at this time (Comm. Ex. 72).

(c) In the case of Mother Hubbard Products Company (G. A. Goodrich Company) the association's letter of February 3, 1941, set out in subparagraph (a) above was followed by a reply dated February 4, 1941, reading:

Glad to receive your letter of February 3rd. Enclosed is a copy of a letter I have written to the Sbisa Coffee Company. We don't sell the other three companies mentioned in your letter.

Any further suggestions you have will be greatly appreciated, for I surely expect to cooperate in every way possible. * * * (Comm. Ex. 54).

On the same date the G. A. Goodrich Company wrote the J. J. Sbisa Coffee Company referring to their previous business relations and its relations with home service merchants generally, saying:

These companies are spread over the entire United States, and it has become a custom that they get practically the same prices for these various products. In turn, it has become a part of our protection to keep these prices all in line as nearly as possible.

This letter explained that in cases where cooperation was withheld the purchaser would have to furnish his own labels or cartons to avoid direct competition, set out the products Sbisa was buying and the suggested retail prices for them, and stated:

Now, I am giving this to you as a matter of record, and hope that you will be able to send us your reply in a favorable way, for we have enjoyed doing business with you and hope that we can continue under conditions outlined above (Comm. Ex. 67-A, B).

G. A. Goodrich Company also sent a copy of the above letter to Try-Me Coffee Mills, advising that concern that it did not sell to Dittmann, Liberty, or Binder. On February 7, 1941, Sbisa replied to G. A. Goodrich Company, setting out the list of its products handled and the prices obtained therefor, observing that all his prices except on one product were in line, and continued:

We also serve a few small operators for resale, with the understanding that the above prices may be maintained.

I don't know who made this unjust complaint, but can assure you that we are for maintained prices.

I am willing to abide by any retail list you submit; provided every other operator in New Orleans does the same (Resp. Ex. 10).

(d) In the case of West Bend Aluminum Company the letter of the association set out in subparagraph (a) above was followed by a reply to Mr. Corbett dated February 4, 1941, reading:

I have your letter of February 3 regarding the activities on the part of some of the New Orleans coffee accounts in the maintenance of the resale prices on our products. I have checked our files, and find that the quantity of merchandise that they have purchased from us is indeed very small, and certainly will not justify our permitting them to continue cutting prices.

I am writing our New Orleans representative and am asking him to take the necessary steps at once to straighten out this situation. Thanks for calling it to our attention (Comm. Ex. 3).

On the same day West Bend Aluminum Company wrote its New Orleans representative, advising of the receipt of the letter from the National Retail Tea & Coffee Merchants Association regarding the cutting of prices by purchasers named in the letter, and stated:

I suggest you call on them, make sure that they know what our retail prices are, and tell them that these prices must be retained or else we can make no further shipment to them (Comm. Ex. 4).

To which West Bend's New Orleans representative replied on February 26, 1941, as follows:

Henry Kepler, local chairman of the National Retail Tea and Coffee Men's Assn. tells me that the above company is purchasing misc. articles sold by association members and they are reselling these articles to small coffee men who cut prices and are disturbing the local market. The members of the NRTCMA have requested the cooperation of manufacturers from whom they buy, asking that Sbisa not be sold and all manufacturers have consented to this cooperation.

I pledged our support and should orders be received from Sbisa, I suggest that we withhold shipment so as not to antagonize the members of the NRTCMA (Comm. Ex. 5).

This letter bears a notation "take off mailing list" approved by the manager of the jobbing division of West Bend Aluminum Company. The record shows that at about this time West Bend began to decline orders generally because aluminum was not available for the manufacture of kitchen utensils.

(e) In the case of The Procter & Gamble Distributing Company the association letter set out in subparagraph (a) above was followed on February 4, 1941, by a reply from Procter & Gamble stating:

Mr. Bouché has referred your letter of the 3rd to me for attention.

I expect to be in Chicago later this month and will talk this matter over with you. I am sure we can straighten out things in the right way (Comm. Ex. 28).

On May 30, 1941, J. J. Sbisa Coffee Company sent an order for merchandise to The Procter & Gamble Distributing Company. On June 6,

1941, Sbisa received a form letter from The Procter & Gamble Distributing Company advising of a vacation close-down of factories and suggesting the purchase of enough stock to carry through the shut-down period. To this Sbisa responded under date of June 9, 1941, with an order for merchandise and called attention to his previous order which had not been acknowledged or shipped. On June 19, 1941, Sbisa inquired by registered mail when shipment of his pending orders might be anticipated, and under date of June 26, 1941, The Procter & Gamble Distributing Company advised Sbisa:

We acknowledge your registered letter of June 19th addressed to our representative Mr. R. P. Hoen, who has referred the matter to us for handling.

You did not receive any acknowledgement of your letter of June 9 because we are not in a position to make shipment to you. The letter we sent you under date of June 6 to which you referred was a mimeographed notice sent to all accounts sold at one time or another to let them know that our factories would not be in production from July 3 through July 18 due to employee vacations.

We found your name was still included in our list of accounts but have since removed your name from our mailing list so that there will be no misunderstanding in the future (Comm. Ex. 64).

PAR. 6. It is contended that the association activities described related to brands said to be owned by the association, "Our Brand" and "Home Service Brand," but the record shows that no such distinction was made and that manufacturers', distributors', or any other brands were comprehended. It is also apparent from the record, and the Commission finds, that the association and its members sought by cooperative action among themselves to exercise control over prices at which "home service merchants" resold merchandise to the public and used their collective weight and influence to secure the cooperation of the sources of supply patronized by them in preventing "price cutters" or other competitors they considered objectionable from securing supplies of merchandise from manufacturers and distributors catering to the special needs of "home service merchants." The cooperation, understandings, and agreements among respondents herein and the acts and things done pursuant thereto, as heretofore set out, have had, and have, the capacity, tendency, and effect of hindering, lessening, and restraining competition among and between home service merchants, and of hindering and preventing home service merchants who are not members of respondent association from obtaining supplies of merchandise needed in their business, and otherwise restraining and lessening competition in the sale and distribution of tea, coffee, toilet preparations, household specialties, and other items of merchandise commonly handled by home service merchants, thus depriving the purchasing public of the benefits which normally flow from free competition among home service merchants.

CONCLUSION

The aforesaid acts and practices of the respondents are all to the prejudice of the public, have a dangerous tendency to hinder, and have actually hindered and prevented, competition among and between respondents and competitors and prospective competitors of respondents in the sale of tea, coffee, toilet preparations, household specialties, and other articles of merchandise, have unreasonably restrained such commerce, and constitute unfair methods of competition in commerce within the 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 answer of certain respondents, testimony and other evidence 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, National Retail Tea & Coffee Merchants Association, Inc., a corporation, its officers, directors, and members; respondent, Oliver J. Corbett, an individual; and respondent, Henry C. Kepler, an individual, trading as Try-Me Coffee Mills, or under any other name; their respective agents, representatives, and employees, in connection with the movement of commodities 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. Induce, persuade, or coerce any manufacturer or distributor of merchandise to discontinue selling or refuse to sell his products to any competitor of respondents, or of any of them.

2. Carry on between themselves or with others communications having the purpose, tendency, or effect of inducing, persuading, or coercing manufacturers or distributors of merchandise to discontinue selling or refuse to sell such merchandise to any competitor of respondents, or of any of them.

3. Use any scheme or device whatsoever to hinder, obstruct, or prevent any competitor of respondents, or of any of them, from freely purchasing and obtaining the commodities usually handled by such competitor in the course of its business; or to prevent any individual, partnership, or corporation from entering into or continuing or becoming associated with a business in competition with respondents, or any of them.

It is further ordered, That nothing herein contained shall be construed to prevent the lawful use by respondents of any trade marks or brands actually owned by them.

It is further ordered, That the case growing out of the complaint herein be, and the same hereby is, closed as to Trico Coffee Company, Inc., in its individual capacity, Commercial Laboratories, Inc., Mother Hubbard Products Company, Inc., The Procter & Gamble Distributing Company, and West Bend Aluminum Company without prejudice to the right of the Commission to reopen the matter and resume trial thereof should the public interest require such action.

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.

Complaint

IN THE MATTER OF

JOSEPH O. MAGGIONI, JOSEPH S. CAFIERO AND MAD-
ELINE CAFIERO, DOING BUSINESS AS L. P. MAGGIONI
& COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5129. Complaint, Feb. 5, 1944—Decision, Mar. 20, 1945

Where three partners engaged in packing and canning fish, oysters, shrimp and clams, and in the marketing, sale and distribution of said sea food products under their own brands and also under private or buyers' brands; selling (1) through a large number of legitimate intermediaries who acted as their agents and were paid commissions or brokerage fees; and (2) direct to a few buyers who were paid, directly or indirectly, commissions or brokerage fees on their own purchases of such sea food products—

Paid or granted, directly or indirectly, commissions, brokerage or other compensation in lieu thereof, to buyers of a substantial portion of their said sea food products in other States:

Held, That such paying and granting, directly or indirectly, of commissions, brokerage or other compensation in lieu thereof, to buyers of said sea food products on their own purchases, and the acts and practices of said partners in promoting sales of sea food products by such payments to buyers, were in violation of subsection (c) of section 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Abrahams, Bouhan, Atkinson & Lawrence, of Savannah, Ga., 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. Respondents, Joseph O. Maggioni, Joseph S. Cafiero and Madeline Cafiero, are partners, doing business as L. P. Maggioni & Company, having their principal office and place of business located at 401 West Bay Street, Savannah, Ga.

PAR. 2. The respondents are now engaged, and for many years prior hereto have engaged, in the business of packing and canning fish, oysters, shrimp and clams (all of which are hereinafter called "Sea Food Products") and in the marketing, sale and distribution of such sea food products in its own name and for its own account for resale.

The respondents sell and distribute their sea food products through two separate and distinct methods: (1) through a large number of legitimate intermediaries who act as their agents in negotiating the sale of sea food

products and for which services such intermediaries customarily are paid directly, or indirectly, commissions or brokerage fees; (2) through the sale of its sea food products direct to a few buyers who are paid, directly or indirectly, commissions or brokerage fees on their own purchases of such sea food products from the respondents.

The respondents to distinguish their sea food products from the sea food products sold by competitors, to facilitate sales utilize registered and unregistered trade-marks and brands for the various sea food products it sells. These brands are generally known as packers' or sellers' brands. Representative of the respondents' brands are:

Mermaid, Sea Zone, Daufuski, Warsaw, Coosaw, Sambo, Port Royal, Fox Inn, Crown, Off Shore, Jekyl Island, Magico, Maggioni, Magestic, English Ace.

Respondent also sells its sea food products under the labels or brands of its buyers, which brands or labels are generally known to the trade as private or buyers brands. Some of such buyers who incorrectly designate themselves as brokers also utilize registered and unregistered labels and brands, which labels and brands are utilized by the respective buyers in selling such buyers merchandise. Representative of respondents' buyers who purchase respondents' sea food products under their own buyers' brands or labels as well as under the sellers brands or labels is Wm. H. Stanley, Inc., of New York City, N. Y. This buyer purchases in its own name, and for its own account, large quantities of respondents' sea food products under its own registered private brand "Seaspray." Representative of respondent's buyers who purchase in their own name and for their own account respondents' sea food products exclusively under the sellers brands or labels are Haas-Guthman Co., Savannah, Ga. and Britt-McKinney Co., Inc., Greenville, S. C.

PAR. 3. The respondents, in the course and conduct of their said business, since June 19, 1936, have sold and distributed a substantial portion of their sea food products directly to buyers located in States other than the State in which the respondents are established, and as a result of said sales and the respondents' instructions such sea food products are shipped and transported across State lines to such buyers who are located in various States of the United States.

PAR. 4. The respondents since June 19, 1936, in connection with the interstate sale and distribution of sea food products in their own name and for their own account for resale, have sold such sea food products to buyers located in the various States of the United States other than the State where respondents are established and have been and are now paying or granting or have paid or granted, directly or indirectly, commissions, brokerage or other compensation or allowance or discounts in lieu thereof to buyers of said sea food products.

PAR. 5. The paying and granting by respondents, Joseph O. Maggioni, Joseph S. Cafiero and Madeline Cafiero, partners, doing business as L. P. Maggioni & Company, directly or indirectly, of commissions, brokerage or other compensation and allowances or discounts in lieu thereof to the buyers of said sea food products, on their own purchases, and the acts and practices of the respondents in promoting sales of sea food products by paying to buyers, directly or indirectly, commissions, brokerage or other compensation and allowances or discounts in lieu thereof, as set forth above, are 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 February 5, 1944, issued and 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 the respondents in due course filed answer to said complaint and denied that their acts and practices were in violation of subsection (c) of section 2 of the Clayton Act as amended.

Thereafter the respondents requested and received permission from the Commission to withdraw their original answer and to file in lieu thereof an answer dated September 29, 1944, which substitute answer admitted all material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer; and the Commission, having duly considered the same and being now fully advised in the premises makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Joseph O. Maggioni, Joseph S. Cafiero, and Madeline Cafiero, are partners, doing business as L. P. Maggioni & Company and having their principal office and place of business located at 401 West Bay Street, Savannah, Ga.

PAR. 2. The respondents are now engaged, and for many years prior hereto have engaged, in the business of packing and canning fish, oysters, shrimp, and clams (all of which are hereinafter called "sea food products") and in the marketing, sale, and distribution of such sea food products in their own name and for their own account for resale.

The respondents sell and distribute their sea food products through two separate and distinct methods: (1) through a large number of legitimate intermediaries who act as their agents in negotiating the sale of sea food products and for which services such intermediaries customarily are paid, directly or indirectly, commissions or brokerage fees; and (2) through the sale of their sea food products direct to a few buyers who are paid, directly or indirectly, commissions or brokerage fees on their own purchases of such sea food products from the respondents.

The respondents, to distinguish their sea food products from the sea food products sold by competitors and to facilitate sales, utilize registered and unregistered trade-marks and brands for the various sea food products sold by them. These brands are generally known as packers' or sellers' brands. Representative of the respondents' brands are:

Mermaid, Sea Zone, Daufuski, Warsaw, Coosaw, Sambo, Port Royal, Fox Inn, Crown, Off Shore, Jekyl Island, Magico, Maggioni, Magestic, and English Ace.

Respondents also sell their sea food products under the labels or brands of their buyers, which brands or labels are generally known to the trade as

private or buyers' brands. Some of such buyers who incorrectly designate themselves as brokers also utilize registered and unregistered labels and brands, which labels and brands are utilized by the respective buyers in selling such buyers' merchandise. Representative of respondents' buyers who purchased respondents' sea food products under their own buyers' brands or labels, as well as under the sellers' brands or labels, was Wm. H. Stanley, Inc., of New York City, N. Y. This buyer purchased in its own name, and for its own account, large quantities of respondents' sea food products under its own registered private brand "Seaspray." Representative of respondents' buyers who purchased in their own name, and for their own account, respondents' sea food products exclusively under the sellers' brands or labels were Haas-Guthman Co., Savannah, Ga., and Britt-McKinney Co., Inc., Greenville, S. C.

PAR. 3. The respondents, in the course and conduct of their said business, since June 19, 1936, have sold and distributed a substantial portion of their sea food products directly to buyers located in States other than the State in which the respondents are established, and as a result of said sales and the respondents' instructions such sea food products are shipped and transported across State lines to such buyers who are located in various States of the United States.

PAR. 4. The respondents, since June 19, 1936, in connection with the interstate sale and distribution of sea food products in their own name and for their own account for resale, have sold such sea food products to buyers located in the various States of the United States other than the State where respondents are established and have been and are now paying or granting, or have paid or granted, directly or indirectly, commissions, brokerage, or other compensation, or allowance or discount in lieu thereof, to buyers of said sea food products.

CONCLUSION

The paying and granting by respondents, Joseph C. Maggioni, Joseph S. Cafiero, and Madeline Cafiero, partners doing business as L. P. Maggioni & Company, directly or indirectly, of commissions, brokerage, or other compensation, and allowances or discounts in lieu thereof, to the buyers of said sea food products, on their own purchases, and the acts and practices of the respondents in promoting sales of sea food products by paying to buyers, directly or indirectly, commissions, brokerage, or other compensation, and allowances or discounts in lieu thereof, as set forth above, are 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 of respondents, which answer admits, with certain exceptions, the material allegations of fact set forth in said complaint and 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 respondents have violated the provisions of subsection (c) of section 2 of the Act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U. S. C. Title 15, Sec. 13).

Order

It is ordered, That the respondents, Joseph O. Maggioni, Joseph S. Cafiero, and Madeline Cafiero, doing business as L. P. Maggioni & Company or under any other name, and their agents, employees, and representatives, directly or through any corporate or other device, in connection with the sale and distribution of sea food products or any other commodity in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying or granting, directly or indirectly, to any buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon purchases made for such buyer's own 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 have complied with this order.

IN THE MATTER OF

OSTREX COMPANY, INC. AND DAVID STEUERMAN AND
LILLIAN STEUERMAN TRADING AS STEUERMAN AD-
VERTISING AGENCY

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

Docket 4894. Complaint, Jan. 25, 1943—Decision, Mar. 21, 1945

Where two individuals who were the advertising agents of a corporation prior to its dissolution, and assisted in the preparation and dissemination of advertising material used by it in behalf of its medical preparation Ostrex, and one of whom owned and carried on the business after said dissolution and the death of the owner, her father; through advertisements in newspapers and periodicals and by other means, directly and by implication—

Represented that such conditions as an exhausted, worn-out rundown feeling and body weakness might not be attributable to age but might be due to body deficiencies of iron, Vitamin B₁, calcium and phosphorus; that said preparation contained a sufficient quantity of each of said ingredients to supply such deficiencies, and that use thereof would remedy the aforesaid conditions when they were due to such deficiencies; and that it contained tonics and stimulants which corrected subnormal conditions in persons over 40 when caused by said deficiencies;

The facts being it had no therapeutic value in the treatment of an exhausted, worn-out, and rundown feeling or body weakness, except insofar as such conditions—in many cases associated with old age, or result of disease, with no relationship to body deficiencies of iron or of calcium, phosphorus, and Vitamin B₁—were due to a body deficiency of iron; while said preparation did provide an adequate amount of iron in cases where there was actual deficiency thereof, it did not provide a therapeutic amount of the other substances, such as should be administered in cases of actual deficiencies thereof (though supplying the minimum daily nutritional requirement of Vitamin B₁, and amounts of calcium and of phosphorus which might be of assistance in preventing deficiencies in said minerals); and, while an iron tonic, it contained no ingredients generally designated as tonics and stimulants;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such statements and representations were true and of thereby inducing its purchase:

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

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 Ostrex Company, Inc., a corporation, and David Steuerman, and Lillian Steuerman, individuals, trading as Steuerman Advertising Agency, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Com-

mission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Ostrex Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of California with its principal office and place of business located at 801 Second Avenue, New York, N. Y. This respondent is, and for more than one year last past has been, engaged in selling and distributing a medical preparation designated Ostrex. In the course and conduct of its business respondent, Ostrex Company, Inc., causes and has caused said medical preparation, when sold, to be shipped or transported from its source of supply located in Cleveland in the State of Ohio 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 its said medical preparation in commerce between and among the various States of the United States.

PAR. 2. Respondents, David Steuerman and Lillian Steuerman, are individuals, trading and doing business as Steuerman Advertising Agency with their office and principal place of business located at 205 East 42nd Street, New York, N. Y. These respondents operate an advertising agency and as such are engaged in formulating, editing, selling and distributing advertising matter. These respondents are the advertising representatives or agents of respondent, Ostrex Company, Inc., and prepare and assist in preparation of advertising material used by respondent, Ostrex Company, Inc., and disseminate and aid in dissemination of such advertising material, including the advertising material hereinafter set forth, in connection with the sale and distribution of the medical preparation hereinabove designated. Respondents act in conjunction and in cooperation with each other in the performance of the acts and practices hereinafter alleged.

PAR. 3. In furtherance of the sale and distribution of the medical preparation sold and distributed by respondent, Ostrex Company, Inc., a corporation, the respondents have disseminated, and are now disseminating and have caused and are now causing the dissemination of, false advertisements concerning said medical preparation by means of and through 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 of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements and representations contained in said advertisements disseminated and caused to be disseminated, as hereinabove set forth, by and through the United States mails, by advertisements inserted in newspapers and periodicals, and by circulars, leaflets, pamphlets and other advertising literature, are the following:

WAS OLD AT 56

Amazed! Feels Years Younger

"I'm 56. Lacked vim and pep. Ostrex tablets gave me pep that makes me feel years younger." B. O. Garner, New Washington, Ohio. OSTREX contains tonics, stimu-

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40 F. T. C.

lants often needed after 40—by bodies lacking iron, calcium, phosphorus, iodine, Vitamin B₁.

For men and women. A 73-year old doctor writes, "It did so much for patients I took it myself. Results fine." Introductory size only 35¢. Start feeling peppier and younger this very day. OSTREX—for that "after 40" let down.

Men, Women! Old at

40, 50, 60! Get Pep

Feel Years Younger, Full of Vim

Don't blame exhausted, worn out, run down feeling on your age. Thousands amazed at what a little peppering up with Ostrex will do. Contains general tonics often needed after 40. * * *

OLD? GET NEW VIM

With Iron, Calcium, Vitamin B₁

Men, Women, of 40, 50, 60, don't be old, weak, worn out, exhausted, Take Ostrex * * *.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others of similar import but not set out herein, all of which purport to be descriptive of the therapeutic properties of said medicinal preparation, respondents represent, directly and by implication, that said preparation is a competent and effective treatment and remedy for an exhausted, worn out, run down feeling and bodily weakness; that said symptoms or conditions are not attributable to old age but are caused by body deficiencies of iron, calcium, phosphorus, iodine and Vitamin B₁; that said preparation contains a sufficient quantity of each of said ingredients to supply such deficiencies; that it contains general tonics, and stimulants which correct sub-normal conditions in persons over forty years of age and causes them to feel younger and full of pep and vitality.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, said preparation is not effective treatment or remedy for and will have no therapeutic effect and value in the treatment of an exhausted, worn out and run down feeling nor will it provide effective relief for bodily weakness. Said conditions are ordinarily associated with old age or result from disease and in a great majority of cases they have no relationship to body deficiencies of iron, calcium, phosphorus, iodine and Vitamin B₁. Respondent's preparation does not provide a therapeutically adequate amount of iron, calcium, phosphorus, iodine and Vitamin B₁ such as should be administered in cases of actual deficiency of such substances in the body. Said preparation does not contain general tonics and stimulants of such a nature and in such amounts as to correct sub-normal conditions in persons over forty years of age and does not and can not cause them to feel younger and full of pep and vitality.

PAR. 6. The use by the respondents of the foregoing false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that 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 said medical preparation.

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 January 25, 1943, issued and thereafter served its complaint in this proceeding upon the respondents, Ostrex Company, Inc., a corporation, and David Steuerman and Lillian Steuerman, individuals, trading as Steuerman Advertising Agency, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act.

On March 5, 1943, 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, David Steuerman and Lillian Steuerman, 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 and in opposition thereto, and that said Commission may proceed upon said statement of facts, making its report stating these findings as to the facts and its conclusion based thereon, and enter this order disposing of the proceeding without presentation of argument or the filing of briefs, and the respondents expressly waived the filing of the report upon the evidence by the trial examiner. Thereafter, this proceeding came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved, accepted, and filed and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The corporate respondent, Ostrex Company, Inc., was legally dissolved by operation of law on January 2, 1943, but upon the dissolution of said corporation, Joseph Breyer, former president of said corporate respondent, carried on the business under the trade name of Ostrex Company. Upon the death of said Joseph Breyer on April 23, 1943, his daughter, the respondent Lillian Steuerman, became the beneficiary under his will and acquired all assets and property of said Ostrex Company, and since April 24, 1943, has been trading under the trade name of Ostrex Company. The place of business of said respondents is located at 801 Second Avenue, New York, N. Y.

PAR. 2. The respondent, Ostrex Company, Inc., during its existence, was engaged in selling and distributing a medical preparation designated Ostrex. In the course and conduct of its business said respondent caused said medical preparation, when sold, to be shipped or transported from its source of supply located at 2654 Lisbon Road, Cleveland, Ohio, to pur-

chasers thereof located in various other States of the United States and in the District of Columbia. This respondent maintained a course of trade in said medical preparation in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. Respondents, David Steuerman and Lillian Steuerman, are individuals, trading and doing business as Steuerman Advertising Agency with their office and principal place of business at 205 East 42nd Street, New York, N. Y. These respondents operate an advertising agency and as such are engaged in formulating, editing, selling and distributing advertising matter. These respondents were the advertising representatives or agents of respondent, Ostrex Company, Inc., and prepared and assisted in the preparation of advertising material used by respondent and aided in dissemination of such advertising material hereinafter set forth, in connection with the sale and distribution of the medical preparation hereinabove designated.

PAR. 4. In furtherance of the sale and distribution of said medical preparation the respondents, David Steuerman and Lillian Steuerman, have disseminated and have caused the dissemination of advertisements concerning the said medical preparation by insertions in newspapers, periodicals and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, and respondents also disseminated and have caused the dissemination of advertisements concerning said product by various means for the purpose of inducing and which are likely to induce, the purchase of said product 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 advertisements inserted in newspapers and periodicals and by other advertising media, are the following:

WAS OLD AT 56

Amazed! Feels Years Younger

"I'm 56. Lacked vim and pep. Ostrex tablets gave me pep that makes me feel years younger." B. O. Garner, New Washington, Ohio. OSTREX contains tonics, stimulants often needed after 40—by bodies lacking iron, calcium, phosphorus, iodine, Vitamin B₁. For men and women. A 73-year old doctor writes, "It did so much for patients I took it myself. Results fine." Introductory size only 35¢. Start feeling peppier and younger this very day. OSTREX—for that "after 40" let down.

Men, Women! Old at

40, 50, 60! Get pep

Feel Years Younger, Full of Vim

Don't blame exhausted, worn out, run down feeling on your age. Thousands amazed at what a little peppering up with Ostrex will do. Contains general tonics often needed after 40—by bodies lacking iron, vitamin B₁, calcium, Phosphorus.

OLD? GET NEW VIM

With Iron, Calcium Vitamin B₁

Men, Women, of 40, 50 and 60, don't be old, weak, worn out, exhausted. Take Ostrex. Contains tonics, stimulants, often needed after 40 by bodies lacking iron, calcium Vitamin B₁.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others of similar import but not set out herein, respondents, David Steurman and Lillian Steurman, individuals, trading as Steurman Advertising Agency, represented, directly and by implication, that conditions such as an exhausted, worn-out, rundown feeling and body weakness may not be attributable to age but may be due to body deficiencies of iron, Vitamin B₁, calcium and phosphorus; that said preparation contains a sufficient quantity of each of said ingredients to supply deficiencies in the body and the use of said preparation will remedy the aforesaid conditions when they are due to these deficiencies; that said preparation contains tonics and stimulants which correct subnormal conditions in persons over 40 years of age when caused by deficiencies of iron, calcium, phosphorus and Vitamin B₁.

PAR. 6. The foregoing statements and representations are false, misleading, and deceptive and constitute false advertisements. In truth and in fact, respondents' preparation is not an effective treatment or a remedy for and would have no therapeutic effect and value in the treatment of an exhausted, worn-out, and rundown feeling nor will it provide effective relief for body weakness, except insofar as such conditions are due solely to a body deficiency of iron; that an exhausted, worn-out, rundown feeling is not always attributable to a body deficiency of iron but in many cases such conditions are associated with old age or result from disease which has no relationship to body deficiencies of iron or of calcium, phosphorus, and Vitamin B₁; that respondents' preparation does provide an adequate amount of iron in such cases where there is actual deficiency of iron in the body; that respondents' preparation does not provide a therapeutic amount of Vitamin B₁, calcium and phosphorus, such as should be administered in cases of actual deficiencies of such substances in the body, but that respondents' preparation does supply the minimum daily nutritional requirement of Vitamin B₁, and amounts of calcium and of phosphorus which may be of assistance in preventing body deficiencies in these minerals.

Respondents' preparation supplies the following active ingredients in the following quantities, in the daily dose of 8 tablets:

Iron Sulphate, Exsiccated	12 grains
Vitamin B (Thiamin Chloride)	333 U.S.P. Units
Tricalcium Phosphate	24 grains

Respondents' preparation does not contain any ingredients usually designated as general tonics or stimulants, but is an iron tonic.

PAR. 7. The use by the respondents of the foregoing false, misleading, and deceptive statements and advertisements 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 and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said medical preparation.

CONCLUSION

The foregoing acts and practices of respondents, David Steurman and Lillian Steurman, trading as Steurman Advertising Agency, 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 and a stipulation as to the facts entered into by the respondents David Steuerman and Lillian Steuerman, trading as Steuerman Advertising Agency, 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 David Steuerman and Lillian Steuerman, trading as Steuerman Advertising Agency 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, David Steuerman and Lillian Steuerman, individuals, trading as Steuerman Advertising Agency, 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 a medical preparation designated "Ostrex" or any other preparation 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:

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 implication:

(a) That said preparation constitutes a remedy or an effective treatment for an exhausted, worn-out, run-down feeling or body weakness, or similar conditions, except when such conditions are due solely to a deficiency of iron in the body.

(b) That said preparation contains sufficient quantities of calcium, phosphorus and Vitamin B₁ so that, when taken as directed, it will provide an adequate or effective treatment for conditions caused by deficiencies in the body of such substances, or any of them.

(c) That said preparation contains any ingredient, other than iron, which acts as a tonic or stimulant.

(d) That an exhausted, worn-out, run-down feeling, or similar conditions, may not be due to old age.

2. Disseminating or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in paragraph 1 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.

It appearing to the Commission that the respondent corporation, Ostrex Company, Inc., has been dissolved, *it is ordered*, That the complaint be, and the same hereby is dismissed as to said respondent.

Complaint

IN THE MATTER OF

IRVING YANOWITZ AND BENJAMIN SOKOLOFF TRADING
AS GOTHAM PREMIUM 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 5015. Complaint, July 22, 1943—Decision, Mar. 21, 1945

Where two partners engaged in competitive interstate sale and distribution of garments, bedspreads, luggage, watches, cameras, dry goods, novelty jewelry, tooth paste and tooth powder, cosmetics, and other articles of merchandise; in promoting the sale and distribution of their said products—

Made use of a method involving the distribution of advertising or sales circulars, which depicted and described the merchandise therein offered under the plan below set forth and as compensation to the operator of said plan, and which contained a pull card or pull tab device consisting of a number of tabs, each concealing the name and price of an article, for use under a plan by which the particular article and the price paid by the purchaser was determined by his chance selection of the particular tab, and the operator after remitting to said partners the total collected from the sale of the chances, was compensated by specified merchandise or, at his option, by the right to deduct one-third of said sum; and thereby

Supplied to and placed in the hands of their said operators or sales representatives— notwithstanding notice on the card which offered the purchaser the privilege of buying an article at the price listed on the back of each slip, or of declining to buy it, and which was inconsistent with the successful operation of the plan—the means of conducting lotteries in the sale and distribution of their said merchandise in accordance therewith, under which the article to be secured and the price to be paid therefor, and whether the purchaser secured an article of greater value than the regular price designated therefor, was determined wholly by lot or chance; contrary to an established public policy of the United States government and in violation of the criminal law, and in competition with many who are unwilling to use any such sales method;

With the result that many persons were attracted by their said sales method and by the element of chance involved therein and were thereby induced to buy and sell their said merchandise in preference to that offered for sale and sold by said competitors, whereby trade was unfairly diverted from their competitors to them:

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

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

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

Mr. David Von G. Albrecht, 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 Irving Yanowitz and Benjamin Sokoloff, individually, and trading as Gotham Premium Novelty 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Irving Yanowitz and Benjamin Sokoloff, are individuals, trading and doing business as Gotham Premium Novelty Company, with their office and principal place of business located at 303-4th Avenue, New York City. Respondents are now and for more than one year last past, have been engaged in the sale and distribution of garments, bedspreads, luggage, watches, cameras, dry goods, novelty jewelry, tooth paste and tooth powder, cosmetics and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be shipped and transported from their place of business in the State of New York to purchasers thereof at their respective points of location in various States of the United States other than New York, and in the District of Columbia. There is now and has been for more than six months last past a course of trade by respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their said business respondents are and have been in competition with other individuals and firms and with corporations engaged in the sale and distribution of similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and distribute said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. Respondents cause to be distributed to representatives and salesmen and prospective representatives and salesmen certain advertising literature including a sales circular. Respondents' merchandise is distributed to the purchasers thereof in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached the tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article of greater value than the price designated for same on such tab,

which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the same sums to the respondents, the said respondents thereupon ship to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchaser of tabs from said pull cards in accordance with the list filled out when the tabs were detached from the pull card.

Respondents sell and distribute various assortments of said merchandise and furnish various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise or lottery scheme. Such plans or methods vary in detail, but the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondents furnish the said pull cards use the same in purchasing, selling and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of their merchandise and the sale of such merchandise by and through the use thereof and by the aid of said method is a practice of a sort which is contrary to an established public policy of the government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance, or the sale of a chance to procure an article of merchandise at a price less than the apparent normal retail price thereof. Many persons, firms and corporations who sell or distribute merchandise in commerce in competition with the respondents, as above alleged, are unwilling to adopt and use said method, or any method involving a game of chance, or the sale of a chance to win something by chance, or any other method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents' said method and by the element of chance involved in the sale of said products in the manner above described, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said methods by respondents, because of said game of chance, has the tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from the said competitors who do not use the same or equivalent methods.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 22, 1943, issued, and subsequently

served, its complaint upon the respondents, Irving Yanowitz and Benjamin Sokoloff, individually, and trading as Gotham Premium Novelty Company, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before 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 the complaint of the Commission, answer of the respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto 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 respondents or oral argument requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Irving Yanowitz and Benjamin Sokoloff, are copartners, trading as Gotham Premium Novelty Company, with their principal office and place of business located at 303 Fourth Avenue, New York, N. Y. Respondents are now, and for several years last past have been, engaged in the sale and distribution of garments, bedspreads, luggage, watches, cameras, dry goods, novelty jewelry, tooth paste and tooth powder, cosmetics, and other articles of merchandise in commerce among and between the various States of the United States. Respondents cause, and have caused, their said products, when sold, to be shipped or transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of their said business, the respondents are engaged in competition with other individuals and partnerships and with corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business, the respondents distribute advertising or sales circulars by the United States mails to prospective customers or representatives located in various States of the United States for the purpose of inducing such customers to sell respondents' merchandise by means of a game of chance, gift enterprise, or lottery scheme, commonly known as a pull card or pull tab device. These circulars contain pictorial representations and descriptive matter with reference to the merchandise offered as compensation for the sale of certain of respondents' merchandise, which merchandise is likewise described by pictorial representations, and otherwise, on said circulars. Each of said circulars contains what is commonly known as a pull card or pull tab device.

Said pull card device consists of a number of tabs, under each of which is concealed the name of an article of merchandise, as well as the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers and prospective purchasers are unable to ascertain which articles of merchandise they are to receive or the prices to be paid therefor until after the tabs are separated or removed from said pull tab device. Adjacent to said device there is a list of the articles of merchandise and the prices thereof, corresponding to the various articles of merchandise and the prices thereof, as concealed under said tabs. When a purchaser has detached a tab and has discovered what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have retail values and regular prices greater than the prices so designated for them but are distributed to the consumer or purchaser for the price designated on the tab which he pulls or removes from said device. The apparent greater values and regular prices of some of said articles of merchandise as compared to the prices the prospective purchaser will be required to pay in the event he secures one of said articles of merchandise induces members of the purchasing or consuming public to select and pull the tabs in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid therefor. The specific article which the purchaser receives, the amount of money he is required to pay, and the obtaining of an article of greater value than the prices designated therefor are thus determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the articles of merchandise listed under said tabs and has collected the amounts charged therefor, such sum is then remitted to the respondents, and the respondents thereupon ship to said representative the merchandise sold by means of said device by said representative, together with a premium for the representative as compensation for operating the device and selling or distributing the said merchandise. Such premium is selected by said representative from the articles of merchandise pictured in said sales or advertising circular. If the said representative so desires he may deduct a cash premium in lieu of said merchandise premium. Said representative delivers the articles of merchandise to the purchasers thereof in accordance with the list filled out when the tabs were removed or detached from the device as above described. The advertising circulars containing such pull card device contain all of the instructions which are given to the representative for the operation of said pull card device and for obtaining the merchandise or premiums from the respondents.

Immediately above said pull tab device there appears the following:

NOTICE TO PURCHASERS—

On the back of each slip is printed the price of an article. If after deliberation you decide that you want to buy the article pay the holder of this book the price shown on the slip. If you do not want the article you need not buy it.

The Commission finds that regardless of said notice the said articles of merchandise have been, and are, in fact sold and distributed by means of said pull card device in accordance with the sales plan or method hereinabove described. The successful operation of respondents' sales plan is dependent upon the ability of the operator to sell all the articles listed, so

as to permit remittance of the required amount to the respondents in order to obtain the merchandise purchased and the premium allowed to the representative as compensation. The purchaser knows the articles listed and the price to be paid therefor before he selects and removes the tab from the pull tab device. The element of chance is the amount of money to be expended and the specific article to be purchased. The operation of the plan strictly in accordance with the above-mentioned NOTICE TO PURCHASERS would not tend to net the operator a return sufficient to warrant the completion of the plan and would thereby make the plan inoperative, and to this extent such notice is merely a subterfuge. The provision in the circular that the operator may deduct one-third of the amount collected and remit the balance in the event all the articles are not sold, does not constitute a sufficient return to the operator to warrant completion of the plan since the inducement to such operator was the premiums or gifts which were to be obtained upon sale of all the articles listed on said pull card device.

PAR. 4. The Commission finds that the persons or representatives to whom respondents have furnished or distributed said sales or advertising circulars containing said pull card device use, and have used, the same in purchasing, selling, and distributing respondents' merchandise in accordance with the sales plan or method hereinafter described. Respondents have thus supplied to, and placed in the hands of, others a means of conducting lotteries in the sale and distribution of their said merchandise in accordance with the sales plan or method hereinabove described. Said merchandise has thus been sold or distributed by means of a game of chance, gift enterprise, or lottery scheme, and respondents have reaped the benefits therefrom. The use of the respondents of said sales plan or method in the sale of their said merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method are 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 described involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations that sell or distribute merchandise in competition with respondents in commerce among and between the various States of the United States are unwilling to adopt and use said method or any method involving a game of chance or a sale of a chance to win something by chance or any method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents' said method and by the element of chance involved in the sale of such merchandise in the manner above described and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said method by respondents, because of said game of chance, has the capacity and tendency to, and does, unfairly divert trade to respondents from their said competitors who do not use the same or an equivalent method.

CONCLUSION

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

tors 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 on the complaint of the Commission, answer of the respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto 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 or oral argument 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, Irving Yanowitz and Benjamin Sokoloff, individuals, trading as Gotham Premium Novelty Company or under any other trade name, and their respective agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of garments, bedspreads, luggage, watches, cameras, dry goods, novelty jewelry, tooth paste and tooth powder, cosmetics, 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, pull cards or other devices which are to be used or may be used in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Shipping, mailing, or transporting to agents or distributors or to members of the public, pull cards or other devices which are to be used or may be used in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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
INTERSTATE HOME EQUIPMENT 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 5173. Complaint, June 3, 1944—Decision, Mar. 23, 1945

Where a corporation and several individuals who controlled it, engaged in the interstate sale and distribution of silverware, mattresses, blankets, radios, towels and other household articles, through some 32 branch offices or distribution centers in 20 States, operated in accordance with their policies by the respective managers and under a program by which said managers' house-to-house canvassers, as a rule, displayed samples and obtained contracts and down payments, and the merchandise—contingent upon approval by the manager or home office of the prospect's credit standing—was delivered, and installments collected until the price was paid—

- (a) Represented that they were selling Rogers 1847 silverware at a price substantially less than the usual retail price; that they were putting on a special advertising campaign in an effort to acquaint the public with their merchandise, during which said merchandise was being sold at reduced prices or at substantially less than usual prices; and that they were selling merchandise at lower prices than others;
- The facts being that the silverware in question was not Rogers 1847, but an inferior grade which they regularly sold at a price substantially less than the customary retail price of Rogers 1847 silverware; they were not putting on any special advertising campaign, and the articles of merchandise which they claimed they were selling at reduced prices were regularly sold by them at the prices asked; and their prices were not less than those of others but were generally higher than were the prices charged by local stores for merchandise of equivalent value;
- (b) Represented falsely that they were representatives of local and well-known business house, that the silverware sold by them was carried in stock by all large department stores, that the patterns sold by them—mostly obsolete—could be supplemented from local department stores, and that their silverware was superior in quality to that offered by local stores at comparable prices;
 - (c) Represented that mattresses offered for sale and sold by them were equal in grade and quality to the well-known and established "Beauty Rest" mattress; and that certain health features thereof were endorsed by physicians;
- The facts being their said mattresses did not compare favorably with Beauty Rest mattresses, but were made of inferior materials and poorly constructed; and they were not endorsed by physicians;
- (d) Represented that blankets which they offered and sold were composed wholly or partly of wool when in fact some were entirely cotton, and none contained over 5% wool;
 - (e) After having agreed to do so, refused to return payments or deposits made by purchasers on merchandise which was unsatisfactory or not as represented by their salesmen;
 - (f) Refused to return payments or deposits on merchandise in cases where purchasers did not desire to complete the sale;
 - (g) Delivered to purchasers goods other than, and in some instances inferior in quality to, those ordered;
 - (h) Delivered goods in addition to those ordered by purchasers and then threatened to sue said purchasers if the unordered merchandise were not paid for;

- (i) Misrepresented certain china ware as to quality and pattern;
- (j) Failed to fulfil contracts with purchasers to repair or replace unsatisfactory or defective merchandise;
- (k) Failed to return merchandise taken up for repair according to agreement; and
- (l) Offered used or second-hand silverware for sale as new or unused;

With tendency and capacity to mislead and deceive, and effect of misleading and deceiving, a substantial portion of the purchasing public, whereby it purchased substantial quantities of their said products:

Held, That the aforesaid 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. Miles J. Furnas*, trial examiner.

Mr. Joseph Calloway for the Commission.

Mr. Ira Lloyd Letts, 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 Interstate Home Equipment Company, Inc., a corporation, Benjamin N. Kane, Sidney A. Kane, Irwin E. Kane, Reuben Lipson, Samuel Leven and William G. Goldstein, individually, and as officers of Interstate Home Equipment Company, Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Interstate Home Equipment Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware and has its principal office and place of business at 60 Franklin Street, Providence, R. I.

PAR. 2. The individual respondents, Benjamin N. Kane, Sidney A. Kane, Irwin E. Kane, Reuben Lipson, Samuel Leven and William G. Goldstein, are now, or were during the time aforementioned, officers of the respondent Interstate Home Equipment Company, Inc., and as such formulate, direct and control the policies, practices and acts hereinafter described and referred to. Their address is 60 Franklin Street, Providence, R. I.

PAR. 3. The respondents, are now and for several years last past have been, engaged in the sale and distribution of silverware, mattresses, blankets, radios, towels and various other household articles.

Respondents' said articles when sold are shipped by respondents from their aforesaid place of business in Providence, R. I., or from the plants where said articles are manufactured or warehouses where they are stored to purchasers thereof located in various States of the United States and in the District of Columbia.

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

PAR. 4. Respondents operate or have operated during part or all of the time aforementioned approximately 32 branch offices or distribution centers in approximately 20 States of the United States and in the District of Columbia. The various branch offices or distribution centers are under the

supervision of employees or agents of the respondents and are designated by respondents and are hereinafter referred to as managers. Said managers operate said branch offices in accordance with the policies formulated by the respondents.

PAR. 5. Respondents' said managers employ salesmen or house-to-house canvassers to sell respondents' said products. Respondents supply said salesmen with samples of their products, and customarily give them some instruction in the art of salesmanship. The salesmen then call at homes and offer respondents' products for sale. In some instances the salesmen carry products with them and make outright sales while in the home of the purchaser. The usual method of selling respondents' said products, however, is to show the prospective purchaser a sample of the product and obtain from the prospect a purchase contract and a deposit or down payment on the purchase, if possible. Said contract is submitted by the salesman to his manager who, after some investigation of the prospect's credit standing, either approves or disapproves said contract. In some instances, the contracts are submitted to the home office for consideration. If the contract is approved, the merchandise is then delivered to the purchaser and the down payment or first instalment is collected. Collectors thereafter call upon the purchasers periodically until the full purchase price of the merchandise is collected.

PAR. 6. In the course and conduct of their business as aforesaid the respondents directly or through their said salesmen have made many oral statements and representations in connection with the sale of their products. Among and typical of said statements and representations are the following:

1. That they were selling Rogers 1847 silverware at a price substantially less than the usual price at which said silverware customarily sold at retail.

2. That respondents were putting on a special advertising campaign in an effort to acquaint the public with respondents' merchandise, and during such campaign said merchandise was sold at reduced prices or at prices substantially less than the regular or usual prices at which said articles were customarily sold.

3. That they were selling articles of merchandise at prices which were less than the usual prices at which articles of equivalent value were customarily and regularly sold by others.

4. That respondents were representatives of local and well known business houses.

5. That the silverware sold by them was carried in stock by all large department stores, and that the patterns sold by respondents could be supplemented from local department stores.

6. That their silverware was superior in quality to the silverware offered by local stores at comparable prices.

7. That certain mattresses offered for sale and sold by them were equal in grade and quality to the well known and established Beauty Rest mattress.

8. That certain blankets which they offered for sale and sold were composed wholly or partly of wool.

9. That certain health features of their mattresses were endorsed by physicians.

PAR. 7. The representations set forth and referred to above and others of similar import and effect but not specifically set out herein were false

and misleading. In truth and in fact, the silverware which respondents represented as being Rogers 1847 silverware, at a reduced price, was not Rogers 1847 silverware but was an inferior grade of silverware which respondents regularly sold at a price which was substantially less than the regular and customary retail price of Rogers 1847 silverware. The respondents were not putting on any special advertising campaign to acquaint the public with their merchandise but the articles of merchandise which respondents claimed they were selling at reduced prices were regularly and customarily offered for sale and sold by respondents at the prices asked. The prices respondents charged for their merchandise were not less than the prices charged by others for articles of equivalent value. In fact, respondents prices were higher generally than were the prices charged by local stores for merchandise of equivalent value. Respondents did not represent local stores or other well known business houses. The patterns of silverware offered for sale and sold by respondents were not carried in stock by local department stores, as a rule. In fact, most of respondents' silverware was of obsolete patterns. Respondents' mattresses did not compare favorably with Beauty Rest mattresses in quality of material or workmanship but were, as a rule, made of inferior materials and were poorly constructed. Respondents' said mattresses were not endorsed by physicians. Most of respondents' blankets contained no wool whatever but were composed of cotton. None of said blankets contained over five percent wool.

PAR. 8. Among the further unfair and deceptive acts and practices engaged in by respondents are the following:

1. Refused to return payments or deposits made by purchasers on merchandise which was unsatisfactory or not as represented by respondents' salesmen, after having agreed to do so.

2. Refused to return payments or deposits made by purchasers on merchandise in cases where respondents did not desire to complete the sale.

3. Delivered to purchasers goods other than and in some instances inferior in quality to the goods ordered by the purchaser thereof.

4. Delivered goods in addition to those ordered by purchasers and then threatened to sue said purchasers if the unordered merchandise was not paid for.

5. Misrepresented certain chinaware as to quality and pattern.

6. Failed to comply with purchaser contracts to repair or replace unsatisfactory or defective merchandise.

7. Failed to return merchandise according to agreement, which had been taken up for repair.

8. Offered used or second-hand silverware for sale as new or unused silverware.

PAR. 9. The use by respondents of the false and misleading representations set forth and referred to above and other representations of similar import and effect but not specifically set out herein has had the tendency and capacity to mislead and deceive and has misled and deceived a substantial portion of the purchasing public and, as a result of the deception engendered by said false and misleading representations, substantial quantities of respondents' said products have been purchased by said public.

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 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 3, 1944, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of answers by the respondents, the Commission, by order entered herein, granted motion of the respondents, Interstate Home Equipment Company, Inc., Benjamin N. Kane, Irwin E. Kane, Reuben Lipson, Samuel Leven, and William G. Goldstein for permission to withdraw their said answers 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. The respondent Sidney A. Kane has been in the United States Navy since February 22, 1944, and did not join with the other respondents in the motion for permission to withdraw the original answer and his counsel moved for a stay of the proceedings as to this respondent.

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. (a) Respondent, Interstate Home Equipment Company, Inc., is a corporation, organized and existing under the laws of the State of Delaware, with its principal office and place of business at 60 Franklin Street, Providence, R. I.

(b) Respondents, Benjamin N. Kane, Irwin E. Kane, Reuben Lipson, Samuel Leven, and William G. Goldstein, are individuals, and officers of Interstate Home Equipment Company, Inc., with their principal place of business at 60 Franklin Street, Providence, R. I. As such officers, these respondents formulate, direct, and control the policies, practices, and acts of Interstate Home Equipment Company, Inc.

(c) Respondent, Sidney A. Kane, an individual, is an officer of Interstate Home Equipment Company, Inc., but in view of his absence in the military service and the motion for stay of this proceeding based upon such service, he is not hereafter referred to or included in these findings.

PAR. 2. The respondents are now, and for several years last past have been, engaged in the sale and distribution of silverware, mattresses, blankets, radios, towels, and various other household articles. When sold, such articles are shipped by respondents from their place of business in Providence, R. I., or from the plants where said articles are manufactured or warehouses where they are stored, to purchasers thereof at their points of location 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 articles in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents operate, or have operated during part or all of the several years last past, approximately 32 branch offices or distribution cen-

ters located in 20 States of the United States and in the District of Columbia. These offices are under the supervision of employees or agents of the respondents designated by them and hereinafter referred to as managers. These managers operate said branch offices in accordance with the policies formulated by the respondents. The managers employ salesmen or house-to-house canvassers to sell respondents' products. These salesmen are supplied with samples of said products and customarily given some instruction in the art of salesmanship. They call at homes and offer respondents' products for sale. In some instances outright sales are made from goods carried by the salesmen, but the usual method of sale is to show the prospective purchaser samples of the products and obtain from the prospect, if possible, a purchase contract and a deposit or down payment on the merchandise. Purchase contracts secured are submitted by the salesman to his manager, who, after some investigation of the prospect's credit standing, either approves or disapproves the contracts, except in some instances where the contracts are submitted to the home office for consideration. If the contract is approved, the merchandise is then delivered to the purchaser and the down payment or first installment is collected. Collectors thereafter call upon the purchasers periodically until the full purchase price of the merchandise is collected.

PAR. 4. In the course and conduct of their business as aforesaid, the respondents, directly or through their said salesmen, have made many oral statements and representations in connection with the sale of their products, among and typical of which were the following:

1. That respondents were selling Rogers 1847 silverware at a price substantially less than the usual price at which said silverware customarily sold at retail.

2. That respondents were putting on a special advertising campaign in an effort to acquaint the public with their merchandise, and during such campaign said merchandise was being sold at reduced prices or at prices substantially less than the regular or usual prices at which said articles were customarily sold.

3. That they were selling articles of merchandise at prices which were less than the usual prices at which articles of equivalent value were customarily and regularly sold by others.

4. That respondents were representatives of local and well-known business houses.

5. That the silverware sold by respondents was carried in stock by all large department stores, and that the patterns sold by respondents could be supplemented from local department stores.

6. That respondents' silverware was superior in quality to the silverware offered by local stores at comparable prices.

7. That certain mattresses offered for sale and sold by respondents were equal in grade and quality to the well-known and established Beauty Rest mattress.

8. That certain health features of mattresses offered for sale and sold by respondents were endorsed by physicians.

9. That certain blankets which respondents offered for sale and sold were composed wholly or partly of wool.

PAR. 5. The aforesaid representations were false and misleading. In truth and in fact, the silverware which respondents represented as being Rogers 1847 silverware, at a reduced price, was not Rogers 1847 silverware but was an inferior grade of silverware which respondents regularly sold

at a price substantially less than the regular and customary retail price of Rogers 1847 silverware. The respondents were not putting on any special advertising campaign to acquaint the public with their merchandise and the articles of merchandise which respondents claimed they were selling at reduced prices were regularly and customarily offered for sale and sold by respondents at the prices asked. The prices respondents charged for their merchandise were not less than the prices charged by others for articles of equivalent value; in fact, respondents' prices were higher generally than were the prices charged by local stores for merchandise of equivalent value. Respondents did not represent local stores or other well-known business houses. The patterns of silverware offered for sale and sold by respondents were not, as a rule, carried in stock by local department stores, and most of respondents' silverware was of obsolete patterns. Respondents' mattresses did not compare favorably with Beauty Rest mattresses in quality of material or workmanship, but were, as a rule, made of inferior materials and were poorly constructed. Respondents' said mattresses were not endorsed by physicians. Most of respondents' blankets contained no wool whatever, but were composed of cotton and none of said blankets contained over five percent wool.

PAR. 6. Among the further unfair and deceptive acts and practices engaged in by respondents were the following:

1. After having agreed to do so, refusing to return payments or deposits made by purchasers on merchandise which was unsatisfactory or not as represented by respondents' salesmen.
2. Refusing to return payments or deposits made by purchasers on merchandise in cases where respondents did not desire to complete the sale.
3. Delivering to purchasers goods other than, and in some instances inferior in quality to, the goods ordered by the purchaser.
4. Delivering goods in addition to those ordered by purchasers and then threatening to sue said purchasers if the unordered merchandise were not paid for.
5. Misrepresenting certain china ware as to quality and pattern.
6. Failing to fulfil contracts with purchasers to repair or replace unsatisfactory or defective merchandise.
7. Failing to return merchandise taken up for repair according to agreement.
8. Offering used or second-hand silverware for sale as new or unused silverware.

PAR. 7. The use by respondents of the false and misleading representations and unfair and deceptive acts and practices set forth and referred to above has had the tendency and capacity to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public; and, as a result of such deception, substantial quantities of respondents' said products have been purchased by said public.

CONCLUSION

The aforesaid acts and practices of the respondents 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 all respondents, except Sidney A. Kane, in which answer said respondents 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, 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, Interstate Home Equipment Company, Inc., a corporation, its officers, representatives, agents, and employees, and respondents Benjamin N. Kane, Irwin E. Kane, Reuben Lipson, Samuel Leven, and William G. Goldstein, individuals, 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 silverware, mattresses, blankets, radios, towels, or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing any silverware as Rogers 1847 silverware which in fact is not Rogers 1847 silverware; or representing, directly or comparatively, that any silverware is of a brand, grade, or quality different from the fact.

2. Representing that any merchandise is being offered at a reduced or special price, when in fact such price is not lower than respondents' usual or customary price for such merchandise.

3. Representing that respondents' prices for merchandise are lower than the usual or customary prices of others for like articles of equivalent value, when respondents' prices are not in fact lower.

4. Representing that respondents represent well-known business concerns, or others, that they do not in fact represent.

5. Representing that silverware sold by respondents can be duplicated or supplemented at local stores when such stores do not stock or sell the patterns offered by respondents.

6. Representing that inferior quality mattresses offered by respondents are equal to superior quality mattresses of well-known brands; or that respondents' mattresses are endorsed or approved by physicians.

7. Representing that blankets not composed of wool are wool blankets or that any blanket contains more wool than it in fact contains.

8. Refusing to accept the return of, and to refund payments or deposits made by purchasers on, merchandise after having agreed to do so.

9. Refusing to return deposits or payments made by purchasers on merchandise in cases where respondents declined or refused to complete the sale.

10. Delivering to purchasers goods other than, or inferior in quality to, the goods ordered.

11. Delivering goods in addition to those ordered by a purchaser and threatening to sue such purchaser for failure to pay for unordered merchandise.

12. Misrepresenting the quality or pattern of china ware.

13. Failing or refusing to fulfil contracts with purchasers to repair or replace unsatisfactory or defective merchandise.

14. Failing or refusing to deliver merchandise which has been returned by purchasers for repair.

15. Representing that used silverware is new or unused.

It is further ordered, That respondents, Interstate Home Equipment Company, Inc., Benjamin N. Kane, Irwin E. Kane, Reuben Lipson, Samuel Leven, and William G. Goldstein, 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.

It is further ordered, That, for the reasons appearing in the findings as to the facts herein, this proceeding be, and the same hereby is, closed as to the respondent, Sidney A. Kane, without prejudice to the right of the Commission, should the facts so warrant, to reopen the proceeding and resume trial thereof in accordance with its regular procedure.

Complaint

IN THE MATTER OF

SAMUEL RUDOVSKY AND MAX BRAUNSTEIN, TRADING
AS RUDD MANUFACTURING 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 5047. Complaint, Sept. 13, 1943—Decision, Mar. 24, 1945

Where two partners engaged in designing and cutting of fabrics, made into men's and boys' pants and various other articles of wearing apparel by others, and in the interstate sale and distribution of said pants and other articles, including many which were wool products within the intent and meaning of the Wool Products Labeling Act of 1939—

Sold substantial numbers of aforesaid wool products, misbranded in violation of said act and the rules and regulations promulgated thereunder in that, when introduced into commerce, they did not have affixed thereto a stamp, tag, etc., showing the percentage of the total fiber weight of wool, reprocessed wool, and reused wool and non-wool fiber, and maximum percentage of adulterating matter; and proper identification of the manufacturer, seller, etc., as required by the Act, and, in plainly legible words and figures, the percentages by weight of wool where such wool product contained other fibers:

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

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

Mr. DeWitt T. Puckett for the Commission.

Mr. Samuel Sutro, of New York City, for respondents.

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 Samuel Rudovsky and Max Braunstein, copartners, trading and doing business as Rudd Manufacturing Company, 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. The respondents, Samuel Rudovsky and Max Braunstein, are copartners, trading and doing business as Rudd Manufacturing Company and have their principal office and place of business at 17 West 17th Street, New York, N. Y.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in designing and cutting fabrics which are manufactured into men's and boys' pants, and various other articles of wearing apparel.

The remaining manufacturing operations necessary to the completion of the clothing are performed for respondents by others.

Respondents cause and for more than one year last past have caused said pants and other articles of wearing apparel when sold by them to be transported from their said place of business in 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 pants and other articles of wearing apparel sold and distributed by respondents in commerce as aforesaid since July 15, 1941, are many which are wool products within the intent and meaning of the Wool Products Labeling Act of 1939 in that such pants and other articles of wearing apparel 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.

PAR. 4. Many of these said wool products sold and distributed by respondents 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 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 nonfibrous 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 wool contents of said wool product where such wool product contained a fiber other than wool.

PAR. 5. The aforesaid acts, practices and methods of respondents, as herein alleged, are all 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 September 13, 1943, issued and subsequently served its complaint in this proceeding upon respondents, Samuel Rudovsky and Max Braunstein, copartners, trading and doing business as Rudd Manufacturing Company, charging them with the use of unfair and deceptive acts and prac-

tices in commerce in violation of the provisions of said acts. After the issuance of said complaint and the filing of answer thereto by respondents, certain admissions were stipulated into the record by counsel for respondents at a hearing held before an examiner of the Commission theretofore duly designated by it, and the transcript of said hearing 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, answer, admissions stipulated into the record, 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. Respondents, Samuel Rudovsky and Max Braunstein, are copartners, trading and doing business as Rudd Manufacturing Company, with their principal office and place of business at 17 West Seventeenth Street, New York, N. Y. Said respondents are now, and for more than one year last past have been, engaged in designing and cutting fabrics which are manufactured into men's and boys' pants and various other articles of wearing apparel. The remaining manufacturing operations necessary to completion of the apparel are performed for respondents by others.

PAR. 2. In the course and conduct of their aforesaid business, respondents have caused, and cause, said pants and other articles of wearing apparel, when sold by them, to be transported from their place of business in New York to purchasers thereof at their respective points of location in other States of the United States and in the District of Columbia. Respondents maintain, and 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 articles of wearing apparel sold and distributed by respondents in commerce as aforesaid since July 15, 1941, are many which are wool products within the intent and meaning of the Wool Products Labeling Act of 1939 in that such articles of wearing apparel were composed in whole or in part of wool or reprocessed or reused wool as those terms are defined in said act.

PAR. 4. Substantial numbers of the aforesaid wool products sold and distributed by respondents in commerce as aforesaid 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 introduced into commerce, did not have on or affixed to them 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 the 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 any nonfibrous loading, fillings, 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) in plainly legible words and figures, the percentages by weight of the wool contents of said wool product where such wool product contains fibers other than wool.

CONCLUSION

The aforesaid acts and practices of respondents 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of respondents thereto, certain admissions stipulated into the record, report of the trial examiner, and briefs 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 Wool Products Labeling Act of 1939 and the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Samuel Rudovsky and Max Braunstein, copartners, trading and doing business as Rudd Manufacturing Company, 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 introduction or manufacture for introduction into commerce or the sale, transportation, or distribution of such products in commerce, as "commerce" is defined in the aforesaid acts, do forthwith cease and desist from misbranding men's and boys' pants, wearing apparel, 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 affix securely to or place on such products a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

1. The percentage of the total fiber weight of such 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 is 5 percentum or more, and (5) the aggregate of all other fibers.

2. The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter.

3. 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

Order

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

J. CLAUD GRIFFIN, TRADING AS COMMERCIAL ART COMPANY, ETC. AND DANIEL G. RIES, TRADING AS PROGRESSIVE PORTRAIT COMPANY

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

Docket 5133. Complaint, Feb. 26, 1944—Decision, Mar. 24, 1945

Where an individual engaged in interstate sale and distribution of colored or tinted enlargements of photographs and of frames therefor, through house-to-house sales agents whom he supplied with small photographs or miniatures which purported to be samples of his work, and which represented a high degree of photographic and artistic skill and were very attractive in appearance—

- (a) Represented to prospective purchasers, who were induced to produce one or more photographs for examination, that such photographs would make excellent enlargements which would be similar in quality, finish, color, etc., to the aforesaid miniatures or samples, and frequently referred to the enlargement as a "painting" or a "hand painted portrait," stating that it would be hand painted by artists; The facts being that the enlargements produced from photographs so submitted were in no way comparable to such miniatures, but were of very inferior quality and frequently worthless, and they were in no sense paintings or hand painted portraits but were merely cheap photographic enlargements on which little or no hand work was done and on which the coloring was supplied through an air brush;
- (b) Falsely represented at times that the price quoted for the enlargement—usually \$2.98—represented a special or introductory offer and was lower than the price at which they were usually sold;
- (c) Concealed from customers, when the pictures were ordered, that the finished product would be so shaped and designed that it could be used only in an odd-style frame not ordinarily obtained in stores accessible to the consuming public, and that it would be difficult or impossible to obtain a frame to fit the picture from any source other than himself, and failed to reveal said facts until the customer was called upon by his second representative or "proof passer," who exhibited what purported to be a proof in black and white of the proposed enlargement, for the ostensible purpose of obtaining the necessary color specifications, collected the purchase price or the balance due thereon, and for first time sought to secure the sale of a frame at an exorbitant price ranging from \$5 to \$22, failing which said individual took little or no further interest in supplying the pictures ordered, and customers declining to buy frames frequently encountered unreasonably long delays in obtaining the pictures and the return of the original photographs; and
- (d) Made use of various addresses as his places of business, which were in fact merely the addresses of persons or firms from whom he obtained the products he sold and who permitted use of their addresses as an inducement to him to purchase their products; and

Where a second individual, from whom the former purchased enlargements—

- (e) Permitted the use by the former of the address at which his photograph enlarging business was located and thereby aided and cooperated with the former in carrying on the practices above described;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character, quality, and value of the products

sold by the individual first referred to and with respect to his identity and business status, and thereby cause its purchase of substantial quantities thereof:

Held, That said 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.

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

Mr. Marshall Morgan for the Commission.

Mr. George Little, of Pittsburgh, Pa., for *J. Claud Griffin*.

Mr. Arthur D. Gatz, of Pittsburgh, Pa., for *Daniel G. Ries*.

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. Claud Griffin*, individually, and trading as *Commercial Art Company*, and formerly trading as *Modern Art Company* and *American Arts*, and *Daniel G. Ries*, individually, and trading as *Progressive Portrait 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. Respondent, *J. Claud Griffin*, is an individual, trading as *Commercial Art Company*, with numerous temporary business and post office addresses, the last known being located at Room No. 407, 929 Fifth Avenue, Pittsburgh, Pa., and whose last known home address was 720 East Diamond Street, North Side, Pittsburgh, Pa. Among other temporary business and post office addresses formerly employed by respondent were: 235 West Water Street, Syracuse, N. Y.; 506 The Arcade, Cleveland, Ohio; 929 Fifth Avenue, Pittsburgh, Pa.; and 608 Washington Trust Building, Pittsburgh, Pa.

Respondent, *Daniel G. Ries*, is an individual, trading as *Progressive Portrait Company*, with his principal place of business located at Room No. 407, 929 Fifth Avenue, Pittsburgh, Pa.

PAR. 2. Respondent, *J. Claud Griffin*, is now and for more than five years last past has been, engaged in the sale and distribution of tinted or colored enlargements of photographs and snapshots and of frames therefor. Respondent, *Griffin*, causes and at all times mentioned herein has caused said products, when sold, to be transported from the State of Pennsylvania, or other points of origin, to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent, *Griffin*, has been and is now engaged in direct and substantial competition with the various corporations, partnerships, and individuals likewise engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of tinted or colored enlargements of photographs and snapshots and of frames therefor.

PAR. 4. Respondent, *Griffin*, on the one hand, and respondent, *Ries*, on the other hand, in connection with the conduct of the said business of respondent, *Griffin*, for several years last past, have entered into and carried

out agreements with each other involving the use of false, misleading and deceptive acts, methods and practices to induce the purchase of respondent, Griffin's, said products, as more fully hereinafter alleged.

PAR. 5. Respondent, Griffin, trading as Commercial Art Company, and formerly trading as Modern Art Company and American Arts, and operating from the respective addresses, Room No. 407, 929 Fifth Avenue, Pittsburgh, Pa.; 234 West Water Street, Syracuse, N. Y.; 506 The Arcade, Cleveland, Ohio; 929 Fifth Avenue, Pittsburgh, Pa., and 608 Washington Trust Building, Pittsburgh, Pa., and from various other addresses to the Commission unknown, in effecting the sale of said tinted and colored enlargements of photographs or snapshots and of frames therefor, operates and has operated in substance as follows:

1. Respondent, Griffin, trading as aforesaid, sells his products to members of the consuming public through the medium of salesmen or sales representatives appointed by him as agents in his behalf. Said salesmen or sales agents are furnished by respondent with appropriate credentials, order blanks or certificates, or other forms for use in taking orders. Said agents are further equipped with attractive samples of colored enlargements, to be represented by them as having been done by Commercial Art Company or other company allegedly conducted and operated by respondent, Griffin, and to be typical of the fine work done by such companies.

2. The first sales agent engaged in house-to-house canvassing of members of the consuming public approaches the customer for the primary purpose of obtaining an order for a colored enlargement. In pursuance of respondent's sales plan, the contract price asked for an enlargement is to be obtained before there is any mention made of a frame for the enlargement. At no time does the first or contact sales agent make reference to the matter of the purchase of a frame. A customer is shown handsome samples of respondent's work, made from carefully selected photographic subjects, and it is represented that for the sum of \$2.98, or other comparable sum, the agent's company will make the same type and grade of product for the customer.

3. Said product from time to time is represented variously as a "portrait," "hand-painted portrait," "hand painting in oil," "hand-painted portrait on canvas," and as a "silk brocade." It is further represented from time to time by respondent's said sales agents that the "portrait" or "painting" has a regular sales value or price ranging from \$15.00 to \$30.00, or other comparable sum, and that the product is being offered at a "special producing price, unframed," or for a small "producing charge," or that the offer is being made in connection with an "advertising program" to "introduce this grade of art," for the price of \$2.98. From time to time it is represented in the case of children that the "portrait" or "painting" to be made will be entered in a special Blue Ribbon Baby Contest.

4. Having made these or similar representations, in whole or in part, respondent's said sales agents then make request for the inspection of family photographs. A photograph pronounced an excellent subject for a "painting" is finally selected and a loan of the same is made by the customer to the salesman at the latter's request for use in making the "portrait" or "painting." The salesman, if questioned in such connection by the customer, assures the customer that special care will be taken of the photograph and that it will be safely returned to the customer along with the finished "portrait" or "painting."

The first or original contact sales agent taking the order for a "portrait" or "painting" collects part payment thereon, usually a dollar, and departs with the treasured family photograph which has been entrusted to him.

In a few weeks a second sales representative of respondent, designated to the customer as "field artist" and known to the trade as a "verifier" or "proof passer," arrives at the home of the customer with a rough photographic proof of an enlargement, collects the balance due on the picture or "painting," and obtains instruction for the coloring to be employed in making the "painting."

5. In further connection with the sale of colored photographic enlargements, respondent, Griffin's said sales agents on occasion represent and have represented to customers and prospective customers that the company is putting on a special advertising campaign to get the company established in that community, to introduce its product in the community. Respondent's method of so-called advertising in this relation is to induce the customer to take a chance by drawing from a number of envelopes containing slips of paper, on one or more of which appears the word "Special" or equivalent word or term. Respondent's sales agents represent that the customer who is fortunate enough to draw the "lucky" slip of paper or certificate so marked is to receive a hand-painted oil portrait of any snapshot or photograph on a background of canvas or silk or other durable material, "free" except for the incidental sum of \$2.98 representing the alleged expense of handling or a small producing charge. Respondent also represents in this connection that this enlargement is regularly sold at prices ranging from \$15.00 to \$30.00, and when the "draw" has been completed the holder of the "special" or "lucky" slip will be furnished an opportunity to consult with a "field artist" from the company to discuss a sketch made from the photograph and to choose the colors desired. (At various times similar offers are and have been made at different prices.) The said envelopes containing said slips are so manipulated by respondent's said sales representatives that each acceptable customer invariably draws a "lucky" slip of paper or certificate marked "Special" or with some equivalent word or term.

The holders of said "special" certificates or other so-called "lucky" slips are and have been led by the false statements and representations of respondent's said sales agents, and by the "fake" drawing in which the customers were "lucky," to believe that said coupon or certificate places and has placed the holder thereof at a distinct advantage in purchasing a painting or portrait, and such holders are and have been thereby induced to enter into contracts for the purchase of so-called "paintings" or "portraits."

In truth and in fact, said coupon or certificate gives the holder thereof no advantage in price whatsoever, for practically all purchasers are permitted to secure a "lucky" or "special" certificate or "lucky slip" and all purchasers may purchase said "paintings" or "portraits" at the price quoted by respondent in making so-called "special introductory and advertising offer." In truth and in fact, said procedure, known to the trade as the "draw," is merely a sales scheme employed to gain entry into the home of the prospective customer and to secure from the customer a photograph or snapshot, and thus more easily facilitate the sale thereafter of a picture and frame.

6. The so-called "portraits," "paintings," "hand-painted portraits," and "hand paintings in oil," and "hand-painted portraits on canvas" or

"silk" sold and distributed by respondent are not portraits in oil or paintings finished or produced by hand in oil colors, nor are they water color paintings or hand paintings or any work of art produced by the art of drawing, but on the contrary are merely cheap, quickly-made photographic reproductions, costing not more than \$1.25 each, which are tinted or colored by the use of pastel or crayon, water color or other powdered pigments soluble in water, sprayed upon the photographic reproduction in solution, largely through the use of a mechanical device known as an air brush, operated by compressed air. Furthermore, said pictures are not finished on canvas or silk or other durable material, but on cardboard.

In truth and in fact, the so-called tinted or colored photographic reproductions sold and distributed by respondent, Griffin, are different from and greatly inferior in quality, workmanship and appearance to the handsome attractive samples exhibited by respondent's sales representatives when obtaining orders for such products. Further, such products are not sold at an "advertising price," "reduced price," "special introductory price," for the "cost of production" or "absolutely free." Respondent's said colored enlargements do not have any sales price or value of \$15.00 or \$30.00 or other approximate sums, and the sales price of \$2.98 is the regular and customary price for which said products are usually and customarily sold by respondent in the ordinary course of business.

The sales agent represented by respondent, Griffin, to be a "field artist" is not an artist in the sense that such term is ordinarily employed or understood by the public. On the contrary, said so-called "field artist" is nothing more than a follow-up man operating for and on behalf of respondent for the purpose of first collecting any balance due on an enlargement and thereafter selling a frame for such enlargement. Sales contracts obligate the customer to pay \$2.98 when "proof of my portrait is shown." Said contracts also contain the provision, "You are not obligated to order a frame."

Further, in truth and in fact, no arrangement has been entered into or put into operation by respondent, J. Claud Griffin, trading as Commercial Art Company, or trading under any other name, for the conduct of or participation in any baby contest at any time or place, nor for the entry in any baby contest of any colored enlargement sold or attempted to be sold by said respondent Griffin of any child or baby.

7. Having concluded all financial aspects of the transaction relating to the colored enlargement by collecting before the product is completed any balance due thereon, the second sales agent or "field artist" then mentions to the customer for the first time the matter of the sale of a frame for the colored enlargement or "painting." Sales agents are and have been careful to avoid mentioning the matter of a frame until the transaction involving the picture or "painting" has been fully concluded.

Handsome samples of frames for the unfinished, undelivered, paid-for-in-full picture or "painting" are exhibited to the customer. In the event the customer objects to the purchase of a frame, compelling arguments and practices are employed by respondent's said frame salesman. The customer is variously told that the picture will not hold its colors without a frame and will be "no good," that it will be impossible for the customer to buy elsewhere a frame that will fit and protect the picture for the reason that the picture will have a convex surface and will be octagon in shape.

It is in the sale of frames that profit is realized both by respondent and by his said sales agents. No profit is made by respondent in connection

with the sale of a colored enlargement. Prints cost from 20¢ to 22¢ each, the cost of finishing and coloring the enlargement runs from 60¢ up, and the salesman gets \$1.50 commission on each enlargement sold.

On occasion, sales agents of respondent, interested only in the sale of a frame for profit, have refused to deliver the picture or "painting" and to return the original treasured photograph which had been loaned to the salesman by the customer unless a frame is bought and paid for in full. Respondent's said sales agents from time to time, in cases where customers have declined to purchase frames, have advised that pictures ordered would not be completed and that the customer would be unable to obtain the return of his original photograph unless a frame be purchased, and respondent's agents have thereupon left the house of the customer and have not subsequently returned.

From time to time discourteous and abusive language has been applied by respondent's said sales agents to customers refusing to buy a frame, and unless strong outside pressure has been brought to bear, respondent from time to time has failed or refused to finish and deliver pictures and to return family photographs to customers who did not buy a frame. Requests and complaints from customers have remained unanswered by respondent.

Many customers have been willing to lose the \$2.98 paid by them for the unfinished picture if they could only obtain the return of the treasured family photograph loaned by them. Photographs, the return of which in their original condition had been promised and assured, have on occasion been finally returned badly mutilated or in damaged condition to those refusing to buy a frame.

Purchasers are not advised, and there is no such understanding or agreement in connection with contracts for colored enlargements or frames therefor, that the completion and delivery of an enlargement is conditioned upon the prior purchase of a frame therefor; or that the sale of a frame is to be connected with and made a part of the original transaction, involving only the purchase of a colored enlargement; or that photographs or snapshots loaned or submitted by purchasers of colored enlargements are to be retained by respondent pending the purchase of a frame, or until the payment of any sum alleged to be due to respondent from a customer on a frame or otherwise. On the contrary, purchasers are advised by respondent that photographs lent by them to respondent will be returned at the time the finished enlargement is delivered, this without reference to the matter of a frame, and respondent's sales contracts for colored enlargements contain such assurance and pledge. Contract certificates given by respondent to customers in connection with the sale of a colored enlargement contain and have contained the guarantee or pledge;

We guarantee the safe return of your photograph with the finished work.

Respondent further conceals and has concealed from the purchaser at the time the so-called "portrait" or "painting" is ordered the fact that the finished product will be delivered in an unusual octagon shape with a convex surface, and that it will be impossible for the purchaser thereafter to obtain a frame to fit said portrait from any source except from or through respondent at prices fixed by him.

PAR. 6. Respondent, Daniel G. Ries, trading as Progressive Portrait Company, now operates and for several years last past has operated, in the city of Pittsburgh, Pa., from the address Room 407, 929 Fifth Avenue, Pittsburgh, Pa., a place of business for the making and sale of enlarged and

tinted or colored photographs. Pursuant to the arrangement with respondent, J. Claud Griffin, referred to in paragraph 4 of this complaint, respondent, Griffin, has been permitted by respondent Daniel G. Ries to use, and he uses and has used as his business office and address, the Pittsburgh office and business address of said respondent Ries, namely, Room 407, 929 Fifth Avenue, Pittsburgh, Pa.; and respondent, Griffin, in pursuance of such arrangement has printed and employed in connection with the sale of his products, as aforesaid, order blanks, contract forms, advertising certificates, letterheads, receipt books and other forms containing the name and address, Commercial Art Company, Room 407, 929 Fifth Avenue, Pittsburgh, Pa.

In further execution of said arrangements, respondent, Ries, has forwarded to customers of respondent Griffin from the former's address, Room 407, 929 Fifth Avenue, Pittsburgh, Pa., colored enlargements made by respondent, Ries in his studio for customers of respondent, Griffin, and has likewise shipped from his said address, by further arrangement with respondent, Griffin, frames sold by respondent, Ries, to respondent, Griffin, to fit said enlargements. Customers of respondent, Griffin, trading as Commercial Art Company, are communicated with on stationery bearing the address of Room 407, 929 Fifth Avenue, Pittsburgh, Pa.

In buying the said products of respondent, J. Claud Griffin, purchasers and prospective purchasers believe and they have believed that they are and were contracting and dealing with duly constituted representatives or sales agents of an existing studio or art company whose name appears and has appeared on the various contract forms, order blanks, identification certificates, or letterheads employed by respondent, Griffin, and his said sales agents or representatives.

In truth and in fact, the name Commercial Art Company, with the address of Room 407, 929 Fifth Avenue, Pittsburgh, Pa., is merely that of a trade name employed by respondent, Griffin, in connection with the sale of pictures produced for him by respondent, Daniel G. Ries, in the studio actually operated by the latter at the said Pittsburgh address. In truth and in fact, the name of Commercial Art Company is wholly fictitious in that there is not and has not been any art company or studio in operation or existence at the address Room 407, 929 Fifth Avenue, Pittsburgh, Pa., designated Commercial Art Company or otherwise designated, nor at the addresses 234 West Water Street, Syracuse, N. Y., or 506 The Arcade, Cleveland, Ohio, or 608 Washington Trust Building, Pittsburgh, Pa., conducted by respondent, J. Claud Griffin. Said respondent, J. Claud Griffin, whether trading from the addresses Room 407, 929 Fifth Avenue, Pittsburgh, Pa.; 234 West Water Street, Syracuse, N. Y.; 506 The Arcade, Cleveland, Ohio, or 608 Washington Trust Building, Pittsburgh, Pa., or from other addresses or through other names to the Commission unknown, has not owned, operated, or conducted and does not now own, operate or conduct any art studio, institution, or company, or office, or other place of business in Pittsburgh or elsewhere, and has not had any actual or financial interest in any company, association or other enterprise where tinted or colored enlargements of photographs are or were made; and he does not own, operate, or control nor has he owned, operated, or controlled the photographic or other equipment essential to the production of enlargements. Nor has respondent, Griffin, had in his employ under his control and direction any artists, operators, or persons skilled in photographic technique or in the use of the air brush or paint brush, or skilled

in doing the necessary color work incident to the making of said colored photographic enlargements.

PAR. 7. The use by respondent, Griffin, of the aforesaid trade name, Commercial Art Company, and of the Pittsburgh address, Room 407, 929 Fifth Avenue, Pittsburgh, Pa., as the location of an art studio or company allegedly owned and operated by him, or of other trade names and addresses for the purpose herein described, including the use of the name Commercial Art Company and other trade names in sales talks and on contract and other forms by his respective agents and exhibited by them to customers and prospective customers, and the posting at Room 407, 929 Fifth Avenue, by respondent, Daniel G. Ries, of mail and pictures and frames therefor to customers and prospective customers of respondent, Griffin, as herein alleged, has and has had the purpose and capacity and tendency to mislead customers and prospective customers to erroneously believe and they have been led to believe that they were and are contracting and dealing with an established, operating, responsible studio, and that the pictures sold by respondent, Griffin, are high-grade hand-painted portraits, and that the frames therefor are of exceptional value, when such were not the facts, and to cause the public to purchase respondent Griffin's pictures and frames in substantial numbers because of such belief so engendered.

The use by respondents of the acts, practices, and methods aforesaid in connection with the offering for sale and selling of enlargements and frames in said commerce has the tendency and capacity to and does mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid statements, representations, and claims are true, and that said products are of the value and quality indicated. As a result of said erroneous and mistaken belief, a substantial number of the public have purchased said products in said commerce, thereby unfairly diverting trade in said commerce to the respondents from their competitors to the injury of said competitors and the public.

PAR. 8. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 26, 1944, issued and subsequently served its complaint in this proceeding upon the respondents, J. Claud Griffin, individually, and trading as Commercial Art Company, and Daniel G. Ries, individually, and trading as Progressive Portrait 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 by respondent, J. Claud Griffin, of his answer to the complaint (no answer being filed by respondent, Daniel G. Ries), 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 com-

plaint, answer of respondent, Griffin, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions filed by respondent, Griffin, to such report, and brief in support of the complaint (no briefs 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, J. Claud Griffin, is an individual, trading as Commercial Art Company, his present business and post office address being 720 East Diamond Street, Pittsburgh, Pa. He is now, and for a number of years last past has been, engaged in the sale and distribution of colored or tinted enlargements of photographs and of frames for such enlargements.

Respondent, Daniel G. Ries, is an individual, trading as Progressive Portrait Company, with his place of business located at 929 Fifth Avenue, Pittsburgh, Pa. Respondent, Ries, is engaged in the making of colored or tinted enlargements of photographs and in the sale of such enlargements.

PAR. 2. In the course and conduct of his business, respondent, J. Claud Griffin, has caused his products, when sold, to be transported from the State of Pennsylvania and from other States of the United States to purchasers located in various States other than those in which such shipments originated. Respondent Griffin has maintained a course of trade in his products in commerce among and between various States of the United States.

PAR. 3. Respondent, Griffin, sells his products directly to the public through sales agents who make house-to-house calls on prospective purchasers. The agents are supplied by Griffin with order blanks and small photographs or miniatures purporting to be samples of the work done by Griffin. These miniatures represent a high degree of photographic and artistic skill and are very attractive in appearance. After directing the prospective purchaser's attention to the samples, the agent then endeavors to induce the prospect to produce one or more photographs for examination. The photographs produced by the prospect are usually those of members of his family and are highly treasured for sentimental reasons. Upon examining the photographs the agent states that they would make excellent enlargements and assures the prospect that any enlargement ordered would be similar in quality, finish, color, etc., to the miniatures carried by the agent as samples. The agent frequently refers to the proposed enlargement as a "painting" or a "hand painted portrait," stating that the enlargement will be hand painted by artists. A further representation sometimes made is that the price quoted for the enlargement (usually \$2.98) represents a special or introductory offer; that is, a price lower than that at which the enlargements are usually sold. If the agent succeeds in making a sale, he obtains the purchaser's signature to a contract or order form and departs, taking with him the photograph which is to be enlarged. In some instances he collects from the purchaser a part of the purchase price of \$2.98, but this is not required.

A few weeks after the order is obtained a second representative of respondent, Griffin, calls on the purchaser. This representative is known

in the trade as a "proof passer." He exhibits to the purchaser what purports to be a proof in black and white of the proposed enlargement and states that his call is for the purpose of obtaining the necessary color specifications for the finished picture, that is, the color of the subject's hair, eyes, etc. The agent sometimes represents himself to the purchaser as an "artist." After obtaining the color specifications and collecting the agreed purchase price of \$2.98 or such balance thereof as may be due, the proof passer then brings up the subject of a frame for the picture. This is usually the first time the matter of a frame has been mentioned throughout the entire transaction, the subject having been avoided by the first representative, and having also been avoided by the proof passer until after the color specifications have been obtained and the \$2.98 collected.

As a matter of fact, the frame for the picture represents, from Griffin's viewpoint, the vital part of the transaction. The sale of the frame is the end toward which the entire sales scheme is directed. Little or no profit is made by Griffin through the sale of the picture itself, as the expense of making the sale and supplying the picture consumes practically all of the purchase price. On the other hand, the margin of profit on the frames is extremely high, the frames being obtained by Griffin very cheaply and resold to the public at prices ranging from \$5.00 to \$22.00.

If a customer expresses himself as being unwilling to purchase a frame, his attention is directed by the proof passer to the fact that the picture will be finished in an irregular octagonal shape and highly convexed, and that it will therefore be very difficult or impossible for the customer to obtain elsewhere a frame which will fit the picture. By these means a customer is frequently compelled or induced to purchase a frame despite his inclination not to do so. In actual practice respondent, Griffin, takes little or no further interest in the supplying of the picture if the customer refuses to purchase a frame. Unreasonably long delays are frequently encountered by the customer in obtaining the picture and in obtaining the return of the original photograph.

PAR. 4. The representations made by respondent Griffin with respect to his enlargements are false and deceptive. The enlargements are in no way comparable to the miniatures carried by Griffin's agents and exhibited to the public as samples of Griffin's work. The enlargements are in fact of very inferior quality and frequently worthless. They are in no sense paintings or hand painted portraits but are merely cheap photographic enlargements on which little or no hand work is done. The coloring applied to the pictures is sprayed on through the use of a mechanical device known as an air brush which is operated by means of compressed air. The price quoted for the enlargements does not represent in any sense a special or introductory offer but is in fact the price at which the enlargements are regularly offered for sale. The entire sales scheme is deceptive and fraudulent in that, although the scheme has for its ultimate object the sale of a picture frame, such fact is concealed and withheld from the prospective purchaser until after the order for the enlargement has been obtained and the purchase price collected. Also concealed and withheld from the prospective purchaser is the fact that the enlargement will be of an irregular shape, and that it will be difficult or impossible for the purchaser of an enlargement to obtain elsewhere a frame which will fit the picture.

PAR. 5. A further practice on the part of respondent Griffin has been the use of various addresses purporting to represent locations at which he

maintained places of business, but which were in fact merely the addresses of persons or firms engaged in the making of photographic enlargements and frames and from whom Griffin obtained the products which he sold to the public. These addresses appeared on Griffin's contract or order forms along with his trade name, Commercial Art Company, or the name American Arts, which was formerly used by him. One of such addresses was that of respondent Daniel G. Ries at 929 Fifth Avenue, Pittsburgh, Pa. At various times other addresses in Pittsburgh were used by Griffin, as well as addresses in Syracuse, N. Y., and Cleveland, Ohio. These fictitious addresses had the tendency and capacity to mislead the public with respect to Griffin's identity and business status, in that they constituted representations that Griffin maintained a place of business at the address specified. Actually, Griffin had no established place of business at the address given or elsewhere. He did not make any of the photographic enlargements or frames sold by him but was engaged solely in the sale of products obtained from other parties, usually the business concerns located at the addresses used by him. Such concerns permitted the use of their addresses by Griffin as an inducement to him to purchase their products.

PAR. 6. Pursuant to agreement with respondent, Griffin, respondent, Daniel G. Ries, has permitted the use by Griffin of the address at which his photograph enlarging business is located, and has thus aided and cooperated with respondent Griffin in carrying on the practice described in paragraph 5 hereof.

PAR. 7. The acts and practices of the respondents, as herein set forth, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character, quality, and value of the products sold by respondent, Griffin, and with respect to the identity and business status of respondent, Griffin, 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 respondent, J. Claud Griffin, (no answer having been filed by respondent, Daniel G. Ries), 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 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, J. Claud Griffin, individually, and trading as Commercial Art 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 photographic enlargements or reductions and of frames therefor, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondent's photographic enlargements or reductions are paintings or are hand painted.

2. Exhibiting to prospective customers as samples any photographs or pictures which are not in fact representative of the pictures sold by respondent.

3. Representing, directly or by implication, that a picture to be made and delivered will be equal in quality and appearance to any sample displayed to the customer, unless the picture thereafter delivered is in fact of the same quality, design, and workmanship as such sample.

4. Representing, directly or by implication, that the price at which any of respondent's products is offered for sale represents a special or introductory offer or a reduced price, when such price is in fact the customary price at which such product is regularly sold.

5. Concealing from or failing to disclose to customers at the time pictures are ordered that the finished picture will be so shaped and designed that it can be used only in an odd-style frame which cannot ordinarily be obtained in stores accessible to the consuming public, and that it will be difficult or impossible to obtain a frame to fit the picture from any source other than respondent.

6. Using addresses purporting to represent the location at which respondent maintains his business, unless respondent does in fact maintain a place of business at the address specified; or otherwise misrepresenting respondent's identity or business status.

It is further ordered, That respondent, Daniel G. Ries, individually, and trading as Progressive Portrait 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 by respondent, J. Claud Griffin, in commerce, as "commerce" is defined in the Federal Trade Commission Act, of photographic enlargements or reductions and of frames therefor, do forthwith cease and desist from:

Representing or cooperating in the representation that his business address is that of respondent, J. Claud Griffin, unless respondent, Griffin, does in fact maintain a place of business at said address; or otherwise cooperating with respondent, Griffin, in misrepresenting his identity or business status.

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.

IN THE MATTER OF
COAST FISHING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5197. Complaint, July 27, 1944—Decision, Mar. 26, 1945

Where a corporation engaged in the packing and interstate sale and distribution of canned tuna, sardines, mackerel and other sea food products to buyers including those who—designating themselves as “brokers,” “merchandise brokers” or “speculative brokers”—customarily placed orders only with those sellers who would grant and pay them commissions or brokerage fees on their own purchases, some of whom distributed them under their own private brands, and who, masking their buying operations under the aforesaid fictional designations to collect commissions or brokerage fees from said corporation and other sellers, invoiced and sold in their own names for their own accounts at their own prices and on their own terms, and assumed full and complete credit risks—

Paid and granted commissions or brokerage fees to buyers of its sea food products on their own purchases, as above illustrated:

Held, That such payments were in violation of subsec. (c) of sec. 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Mitchell, Silberberg & Knupp, of Los Angeles, Calif., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, Coast Fishing Company, is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 621 S. Fries Avenue, Wilmington, Calif.

PAR. 2. Respondent, Coast Fishing Company, is now engaged and for many years prior hereto, has engaged in the business of packing, distributing, and selling canned tuna, canned sardines and canned mackerel and other sea food products (all of which are hereinafter called sea food products) in its own name and for its own account for resale directly to buyers located in States other than the State in which the respondent is established. As a result of respondent's instructions, such sea food products are shipped and transported across State lines to such buyers who are located in various States of the United States, other than the State where the respondent is established.

The respondent, to distinguish its sea food products from the sea food products sold by competitors, and to facilitate sales, utilizes registered and

unregistered trade-marks and brands for the various types and grades of sea food products it sells. Among and representative of respondent's well-known brands are:

Coast, Treasure, Abbey Biltmore, Satisfaction, Wave Kissed, King Solomon, Lucky Strike, Flakies.

PAR. 3. The respondent, since June 19, 1936, in connection with the interstate sale and distribution of sea food products has been and is now paying or granting or has paid or granted, directly or indirectly, commissions, brokerage or other compensation or allowances or discounts in lieu thereof to buyers of said sea food products sold under its own labels, unlabeled and under buyers' labels.

PAR. 4. The respondent, since June 19, 1936, has distributed and sold and distributes and sells sea food products directly to certain buyers in interstate transactions as aforesaid and has paid to such buyers commission or brokerage fees on purchases made by them in their respective names and for their respective accounts. The respondent's method of distribution and sale, as hereinafter illustrated, is representative of the sales methods of a number of West Coast distributors.

The respondent's buyers customarily designate themselves as "brokers," "merchandise brokers," or as "primary distributors," although they are known to the trade as "buying brokers" or "speculative brokers." Such "buying brokers" or "speculative brokers" customarily operate by placing orders for merchandise with those sellers, and only with those sellers, who will grant and pay them commissions or brokerage fees on their own purchases. Some such buyers are large scale buyers and sellers of sea food products distributed under their own private brands, which brands usually show the name and address of the buyer, but not of the packer, and identify the merchandise as being the product of the particular buyer who owns the label.

Some such buyers customarily purchase their private brand sea food products from respondent and many other sellers and often during a given season, after shopping the market, will purchase such commodities under the same private brands from several competing sellers, placing their orders where they are able to secure the most favorable prices and terms.

Such buyers place their orders for merchandise with respondent and other sellers, who, on receiving and accepting such orders, deliver the merchandise to a common carrier for delivery, but require that the buyer pay the purchase price as a condition precedent to the delivery of the merchandise. If such merchandise is lost or damaged in transit, such buyers file claims in their own names and collect damages from the carrier for their own account.

On receipt of the merchandise, such buyers insure such merchandise and warehouse it in their own warehouses or in public warehouses, and thereafter generally utilize the warehouse receipts covering the merchandise, together with the insurance contract, as collateral or security to obtain bank loans.

Such buyers mask these operations under the fictionalized designation of "brokers," "merchandise brokers," or "primary distributors," for the sole purpose of coloring the name and method of their operation in order to collect commissions or brokerage fees from respondent and from other sellers who will pay such buyers commissions or brokerage fees on their own purchases, notwithstanding the fact that it is well known to be the custom of such buyers to invoice and sell such merchandise in their own

names, for their own accounts, at their own prices, and on their own terms, and to assume full and complete credit risks.

PAR. 5. The acts and practices of the respondent in promoting sales of sea food products by paying to buyers, directly or indirectly, commissions, brokerage or other compensation and allowances or discounts in lieu thereof, as set forth above, are 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 an act of Congress approved June 19, 1936, (the Robinson-Patman Act—U.S.C. Title 15, Sec. 13) the Federal Trade Commission on July 27, 1944, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging said respondent with violation of the provisions of subsection (c) of section 2 of said Clayton Act as amended. After the issuance of said complaint, the respondent in due course filed its answer admitting all material allegations of fact set forth in said complaint but stating that the acts and practices complained of were discontinued prior to the issuance of said complaint. Thereafter, respondent waived further hearing as to the facts, the filing of briefs, and oral argument. Thereupon, this matter regularly 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. Respondent, Coast Fishing Company, is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 621 South Fries Avenue, Wilmington, Calif.

PAR. 2. Respondent, Coast Fishing Company is now, and for many years last past has been, engaged in the packing, sale, and distribution of canned tuna, canned sardines, canned mackerel, and other sea food products (all of which are hereinafter frequently referred to as sea food products). Pursuant to sales made, respondent causes its products to be transported from its place of business to the purchasers at their various points of location in States other than the State in which the shipment originated, and maintains, and has maintained, a course of trade in such products in commerce, as "commerce" is defined in the said Clayton Act as amended.

PAR. 3. Since June 19, 1936, respondent has sold and distributed sea food products directly to certain buyers in commerce as aforesaid, and has paid to such buyers commissions or brokerage fees on the purchases made by them in their respective names and for their respective accounts. Some of the buyers who purchased sea food products from respondent designate themselves as "brokers," "merchandise brokers," or "primary distributors," although they are known to the trade as "buying brokers" or "speculative brokers." Such buying "brokers" or "speculative brokers" customarily operate by placing orders for merchandise with those sellers,

and only with those sellers, who will grant and pay them commissions or brokerage fees on their own purchases. Some of such buyers are large-scale buyers and sellers of sea food products which they distribute under their own private brands, which brands usually show the name and address of the buyer, but not of the packer, and identify the merchandise as being the product of the particular buyer who owns the label. Some of the "buying brokers" or "speculative brokers" customarily purchase their private-brand sea food products from respondent and from other sellers, and often during a given season, after shopping the market, will purchase such commodities under their same private brands from several competing sellers, placing their orders where they are able to secure the most favorable prices and terms. Respondent has sold its sea food products to some of such purchasers under the buyer's private label although it has its own trade-marks and brands which it customarily places on its products to identify and distinguish them from the products of others.

PAR. 4. Some "buying brokers" or "speculative brokers" place their orders for merchandise with respondent and other sellers, who, on receiving and accepting such orders, deliver the merchandise to a common carrier but require that the buyer pay the purchase price as a condition precedent to the delivery of the merchandise. If such merchandise is lost or damaged in transit, such buyers file claims in their own names and collect damages from the carrier for their own account. On receipt of the merchandise, such buyers insure and warehouse it in their own warehouses or in public warehouses and thereafter generally utilize the warehouse receipts covering the merchandise, together with the insurance contract, as collateral or security to obtain bank loans. Such buyers mask these buying operations under the fictional designation of "brokers," "merchandise brokers," or "primary distributors" for the sole purpose of coloring their method of operation in order to collect commissions or brokerage fees from respondent and from other sellers who will pay commissions or brokerage fees on such buyer's own purchases, notwithstanding the fact that it is well known to be the custom of such buyers to invoice and sell such merchandise in their own names, for their own accounts, at their own prices, and on their own terms, and to assume full and complete credit risks.

CONCLUSION

The aforesaid acts and practices of respondent in paying and granting commissions or brokerage fees to buyers of its sea food products on their own purchases of said commodities, as hereinbefore illustrated, constitute violations by said respondent of the provisions and 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, the answer of respondent admitting the material allegations of fact set forth in said complaint, and a waiver of 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 subsection (c) of section 2 of "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15,

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1914, (the Clayton Act) as amended by an act of Congress approved June 19, 1936, (the Robinson-Patman Act—U.S.C. Title 15, Sec. 13).

It is ordered, That respondent, Coast Fishing Company, a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the sale and distribution of sea food products or other merchandise in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying or granting, directly or indirectly, anything of value as a commission or brokerage, or any compensation, allowance, or discount in lieu thereof to any purchaser upon purchases for his own account, or to any agent, representative, or other intermediary acting in fact for or in behalf of or subject to the direct or indirect control of the purchaser to whom sale is made.

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

Complaint

IN THE MATTER OF
 LONDON HANDKERCHIEF COMPANY, INC. AND
 HARRY STEINBERG

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

Docket 5212. Complaint, Sept. 2, 1944—Decision, Mar. 26, 1945

Where a corporation and its president and principal stockholder, engaged in the interstate sale and distribution to wholesalers and retailers of handkerchiefs, which were seconds, rejects or irregulars of inferior quality, badly cut and imperfectly sewed and of a retail value considerably less than the price charged therefor—

- (a) Sold said handkerchiefs so packed in a sealed carton bearing the legends "Send a Hank to a Yank" and "Serving those who Serve," that they were not visible to purchasers and no opportunity was afforded to observe their quality; and
- (b) Represented thereby, and through furnishing to dealers display posters bearing the legend: "Hanks for Yanks," "6 large cotton handkerchiefs packaged, ready for mailing, no wrapping no stamp necessary" and a depiction of the package, and through advertisements in trade journals in effect so stating, that said handkerchiefs were of good quality, well made and long wearing and comparable to others usually sold at the same or similar price;

With the effect of misleading dealers and members of the purchasing public, with the result that such members, and especially relatives and friends of the armed services purchased said products, and with the effect of thereby placing in the hands of dealers and retailers means of misleading and deceiving such members, and with tendency and capacity to cause them to purchase substantial quantities of said products:

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

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 London Handkerchief, Inc., a corporation, and Harry Steinberg, an individual, and the president of London Handkerchief 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, London Handkerchief Company, Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 9 East 38th Street in the city of New York, N. Y.

Respondent, Harry Steinberg, is president and principal stock holder of respondent corporation, London Handkerchief Company, Inc., and formulates, controls and directs its policies and practices. Respondent, Harry

Steinberg, has his offices at the same address as that of corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution of handkerchiefs to wholesale dealers and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondents cause and have caused said handkerchiefs when sold to be transported from their place of business in the city of New York, N. Y., to purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. There is now and has been for more than one year last past a course of trade by respondents in said handkerchiefs in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as described in paragraph 2 hereof respondents have used the following method of selling and furthering the sale of their handkerchiefs:

Six of said handkerchiefs are packed in a sealed carton bearing the legends "Send a Hank to a Yank," and, "Serving those who Serve" and these packages are sold to dealers for resale to the purchasing public. The manner or packing said handkerchief is such that they are not visible to purchasers or prospective purchasers, and they are afforded no opportunity to observe the quality of said handkerchiefs.

Respondents furnish to said dealers display posters advertising said packages of handkerchiefs bearing the following legend, "Hanks for Yanks," "6 large cotton handkerchiefs packaged, ready for mailing no wrapping no stamp necessary"; and a depiction of the package of handkerchiefs.

Respondents have also in printed advertisements published in trade journals having a general circulation, published the following statement.

Khaki Hanks for the Yanks * * * As usual Hank is on the job providing Khaki handkerchiefs for the men in the service. Here is a timely promotion, 6 large long wearing Khaki handkerchiefs specially packaged in a self mailing service gift box.

Feature this new gift box display it prominently. Make it easy to send "Hanks to Yanks."

London Handkerchief Co., Inc.

PAR. 4. By the use of these methods of packaging their handkerchiefs, and by the use of the above quoted statements in their advertising, respondents cause the dealers and members of the purchasing public to believe that their handkerchiefs are of good quality, well made and long wearing, and comparable to other handkerchiefs usually sold at the same or similar price.

In truth and in fact, the handkerchiefs so packed and sold by respondents are seconds, rejects or irregulars, of inferior quality, badly cut and imperfectly sewed, and have a retail value considerably less than the price charged by respondents.

Members of the purchasing public especially relatives and friends of members of the armed services purchase respondents handkerchiefs as packaged and sold by them, in the belief that said handkerchiefs are well made, long wearing, and of good quality, and of the value indicated by their price. Respondents thus place in the hands of dealers the means of deceiving and misleading members of the purchasing public.

PAR. 5. The use by respondents of the aforesaid misleading and deceptive acts and practices has the tendency and capacity to cause members of the purchasing public to purchase substantial quantities of respondents handkerchiefs.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 2, 1944, issued and subsequently served its complaint in this proceeding upon respondent, Harry Steinberg, an individual, charging him with the use of unfair and deceptive acts and practices in commerce. After the issuance of said complaint and the filing of the answer of respondent, Harry Steinberg, the Commission, by order entered herein, granted the motion of said respondent for permission to withdraw his answer and to substitute an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and said substitute answer of respondent, Harry Steinberg; 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, London Handkerchief Company, Inc., was, until its dissolution early in 1944, a corporation, organized and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 9 East Thirty-Eighth Street, New York, N. Y.

(b) Respondent, Harry Steinberg, an individual, with offices at 9 East Thirty-Eighth Street, New York, N. Y., was president and principal stockholder of London Handkerchief Company, Inc. He formulated, controlled, and directed the policies and practices of said company, and he and the company acted together and in cooperation with each other in doing the acts and things hereinafter found.

PAR. 2. For a substantial period of time respondents were engaged in the sale and distribution of handkerchiefs to wholesale and retail dealers located at points in various States of the United States and in the District of Columbia. Respondents caused said handkerchiefs, when sold, to be transported from their place of business in New York, N. Y., to purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia, and maintained a course of trade in said handkerchiefs in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of the aforesaid business, respondents used the following method of selling and furthering the sale of their handkerchiefs: Six of said handkerchiefs were packed in a sealed carton bearing

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the legends "Send a Hank to a Yank," and "Serving those who serve," and these packages were sold to dealers for resale to the purchasing public. The manner of packing said handkerchiefs was such that they were not visible to purchasers or prospective purchasers and no opportunity was afforded purchasers to observe the quality of said handkerchiefs. Respondents, in advertising said packages of handkerchiefs, furnished to dealers display posters bearing the following legend: "Hanks for Yanks," "6 large cotton handkerchiefs packaged, ready for mailing, no wrapping, no stamp necessary," and a depiction of the package of handkerchiefs. Respondents also published the following statement in printed advertisements in trade journals having a general circulation:

Khaki Hanks for the Yanks * * * As usual Hank is on the job providing Khaki handkerchiefs for the men in the service. Here is a timely promotion, 6 large long wearing Khaki handkerchiefs specially packaged in a self mailing service gift box.

Feature this new gift box display it prominently. Make it easy to send "Hanks to Yanks."

London Handkerchief Co., Inc.

PAR. 4. By the use of the aforesaid method of packaging their handkerchiefs and by the use of the above-quoted statement in their advertising, respondents caused dealers and members of the purchasing public to believe their handkerchiefs were of good quality, well made and long wearing, and comparable to other handkerchiefs usually sold in the same or similar price. In truth and in fact, the handkerchiefs so packed and sold by respondents were seconds, rejects, or irregulars, of inferior quality, badly cut and imperfectly sewed, and of a retail value considerably less than the price charged by respondents. Members of the purchasing public, especially relatives and friends of members of the armed services, purchased respondents' handkerchiefs as packaged and sold by them in the belief that said handkerchiefs were well made, long wearing, of good quality, and of the value indicated by their price. Respondents thus placed in the hands of dealers and retailers means of deceiving and misleading members of the purchasing public.

PAR. 5. The use by respondents of the aforesaid misleading and deceptive acts and practices has had the tendency and capacity to cause members of the purchasing public to purchase substantial quantities of respondents' handkerchiefs.

CONCLUSION

The aforesaid 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.

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 individual respondent, Harry Steinberg, in which answer said respondent admitted all the material allegations of fact set forth in said complaint and waived 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 respondent, Harry Steinberg, 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 handkerchiefs, do forthwith cease and desist from:

1. Selling or distributing handkerchiefs which are seconds, rejects, or irregulars, so packaged as not to be readily subject to inspection by the purchaser, without clearly disclosing on such package that the handkerchiefs are seconds, rejects, or irregulars.

2. Representing, directly or by implication, that handkerchiefs which are seconds, rejects, or irregulars are well made or good quality handkerchiefs.

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

It is further ordered, In view of the dissolution of the corporate respondent, London Handkerchief Company, Inc., that the complaint herein be, and the same hereby is, dismissed as to said respondent.

IN THE MATTER OF

MAY GOLDBERG, TRADING AS NORMAN COMPANY,
AND SAMUEL J. GOLDBERG

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

Docket 3812. Complaint, Jan. 28, 1942—Decision, Mar. 29, 1945

Where two individuals engaged in competitive interstate sale and distribution of lamps, shades and novelties; in selling and distributing their merchandise by devious methods—

- (a) Forwarded small orders of merchandise, charges for which usually amounted to less than \$25, to various department stores and other similar organizations, without having received orders therefor, selecting in many cases as prospective consignees stores which maintained a resident buying agent in New York City, and usually advised those concerned, when a shipment was questioned, that the order had been placed by the local resident buyer and was on file and, in the event the copy thereof was demanded either by the consignee or the buying agent, maintained that they had it while making use of various excuses and delays for their failure to produce it;
- (b) Usually refused to accept the return of such merchandise which consignees refused to accept, and threatened such consignees with legal action for failure to accept the same; and
- (c) In other cases, accepting return of the merchandise, made claims upon the consignee for transportation charges, breakage etc.;

With the result that purported consignees, in many cases, accepted and paid for such merchandise on the assumption that it had been properly ordered; in others paid therefor because of threats of legal action and to avoid expensive litigation on such small amounts; and in some instances—upon being advised that it had been refused by said individuals when returned and would be sold by the transporting agent for charges—accepted and paid therefor rather than continue the controversy; and

- (d) In cases where payment was refused by the consignee, in addition to sending various demands for payment, also sent letters purporting to be written by a collection agency, demanding payment, and represented that such accounts had been insured and were being turned over to their surety company for attention;

The facts being they did not so insure any of their accounts nor did they obtain the services of any bona fide collection agency to enforce collections, but, instead, purchased such purported letters from collection agencies in blank and filled in and mailed them without any further connection or service of such agencies; and while suit was threatened in many cases, in no instance, in so far as appeared, was suit ever filed to recover payment on such alleged purchases;

With capacity and tendency to mislead and deceive a substantial number of retail dealers, and to induce them to purchase their said products under the erroneous belief that such products had actually been ordered, or in order to avoid the expense and inconvenience of threatened litigation, whereby trade was diverted unfairly to them from competitors who did not engage in similar practices:

Held, That said acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and of their competitors, and constituted unfair

¹ Amended.

methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Lewis C. Russell*, trial examiner.
Mr. Karl Stecher for the Commission.

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 May Goldberg, trading under the name Norman Company, and Samuel J. Goldberg, 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, May Goldberg, is an individual, doing business under the trade name of Norman Company, with her principal place of business and general office at 169-173 Madison Avenue, or at 43 West 16th Street, in the city of New York, State of New York. Respondent, Samuel J. Goldberg, is the husband of May Goldberg and actively participated as a principal in the acts and practices hereinafter complained of and in the operation of the business hereinafter described. Respondents, trading under the name Norman Company, are now and have been for several years heretofore, engaged in the business of selling and distributing, among other items of merchandise, lamps, shades and novelties. Respondents have caused, and do cause, said products to be transported from their place of business in New York to the purchasers or purported purchasers thereof located at points in the States of the United States other than the State of New York.

PAR. 2. The respondents have been and are now engaged in substantial competition in the sale and distribution of said lamps, shades and novelties with corporations and with partnerships and with other individuals likewise engaged in the business of selling and distributing similar and other articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents have from time to time shipped such merchandise to various individuals, partnerships and corporations without having previously received orders therefor from said purported purchasers. In their correspondence with a purported purchaser respondents have contended that said merchandise was shipped in response to an order from the purported purchaser or its agent or representative. Respondents have in a large percentage of such instances refused to accept the return of said merchandise from the purported purchaser, insisting that the same should be kept and paid for by said purported purchaser. In many instances in which merchandise has been returned by the purported purchaser and accepted by the respondents, claims of various sorts covering transportation charges, breakage, etc., have been made against the purported purchaser.

In some instances, in their attempt to enforce payment for their merchandise or their claims, respondents have sent form letters of a collection agency to the purported purchasers. In other instances, respondents have threatened to turn the matter over to their surety company, which alleg-

edly guarantees all of their accounts, for collection by legal proceedings if necessary.

On their letterheads, directly under the name Norman Company, respondents have printed the word "manufacturers," thereby representing to the public that the lamps, shades and novelties which they offer for sale and sell are manufactured by them.

PAR. 4. In truth and in fact, respondents have no orders for the merchandise sent out to purported purchasers in the manner set forth herein. The purpose of respondents is, through means of threats, coercion and annoyance, to induce the purported purchaser to accept and pay for the merchandise rather than submit to the annoyance of the interminable correspondence and threats in which respondents indulge.

The form letters which appear to be sent to the purported purchasers by a collection agency are purchased by respondents in blank and the name inserted thereon by them. Said purported purchasers are thus induced to believe that the letters are sent to them by a bona fide collection agency, when in truth and in fact the senders of said letters are the respondents.

In truth and in fact, respondents have no intention of turning any of their claims over to a surety company for collection as threatened in their letters and no such surety company is employed by them.

In truth and in fact, respondents are not the manufacturers of the merchandise which they offer for sale and sell.

PAR. 5. The use by the respondents of the acts and practices hereinabove described has had, and now has, the capacity and tendency to, and does, mislead a substantial number of retail dealers and induce them to purchase respondents' products under the erroneous belief that such products have actually been ordered, or in order to avoid the expense and inconvenience of threatened litigation.

As a consequence thereof, trade has been and is unfairly diverted to respondents from their competitors who are also engaged in the sale and distribution of lamps, shades and novelties in commerce among and between the various States of the United States who do not engage in similar practices to induce the purchase of their products. As a result thereof, injury has been and is being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 8, 1939, issued, and subsequently served, its complaint in this proceeding upon the respondents, Norman Company, a corporation, and Samuel J. Goldberg, Mrs. May Goldberg, Edward Koplin, and Max Feder, individually, and as officers of said corporation, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint, 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, it appearing to the Commission from said testimony and other evidence that the Norman Company was not a corporation but, instead, was a trade name used by May Goldberg and that the respondents, Edward Koplin and Max Feder, had no connection with said business, the Commission on October 14, 1941, issued its order upon the respondents, May Goldberg and Samuel J. Goldberg, to show cause why an amended complaint should not issue to conform to the proof and the testimony and other evidence heretofore introduced should not be considered to the same extent and effect as if taken under said amended complaint.

Thereafter, this matter having come on to be heard by the Commission upon said order to show cause and answer of the respondent, May Goldberg, the Commission on January 28, 1942, issued its order directing that an amended complaint issue and that the testimony and other evidence heretofore taken be considered in support thereof and in opposition thereto to the same extent and effect as if said proof had been offered and received under such amended complaint; and said amended complaint was duly issued and served upon said respondents, May Goldberg and Samuel Goldberg. Thereafter, the proceeding regularly came on for final hearing before the Commission on said amended complaint, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, supplemental report of the trial examiner, and brief and supplemental brief filed in support of the complaint (no briefs having been filed by respondents or oral argument requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, May Goldberg, and Samuel J. Goldberg, her husband, are individuals, engaged in the sale and distribution of merchandise under the trade name of Norman Company, which trade name is registered under the name of May Goldberg as sole proprietor. Said respondents maintain their principal place of business at 169-173 Madison Avenue in the city of New York and State of New York. The respondent, May Goldberg, was in charge of the finances of the business, and the respondent, Samuel J. Goldberg, was in charge of the operation of the business, taking care of the hiring of employees, soliciting business, and filling of orders. In the course and conduct of said business, when occasion arose, May Goldberg signed correspondence under the names "M. Goldberg" and "M. Feder."

PAR. 2. The respondents, May Goldberg and Samuel J. Goldberg, have, for several years last past, been engaged in the business of selling and distributing, among other items of merchandise, lamps, shades, and novelties, and cause such products, when sold, to be 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 said products in commerce among and between the various States of the United States.

PAR. 3. The respondents have been, and are, engaged in substantial competition in the sale and distribution of said lamps, shades, and novel-

ties with other individuals and with partnerships and corporations engaged in the business of selling and distributing similar and other articles of merchandise in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their aforesaid business, the respondents, May Goldberg and Samuel J. Goldberg, were engaged in the sale and distribution of their merchandise by devious methods consisting principally of forwarding small orders of merchandise to various department stores and other similar organizations without having received an order for such merchandise. In many cases, the respondents selected as prospective consignees of their shipments, department stores and other similar places of business that maintained a resident buying agent in the city of New York. When such merchandise was received by these consignees, in many cases the absence of a purchase order was overlooked or it was assumed that the purchase had been made by the resident buying agent in New York. In those cases where the shipment was questioned and request made of the respondents as to the authority under which the merchandise was shipped, such parties were usually advised that the order had been placed by the local resident buyer in New York and that the respondents had such order on file. In the event a copy of the order was demanded, either by the consignee or the resident buying agent, the respondents maintained that they had such order, but by means of various excuses and delays failed to produce such order for inspection. In those cases where the consignee refused to accept such shipments because of the absence of prior order and returned the merchandise to the respondents, the respondents usually refused to accept the return of the merchandise and entered into an interchange of correspondence threatening such consignee with suit or other legal action for failure to accept such shipments. In other cases, the respondents accepted return of the merchandise and made claims upon the consignee for transportation charges, breakage, etc.

The amount charged by the respondents for the merchandise shipped in this manner without order usually amounted to less than \$25. In many cases, the purported consignee accepted and paid for such merchandise under the assumption that it had been properly ordered. In other cases, such consignees paid for such merchandise because of threats of legal action on the part of the respondents and in order to avoid expensive litigation on such small amounts. In some instances, such consignees, upon being advised that shipment had been refused by respondents when returned and would be sold by the transporting agent for charges, accepted and paid for such shipments rather than continue further controversy as to the existence or nonexistence of an order for the merchandise. In those cases where payment was refused by the consignee, the respondents, in addition to sending various demands for payment, also forwarded letters purporting to be written by a collection agency, demanding payment, and also represented that such accounts had been insured and were being turned over to their surety company for attention. The respondents did not so insure any of their accounts nor did they obtain the services of any bona fide collection agency to enforce collection of their accounts, but, instead, such purported letters from collection agencies were purchased by the respondents in blank and filled in and mailed out by the respondents without any further connection or service of such collection agency. Although suit was threatened in many cases, the Commission finds no instance in which the respondents ever filed suit to recover payment on such alleged purchases.

PAR. 5. The use by said respondents of the aforesaid acts and practices has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of retail dealers and to induce them to purchase said respondents' products under the erroneous belief that such products have actually been ordered or in order to avoid the expense and inconvenience of threatened litigation. As a direct result thereof, trade has been diverted unfairly to the said respondents from their competitors who are also engaged in the sale and distribution of similar products in commerce among and between the various States of the United States and who do not engage in similar practices to induce the purchase of their products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, testimony and other evidence in support of the amended complaint and in opposition thereto taken before a trial examiner of the Commission theretofore duly designated by it, report and supplemental report of the trial examiner upon the evidence and exceptions filed thereto, and brief and supplemental brief filed in support of the complaint; and the Commission having made its findings as to the facts and its conclusion that said respondents, May Goldberg and Samuel J. Goldberg, individually and trading as Norman Company, have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, May Goldberg, an individual, and Samuel J. Goldberg, an individual, trading under the name of Norman Company or any other trade name, and their representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of lamps, shades, novelties, and other items of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Shipping or delivering their merchandise to department stores and other retailers without previous order or agreement to purchase, for the purpose of inducing the purchase of their said products through mistake.
2. The use of threats of legal action, demand letters purporting to be from the collection agencies, and other forms of coercion to induce a consignee to accept and pay for merchandise which had not been ordered or shipped under an agreement to purchase.
3. Representing that the accounts of the respondents are insured or that claims based upon refusal to accept merchandise not previously ordered will be turned over to a surety company for collection.
4. Refusing to accept return of merchandise shipped by respondents without bona fide order or previous agreement to purchase.

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5. Making false claim for damages on merchandise returned by consignees to whom merchandise was shipped without order or other agreement to purchase.

It is further ordered, That the respondents, Samuel J. Goldberg and May Goldberg, 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

SOLOMON A. BORTZ

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

Docket 4961. Complaint, May 11, 1943—Decision, Mar. 29, 1945

Where an individual engaged under various trade names, as below set forth, in interstate sale and distribution of post cards and other printed material for obtaining by subterfuge address, employer and other information about delinquent debtors, including folders made up of a card with space for address of the person from whom information was sought and an information return post card addressed to him under one of said trade names;

Making use of a plan under which he printed a number identifying the particular credit or collection agency purchaser on information return cards, and forwarded the folders to the purchaser, and the latter stamped and addressed the address card to the debtor at his last known address, and returned the complete units for mailing to said individual, who in due course forwarded to the particular purchaser the information supplied by the addressee recipient on the return cards —

- (a) Represented directly and by implication through use of the trade name "Susquehanna Pen Co." that he was in the business of selling and distributing pens; and,
- (b) Represented through said cards and placed in the hands of his customers a means of representing, to the recipients thereof, that pens were being offered them free as an introductory offer by the Advertising Department of the Susquehanna Pen Co.;

The facts being he was not thus engaged; the pens supplied to the recipients of the cards were of very cheap construction, costing him approximately 80 cents a gross; and the whole scheme was merely a subterfuge for obtaining information;

- (c) Represented through use of the trade name "Trust Service Co.," that he was engaged in the administration of trust estates or that his business bore some relation to trusts; and
- (d) Represented through statements on folders issued under the trade name "Bortz & Co." and others issued under the name "Trust Service Co.," that he was engaged in locating missing heirs, recovering unclaimed assets for the true owners thereof, checking titles to real estate, and handling estates, and that the person concerning whom information was sought had or might have an interest in an estate or land, which would be of financial benefit to him;

The facts being that said trade names were used by him as a subterfuge, and the folders and other printed matter had as their sole purpose the obtaining of information about the recipients to facilitate the collection of alleged delinquent accounts by his customers;

With capacity and tendency to engender in the minds of a substantial number of persons, the erroneous belief that the aforesaid post cards, folders, and other printed matter were sent them for the purpose of determining whether or not they had an interest in some estate or property, or for the purpose of introducing pens under an advertising campaign; and to cause such persons, by reason thereof, to give information which they would otherwise not 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. Miles J. Furnas*, 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 Solomon A. Bortz, an individual, 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, Solomon A. Bortz, is an individual, trading under the names Bortz & Company, Trust Service Company and Susquehanna Pen Company, with his principal office and place of business located at Anderson, Ind.

PAR. 2. Respondent is now, and for more than four years last past has been, engaged in the sale and distribution of postcards, envelopes, form letters and other printed material designed and intended to be used by creditors, collection agencies and attorneys in obtaining information concerning delinquent debtors. Respondent causes the said postcards, envelopes, form letters and other printed material to be transported from his aforesaid place of business in Anderson, Ind., to purchasers thereof located 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 postcards, envelopes, form letters and other printed material 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 when using the name "Susquehanna Pen Company" are in the form exemplified by a photostatic copy thereof marked Exhibit A; when using the name "Bortz & Company" are in the form exemplified by a photostatic copy thereof marked Exhibit B. The said form letters sold and distributed by respondent when using the name "Trust Service Company" are in the form exemplified by a photostatic copy thereof marked Exhibit C. The said Exhibits A, B and C are attached hereto, and by this reference are incorporated herein and made a part hereof.¹

PAR. 4. In the space opposite "This is your No." on the cards exemplified by Exhibit A, in the space opposite "File No." on the cards exemplified by Exhibit B, and in the space below "Please Refer to File Number" on the letter exemplified by Exhibit C, respondent places numbers, which are his code numbers and identify his customers to him.

Respondent's customers address the cards to the persons concerning whom information is sought, at their last known address, attach the postage necessary for their delivery to such persons, and cause the cards to be delivered to respondent at Anderson, Ind.

Respondent's customers insert in the appropriate spaces in the form letters the names and last known addresses of the persons concerning whom information is sought and cause them to be signed by some individual. The letters are then placed in stamped envelopes, purchased from respondent, addressed to such persons, together with a reply envelope addressed to:

• Trust Service Co.
Williams Bldg.
Anderson, Indiana.

¹ See pages 311, 312, and 313.

Such reply envelopes sometimes are, and sometimes are not, stamped by respondent's customers; they are purchased by respondent's customers from him.

Said customers, thereafter, cause the envelopes, addressed to the persons concerning whom information is sought, and the enclosures to be delivered to respondent at Anderson, Ind.

After receipt by respondent from his customers of the said cards and letters, respondent causes them to be deposited in the United States mail.

Such of the return postcards and form letters as are filled out and mailed by the recipients thereof are received by respondent, the customers identified by the code numbers, and sent by him to the customers so identified.

Respondent in the past has sent to many of those who returned the "Susquehanna Pen Company" card a cheap pen of Japanese manufacture.

PAR. 5. By means of the "Susquehanna Pen Company" cards, respondent has falsely represented and placed in the hands of his customers means of falsely representing, directly and by implication, to the recipients of said cards that the pens referred to were of such a character that the friends and fellow employees of the recipients might be interested in the purchase thereof, and that respondent's proposal was made in order to introduce his pens to prospective purchasers and as a means of advertising the same.

PAR. 6. Through the use of the name "Susquehanna Pen Company" respondent has represented, directly and by implication, that he is in the business of selling and distributing pens.

PAR. 7. The said representations were false and misleading. In truth and in fact, the pens sent by respondent to those who returned the "Susquehanna Pen Company" cards were of the cheapest description and not of such a character as to be of any possible interest to persons to whom they might be exhibited, and were not sent as a means of getting their merits before possible purchasers. The said cards were not sent as a method of promoting the sale of pens, but have as their sole purpose the obtaining of information about the recipients. The whole scheme was merely a subterfuge for obtaining information, and the said name is merely a disguise for the true nature of the business.

PAR. 8. By means of the "Bortz & Company" cards and "Trust Service Company" letters and envelopes respondent has represented, and placed in the hands of his customers, means of falsely representing, directly and by implication, to the recipients thereof that respondent has correspondents in all principal cities of the world, handles and administers estates, is engaged in the business of locating heirs to estates or to interests therein, engages in searches of records and titles to property, and in recovering unclaimed assets for the true owners thereof, and that the person concerning whom information is sought has or may have an interest in an estate or land which will be of financial benefit to him.

PAR. 9. Through the use of the name "Trust Service Company" respondent has represented, directly and by implication, that his business bears some relation to trusts.

PAR. 10. The said representations are false and misleading. In truth and in fact the business of respondent, trading as "Bortz & Company" and "Trust Service Company" has nothing whatever to do with trusts, and the name "Trust Service Company" is merely a disguise for the true nature of the business. Respondent, trading as aforesaid, does not have correspondents in all principal cities of the world, does not handle or ad-

minister estates, is not engaged in the business of locating heirs to estates or interests therein, or in searches of records or titles to property or in the recovery of unclaimed assets for the true owners thereof. He has no knowledge of any interests in estates or in lands to which the persons concerning whom information is sought may be entitled.

PAR. 11. The sole purpose of the said cards and letters is to secure information in order to facilitate the collection of alleged delinquent accounts by respondent's customers.

PAR. 12. The use as hereinabove set forth of the foregoing false and misleading statements, representations and designations has had the capacity and tendency to, and has misled and deceived many persons to whom said cards, letters and envelopes were sent into the erroneous and mistaken belief that said statements, representations and designations were true, and by reason thereof to give information which they would not otherwise have supplied.

PAR. 13. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 11, 1943, issued, and subsequently served, its complaint upon the respondent, Solomon A. Bortz, an individual, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a trial examiner of the commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Solomon A. Bortz, is an individual, trading under the names Bortz & Company, Trust Service Co., and Susquehanna Pen Co., with his principal office and place of business located at Anderson, Ind.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the sale and distribution of post cards, envelopes, form letters, and other printed material designed and intended to be used by creditors, collection agencies, and attorneys in obtaining information concerning delinquent debtors. Respondent causes said post cards, envelopes, form letters, and other printed material to be transported from his place of business in the State of Indiana 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 post cards, envelopes, form letters, and other printed material in commerce among and between the various States of the United States.

PAR. 3. Among the post cards and other printed material designed for obtaining information concerning delinquent debtors were certain cards or folders sold by the respondent to creditors and collection agencies under the name of Susquehanna Pen Co. These cards or folders were made up of units composed of two cards—an address card, with space for inserting the address of the debtor or other person from whom information was sought, and an information card in the form of a return post card, so designed that they could be sold and mailed as a folder. The reply card was addressed to the Susquehanna Pen Co., Advertising Department, Anderson, Ind. These cards informed the recipient that the Susquehanna Pen Co. would mail him a pen absolutely free of charge as an introductory offer and requested the filling out of certain information on the return card, such as the name and present address and the place of employment of the recipient.

When a creditor or collection agency purchased a supply of said mailing cards or folders, the respondent printed an identification number on the information cards and forwarded said mailing cards or folders to the purchaser. The address card of respondent's unit was then addressed to the debtor at his last-known address by the creditor, collection agency, or other purchaser, who also attached necessary prepaid postage. The units composed of the two cards were then returned by the purchaser to the respondent and were mailed by him from the city of Anderson, Ind., to the persons and to the addresses placed upon the address cards by the purchaser.

When the recipient responded to the request for information contained on the address card, he filled in the blank spaces on the information card, detached such card from the address card, and mailed it to the address given thereon, to wit, Susquehanna Pen Co., Advertising Department, Anderson, Ind. When these cards were received by the respondent, he forwarded them to the purchaser, identified by the identification number appearing on said cards, and mailed a pen to the recipient.

Through the use of the trade name Susquehanna Pen Co., respondent represented directly and by implication that he was in the business of selling and distributing pens, and by means of the representations on said cards respondent represented, and has placed in the hands of his customers a means of representing, to the recipients of said cards that pens were being offered them as an introductory offer by the Advertising Department of the Susquehanna Pen Co. In fact, respondent was not engaged in the sale of pens, and the pens supplied to the recipients of the cards were of very cheap construction, costing the respondent approximately 80 cents a gross. The cards were not sent as a method of promoting the sale of pens but had as their sole purpose the obtaining of information about the recipients. The whole scheme was merely a subterfuge for obtaining information, and the use of the trade name Susquehanna Pen Co. was merely a disguise for the true nature of the business.

PAR. 4. Another and similar practice adopted by the respondent was that conducted under the trade name of Bortz & Company. In this connection the respondent used a folder similar to that hereinabove described, containing a reply card addressed to Bortz & Company, Liberal Life Bldg.,

Anderson, Ind. This card contained, as descriptive of Bortz & Company, the statements:

ESTATE COUNSELORS
LIBERAL LIFE BLDG.
ANDERSON, IND.

Estates Handled
Missing Heirs Located

Searchers of Records
Examiners of Titles

and further informed the recipient that Bortz & Company was looking for a person of the name of the recipient and had reason to believe that the recipient might be the party and that it was a matter of distinct importance for the recipient to make sure whether or not he was the correct party by answering the questions appearing on the reply card. The information required to be filled in contained the name and residence, name and address of the nearest relative, name of present employer, name of bank, and whether or not the recipient owned his home or rented, or owned an automobile. As in the case of the folders hereinabove described, when a creditor or collection agency purchased a supply of said mailing cards or folders, the respondent printed an identification number on the information cards and forwarded said mailing cards or folders to the purchaser, who in turn addressed the cards to the debtor at his last-known address, attached the necessary postage, and returned the cards to the respondent for mailing from Anderson, Indiana. Any replies received through the reply card were forwarded by the respondent to the creditor or collection agency indicated by the identification number.

PAR. 5. Another and similar practice adopted by the respondent was that conducted under the trade name of Trust Service Co., Williams Building, Anderson, Ind. In this connection the respondent used a printed form purporting to be from the Trust Service Co., at the top of which were the statements:

ESTATES HANDLED
MISSING HEIRS LOCATED

EXAMINERS OF TITLES
SEARCHERS OF RECORDS

UNCLAIMED ASSETS RECOVERED

By this form the recipient was informed that the Trust Service Co. was endeavoring to contact a person bearing the recipient's name and was requested to fill out the information called for in the blank spaces, which might be of great importance to the recipient. The information requested was the name and resident address of the recipient, his previous address, occupation, date of birth, name and birthplace of father, and name of nearest living relative and also, as references, the name of the recipient's employer, former employer, name of bank, and personal description. As in the case of the folders hereinabove described, when a creditor or collection agency purchased a supply of respondent's printed material, the respondent placed an identification number on the printed form and forwarded it to the purchaser, together with a blank envelope for addressing to the debtor, with return address of 209 Williams Building, Anderson, Ind., and a return envelope addressed to Trust Service Co., Williams

Bldg., Anderson, Ind. The purchaser would then address the envelope to the debtor or other person from whom information was requested and enclose therein the form of the Trust Service Co. and return envelope addressed to the Trust Service Co., together with necessary postage, which envelope was then sealed and forwarded to the respondent for mailing from Anderson, Ind. Any replies received on the printed forms were forwarded by the respondent to the creditor or collection agency indicated by the identification number.

PAR. 6. Through the use of the trade name Trust Service Co., respondent represented directly and by implication that he was engaged in the administration of trust estates or that his business bore some relation to trusts. Through the use of the statements contained on the folders issued under the trade name Bortz & Company and the form issued under the trade name Trust Service Co., the respondent represented that he was engaged in locating missing heirs, recovering unclaimed assets for the true owners thereof, checking titles to real estate, and handling estates, and that the person concerning whom information was sought had or might have an interest in an estate or land, which would be of financial benefit to him. In fact, respondent trading as Bortz & Company and as Trust Service Co., is not engaged in the administration of trusts or the handling of trust estates and does not locate missing heirs or attempt to recover unclaimed assets, but, instead, said trade names are used by the respondent as a subterfuge, and the folders and other printed matter are not forwarded for the purpose of obtaining any information concerning interests in estates or lands, or the ownership thereof, but have as their sole purpose the obtaining of information about the recipients to facilitate the collection of alleged delinquent accounts by respondent's customers.

PAR. 7. The use, as hereinabove set forth, of the foregoing acts and practices has the capacity and tendency to engender in the minds of a substantial number of persons, the erroneous and mistaken belief that the aforesaid post cards, folders, and other printed matter were sent them for the purpose of determining whether or not they had an interest in some estate or property, or in the case of the folders forwarded under the name of Susquehanna Pen Co., that such cards were forwarded to them for the purpose of introducing pens under an advertising campaign; and such practices had the tendency and capacity to cause such persons, by reason thereof, to give information which they would otherwise not have supplied.

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 on the complaint of the Commission, answer of the respondent, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs filed in support of the complaint

and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Solomon A. Bortz, an individual, trading under the name of Bortz & Company, Susquehanna Pen Co., or Trust Service Co., or trading under any other name or names, and his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act of mailing cards, folders, or any other printed material for use in obtaining information concerning debtors or other persons, do forthwith cease and desist from:

1. Using the words "Susquehanna Pen Co." in respondent's trade name or using any other word or words to designate or describe the business of the respondent which represent or imply that respondent's business is that of selling or distributing pens or other merchandise.

2. Using the words "Trust Service Co." or any other words of similar import or meaning to designate or describe the business of the respondent.

3. Using, or placing in the hands of others for use, cards, folders, or other printed material so worded or designed as to represent or imply that the respondent is conducting an advertising campaign or is distributing pens or other merchandise free of charge for the purpose of promoting the sale of such merchandise.

4. Representing directly or by implication that persons concerning whom information is sought through respondent's cards or other printed material have or may have an interest in some estate, unclaimed asset, or other property when the information sought is for use in the collection of debts.

5. Using, or placing in the hands of others for use, cards, folders, or other printed material so worded and designed as to represent or imply that it has been forwarded by some agency engaged in the administration of trusts or estates or engaged in locating missing heirs or persons having an interest in some estate, property, or unclaimed asset, or that the information sought to be obtained by such cards, folders, or other printed material is for use in locating such missing heirs or other interested parties when the information sought is for use in the collection of debts.

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

THE
 ATTACHED
 CARD
 Is a Free Advertising Offer
 CLIP AND
 MAIL IT TO US
 TODAY
 No Obligation
 No Postage Required
 SUSQUEHANNA PEN CO.

NAME OF DEBTOR
 LAST KNOWN ADDRESS



After 3 Days Return to
 SUSQUEHANNA PEN CO.
 Anderson, Ind.
 Service and Forwarding Postage Guaranteed

PLACE
 1-CENT
 STAMP
 HERE

A FREE PEN

No Obligation

To Introduce Our Pens

We will mail you one of them ABSOLUTELY FREE OF CHARGE provided you will show it to your friends and fellow employees where you work. In order to avoid duplication, name of employer must be given. You must act promptly, as only a limited number of pens will be distributed in this manner. Yours will be sent you as soon as this request card is returned.

THIS FREE PEN CERTIFICATE ISSUED TO
 NAME OF DEBTOR
 LAST KNOWN ADDRESS

FILL OUT AND MAIL THIS CARD AT ONCE

Name _____
 Present Address _____
 City _____
 State _____
 Phone Number _____
 Now Employed by _____
 Dept. _____
 Address _____

*This Order Cannot Be Transferred . . .
 For YOU ONLY*
 This Is Your No. _____

PLACE
 1-CENT
 STAMP
 HERE

REPLY CARD

SUSQUEHANNA PEN CO.

Advertising Department ANDERSON, IND.

SEARCHERS OF RECORDS
EXAMINERS OF TITLES

Correspondents in All Principal Cities of the World

ESTATES HANDED
MISSING WERE LOCATEDBORTZ & CO.
ESTATE COUNSELORS
LIBERAL LIFE BLDG.
ANDERSON, IND.

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.

Very truly yours,

BORTZ & CO.

EXHIBIT *B*.....Interview with *Carl*.....File *1-17650*... Date *11-24-42**(Donald) Mark Donald, Attorney*

Federal Trade Commission

Place
1-Cent
Stamp
Here

Reply Card

BORTZ & COMPANY

LIBERAL LIFE BLDG.

ANDERSON, IND.

Subject:

NAME OF DEBTOR

LAST KNOWN ADDRESS

FILE NO.

Full Name

Age

Residence Address (present)

PLACE
1-CENT
STAMP
HERE

Residence Address (previous)

Nearest Relative

Relationship

Address of Nearest Relative

If Married, Wife's Full Name

Epsilon 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

After 5 Days Return to
BORTZ & CO.
LIBERAL LIFE BLDG.
ANDERSON, IND.

Return and Forwarding Postage Guaranteed

Post Card

NAME OF DEBTOR
LAST KNOWN ADDRESS

303

Exhibit C

COPY Correspondents in All Principal Cities of the World

UNCLAIMED ASSETS RECOVERED

ESTATES HANDLED

EXAMINERS OF TITLES

MISSING HEIRS LOCATED

SEARCHERS OF RECORDS

TRUST SERVICE CO.

Williams Building

Anderson, Ind.

Phone: 331

PLEASE REFER

TO FILE NUMBER

TO

We are endeavoring to contact a person bearing your name. In order for us to make further progress in our investigation, will you kindly answer the following? This may be of great importance to you.

Full Name _____ Date of Birth and Place _____

Present Residence _____ Name of Father _____
Street _____

_____ Birthplace of Father _____
City _____ State _____

Previous Address _____ Nearest Living Relative _____
(Use other side for more) Street _____

_____ Address _____
City _____ State _____ Street _____

Occupation _____

If Married, _____ City _____ State _____
Mate's Name _____

REFERENCES

Your Employer _____

or own business Firm Name _____ Street _____ City _____ State _____

Former Employers _____
Firm Name _____ Street _____ City _____ State _____

_____ Street _____ City _____ State _____

Name of Your Bank _____

_____ Street _____ City _____ State _____

Personal Description _____

General Remarks: (Use other side of this blank if necessary) _____

If the above information checks with the records, you will be notified. Use enclosed envelope and a prompt reply will facilitate matters.

Very truly yours,
TRUST SERVICE CO.
Manager, Research Department.

Complaint

40 F. T. C.

IN THE MATTER OF

MARINE PRODUCTS COMPANY

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 APPROVED JUNE 19, 1936

Docket 5137. Complaint, Mar. 14, 1944—Decision, Mar. 29, 1945

Where a corporation engaged in the interstate sale and distribution of canned tuna, abalone and skip jack—

Paid and granted to buyers, some of whom incorrectly designated themselves as brokers, commissions or brokerage or compensation, allowances, or discounts in lieu thereof on purchases of its products made by such buyers on their own behalf and for their own accounts, including purchases bearing its brands and labels and purchases bearing the private brands or labels of the buyers:

Held, That said acts and practices in paying and granting such commissions or brokerage to purchasers of its products constituted violation of subsec. (c) of Sec. 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. Benjamin W. Shipman, of Los Angeles, Calif., and *Mr. Fulton Brylawski*, of Washington, D. C., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, Marine Products Company, is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 3370 Harasthy Street, San Diego, Calif.

PAR. 2. Respondent, Marine Products Company, is now engaged and for many years prior hereto, has engaged in the business of distributing and selling canned tuna, canned abalone, and canned skip jack and other sea food products (all of which are hereinafter called sea food products) in its own name and for its own account.

The respondent sells and distributes its sea food products through two separate and distinct methods. First, through intermediaries who act as its agents in negotiating the sale of its sea food products and for which services such intermediaries customarily are paid, directly or indirectly, commissions or brokerage fees. Second, through the sale of its sea food products directly to buyers who are paid, directly or indirectly, commission or brokerage fees on their own purchases of such sea food products.

The respondent, to distinguish its sea food products from the sea food products sold by competitors and to facilitate sales, utilizes registered and unregistered trade-marks and brands for various sea food products it sells, which brands are generally known as packers' or sellers' brands.

The respondent also sells its sea food products unlabeled or unbranded, and also under the labels or brands of its buyers, which brands or labels are generally known to the trade as private or buyers' brands. Some of such buyers who incorrectly designate themselves as brokers also utilize registered and unregistered labels and brands, which labels and brands are utilized in selling such respective buyers' merchandise. Such buyers are primarily engaged in the purchase and sale of sea food products in their own name and for their own account.

PAR. 3. The respondent in the course and conduct of its said business, since June 19, 1936, has sold and distributed a substantial portion of its sea food products directly to buyers located in States other than the State in which the respondent is established, and as a result of said sales and the respondent's instructions, such sea food products are shipped and transported across State lines to such buyers who are located in various States of the United States.

PAR. 4. The respondent, since June 19, 1936, in connection with the interstate sale and distribution of sea food products in its own name and for its own account for resale, has sold such sea food products to buyers located in the various States of the United States other than the State where respondent is established, and has been and is now paying or granting or has paid or granted, directly or indirectly, commissions, brokerage or other compensation or allowances or discounts in lieu thereof to buyers of said sea food products sold under its own labels, unlabeled and under buyers' labels.

PAR. 5. The paying and granting by respondent, directly or indirectly, of commissions, brokerage or other compensation and allowances or discounts in lieu thereof to the buyers of said sea food products, on their own purchases which are resold unlabeled or under either the buyers' or sellers' labels, and the acts and practices of the respondent in promoting sales of sea food products by paying to buyers, directly or indirectly, commissions, brokerage or other compensation and allowances or discounts in lieu thereof, as set forth above, are 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 an act of Congress approved June 19, 1936, (the Robinson-Patman Act—U. S. C. Title 14, Sec. 13) the Federal Trade Commission on March 14, 1944, issued and subsequently served its complaint in this proceeding upon Marine Products Company, a corporation, charging it with violation of the provisions of subsection (c) of section 2 of said Clayton Act as amended. After the issuance of said complaint, the respondent filed its answer, which answer admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. In said answer respondent stated that the practices complained of had been discontinued. Thereafter, this proceeding regularly 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. Respondent, Marine Products Company, is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 3370 Harasthy Street, San Diego, Calif. The respondent is now, and for many years last past has been, engaged in the sale and distribution of canned tuna, canned abalone, and canned skip jack (hereinafter frequently referred to as sea-food products). Respondent sells its sea-food products under its own trade marks and brands and also, by agreement with some buyers, places the private brands or labels of such buyers on the sea-food products purchased by them.

PAR. 2. In the course and conduct of its aforesaid business, pursuant to sales made, respondent transports, or causes its products to be transported, from its place of business to various purchasers at their respective points of location in States other than the State in which such shipments originated. Respondent thus maintains, and has maintained, a course of trade in said products in commerce, as "commerce" is defined in the aforesaid Clayton Act as amended.

PAR. 3. Since July 19, 1936, respondent has, in or in connection with sales of its sea-food products in commerce as aforesaid, paid and granted to buyers, some of whom incorrectly designate themselves as brokers, commissions or brokerage or compensation, allowances, or discounts in lieu thereof on purchases of its products made by such buyers on their own behalf and for their own accounts. Such brokerage payments, or discounts in lieu thereof, have been made to buyers upon their own purchases of products bearing respondent's brands and labels as well as upon purchases of respondent's products under the private brands or labels of the buyers.

CONCLUSION

The aforesaid acts and practices of the respondent in paying and granting commissions or brokerage or compensation, allowances, or discounts in lieu thereof to purchasers of its products constitute violations 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 of the respondent, which answer admits all of the material allegations of fact set forth in said complaint and 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 subsection (c) of section 2 of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (the Clayton Act) as amended by an act of Congress approved June 19, 1936, (the Robinson-Patman Act—U. S. C. Title 15, Sec. 13).

It is ordered, That respondent, Marine Products Company, a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in or in connection with the sale and distribution of sea-food products or other commodities in commerce, as

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"commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

Paying or granting, directly or indirectly, anything of value as a commission or brokerage, or any compensation, allowance, or discount in lieu thereof, to any purchaser upon purchases for his own account, or to any agent, representative, or other intermediary acting in fact for or in behalf of or subject to the direct or indirect control of the purchaser to whom sale is made.

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

IN THE MATTER OF
LOUIS FARBEN, TRADING AS GOLD STAR
NOVELTY HOUSE

MODIFIED ORDER TO CEASE AND DESIST

Docket 3449. Order, April 3, 1945

Modified order in proceeding in question—in which original order issued on November 15, 1940, 31 F. T. C. 1357—requiring respondent, his representatives, etc., in connection with the offer, etc., in commerce, of manicure sets, electric lamps, and other articles, to cease and desist from using lottery schemes in merchandising, from using terms “without cost,” etc., to refer to articles offered as compensation for distribution of his products, and from representing his business as registered under the laws of the United States, as in said order specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (respondent having filed no answer thereto), testimony and other evidence taken before Randolph Preston, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondent having offered no proof in opposition thereto), brief filed herein by counsel for the Commission (respondent not having filed brief and oral argument having been waived); and the Commission having duly made and issued its findings as to the facts, conclusion, and order to cease and desist dated November 15, 1940; and the Commission having further considered said order to cease and desist heretofore issued, and being of the opinion that the public interest requires that a modified order to cease and desist should be issued in said cause; and the Commission having given due notice to the respondent to show cause on March 13, 1945, why this case should not be reopened for the purpose of modifying said order to cease and desist; and the Commission having considered the matter and the record herein, issues this its modified order to cease and desist.

It is ordered, That the respondent, Louis Farben, individually, and trading as Gold Star Novelty House, his representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of manicure sets, electric lamps, leather wallets, pictures, silverware and chinaware, cosmetics, jewelry, comb and brush sets, razor blades or any other articles of merchandise in commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, 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 agents or to distributors, or to members of the public push or pull cards, 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.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards or other lottery devices.

4. Using the term "Without Cost," "free," or any other term of similar import or meaning, to describe or refer to articles offered as compensation for distributing respondent's merchandise.

5. Representing that respondent's business is registered under the laws of the United States.

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

IN THE MATTER OF

EDWARD W. BULLOCK, INDIVIDUALLY AND TRADING AS
BONDED JEWELERS OF AMERICA, AND GLADYS JOHN-
STON

MODIFIED ORDER TO CEASE AND DESIST

Docket 3459. Order, April 3, 1945

Modified order in proceeding in question—in which original order issued on December 21, 1938, 27 F. T. C. 1429—requiring respondents, their representatives, etc., in connection with the offer, etc., of rings, watches, and other jewelry products in commerce, to cease and desist from representing their business as bonded through their trade name or otherwise, from representing themselves as manufacturers, their rings as finished with white gold, etc., their products as “free,” etc., and from using term “free,” etc., as in said order specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents, in which answer respondents admitted all material allegations of fact set forth in said complaint and stated that they waived all intervening procedure and further hearing as to said facts, and the Commission having duly made and issued its findings as to the facts, conclusion, and order to cease and desist dated December 21, 1938; and the Commission having further considered said order to cease and desist heretofore issued and having served upon respondents on February 13, 1945, due notice to appear and show cause at a time and place fixed why this case should not be reopened for the purpose of modifying said order to cease and desist in the manner and to the extent set out in said notice, to which respondents failed to make return; and having considered the matter and the record herein and concluded that the public interest requires such action, the Commission issues this its modified order to cease and desist.

It is ordered, That respondents, Edward W. Bullock and Gladys Johnston, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of rings, watches, and other jewelry products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, through the use of the trade name “Bonded Jewelers of America,” or any other words of similar import or meaning, or in any other manner, that the business operated by respondents is bonded, when such is not the fact.

2. Representing that the respondents, or either of them, are the manufacturers of the products sold by them, unless and until they actually own and operate, or directly and absolutely control, the manufacturing plant wherein such products are manufactured by them.

3. Representing, designating, or describing rings as “finished with white gold,” or “white gold finish,” or any word or words of similar import and meaning, unless such rings are actually finished in white gold.

4. Representing, designating or describing, articles or merchandise regularly included in a combination offer with other articles of merchandise as "free," "included free," or "included free of extra charge."

5. Representing, designating, or describing watches or other articles, delivered only upon the condition that some other article be purchased and paid for, as "free," "included free," or "included free of extra charge," or in any other manner indicating that the watch or other article is a gift or gratuity.

6. Using the term "free" or any other term of similar import and meaning to designate, describe, or refer to any merchandise which is not a gift or gratuity and delivered to the recipient thereof without cost and unconditionally.

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

40 F. T. C.

IN THE MATTER OF
JACOB GOLDBERG, TRADING AS CROWN NOVELTY HOUSE

MODIFIED ORDER TO CEASE AND DESIST

Docket 3484. Order, April 3, 1945

Modified order in proceeding in question—in which original order issued on February 8, 1939, 28 F. T. C. 475—requiring respondent, his representatives, etc., in connection with offer, etc., in commerce, of watches, cameras, and other articles, as below specified, to cease and desist from using lottery schemes in merchandising thereof, or using term “free,” etc. to refer to articles offered as compensation for distributing its merchandise, as in said order specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts; and the Commission having duly made and issued its findings as to the facts, conclusion, and order to cease and desist dated February 8, 1939; and the Commission having further considered said order to cease and desist heretofore issued, and being of the opinion that the public interest requires that a modified order to cease and desist should be issued in said cause; and the Commission having given due notice to the respondent to show cause on March 13, 1945, why this case should not be reopened for the purpose of modifying said order to cease and desist; and the Commission having considered the matter and the record herein, issues this its modified order to cease and desist.

It is ordered, That the respondent, Jacob Goldberg, individually, and trading as Crown Novelty House, or trading under any other name, his representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of watches, cameras, china and silverware, lamps, razor blades, clocks, cigaret lighters, jewelry, cosmetics, bedding, kitchenware, or any other articles of merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others, pull cards or circulars having pull tabs thereon, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping or transporting to his agents or to distributors or to members of the public pull cards or circulars having pull tabs thereon, or other lottery devices so prepared or printed as to enable such persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of pull cards or circulars having pull tabs thereon, or any other lottery device.

4. Using the term “free,” or any other term of similar import or meaning, to describe or refer to articles offered as compensation for distributing respondent’s merchandise.

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

Order

IN THE MATTER OF
LEKAS AND DRIVAS, INC.

MODIFIED ORDER TO CEASE AND DESIST

Docket 4815. Order, April 3, 1945

Modified order pursuant to provisions of Section 5 (i) of the Federal Trade Commission Act and in accordance with decree below referred to, in proceeding in question in which original order issued on July 7, 1943, 37 F. T. C. 9, and in which the Circuit Court of Appeals for the Second Circuit on November 30, 1944, in *Lekas and Drivas, Inc. v. Federal Trade Commission*, 145 F. (2d) 976, 39 F. T. C. 714, rendered its opinion, and on December 18, 1944 issued its decree modifying said order of the Commission in certain particulars and affirming the same in other particulars—

Requiring respondent, its officers, etc., in connection with the offer, etc., of olive oil, to cease and desist from disseminating advertisements which directly or through inference misrepresent the therapeutic value of its said product, misrepresent nutritional value of olive oil as compared with meat, or misrepresent specific vitamin contents thereof, etc., as in said order specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on July 7, 1943, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on November 30, 1944, the United States Circuit Court of Appeals for the Second Circuit rendered its opinion and on December 18, 1944, issued its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars.

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this, its modified order to cease and desist in conformity with said decree.

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

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

a. That respondent's olive oil, when taken internally, has any specific therapeutic value in the treatment or prevention of any disease or condition, except a possible slight value as a laxative.

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

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

d. That respondent's olive oil, when applied externally, has any thera-

peutic value in the treatment of irritations of the skin other than that supplied by a lubricant.

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

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

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

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

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, of respondent's olive oil, which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions thereof.

It is further ordered, That the respondent shall, within 30 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Order

IN THE MATTER OF

FLOYD IRL SORRELLS, TRADING AS TEXAS TASTY
COMPANY

MODIFIED ORDER TO CEASE AND DESIST

Docket 3487. Order, April 5, 1945

Modified order in proceeding in question—in which original order issued on January 10, 1939, 28 F. T. C. 64—requiring respondent, his representatives, etc., in connection with offer, etc., in commerce, of "Penny Nips" confections, to cease and desist from representing the same as noncompetitive, from misrepresenting qualities and properties thereof, endorsement by city officials, etc., terms and conditions to agents and representatives, necessity for securing state or municipal license for sale thereof, etc., and from use of term "free" to refer thereto, as in said order specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having heretofore been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, which answer admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearings as to the facts, and the Commission having, on January 10, 1939, issued and subsequently served upon the respondent its findings as to the facts and conclusion and its order to cease and desist; and the Commission having further considered said order to cease and desist and having given due notice to the respondent to show cause, if any be had, why the proceeding should not be reopened for the purpose of modifying said order in the respects and to the extent set out in said notice, and the respondent having made no objections to the proposed modification of said order; and the Commission having duly considered the matter and the record herein, and having concluded that the public interest requires the modification of said order to cease and desist in the respects and to the extent set out in said notice.

It is ordered, That the respondent, Floyd Irl Sorrells, an individual, trading as the Texas Tasty Company or under any other trade name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of confections known as "Penny Nips," whether sold under that name or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing directly or in any manner whatever

1. That such confection is a noncompetitive article of merchandise.
2. That such confection will remain in marketable condition in weather temperature up to 132° Fahrenheit.
3. That the city officials of Fort Worth, Texas, or of any other city, have certified the purity of such confection, until and unless such officials have so certified respondent's confection.
4. That the liquid in such confection is pure fruit juice.
5. That respondent's representatives or agents will remain in the territory allotted to a dealer under contract, for the purpose of aiding the dealer in his sale of respondent's product, until the dealer has sold

merchandise equaling the amount the dealer advanced to respondent's representative or agent as a consideration for the contract.

6. That such confection will be shipped by respondent to a bonded warehouse, where the dealer may withdraw it in small quantities by paying the amount due on each small box so withdrawn.

7. That free merchandise will be shipped to the dealer to reimburse him for expense incurred in paying shipping charges, unless such merchandise is actually shipped.

8. That such confection will be shipped to purchasers charges prepaid, unless it is in fact so shipped.

9. That products similar to respondent's confection or respondent's confection have never been sold in the territory allotted to the dealer, when such is not the fact.

10. That no state or municipal license will be charged the dealer for selling respondent's confection in the territory allotted to such dealer; and from

11. Using the term "free" or any other term of similar import and meaning to describe, designate or refer to any merchandise which is not a gift or gratuity and delivered to the recipient thereof without cost and unconditionally.

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

MONTGOMERY WARD & 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 5052. Complaint, Sept. 22, 1943—Decision, Apr. 6, 1945

Where a corporation engaged in interstate sale and distribution of its "Dr. Pierce's Purgative Pellets" and "Ward's Bile Salts Compound and Cascara Tablets"; in advertisements of its said laxatives, in its semi-annual catalogs—

Failed to reveal facts material in the light of the representations made therein with respect to consequences which might result from use of the preparations under prescribed or usual conditions and that the preparations should not be used in the presence of abdominal pains, nausea, vomiting, or other symptoms of appendicitis, through any reference to said danger, in the early advertisements or through adequate warning with reference thereto in a later one;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that its preparations were entirely safe and harmless, thereby causing 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 the giving of adequate warning by the advertiser of medicinal preparations against the potential danger of laxatives concerned when taken by one suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis where it appeared that the advertisement in its semi-annual catalog contained no reference to the aforesaid danger other than the statement in small type at the bottom of the pages involved: "Read article on 'Laxatives' inserted between pages 536 and 537"; that such insert page contained various statements with respect to several different types of medicines, such as headache remedies, cold remedies, nose drops and sprays, laxatives, rectal preparation, diuretics, etc., and at that portion of the page which dealt with laxatives contained, among others the following statement: "Warning: Never take a laxative when abdominal pain (stomach ache, cramps), vomiting, or other symptoms of appendicitis are present": The quoted statement did not constitute an adequate warning against the potential danger in the use of the preparations concerned because it did not appear in the body of the advertisements thereof, but on a separate page in the catalog, would in many cases escape the attention of one reading the advertisements of the preparations, did not mention the specific preparations involved but referred only to laxatives generally, and omitted any reference to the symptom of nausea.

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

Mr. Joseph Callaway for the Commission.

Mr. R. G. Crandall and *Mr. F. G. Keiper*, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Montgomery Ward & 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, Montgomery Ward & Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 619 West Chicago Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the offering for sale, sale and distribution of two laxative medicinal preparations, one of them being designated as Dr. Pierce's Purgative Pellets and the other being designated as Ward's Bile Salts Compound and Cascara Tablets. Respondent causes said preparations, when sold, to be shipped from its 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.

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. Respondent in the course and conduct of its business, as aforesaid, has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said medicinal 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 said medicinal 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.

The advertisements so disseminated by respondent are, in substance, that each of said preparations constitutes an effective treatment for constipation.

PAR. 4. Respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the reason that they fail to reveal facts material in the light of such representations or 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. In truth and in fact, each of said preparations is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, colic, nausea, vomiting or other symptoms of appendicitis.

PAR. 5. The failure of the respondent to disclose in its said advertising matter that the use of said preparations under the conditions prescribed in said advertisements or such conditions as are customary and usual may be potentially dangerous, 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 each of said preparations is entirely safe and harmless, and may be taken at all times without ill effects to the user, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said medicinal preparations.

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 September 22, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Montgomery Ward & 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 to the complaint, a stipulation of facts was entered into between the attorney for the Commission and the attorney for the respondent at a hearing before a trial examiner of the Commission theretofore duly designated by it. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, stipulation of facts, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Montgomery Ward & Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 619 West Chicago Avenue, Chicago, Ill. Respondent is now, and for several years last past has been, engaged in the sale and distribution of two medicinal preparations, one being designated as Dr. Pierce's Purgative Pellets and the other as Ward's Bile Salts Compound and Cascara Tablets.

PAR. 2. Respondent causes and has caused the preparations, when sold, to be shipped from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in the 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 its business respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning the 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, advertisements concerning the preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the preparations in commerce; as "commerce" is defined in the Federal Trade Commission Act.

The preparations are laxatives and are intended for use by the general public for the relief of constipation. Along with numerous other articles, the preparations are advertised by respondent in catalogs issued semi-annually and distributed among prospective purchasers.

In certain catalogs issued by respondent prior to January 15, 1943, the preparations were advertised as follows:

Dr. Pierce's Purgative Pellets

Concentrated root and herbal extracts. Only fine, pure quality ingredients are used. Help relieve constipation. Small—easy to take. Have been widely used for a great many years. (Comm. Ex. 2)

* * *

Bile Salts and Cascara Tablets

Bile Salts are often taken for sluggish liver, lack of bile. Help digestion of fats in intestines. Cascara acts as a laxative. Easy to take. (Comm. Ex. 1)

Although the preparations are laxatives and each is potentially dangerous when taken by one suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis, the advertisements quoted above made no reference to such danger.

A later catalog, issued on or about January 15, 1943, contained the following advertisements:

Dr. Pierce's Pellets
Easy-to-take purgative
pellets. (Comm. Ex. 4)

* * *

Wards Bile Salts and
Cascara Tablets
Often taken for sluggish
liver. Aids digestion.
Cascara acts as a laxa-
tive. (Comm. Ex. 3).

Like the earlier advertisements quoted above, these advertisements contained no statement warning purchasers against the use of the preparations in the presence of symptoms of appendicitis. However, at the bottom of the pages on which the advertisements appeared (pages 532 and 533 of the catalog) there was printed, in small type, the following: "Read article on 'Laxatives' inserted between pages 536 and 537." The insert page referred to, which was inserted between pages 536 and 537 of the catalog, contained various statements with respect to several different types of medicines, such as headache remedies, cold remedies, nose drops and sprays, laxatives, rectal preparations, diuretics, etc. That portion of the page which dealt with laxatives contained, among others, the following statement: "Warning: Never take a laxative when abdominal pain (stomach ache, cramps), vomiting, or other symptoms of appendicitis are present."

In the opinion of the Commission, this statement did not constitute an adequate warning against the potential danger in the use of the preparations here involved, because the statement did not appear in the body of the advertisements of the preparations but appeared on a separate page in the catalog. The statement would in many cases escape the attention of one reading the advertisements of the preparations. Moreover, the statement did not mention the specific preparations here involved but

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referred only to laxatives generally. Also, it omitted any reference to nausea, which is one of the symptoms of appendicitis.

PAR. 4. The Commission therefore finds that the advertisements disseminated by respondent with respect to its preparations constituted false advertisements, in that they failed to reveal facts material in the light of the representations made therein, and material with respect to consequences which may result from the use of the preparations under the conditions prescribed in the advertisements or under such conditions as are customary or usual; that is, the advertisements failed to reveal that the preparations should not be used in the presence of abdominal pains, nausea, vomiting, or other symptoms of appendicitis.

PAR. 5. The use by respondent of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's preparations are entirely safe and harmless and may be taken at all times without danger of ill effects to the user, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of the preparations 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, a stipulation of facts entered into between the attorney for the Commission and the attorney for respondent, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Montgomery Ward & 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, or distribution of respondent's medicinal preparations designated "Dr. Pierce's Purgative Pellets" and "Ward's Bile Salts Compound and Cascara Tablets," or any other preparations 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:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which fails to reveal that the preparation advertised 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

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

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

Complaint

IN THE MATTER OF
CEIL MALK, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914 AND THE WOOL PRODUCTS LABELING ACT OF 1939 APPROVED OCT. 14, 1940

Docket 5138. Complaint, Mar. 14, 1944—Decision, Apr. 6, 1945

Where a corporation engaged in the interstate sale to the general public from their store of wool products, including women's coats, suits and other garments—

- (a) Sold some of the aforesaid wool products misbranded in violation of the Wool Products Labeling Act and the rules and regulations promulgated there under in that said products did not have affixed thereto the required stamp, tag, label or other means of identification showing the name of the manufacturer or that of a subsequent seller or reseller and in that one garment did not have affixed to its interlining a stamp, tag, label or other means of identification, as provided by aforesaid act; and
- (b) With intent to violate the same and said rules and regulations, mutilated and participated in and caused the mutilation of stamps, tags, labels or other means of identification which had been affixed to certain of said wool products by the manufacturer and which purported to contain the information required thereby, including the percentage of wool, reprocessed wool, and reused wool, etc. and adulterating matter and identification of the manufacturer, seller, etc., through removing that portion which contained the name of the manufacturer or seller of said products; and did not replace the same:

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

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

Mr. DeWitt T. Puckett and *Mr. G. M. Martin* for the Commission.

Cotton, Brenner & Wrigley, 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 Ceil Malk, Inc., 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. Respondent, Ceil Malk, 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 202 Livingston Street, Brooklyn, N. Y.

PAR. 2. Respondent is now, and for several years last past has been, operating a store at the aforesaid address selling to the general public wool products, as such products are defined in 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 said act.

PAR. 3. During all the time aforementioned, the respondent, has purchased and is now purchasing said wool products from various manufacturers located in States other than the State of New York, and has caused and is now causing such products to be transported in commerce through regular and continuous channels of trade in which such products through respondent reach the ultimate purchaser-consumer in a State other than the State of manufacture or first introduction into such commerce. Respondent also purchases said products from various manufacturers located in the State of New York who manufacture such products for introduction into said commerce.

Said wool products transported in commerce as aforesaid and said wool products manufactured for introduction into said commerce are thereafter offered for sale and sold by respondent to the general public at its said place of business. Said products are offered for sale and some are sold to purchasers residing in States other than the State of New York and shipped to said purchasers at their respective points of residence from respondent's place of business in Brooklyn, N. Y.

PAR. 4. Among the wool products purchased and transported in commerce as aforesaid and also among the wool products manufactured for introduction into said commerce and thereafter offered for sale and sold by respondent as aforesaid since July 15, 1941, were women's coats, suits and other garments. All of said wool products purchased and transported in commerce as aforesaid, and all of said wool products manufactured for introduction into said commerce, were subject to the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

PAR. 5. Some of the aforesaid wool products were misbranded within the intent and meaning of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder when offered for sale and sold by respondent, in that said products, when offered for sale and sold by respondent, did not have affixed thereto a stamp, tag, label or other means of identification 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 nonfibrous 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 said wool product where said wool product contained a fiber other than wool.

PAR. 6. The aforesaid wool products, when received by respondent at its said place of business, had affixed thereto stamps, tags, labels or other means of identification purporting to contain the information required by

the Wool Products Labeling Act of 1939. After said wool products were delivered to the respondent at its said store and place of business as aforesaid, and before said wool products were offered for sale or sold by respondent to the general public, said respondent, with intent to violate the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, did remove, and participate in and cause the removal of, the stamps, tags, labels or other means of identification which purported to contain the information required by the provisions of said act and said rules and regulations affixed to said wool products by the manufacturer thereof or by some person authorized or required by said act to affix such stamps, tags, labels, or other means of identification to said wool products.

PAR. 7. After said wool products were delivered to the respondent at its said store and place of business as aforesaid, and before said wool products were offered for sale or sold by respondent to the general public, said respondent, with intent to violate the provisions of said Wool Products Labeling Act of 1939 and said rules and regulations promulgated thereunder, did mutilate and participate in and cause the mutilation of the stamps, tags, labels or other means of identification which purported to contain the information required by the provisions of said act and said rules and regulations affixed to said wool products by the manufacturer thereof, or by some person authorized or required by said act to affix such stamps, tags, labels or other means of identification to said wool products.

PAR. 8. Said respondent did not replace said stamps, tags, labels, or other means of identification with substitute stamps, tags, labels, or other means of identification containing the information required under the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations thereunder. As a result of respondent's said acts and practices in removing and mutilating said stamps, tags, labels or other means of identification affixed to said wool products, said wool products, when offered for sale and sold by respondent to the general public at its said store and place of business, did not have affixed thereto stamps, tags, labels, or other means of identification containing the information required by said act and said rules and regulations.

PAR. 9. The aforesaid acts, practices and methods of the respondent, as herein 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 March 14, 1944, issued and subsequently served its complaint in this proceeding upon respondent, Ceil Malk, 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. The respondent filed no answer to the complaint. At a regularly scheduled hearing in the matter on June 20, 1944, a stipulation as to the facts was entered into between counsel representing the Federal Trade Commission and counsel representing the respondent by which it was agreed that, subject to the approval of the Federal Trade Commission, said stipulation of facts may be taken as the

facts in this proceeding. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint and the said stipulation of facts, the same having been approved by the Commission, the filing of a trial examiner's report, briefs and oral argument having been waived; 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, Ceil Malk, 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 202 Livingston Street, Brooklyn, N. Y.

PAR. 2. Respondent is now, and for several years last past has been, operating a store at the aforesaid address, selling to the general public wool products, as such products are defined in 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 said act.

PAR. 3. During the time aforementioned, the respondent has purchased, and is now purchasing, said wool products from various manufacturers located in the State of New York, and has caused some of said products, when sold, to be shipped from respondent's said place of business in Brooklyn, New York, to the purchasers thereof located in States other than the State of New York.

PAR. 4. Among the wool products offered for sale and sold by respondent in commerce as aforesaid, since July 15, 1941, were women's coats, suits and other garments. Said products were subject to the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

PAR. 5. Some of the aforesaid wool products were misbranded within the intent and meaning of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, when offered for sale and sold by respondent, in that said products, when offered for sale and sold by respondent as aforesaid, did not have affixed thereto a stamp, tag, label or other means of identification showing the name of the manufacturer of the wool product or the name of a subsequent seller or reseller of the product, as provided for in said act and the rules and regulations promulgated thereunder. One garment when offered for sale and sold as aforesaid by respondent, did not have affixed to the interlining thereof a stamp, tag, label or other means of identification, as provided by the Wool Products Labeling Act of 1939.

PAR. 6. Some of the aforesaid wool products, when received by respondent at its said place of business, had affixed thereto stamps, tags, labels 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 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 nonfibrous loading, filling or adulterating matter; (c) the name of the manufacturer of the wool product, or the manufac-

turer'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 said wool products where said wool product contained a fiber other than wool, which information is required by the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

After said products were delivered to the respondent at its said store and place of business as aforesaid, and before said wool products were offered for sale or sold by respondent to the general public, said respondent, with intent to violate the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, did mutilate and participate in and cause the mutilation of the stamps, tags, labels or other means of identification affixed to some of said wool products by the manufacturer thereof, which stamps, tags, labels or other means of identification purported to contain the information required by the provisions of said act and said rules and regulations, by removing that portion of said stamp, tag, label or other means of identification which contained the name of the manufacturer of the products or the seller of said products to the respondent, and said stamps, tags, or labels as mutilated, did not contain the name of the manufacturer of said products or the name of a subsequent seller or reseller, as required by said act and said rules and regulations.

PAR. 7. Said respondent did not replace said stamps, tags, labels, or other means of identification with substitute stamps, tags, labels, or other means of identification containing the information required under the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations thereunder. As a result of respondent's said acts and practices in mutilating as aforesaid said stamps, tags, labels, or other means of identification affixed to said wool products, and by its failure to affix to the interlining of the aforesaid garment a stamp, tag or other means of identification giving the information required by said act and said rules and regulations, said wool products, when offered for sale and sold by respondent to the general public at its said store and place of business, did not have affixed thereto stamps, tags, labels, or other means of identification containing all the information required by said act and said rules and regulations.

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 a stipulation of facts entered into between counsel for the Federal Trade Commission and counsel for the respondent, by which stipulation the filing of briefs and oral argument were specifically waived; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the pro-

visions of the Federal Trade Commission Act and the provisions of the Wool Products Labeling Act of 1939.

It is ordered, That respondent, Ceil Malk, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the 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 women's coats and 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 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 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 respondent, Ceil Malk, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the purchase, offering for sale, sale, or distribution of women's coats and suits or any other "wool products" as such products are defined in, and subject to, the Wool Products Labeling Act of 1939, do forthwith cease and desist from causing or participating in the removal or mutilation of any stamp, tag, label, or other means of identification affixed to any such "wool product" pursuant to the provisions of the Wool Products Labeling Act of 1939 with intent to violate the provisions of said act, and which stamp, tag, label, or other means of identification purports to show all or any part of the following:

(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 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

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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.

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
HILLYARD OPTICAL 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 4984. Complaint, June 26, 1943—Decision, Apr. 7, 1945

Where three partners engaged in the District of Columbia in the offer and sale of eye-glasses, lenses and frames therefor to members of the public; through advertisements in newspapers and by other means, directly and by implication—

(a) Represented falsely that their said business was the oldest and largest optical company in Washington, D. C., and had been in existence for over 40 years;

The facts being that their business had its origin in 1939 and their partnership, similarly designated, was formed in 1941;

(b) Represented falsely that they made free examinations of the eyes of prospective customers;

The facts being that where a customer purchased glasses, cost of the examination was included in the price thereof, while in cases where for any reason, customer decided not to purchase glasses, they frequently charged and sought to collect a fee of \$2 or \$3 for the examination, and in some instances, where the customer objected to paying for the examination, which he understood from their advertising was free, they browbeat and threatened him, and otherwise sought to force payment of such fee before he was permitted to leave the premises;

(c) Represented that they rendered efficient and satisfactory service, and guaranteed satisfaction to their customers;

The facts being that in many instances where they failed to render such efficient and satisfactory service, they also failed and refused to honor the guarantee of satisfaction made in their advertisements by statements such as "This is your assurance of guaranteed satisfaction"; prescribed glasses, in some instances, after an examination which lasted but a few minutes; furnished glasses to customers which did not correspond to their own prescription; many customers complained to the Board of Optometry for the District of Columbia; and, in many cases where customers were dissatisfied and appealed to them, in some cases many times, to correct faults in the glasses, furnish them with satisfactory glasses, or make refund or adjustment, failed or refused to do so and, in one instance, even sought to sell to customer her old glasses, which they had caused her to leave with them, as new;

(d) Represented that the prices advertised were special and reduced prices and available for a limited time only; that complete single-vision spherical lens glasses, with any shape frames or rimless, and with case and cleaner, usually or regularly priced at \$15, were only \$5, and that bifocal genuine spherical Kryptok white lenses of a regular value of \$12 were offered for only \$5;

The facts being that said representations were false: such representations, continually repeated, as "Two Specials All This Week" in advertising glasses for \$5, "\$15 Value for \$5," and "Regular Value \$15," were used as a means of inducing prospective customers to come to their place of business, whereupon they sought to sell them glasses at much higher prices; they used many means to discourage prospective customers from insisting upon glasses at \$5, such as statements that the \$5 glasses would not be satisfactory, or that the customer could not be fitted with \$5 glasses, and in some instances accomplished such persuasion when the customer realized that he would have to pay for an examination if he did not take glasses, and, rather than lose the cost of examination, consented to buy higher-priced glasses; and Where a fourth individual, the father of said partners, similarly engaged in said District; through like advertisements, directly and by implication—

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- (e) Falsely represented that he was a college graduate optometrist or physician; and
 (f) Represented falsely that complete glasses with single-vision lenses (except cylindrical or tinted lenses) in frames or rimless mountings, with case and cleaner, having a regular value of \$12, were offered at a special price of \$5, and that bifocal genuine Kryptok white lenses of a regular value of \$12 were offered at a special price of \$5;

The facts being he made it a practice to attempt to persuade persons coming into his place of business for \$5 glasses to purchase higher-priced glasses or more expensive frames and was able to sell more expensive glasses to about three out of ten such customers; the so-called special price of \$5 was for glasses with a rhodium frame or rhodium mountings, whereas glasses which sold for \$12 included a "better job" and a higher-priced frame; the Kryptok lenses which he offered for \$5 and represented as having a \$12 value, did not in fact have any such value, being cheaper than another type of bifocal lens which he regularly sold for \$9.75 and which he attempted to sell to customers by explaining their advantages and greater value as compared with Kryptok lens; customers were misled by his \$5 offer of lenses into believing that the frames were included; and the so-called "Specials" were continuously repeated and were in fact his usual and customary prices charged to customers to whom he was unable to sell more expensive frames or lenses;

With the effect of misleading and deceiving a substantial number of the purchasing public into the erroneous belief that such false representation were true, and to induce it because of such belief, to purchase said glasses:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. John M. Russell for the Commission.

Mr. Jack L. Friedlander, 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 Francis R. Hillyard, Sr., Bernard B. Hillyard, Francis R. Hillyard, Jr., Frederick C. Hillyard, individuals and copartners, trading as Hillyard Optical Company, Hillyard's Optical Service, Dr. F. R. Hillyard & Son and F. R. Hillyard & Son, and John Giddings, an individual, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Francis R. Hillyard, Sr., Bernard B. Hillyard, Francis R. Hillyard, Jr., and Frederick C. Hillyard, are individuals and copartners, doing business under the firm names of Hillyard Optical Company, Hillyard's Optical Service, Dr. F. R. Hillyard & Son and F. R. Hillyard & Son. The address of respondent, Francis R. Hillyard, Sr., is 5326 Georgia Avenue, Washington, D. C.; Bernard B. Hillyard and Francis R. Hillyard, Jr., 711 G Street, N. W., Washington, D. C. and Frederick C. Hillyard, 521 H Street, N. E., Washington, D. C. Respondent, John Giddings, is an individual, with his address at 617 Seventh Street, N. W. Washington, D. C., and was an employee of the other respondents for some time prior to about February 1, 1943.

PAR. 2. Respondents, other than John Giddings, are now and have been for more than two years last past, engaged in the business of operating optical stores in Washington, D. C., under the names above designated, and in offering for sale and selling eyeglasses, lenses and frames

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therefor to the general public in the District of Columbia. Prior to about February 1, 1943, the respondent, John Giddings, was an employee of the other respondents. All of said respondents have cooperated each with the other and have acted in concert in the acts and practices hereinafter alleged.

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 and their qualifications by the United States mails and various other means in commerce as "commerce" is defined in the Federal Trade Commission Act. The respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products and qualifications, 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 inserted in newspapers and by other means in commerce, are the following:

WASHINGTON'S LARGEST AND OLDEST OPTICAL CO.

711 G St. N.W.

521 H St. N.W.

Two Specials All This Week

Complete Glasses	
Single Vision	
Spherical pre-	\$5
scription Lenses	
Any Shape.	\$15.00
Frame or Rimless	Value
Case and Cleaner	

OR

BIFOCALS, genu-	
ine Kryptok	
Spherical pre-	
scription lenses,	
any shape,	\$5
to see far and near	
Reg. Value \$15.	
Now, white lenses only.	

COLLEGE GRADUATE EYESIGHT SPECIALISTS

ESTABLISHED

46 YEARS.

One Week

SPECIAL

Washington's oldest and largest family of eyesight specialists, associated with the optical profession for over 40 years. This is your assurance of guaranteed satisfaction. By operating our own shop we are able to give you the lowest price on all of your optical needs.

FREE
EXAMINATION

\$5
\$12.00
VALUE.

The Hillyard Optical Company is owned and operated by College Graduated Eyesight Specialists.

DR. F. R. HILLYARD & SON

Attention! Be sure to consult a College Graduate Eyesight Specialist. We have been Practicing Optometrists for 44 years and have always given efficient service. We are located in our own building and out of the high rent district. All lens surfacing done in our own laboratory on the premises. We fill prescriptions and will duplicate lenses.

* * * 5326 Georgia Ave., N.W.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others of similar import not specifically set out herein, respondents represent, directly and by implication, that all of said individual respondents are college graduate optometrists or opticians, that said business is the oldest and largest optical company in Washington, D. C. and has been in existence for over forty years; that respondents guarantee satisfaction to their customers; that they make free examinations of prospective customers' eyes; that they render efficient and satisfactory service; that the offers made are special and reduced prices and for a limited time only; that respondents sell customers complete single-vision spherical lens glasses with any shape frames or rimless with case and cleaner worth \$15 for only \$5; that they sell customers any shape bifocal, far and nearsighted, genuine Kryptok spherical white lenses regularly valued at \$15.00 for only \$5.00; that said respondents by operating their own shops are able to sell, and sell, every kind of complete eyeglasses and lenses at lower prices than any other opticians or optometrist.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false and misleading. Respondent, Francis R. Hillyard, Sr., is not a college graduate. The Hillyard Optical Company is not the oldest or largest optical company in Washington, D. C., but has only been in existence for about three years. In many instances, respondents do not, and will not, satisfy their customers by providing them with satisfactory glasses or refunding money paid for unsatisfactory glasses. Respondents do not make free examinations of customers' eyes. Whenever glasses are sold, after examination, the charge for the examination is included in the price for the glasses. In case no glasses are purchased, after examination, a charge is made for such examination. Respondents do not render efficient and satisfactory service in that only a perfunctory examination of the eyes is made, and in many instances glasses are ill-fitted and absolutely useless to the purchaser. The offers made and designated as "Special" are not special or reduced prices and are not made for a limited time only, but are regular and continuing offers made by respondents for an indefinite time. Respondents' said offers to sell glasses or lenses for \$5.00 are not made in good faith, but are solely for the purpose of inducing prospective customers to call at respondents' places of business.

When such prospective customers call at respondents' places of business to purchase glasses and lenses, pursuant to and in accordance with respondents' said advertisements, after respondents examine prospective customers' eyes, they inform them glasses will cost a certain figure, much higher than \$5.00; and when customers protest, respondents tell them that the \$5.00 glasses will not be of any value for their eye condition and usually they are eventually sold glasses at much higher prices. Only a small proportion of respondents' business consists of glasses or lenses for \$5.00. Respondents do not sell comparable glasses, lenses or frames at lower prices than many others engaged in like businesses. A large proportion of the lenses sold by respondents are stock lenses and no shop work is done by them, and the prices stated in the advertisements to be the regular prices for glasses and lenses are fictitious and greatly in excess of the regular and going retail prices therefor.

PAR. 6. The use by the respondents of the foregoing false, deceptive and misleading statements and representations, disseminated as aforesaid, has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and

mistaken belief that all of such statements and representations are true and into the purchase of substantial quantities of respondents' glasses, frames and lenses as a result of such erroneous and mistaken beliefs.

PAR. 7. The aforesaid acts and practices of respondents, 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 June 26, 1943, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of answers thereto by certain respondents, 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 complaint, the answers thereto, testimony 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. (a) Respondent, Francis R. Hillyard, Sr., is an individual, trading as Dr. F. R. Hillyard & Son and as F. R. Hillyard & Son, with his principal place of business at 5326 Georgia Avenue, N. W. Washington, D. C. This respondent is the father of respondents, Bernard B. Hillyard, Frederick C. Hillyard, and Francis R. Hillyard, Jr.

(b) Respondents, Bernard B. Hillyard, Frederick C. Hillyard, and Francis R. Hillyard, Jr., individuals, are copartners trading as Hillyard Optical Company, with their places of business at 711 G Street, N. W., and 521 H Street, N. E., Washington, D. C.

(c) Respondent, John Giddings, an individual, was, during a part of the time covered by the complaint herein, an employee of the partnership at the 711 G Street, N. W., place of business.

PAR. 2. Respondents, other than John Giddings, are now, and for several years last past have been, engaged in the business of operating optical stores in Washington, D. C., and in offering for sale and selling eyeglasses, lenses, and frames therefor to members of the public in the District of Columbia. Respondent John Giddings, in his capacity as an employee of the Hillyard Optical Company, has been similarly engaged on behalf of his employers.

PAR. 3. In the course and conduct of their aforesaid businesses, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning

their said products and their qualifications by means of the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products and qualifications 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 above set forth, by the United States mails, by advertisements inserted in newspapers, and by other means in commerce, are the following by the Hillyard Optical Company:

Two Specials All This Week

Complete Glasses		BIFOCALS, genuine	
Single Vision		Kryptok lenses to	
Frame or Rimless	\$5	see far and near.	\$5
Examination		Reg. value, \$12.00.	
Case and Cleaner		Now, white lenses only	

By operating our own shop we are able to give you the lowest price on all of your optical needs.

(Picture of Glasses)		\$5
Free Examination	\$12.00	Value

ATTENTION: Know your eyesight specialist; who is he? Is he a COLLEGE GRADUATE? These questions are VITAL to your health and happiness. CONSULT A COLLEGE GRADUATE EYESIGHT SPECIALIST. The name of HILLYARD has been associated with the optical profession for over 40 years. Washington's largest and oldest family of eyesight specialists.

TWO CONVENIENT LOCATIONS

HILLYARD OPTICAL CO.

711 G St. N. W. * 521 H St. N. E.

Hours, 8:30 A.M. to 6 P.M.

Hours, 8:30 A.M. to 7:30 P.M.

Two Specials All This Week

\$5 (Picture of Glasses)

Free
Examinations
With Glasses

Complete Glasses
Single Vision
Spherical Pre- \$5
scriptions Lenses,
Any Shape \$15.00
Frame or Rimless Value
Case and Cleaner

BIFOCALS; genuine Kryptok spherical prescription lenses, any shape, to see far and near. Reg. value, \$15.00. Now, white lenses only. \$5

WHY THE
HILLYARD
OPTICAL CO. IS
WASHINGTON'S
LEADING
OPTICAL
ESTABLISHMENT

When patronizing the Hillyard Optical Co., you deal with Washington's largest and oldest optical establishment—43 years. We devote 100% of our time to the optical profession. The Hillyard Optical Co. is owned and operated by College Graduated Eyesight Specialists. In operating our own shop we give you the lowest prices and quickest service for your optical needs.

Two Convenient Locations

HILLYARD OPTICAL CO.

711 G St. N. W. * 521 H St. N. E.

Hours, 8:30 A.M. to 6 P.M.

Hours, 8:30 A.M. to 7 P.M.

One
Week SPECIAL

(Picture of Glasses)

Washington's oldest and largest family of eyesight specialists, associated with the optical profession for over 40 years. This is your assurance of guaranteed satisfaction.

Complete Glasses
Single Vision
Any Shape Lens
Spherical Lenses \$5
Reg. Frame or
Rimless
Case and Cleaner

Bifocals. Genuine
Kryptok Spherical
Lenses. Any Shape, \$5
To see Far and
Near. Reg. Value
\$12.00. White lenses
Only. Now

Free Examination with Glasses

HILLYARD OPTICAL CO.
711 G St. N. W. * 521 H St. N. E.

2 Locations

and the following by Francis R. Hillyard, Sr.:

SHOPPERS

Special No. 1		Special No. 2
Complete Glasses		Bifocals, Genuine
Single Vision		Kryptok White
Frame or Rimless	\$5	Lenses to See Far \$5
Examination		and Near. Reg.
Case & Cleaner		Value, \$12.00 NOW
(Picture of Glasses)		\$5
		\$12.00
		Value

ATTENTION! Be sure to consult a College Graduate Eyesight Specialist. We have been Practicing Optometrists for 44 years and have always given efficient service. We are located in our own building and out of the high rent district. All lens surfacing done in our own laboratory on the premises. We fill prescriptions and will duplicate lenses.

The Above Prices Do Not Include Cylinder or Tinet Lenses

Office Hours 8:30 A.M. to 7:30 P.M.

DR. F. R. HILLYARD & SON
5326 Georgia Ave. N. W.

Parking Facilities

Telephone TAYlor 8644

PAR. 4. Through the use of the statements and representations contained in the aforesaid advertisements, and others of similar import not specifically set out herein, respondents, Bernard B. Hillyard, Frederick C. Hillyard, and Francis R. Hillyard, Jr., trading as Hillyard Optical Company, have represented, directly and by implication, that their said business is the oldest and largest optical company in Washington, D. C., and has been in existence for over 40 years; that respondents guarantee satisfaction to their customers; that they make free examinations of the eyes of prospective customers; that they render efficient and satisfactory service; that the prices advertised are special and reduced prices and are available for a limited time only; that complete single-vision spherical lens glasses and with any shape frames or rimless, with case and cleaner, usually or regularly priced at \$15, are only \$5, and that bifocal genuine spherical Kryptok white lenses of a regular value of \$12 are offered for only \$5. Respondent, Francis R. Hillyard, Sr., through his aforesaid advertisements, and others similar thereto not specifically set out herein, represents, directly and by implication, that he is a college graduate optometrist or optician; that complete glasses with single-vision lenses (except cylindrical or tinet lenses) in frames or rimless mountings, with case and cleaner, having a regular value of \$12, are offered at a special price of \$5, and that

bifocal genuine Kryptok white lenses of a regular value of \$12 are offered at a special price of \$5.

PAR. 5. The aforesaid statements and representations by Francis R. Hillyard, Sr., are grossly exaggerated, false, and misleading. Said respondent is not a college graduate optometrist or optician. The single-vision glasses offered for \$5 are not of a \$12 value as represented. He makes it a practice to attempt to persuade persons coming into his place of business for \$5 glasses to purchase higher-priced glasses or more expensive frames and is able to sell more expensive glasses to about three out of ten such customers. The so-called special price of \$5 is for glasses with a rhodium frame or rhodium mountings, whereas glasses sold for \$12 include a "better job" and a higher-priced frame or a frame with gold mountings. The Kryptok lenses offered for \$5 and represented as having a \$12 value do not in fact have any such value. The Kryptok lens is made in two parts having different densities and is cheaper than another type of bifocal lens which is regularly sold by respondent for \$9.75. Respondent attempts to sell more expensive lenses to customers seeking \$5 bifocal lenses by explaining the advantages and greater value of the \$9.75 lens as compared with the Kryptok lens. Respondent testified that fully three out of five customers who ask for \$5 bifocal lenses in response to his advertisement believe they are going to get a complete set of glasses for \$5, and when he explains that the advertisement offers only lenses and that the frames are extra, customers say to him: "Now, you are misrepresenting, you tricked me into coming down here just to get me down here and now you say it is not \$5." He has difficulty in making them understand the advertisement and testified that "People are so dumb at times it just makes you tired." There was a period of time during which respondent ran the advertisement offering complete single-vision glasses and Kryptok bifocal lenses at \$5 continuously, and these prices were not special but were the usual and customary prices charged at that time to those customers to whom the respondent was unable to sell more expensive frames or lenses.

PAR. 6. (a) The aforesaid statements and representations by respondents, Bernard B. Hillyard, Frederick C. Hillyard, and Francis R. Hillyard, Jr., trading as Hillyard Optical Company, are grossly exaggerated, false and misleading in the particulars hereinafter set out.

(b) The Hillyard Optical Company is not the oldest optical company in Washington, D. C., and has not been in existence for over 40 years. As a matter of fact, the business now designated as Hillyard Optical Company had its origin in 1939 and the partnership now designated as Hillyard Optical Company was formed in 1941.

(c) Respondents do not furnish "free examination" or "free examination with glasses." In those instances where a customer purchases glasses, the cost of the examination is included in the price of the glasses and it is not in any sense "free." In those cases where, because of the manner in which the customer is treated or because of the perfunctory nature of the examination given, or for other reasons, the customer decided not to purchase glasses from respondents, they frequently charge and seek to collect a fee of \$2 or \$3 for the examination. In some instances where the customer objects to paying for the examination when he understood from respondent's advertising that it was free, respondents have browbeaten, threatened, and otherwise sought to force payment of such fee before the customer was permitted to leave the premises.

(d) In the many instances where respondents have failed to render the efficient and satisfactory service which they have represented that they

furnish, they have also failed and refused to honor the guarantee of satisfaction made in their advertisements by means of statements such as "This is your assurance of guaranteed satisfaction." The record shows a number of instances where respondents have prescribed glasses after an examination which lasted but a few minutes—in some cases 5 minutes, or 5 to 10 minutes, or 10 to 15 minutes, or less than 20 minutes. The testimony of qualified optometrists is to the effect that an adequate eye examination for the purpose of prescribing glasses usually requires 30 or more minutes, and only in an unusual and exceptional instance can an adequate examination be made in as little as 20 minutes. The record shows several specific instances where the glasses furnished to customers by respondents did not correspond to respondents' own prescription for such customers. Many customers of respondents have complained about respondents to the Board of Optometry for the District of Columbia. An official of that board testified that he had received a great many complaints concerning respondents, that he had compared the glasses furnished with the prescriptions given and he had yet to find an instance where the glasses supplied by respondents corresponded to their prescription. In many cases where customers were dissatisfied with the glasses purchased from respondents and appealed to respondents, in some cases many times, to correct the faults in the glasses, furnish them with satisfactory glasses, or make some refund or adjustment, respondents have failed or refused to do so. For instance, one customer who went to respondents' place of business to purchase glasses advertised for \$5 was sold a pair of glasses for \$12. She could not see satisfactorily with the glasses and when she tried to use them they gave her severe headaches. She sought many times without success to persuade respondents to correct the glasses or give her satisfactory glasses. In another instance respondents caused a customer to leave her old glasses with them and then sought to sell these old glasses to the customer again as being new glasses. Respondents insisted that the glasses were new even after the customer pointed out certain identifying marks by which she knew the glasses to be her old glasses.

(e) Respondents' representations such as "Two Specials All This Week" in advertising glasses for \$5, "\$15 Value for \$5," and "Regular Value \$15" falsely indicate that customers may secure a special price or a reduced price for a limited time which they do not in fact receive. Such representations are used as a means of inducing prospective customers to come to their place of business, whereupon respondents seek to sell them glasses at much higher prices. The continuous repetition of such offers makes it plain that they are not, in truth and in fact, limited in point of time. It is also plain from the testimony of persons who have sought to buy glasses from respondents at \$5 and have paid \$12 or \$15 or more, that respondents do not sell for \$5 glasses for which they customarily charge \$12 or \$15. Respondents use many means to discourage prospective customers from insisting upon glasses at \$5, such as statements that the \$5 glasses will not be satisfactory, or that the customer can not be fitted with \$5 glasses; and in some instances the persuasion is accomplished when the customer realizes that he will have to pay for an examination if he does not take glasses, and rather than lose the cost of examination consents to buy higher-priced glasses.

PAR. 7. The use by the various respondents of the false, deceptive, and misleading statements and representations disseminated as aforesaid has had the capacity and tendency to mislead and deceive, and has misled and

deceived, a substantial number of the purchasing public into the erroneous and mistaken belief that such false advertisements, statements, and representations are true, and to induce a substantial number of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' glasses, frames, and lenses.

CONCLUSION

The aforesaid acts and practices 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of certain respondents, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, and briefs filed herein (oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

I. *It is ordered*, That respondents, Bernard B. Hillyard, Frederick C. Hillyard, and Francis R. Hillyard, Jr., individually and as copartners, trading as Hillyard Optical Company, or under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of eyeglasses, lenses, or frames, do forthwith cease and desist from directly or indirectly:

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

(a) That their business is the oldest optical establishment in Washington, D. C., or that they have been engaged in the optical business longer than is the fact.

(b) That any service or commodity for which a charge is made, directly or indirectly, or the cost of which is included in the purchase price of any other service or commodity, is free, either by the use of the term "free" or by any other term or terms of similar import or meaning.

(c) That they guarantee satisfaction unless they do in fact furnish glasses satisfactory to their customers or accept the return of unsatisfactory glasses and refund the purchase price thereof.

(d) That the customary or usual price for any kind or type of glasses, lenses, or frames is a special or reduced price; or that an offer of glasses, lenses, or frames is limited in point of time when the offer is not in fact so limited; or that glasses, lenses, or frames offered are of a value in excess of the usual or customary price thereof.

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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said eyeglasses, lenses, or frames, any advertisement which contains any of the representations prohibited in paragraph 1 above.

II. *It is further ordered*, That respondent, Francis R. Hillyard, Sr., 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 eyeglasses, lenses, or frames, do forthwith cease and desist from directly or indirectly:

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

(a) That he is a college graduate optometrist or optician.

(b) That the customary or usual price for any kind or type of glasses, lenses, or frames is a special or reduced price, or that glasses, lenses, or frames offered are of a value in excess of the usual or customary price thereof.

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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said eyeglasses, lenses, or frames, any advertisement which contains any of the representations prohibited in paragraph 1 above.

III. *It is further ordered*, That, inasmuch as respondent, John Giddings, had no managerial direction or control over the business of the respondents he served as an employee, the complaint herein be, and the same hereby is, dismissed as to said John Giddings without prejudice to the right of the Commission to institute further proceedings should facts warrant such action.

IV. *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

NATIONAL SECRETARIES' ASSOCIATION, AND H. ROBINSON SHEPHERD, RUTH HOSTETLER, HILARY A. BUFTON, AND GEORGE TURNER, INDIVIDUALLY AND AS OFFICERS AND DIRECTORS THEREOF

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

Docket 5003. Complaint, July 15, 1943—Decision, Apr. 10, 1945

Where a corporation and its officers, by two of whom it was organized and incorporated as not for profit, but who actually operated it as a private business to promote the sale and distribution of their books through sale of memberships therein by salesmen or "registrars" to persons holding secretarial positions who were thereupon organized into local chapters, and by virtue of their membership contracts became entitled to receive aforesaid books "Better Letters—Lessons in English," "Better Letters—Quiz Book," "Webster's Encyclopedic Dictionary," and accident insurance policy, and a year's subscription to a monthly magazine, along with other benefits represented as accruing, namely, special rates at many vacation resorts and opportunities for better positions through an employment service; to induce the purchase of their books and memberships in their said association—

(a) Represented directly and through their said agents or "registrars" that the association would provide special courses of instruction similar to those of a correspondence school; stating, in furtherance of such representations, in their advertising, including application forms, under the caption "INDIVIDUAL INSTRUCTION," "You have the undivided attention of your instructor. When your lessons are before him you are the only student in his class";

The facts being no provisions were made for giving any such course to members but the educational features were limited to supplying the members with said publications, with suggestions that the "Quiz Book" be covered in the course of meetings among the members;

(b) Represented, as aforesaid, that purchasers of memberships would receive group health, accident, and hospitalization policies;

The fact being the only insurance policy supplied to the members was a special accident contract very limited in scope and with no health insurance features;

(c) Represented, as aforesaid, that the association maintained an employment service for its members and that assistance would be given by it in securing employment for them, through Article IV of its constitution, distributed among the members, providing for "assistance in securing employment for its members," and through including in its advertising material and on application blanks, under caption "EMPLOYMENT SERVICE," the statement "Upon completion of training you are eligible to file for the better positions which employers list with the national headquarters of the Association";

The facts being they maintained no employment service or facilities therefor, and efforts with reference to employment were limited to adoption of a by-law by the board of governors providing that the members pledge themselves to report to the employment committee of their local chapters positions which from time to time might come to their attention; and

(d) Represented through their said "registrars" that the association was an old, established organization, with chapters located all over the United States;

When, in fact, said association was established in 1942 and chapters were limited to a small number in the Middle West and Far West;

With the result that members and prospective members were led into the erroneous belief that they were joining a legitimate and well-established association of secretaries and thereby into purchase of said publications:

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. J. Earl Cox*, trial examiner.

Mr. Merle P. Lyon and *Mr. Clark Nichols* for the Commission.

Mr. J. K. Owens, of Kansas City, Mo., for respondents generally, and along with—

Mr. J. B. McGilwray, of Kansas City, Mo., for National Secretaries' Association.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that National Secretaries' Association, a corporation, and H. Robinson Shepherd, Ruth Hostetler, Hilary A. Bufton, and George Turner, individually, and as officers and directors of National Secretaries' Association, 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. Respondent, National Secretaries' Association, is a corporation, organized, existing and doing business under the laws of the State of Missouri, with its principal offices at 1005 Grand Avenue, Kansas City, Mo.

Respondent, H. Robinson Shepherd, is president of National Secretaries' Association, and resides in Leavenworth, Kans.

Respondent, Ruth Hostetler, is secretary of National Secretaries' Association, and has her place of business at 1005 Grand Avenue, Kansas City, Mo.

Respondent, Hilary A. Bufton, is the manager and principal organizer and promoter of the business conducted by National Secretaries' Association, and holds the office of treasurer of said corporation. His place of business is also located at 1005 Grand Avenue, Kansas City, Mo. He directs and controls the sales, policies, and general business operations of all the other respondents herein.

Respondent, George Turner, is sales manager of National Secretaries' Association, with offices at 1005 Grand Avenue, Kansas City, Mo.

PAR. 2. Respondents are now, and for more than a year last past have been, engaged in the sale and distribution of certain books entitled "Better Letters—Lessons in English," "Better Letters—Quiz Book" and "Webster's Encyclopedic Dictionary." Said respondents, being engaged in business as aforesaid, cause said books to be transported from their principal offices and places of business in the State of Missouri to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said books in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, Hilary A. Bufton, has been for many years engaged in the sale of books of various kinds, including two books designed for the use of secretaries, entitled "Better Letters—Lessons in English" and "Better Letters—Quiz Book." In December 1941 he adopted as a trade name for his business in said books the name "National Secretaries' Association." In May 1942 he caused National Secretaries' Association to be incorporated under the laws of the State of Missouri as a non-profit corporation. Said corporation was organized for the primary purpose of affording an outlet for the sale of the various publications sold by said Hilary A. Bufton, and since the date of its incorporation said corporation has bought said books from said Hilary A. Bufton and sold and distributed same to its members in the manner hereinafter set out. Various salesmen and organizers are employed by the respondent, Hilary A. Bufton, to organize local chapters of secretaries in various cities of the Middle West and the Pacific Coast States. After these salesmen and organizers have sold a sufficient number of memberships in National Secretaries' Association to form a local chapter, a meeting of all the signers of said contracts of membership is called and a local chapter organized. The initiation fee was originally \$29.85, with annual dues of \$3.65, but this initiation fee was subsequently increased to \$35.00, with annual dues of \$5.00. The initiation fees are paid direct to National Secretaries' Association, which then pays \$10 to the salesman or so-called "registrar," \$1.00 for the purchase of an accident insurance policy for each member, and 85 cents for the purchase of a year's subscription to a magazine entitled "The Secretary." The memberships are sold under the installment plan in installments suitable to the subscriber, and each member is entitled to receive, and does receive, the three books hereinbefore mentioned, "Better Letters—Lessons in English," "Better Letters—Quiz Book," and "Webster's Encyclopedic Dictionary." These books are supplied to National Secretaries' Association by respondent, Hilary A. Bufton, and the profits accruing to said respondent from the sale of said books constitute the chief reason for the organization and promotion of the various local chapters of National Secretaries' Association. Whatever benefits may accrue to the members are incidental to the operation of the plan, which is primarily designed to further the business interests of respondent, Hilary A. Bufton.

PAR. 4. Respondents, or their agents and representatives, establish contacts in a city where it is their intention to establish an alleged chapter of National Secretaries' Association. The said respondents, directly and through their agents and representatives, represent to the prospective members of National Secretaries' Association that it is an old, established association of secretaries, with chapters all over the United States; that it has a three-fold purpose, first, to give its members education and study facilities and assistance; second, to give social and cultural advantages; and third, to provide its members with group insurance and accident insurance benefits at a low premium rate. They represent that all of these advantages will be obtained by the members upon payment of the initiation fee, and that National Secretaries' Association was organized not for profit, but as a benevolent and educational association for the benefit of the members.

Respondents, or their agents and representatives, have made various false and misleading statements to prospective members of National Secretaries' Association for the purpose of inducing the signature of membership contracts and payment of initiation fees and annual dues. Among

said false and misleading statements and representations are representations that courses of study will be given to all members, supervised by a university graduate, who will give individual instruction and help to the members to make them more efficient secretaries; that employment will be obtained for all members who have completed the prescribed course of study; that members of National Secretaries' Association are entitled to special privileges and discounts at "many renowned resorts"; that said association has been in existence for several years and has a number of chapters in the eastern part of the United States; and that a membership card and emblem will be given to each member upon enrollment.

PAR. 5. In truth and in fact, National Secretaries' Association is only a sham and an outlet for the publications sold by respondent, Hilary A. Bufton, entitled "Better Letters—Lessons in English," "Better Letters—Quiz Book" and "Webster's Encyclopedic Dictionary." It is not a legitimate association of secretaries organized not for profit and for a philanthropic and educational purpose, but is designed and intended to further the personal sales activities of respondent, Hilary A. Bufton, in selling the aforesaid books, which are supplied to the members as part of the consideration of their initiation fee in joining said association.

National Secretaries' Association is not an old, established institution, and has not branches in the eastern part of the United States, and only a few branches in the Middle West and Far West sections of the United States. No courses of study are furnished to the members, and no instruction or supervision is furnished by the association to its members. The association makes no effort to secure employment for its members or to help them secure better jobs than they now have. The "many renowned resorts" at which members are entitled to discounts are very few in number. Several of them are in foreign countries or so located as to be of little use to the rank and file of the membership of said association. The membership card and emblem are not furnished to the members until final payment of the initiation fee has been made. Generally speaking, membership in National Secretaries' Association does not confer the advantages expected by its members and promised to them by its agents and representatives as aforesaid.

PAR. 6. By reason of the foregoing acts, statements and inducements as herein set forth, members and prospective members of National Secretaries' Association have been led into the erroneous and mistaken belief that they are joining a legitimate and well-established association of secretaries who have banded together for mutual self help and educational, social and cultural advantages.

Further, as a result of the aforesaid acts, statements and inducements, the respondents have sold and are now selling memberships in National Secretaries' Association, and have sold and are now selling the books entitled "Better Letters—Lessons in English," "Better Letters—Quiz Book," and "Webster's Encyclopedic Dictionary" to various members of the public who, as a result of such acts, statements and inducements have joined the purported association and purchased the aforesaid books.

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 July 15, 1943, issued, and subsequently served, its complaint in this proceeding on the respondents, National Secretaries' Association, a corporation, and H. Robinson Shipherd (named in the complaint as H. Robinson Shepherd), Ruth Hostetler Bufton (named in the complaint as Ruth Hostetler), Hilary A. Bufton, and George Turner, individually, and as officers of National Secretaries' Association, 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 the answers of the respondents 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 briefs filed in support of the complaint and in opposition thereto (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, National Secretaries' Association, is a corporation, organized, existing, and doing business under the laws of the State of Missouri, with its principal office at 1005 Grand Avenue, Kansas City, Mo.

Respondent, H. Robinson Shipherd (named in the complaint as H. Robinson Shepherd), is president of National Secretaries' Association and now resides in North Amherst, Mass.

Respondent, Ruth Hostetler Bufton (named in the complaint as Ruth Hostetler), is secretary of the National Secretaries' Association and has her place of business at 1005 Grand Avenue, Kansas City, Mo.

Respondent, Hilary A. Bufton, is the manager and principal organizer and promoter of the business conducted by National Secretaries' Association and also does business under the name of Executives Guild. His principal place of business is also located at 1005 Grand Avenue, Kansas City, Mo.

Respondent, George Turner, is engaged with the respondent, Hilary A. Bufton, in promoting the National Secretaries' Association and has his office at 1005 Grand Avenue, Kansas City, Mo., and resides at 801 E. Armour Street, Kansas City, Mo.

PAR. 2. The respondents are now, and for several years last past have been, engaged in the sale and distribution of certain books entitled, "Better Letters—Lessons in English," "Better Letters—Quiz Book," and "Webster's Encyclopedic Dictionary." Said respondents cause said books, when sold, to be transported from their office and place of business in the State of Missouri to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain,

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

PAR. 3. The respondent, Hilary A. Bufton, since 1934, has been engaged in the sale and distribution of his publication known as "Better Letters," under the trade name "Executives Guild." On or about November 28, 1941, the respondents, Hilary A. Bufton and George Turner, originated the plan of promoting the sale of said publication Better Letters and other publications through the instrumentality of an organization known as "National Secretaries' Association," which name was adopted as a trade name by the respondent, Hilary A. Bufton.

Under this arrangement the respondent, Hilary A. Bufton, supplied all necessary capital, publications, and other material necessary to the operation of the business, and respondent, George Turner, took over the sales of the memberships and all expenditures incident thereto, including commissions to organizers and travelling expense. Memberships were originally sold for \$29.85, with annual dues thereafter of \$3.65. All monies collected from the sale of such memberships, including annual dues after deduction of cost of magazine, were divided, equally between said respondents, Hilary A. Bufton and George Turner. The customary procedure followed by the various salesmen and organizers, who were designated as "registrars," was to call on prospects holding secretarial positions and endeavor to induce them to sign a contract or application for membership in the National Secretaries' Association. When a sufficient number of memberships were sold by an organizer, a meeting of all signers of such contracts of membership was called and a local chapter organized.

Persons joining the National Secretaries' Association were required to pay at least \$3.65 in cash at the time of signing the application or contract of membership and to execute a promissory note, payable in installments, for the balance of the price of the membership. In return for this payment, such persons were to receive an emblem, a membership card in the National Secretaries' Association, a copy of the constitution and by-laws, a copy of respondents' publications Better Letters—Lessons in English; Better Letters—Quiz Book, and also a copy of Webster's Encyclopedic Dictionary, and, in addition, an accident insurance policy and a year's subscription to a monthly magazine. Other benefits which were represented as accruing to members were special rates at many vacation resorts and opportunities for better positions through an employment service.

PAR. 4. On or about May 14, 1942, the National Secretaries' Association was incorporated as a corporation not for profit under the laws of the State of Missouri, with H. Robinson Shipherd as president, Ruth Hostetler Bufton as secretary, and Hilary A. Bufton as treasurer. Immediately thereafter, respondent, Hilary A. Bufton, resigned as treasurer and was succeeded by Evangeline Smith, a stenographer in the office of his attorney. Said respondent, Hilary A. Bufton, then entered into a contract with the National Secretaries' Association, whereby the said respondent, Hilary A. Bufton, retained the sole right to solicit or accept memberships in said organization and to organize chapters. Memberships were to sell for \$35, \$5 of which was to be credited to the association as membership dues. Shortly thereafter, the cost of membership was reduced to \$23.65, with the sum of \$3.65 being applied to the membership account. Under this plan, the arrangements between respondents, Hilary A. Bufton and George Turner, remained the same, except that the equal

division of monies received was discontinued and the \$25 net received by respondent, Hilary A. Bufton, was divided \$10 to said respondent, Hilary A. Bufton, and \$15 to respondent, George Turner. Of the amount allotted to said respondent, George Turner, to cover sales expense, \$10 was paid to the salesman or organizer for each contract of membership obtained. No change was made in the material or benefits given to applicants for membership from those above described, except that when the price was reduced from \$35 to \$28.65 delivery of the Webster's Encyclopedic Dictionary was discontinued and about this time the supplying of accident insurance policy was discontinued as part of the membership contract but was still available to members on payment of the sum of \$1 annually.

PAR. 5. The exclusive management and control of the corporate respondent, National Secretaries' Association, including all the finances of said corporation, were vested in a board of governors, consisting of the president, secretary, and treasurer of said corporation. The members of the association and the various chapters organized by them had no voice in the conduct of the corporate respondent except that in August 1943 a by-law was adopted establishing a national advisory council to be composed of all chapter presidents, each to have one vote when consulted by the board of governors in connection with the shaping of national policies and in connection with the administration of the association generally. No provision was made for the election of officers, who, in turn, constituted the board of governors, and in practice the board of governors, or those remaining, filled any vacancies which occurred. On or about January 1, 1943, the board of governors, by reason of the expected absence of the respondent, Ruth Hostetler Bufton, who was then secretary, passed a resolution turning over all details, clerical work, etc., pertaining to the National Secretaries' Association to the Executive Guild. Although the said respondent, Ruth Hostetler Bufton, was absent from Kansas City, she continued as secretary and member of the board of governors.

PAR. 6. At all times subsequent to the organization of the National Secretaries' Association the respondents, Hilary A. Bufton and George Turner, in cooperation with the other individual respondents, operated said association as their own individual business, crediting the membership fee of \$3.65 to the National Secretaries' Association and distributing the balance to the respondents, Hilary A. Bufton and George Turner, on the basis hereinbefore described. The office of the National Secretaries' Association was located in the offices of Hilary A. Bufton and George Turner. Rent for such office was paid by the respondent, Hilary A. Bufton. Correspondence in connection with the activities of the National Secretaries' Association was for the most part conducted by the respondents, Hilary A. Bufton and George Turner, and correspondence in connection with the collection of promissory notes given in payment of membership contracts was conducted by the respondent, Hilary A. Bufton, either under his own name as Executives Guild or under the name of National Secretaries' Association. From time to time, particularly where collection matters were involved, the respondent, Hilary A. Bufton, signed letters written under the name of National Secretaries' Association with the name "H. J. Vance," a person who was not connected with the National Secretaries' Association and who had no interest in the matter whatsoever.

In practice, the business of the National Secretaries' Association was not conducted as a corporation not for profit but, instead, was conducted for the sole purpose of selling the publications distributed by the respond-

ent, Hilary A. Bufton, and the profits accruing from the sale of said books constituted the chief reason for the organization and promotion of the various local chapters of the National Secretaries' Association. Whatever benefits might have accrued to the members were incidental to the operation of the plan, which was primarily designed to further the business interests of the respondents, Hilary A. Bufton and George Turner.

PAR. 7. In the course and conduct of their business and for the purpose of inducing persons to purchase respondents' publications and memberships in the National Secretaries' Association, the said respondents directly and through their agents and representatives made various misleading, false, and deceptive statements, typical of which are the following:

1. *Representations as to educational features.* In this connection it was represented to the purchaser that the National Secretaries' Association would provide special courses of instruction similar to those of a correspondence school. In furtherance of such representations the respondents placed the following statement in their various advertising material, including application forms:

"INDIVIDUAL INSTRUCTION

"You have the undivided attention of your instructor. When your lessons are before him you are the only student in his class."

In fact, no provisions were made for giving any course of instruction to the individual members of the association and respondents did not conduct any correspondence course for the members of such association or provide the facilities therefor. The educational features were limited to supplying the members with the publications *Better Letters* and *Quiz Book*, with suggestions that the *Quiz Book* be covered in the course of meetings among the members.

2. *Representations as to insurance.* It was represented that purchasers of memberships in the National Secretaries' Association would receive group health, accident, and hospitalization policies. In fact, the only insurance policy supplied to the members was a special accident contract very limited in scope and having no health insurance features.

3. *Representations as to employment.* One of the provisions of Article IV of the constitution of the National Secretaries' Association, which was distributed to its members, under the powers and purposes of the organization was "assistance in securing employment for its members." In its various advertising material and on application blanks the following statement appeared:

"EMPLOYMENT SERVICE

"Upon completion of training you are eligible to file for the better positions which employers list with the national headquarters of the Association."

In addition, it was represented by various salesmen that employment and better positions could be obtained through the association. In fact, the respondents maintained no employment service for the members of the association and established no facilities therefor and efforts with reference to employment were limited to adoption of a by-law by the board of governors providing that the members pledge themselves to report positions which from time to time might come to such members' attention, to the employment committee of the local chapters to which such member belonged.

4. *Representations as to status of the association.* It was also represented by registrars that the National Secretaries' Association was an old, established organization with chapters located all over the United States, when, in fact, said association was established in 1942 and chapters were limited to a small number in the Middle West and Far West.

PAR. 8. By reason of the foregoing acts, statements, and inducements as herein set forth, members and prospective members of the National Secretaries' Association have been led into the erroneous and mistaken belief that they were joining a legitimate and well-established association of secretaries and through this means have been induced to purchase respondents' publications.

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

It is ordered, That the respondent, National Secretaries' Association, a corporation, and its officers, and the individual respondents, H. Robinson Shipherd (named in the complaint as H. Robinson Shepherd), Ruth Hostetler Bufton (named in the complaint as Ruth Hostetler), Hilary A. Bufton, and George Turner, 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 certain publications known as "Better Letters—Lessons in English" and "Better Letters—Quiz Book," or any other publication 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 the National Secretaries' Association is not conducted for profit or that said association is anything other than a means or instrumentality for selling publications, with only incidental benefits to its members.
2. Representing directly or by implication that special courses of instruction can be obtained through the purchase of a membership in the National Secretaries' Association or that any educational benefits can be derived from membership in said association other than those which may be acquired through the purchase of respondents' publications.
3. Representing directly or by implication that members of the National Secretaries' Association will be entitled to receive insurance protection different from that provided for by the policy actually issued.
4. Representing directly or by implication that the National Secretaries' Association maintains an employment service for its members or that assistance will be given by the association in securing employment for its members when employment activities are limited to activities of members in the local chapters.

Order

5. Representing directly or by implication that the National Secretaries' Association is an old, established association or that it has chapters in localities where none exist.

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

L. R. KALLMAN & COMPANY

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

Docket 4966. Complaint, May 19, 1943—Decision, Apr. 11, 1945

Where a partner in active charge of a family partnership business financed by him, and engaged in interstate sale and distribution of two cosmetic preparations designated "Chin-Up"—more recently "Chin-Ep"—and "Digitite"; through advertisements in newspapers and by circulars and other advertising literature, directly and by implication—

- (a) Represented that the preparation "Chin-Up," or "Chin-Ep," was effective in tightening the throat line, that it eliminated flabbiness and crepiness along the throat line, made loose, flabby skin on the chin and throat line smoother and firmer, and caused a person to have and to retain a youthful throat line; and
- (b) Represented that the preparation designated "Digitite" tightened the skin of the hands and made it firm, and caused the hands to become velvety smooth, and that use thereof would result in the hands having a youthful appearance;

The facts being that while the preparations in question—the active ingredients of which, namely, m-digallic acid in ethyl alcohol together with a fraction of 1% of phenyl carbinol, were the same—during the time they remained on the skin, because of their astringent action, might give a feeling of skin tightness, they would not in fact tighten loose skin or give the skin an appearance of smoothness; they would not in any way affect wrinkles and skin flabbiness due to changes within the skin or deeper tissues, nor would they eliminate or prevent skin crepiness; while their continued use might harden the outer layer of the skin and might or might not, depending upon various circumstances, cause it to be temporarily firmer, such continued use might result in skin irritations and roughness; and said "Chin-Up" or "Chin-Ep" was not effective in tightening the throat line and would not cause a person to have or to retain a youthful throat line, nor would "Digitite" cause the hands to become velvety smooth or give them a youthful appearance;

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

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. John L. Hornor*, trial examiner.
Mr. John M. Russell for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that L. R. Kallman, an individual, trading as L. R. Kallman & 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. L. R. Kallman, is an individual, trading as L. R. Kallman & Company with his principal office located at 43 East Ohio Street, Chicago, Ill.

PAR. 2. Respondent is now, and has been for more than two years last past, engaged in the sale and distribution of two cosmetic preparations, designated "Chin-Up" (also designated "Chin-Ep") and "Digitite." Respondent causes his said preparations, when sold, to be transported from his aforesaid 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. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said 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 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 products by the United States mails and by various other means of 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 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 disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by radio continuities, by advertisements in newspapers, and by circulars and other advertising, are the following:

Chin-Up

CHIN-UP

FOR THE YOUNG LINE OF BEAUTY.

You can actually feel your throatline tightening. It's a wonderful sensation. Don't let flabbiness, crepiness, destroy your youthful throat line. Quick, easy, and so effective you can cut down on the applications as time goes on.

You'll never want a chin strap again.

A completely revolutionary astringent mask effective in making loose flabby skin on chin and throatline, firmer, smoother.

See how it helps to keep your throatline and chinline firmer and smoother. Use Chin-ep to help retain a youthful chinline.

Digitite

Three-Minute Hand Treatment.

A revolutionary new beauty aid to help firm the skin! You'll feel the tightening sensation almost immediately . . . and be enchanted by the velvety smoothness and youthful appearance of your hands.

You'll marvel at the economy of Digitite—you need use so little—you can gradually cut down the applications. A few drops a day does the trick.

Non-sticky.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others of similar import not specifically set out herein, all of which purport to be descriptive of respondent's said preparation

designated "Chin-Up" and of its effectiveness when used, respondent directly and by implication represents that it is effective in tightening the throat line; that it eliminates and prevents flabbiness and crepiness along the throat line; that it makes loose flabby skin on the chin and throat line smoother and firmer; that it causes a person to have and retain a youthful throat line.

By the use of the statements and representations hereinabove set forth, and others of similar import not specifically-mentioned herein which purport to be descriptive of respondent's said preparation designated "Digitite," respondent directly and by implication represents that it tightens the skin of the hands and makes it firm; that it causes the hands to become "velvety" smooth and that its use will result in the hands having a youthful appearance; that it is non-sticky when applied to the hands.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact respondent's said preparation designated "Chin-Up" is not effective in tightening the throat line. It will not eliminate or prevent flabbiness or crepiness along the throat line. It will not make any loose or flabby skin firmer or smoother. It will not cause a person to have or retain a youthful throat line.

Respondent's preparation designated "Digitite" will not tighten the skin of the hands or make it firm. It will not cause the hands to become velvety smooth or result in the hands having a youthful appearance. It is sticky when first applied to the hands and remains so until it dries.

PAR. 6. The true facts are that the only effect of each of respondent's said preparations designated "Chin-Up" and "Digitite" when used as directed, is a temporary local astringent action upon the skin. Said preparations will have effect only upon the outer horny layer of the skin and neither of them will penetrate beneath this layer of the skin. Both of said preparations will harden and tan the outer layer of the skin, but neither of them will have any effect upon the deeper wrinkles and flabbiness of the skin which are the result of changes therein.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations in said false advertisements, disseminated as aforesaid, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and into the purchase of substantial quantities of respondent's said cosmetic preparations as a result of such erroneous and mistaken beliefs.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 19, 1943, issued and subsequently served its complaint in this proceeding on respondent L. R. Kallman, an individual, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allega-

tions 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 complaint, the answer thereto, 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, Lawrence R. Kallman (referred to in the complaint as L. R. Kallman), an individual, is a partner in L. R. Kallman & Company, a copartnership consisting of the said Lawrence R. Kallman, his wife, Mabel P. Kallman, and his son, Donald R. Kallman. The said respondent financed the business carried on by the partnership and is in active charge and direction of its affairs. His principal office and place of business is located at 43 East Ohio Street, Chicago, Ill.

PAR. 2. For more than two years last past respondent has been engaged in the sale and distribution of two cosmetic preparations, one designated "Chin-Up" (more recently called "Chin-Ep"), and the other designated as "Digitite." Respondent causes said preparations, when sold, to be transported from his 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, and maintains, and at all times mentioned herein has maintained, a course of trade in said 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 the aforesaid business, respondent has disseminated, and has caused the dissemination of, false advertisements concerning said 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 has caused the dissemination of, false advertisements concerning 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. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as aforesaid by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following respecting the preparation designated "Chin-Up" or "Chin-Ep":

CHIN-UP

For the Young
Line of Beauty

You can actually feel your throatline tightening. It's a wonderful sensation. Don't let flabbiness, crepiness destroy your youthful throatline. Quick, easy, and so effective

you can cut down on the applications as time goes on. Use it just before your biggest party—use it nightly. You'll never want a chin strap again! (Comm. Ex. 5).

* * * * *

CHIN-EP

For a More Beautiful, More
Youthful-looking Throatline

You've looked for it . . . you've asked for it . . . here it is! A new, completely revolutionary astringent mask. Amazingly effective in making loose flabby skin on your throatline and chinline firmer, smoother! You'll be delighted with the new beauty, the more youthful loveliness you see! Easy to apply, too! Once you use it you'll never be without it! (Comm. Ex. 13).

And the following respecting the preparation "Digitite":

FOR FIRMER,
MORE YOUTHFUL
LOOKING HANDS

use

DIGITITE!

The Amazing Three
Minute Hand Treatment

Not a lotion to *soften* the hands but a completely revolutionary new hand beauty aid to help *firm* the skin. So effective its tightening sensation is felt almost immediately upon application. Then—You'll be delighted with the new loveliness, the new beauty and velvety-smoothness of your hands! They'll be lovely to touch, to behold! A lingering fragrance. Nonsticky. Economical too . . . so marvelously quick and so effective you can gradually cut down the applications. Remember—a few drops a day does the trick! (Comm. Ex. 10).

PAR. 4. Through the use of the statements and representations contained in the advertisements set out above, and in others of similar import not specifically set out herein, all of which purport to be descriptive of respondent's said preparations and their effectiveness in use, respondent represents, directly and by implication, that the preparation "Chin-Up," more lately called "Chin-EP," is effective in tightening the throatline, that it eliminates and prevents flabbiness and crepiness along the throatline, that it makes loose, flabby skin on the chin and throatline smoother and firmer, and that it causes a person to have and to retain a youthful throatline; and that the preparation designated "Digitite" tightens the skin of the hands and makes it firm, that it causes the hands to become velvety smooth, and that its use will result in the hands having a youthful appearance.

PAR. 5. The formula for the preparation "Chin-Up" was not changed when the name of the product was changed to "Chin-Ep." The ingredients in the preparations "Chin-Up" and "Digitite" are the same, but one contains a higher percentage of the active ingredients than the other. The active ingredient in both preparations is m-digallic acid in ethyl alcohol. Both preparations also contain a fraction of one percent of phenyl carbinol. Respondent furnishes to purchasers of said preparations at their various

locations throughout the United States advertising copy and newspaper mats, and makes it a practice to reimburse dealers who purchase said preparations for all or a portion of the cost of publishing in newspapers the advertising mats or other advertisements containing representations similar to and based upon those supplied by respondent.

PAR. 6. The aforesaid preparations will have a temporary local astringent action upon the skin, but they will not have any effect upon any part of the skin except its outer layer. During the time these preparations remain on the skin, because of their astringent action, they may give to the user a feeling of skin tightness but they will not in fact tighten loose skin or give the skin an appearance of smoothness. Wrinkles and skin flabbiness due to changes within the skin or deeper tissues cannot be corrected or affected in any way by said preparations, nor will said preparations eliminate or prevent skin crepiness. The continued use of the preparations may harden the outer layer of the skin and may or may not, depending upon various circumstances, cause the outer layer of the skin to be temporarily firmer. Such continued use, however, may result in skin irritations and roughness. The preparation "Chin-Up" or "Chin-Ep" is not effective in tightening the throatline and will not cause a person to have or to retain a youthful throatline. The preparation "Digitite" will not cause the hands to become velvety smooth or give to the hands a youthful appearance.

PAR. 7. The use by respondent of the false, misleading, and deceptive statements and representations contained in the aforesaid false advertisements disseminated, as heretofore 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 such false statements and representations are true, and into the purchase of substantial quantities of respondent's said preparations as a result of such erroneous and mistaken beliefs.

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 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 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 Lawrence R. Kallman, individually, and as a copartner in L. R. Kallman & Company, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of "Chin-Up" or "Chin-Ep" and "Digitite," or any preparations 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, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or through inference:

(a) That the preparation "Chin-Up" or "Chin-Ep" is effective in tightening the throatline; that it will eliminate or prevent flabbiness or crepiness along the throatline; that it will cause a person to have or to retain a youthful throatline; that it will make any loose or flabby skin smoother; or that it will make the skin firmer, in excess of possibly affording temporary firmness to the outer layer of the skin.

(b) That the preparation "Digitite" will tighten the skin of the hands; that it will cause the skin of the hands to be smoother or velvety smooth; that it will give to the hands a youthful appearance; or that it will cause the skin to be firmer, in excess of possibly affording temporary firmness to the outer layer of the skin.

2. Disseminating or causing to be disseminated, by any means, any advertisement for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the aforesaid preparation, which advertisement contains any of the representations prohibited in paragraph 1 above.

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

Complaint

IN THE MATTER OF
 JOSEPH SPERLING, INC.

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

Docket 5113. Complaint, Jan. 10, 1944—Decision, Apr. 11, 1945

Where a corporation engaged in buying and making ladies' fur coats and garments and in the sale thereof to purchasers in several states and the District of Columbia—
 Represented that certain fur coats were made from leopard peltries, through statements on tags affixed thereto and in radio continuities and newspaper and other advertisements including, as typical, the statement “* * There is variety in the Leopard hide * * This kingly animal is judged by his markings. That is why you'll particularly appreciate these superb South American Spotted Leopard fur coats * * * Choose this long wearing and flattering fur”;

The facts being that the garments in question were not made from leopard pelts but from South American spotted cat pelt, garments of which are practically indistinguishable by the purchasing public from the long highly esteemed and more costly leopard and, when not designated South American spotted cat, are readily believed to be and accepted as leopard;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, on account of which belief it purchased a substantial volume thereof:

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

Mr. Carrel F. Rhodes for the Commission.

Mr. Fulton Brylawski, 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 Joseph Sperling, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Joseph Sperling, Inc., is a corporation, organized under the laws of the State of Delaware, with its principal office and place of business located at 709 13th Street, N. W., Washington, D. C.

PAR. 2. Respondent is now, and for several years last past has been, engaged in buying, making and selling ladies' fur coats and garments.

Respondent causes its said products when sold, to be transported from its place of business in the District of Columbia to purchasers thereof located in the several 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. South American Spotted Cat pelts and garments made therefrom resemble but are not equal in quality nor comparable in value to

Leopard pelts and garments made from such pelts. Coats and garments made from the peltries of South American Spotted Cat have the appearance and feel of garments made from the peltries of the Leopard, and are by the purchasing public practically indistinguishable from garments made of Leopard pelts. By reason of the similarity in appearance and feel of garments made from peltries of the South American Spotted Cat and not so designated, they are readily believed to be and accepted by the purchasing public as being made from Leopard pelts.

PAR. 4. Garments made from the pelts of Leopards have for many years held, and still hold, great public esteem and confidence, and because of their luster and superior lasting qualities command a higher price than garments made from the peltries of the South American Spotted Cat.

PAR. 5. In the course and conduct of its aforesaid business, in connection with the offering for sale, sale and distribution of its products in commerce, and for the purpose of inducing the purchase thereof by the public, respondent has made, or caused to be made, various statements, and representations descriptive of its products and the material of which they are composed on tags affixed to said products and by radio continuities and advertisements in newspapers and other media distributed among customers and prospective customers located in the various States of the United States and in the District of Columbia.

Many of the statements and representations made by respondent designating and describing said products and the furs from which they are made are false and misleading. Among and typical but not exclusive of such false and misleading statements and representations are the following:

* * There is variety in the Leopard hide * * This kingly animal is judged by his markings. That is why you'll particularly appreciate these superb South American Spotted Leopard fur coats displayed now at Joseph Sperling * * Washington's oldest exclusive furriers * * at only \$295 * * Choose this long wearing and flattering fur * * at Joseph Sperling, 709 13th Street, N. W., Washington, D. C.

PAR. 6. Through the use of the statements and representations herein above set forth respondent represents that its said fur coats are made from Leopard peltries. In truth and in fact respondents said fur coats are not made from Leopard peltries.

PAR. 7. The use by the respondent of the foregoing acts and practices 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 respondent has truthfully represented the furs from which its coats and garments are made. On account of these erroneous beliefs, a considerable number of the consuming and purchasing public have purchased a substantial volume of respondent's said products.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Fursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 10, 1944, issued and subsequently served its complaint in this proceeding upon respondent, Joseph Sperling,

Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of 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, Joseph Sperling, Inc., is a corporation, organized under the laws of the State of Delaware, with its principal office and place of business located at 709 Thirteenth Street, N. W., Washington, D. C. It is now, and for several years last past has been, engaged in buying, making, and selling ladies' fur coats and garments.

PAR. 2. In the course and conduct of the aforesaid business, respondent causes its products, when sold, to be transported from its place of business in the District of Columbia to purchasers thereof located in several 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 various States of the United States and in the District of Columbia.

PAR. 3. In connection with the offering for sale, sale, and distribution of its products as aforesaid, and for the purpose of inducing the purchase thereof by the public, respondent has made, or caused to be made, various false and misleading statements and representations purporting to be descriptive of its products and the material of which they are composed by means of tags affixed to said products, by radio continuities, and by advertisements in newspapers and other media distributed among customers and prospective customers located in various States of the United States and in the District of Columbia. Among and typical of such statements and representations are the following:

* * There is variety in the Leopard hide * * This kingly animal is judged by his markings. That is why you'll particularly appreciate these superb South American Spotted Leopard fur coats displayed now at Joseph Sperling * * Washington's oldest exclusive furriers * * at only \$295 * * Choose this long wearing and flattering fur * * at Joseph Sperling, 709 13th Street, N. W., Washington, D. C.

PAR. 4. Through the use of the foregoing statements and representations, respondent represents that the fur coats so described are made from leopard peltries, whereas in truth and in fact respondent's said fur coats are not made from leopard peltries.

PAR. 5. Garments made from leopard pelts have for many years held, and still hold, great public esteem and confidence, and because of their luster and superior lasting qualities command a higher price than garments made from the peltries of the South American spotted cat. Said South American spotted cat pelts resemble leopard pelts, but such spotted

Order

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cat pelts and garments made therefrom are not equal in quality or comparable in value to leopard pelts and garments made from such pelts. Coats and garments made from the peltries of South American spotted cat have the appearance and feel of garments made from leopard peltries and are practically indistinguishable by the purchasing public from garments made of leopard pelts. By reason of the similarity in appearance and feel of garments made from peltries of the South American spotted cat and not so designated, they are readily believed to be and accepted by the purchasing public as being made from leopard pelts.

PAR. 6. The use by respondent of the aforesaid false and misleading statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and that respondent has truthfully represented the furs from which its coats and garments are made. On account of these erroneous beliefs, numbers of the consuming and purchasing public have purchased a substantial volume of respondent's said products.

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 the respondent in which answer respondent admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts, 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, Joseph Sperling, Inc., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of furs or fur garments in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "leopard," or any simulation thereof, either alone or in conjunction with any other word or words, to designate furs or fur garments not made from the peltries of the leopard; or designating or describing furs or fur garments in any way other than by the use of the true name of the fur as the last word of the designation or description; provided, that if a fur is so dyed or processed as to simulate another fur and the name of the animal whose fur is so simulated be given, such name shall be immediately followed by and compounded with the words "dyed" or "processed," together with the true name of the animal producing the fur as the last word of the description, and all words of such designation shall be equally conspicuous.

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
 JASPER W. EFIRD, 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 3955. Complaint, Nov. 21, 1939—Decision, Apr. 14, 1945

Where an individual who (1) together with his four (later—three) brothers or their immediate families, controlled 38 corporations engaged in the operation as a family enterprise of retail department stores in North and South Carolina and Virginia and acted as vice president, director and buyer thereof; (2) received substantial amounts in salary and dividends therefrom; (3) made use of a New York office maintained in his name for the receipt and execution of orders transmitted to him for or by said corporate units, approving or negotiating orders placed by managers and buyers of different units, subject to his approval, on occasional trips to said city, and making some purchases directly for said units without requisition; (4) listed on the stationery employed by him in such purchasing said various businesses and their locations, and was in turn listed on their order blanks and stationery as their New York office, and so listed himself in various circulars and instructions sent to them; (5) exacted discounts or allowances in lieu thereof when able in negotiating with manufacturers and sellers for the most favorable prices on such purchases, shipments of which were as a rule made directly to the particular store involved; and (6) made use of funds thus received in paying the expenses of said office—

- (a) Received, while thus acting in his capacity as an officer of said corporate units and in their behalf, commissions and payments and allowances in lieu thereof from manufacturers and sellers of merchandise purchased for or in behalf of said units and used for their sole benefit in maintaining said buying office for them; and,

Where said corporate units—

- (b) Received as aforesaid such commissions and allowances in lieu thereof upon purchases made for them, and, in some instances in which said individual was successful in beating down a price of a manufacturer or seller to the point where the commissions which otherwise would have been paid were not permitted by the price allowed, but, instead, were included in the discounts allowed on the transaction, benefitted directly:

Held, That in receiving and accepting brokerage fees or commissions, or allowances and discounts in lieu thereof, from manufacturers and sellers upon purchases of merchandise as hereinabove found, said individual and corporations violated the provisions of subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Before *Mr. John P. Bramhall*, trial examiner.

Mr. Frank Hier for the Commission.

Guthrie, Pierce & Blakeney, of Charlotte, N. C., for respondents.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties named in the caption hereof and hereinafter more particularly designated

and described, have since June 19, 1936, violated and are violating the provisions of subsection (c), section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Jasper W. Efird, is an individual, maintaining an office at 200 West 34th Street, New York City, N. Y., under the name of J. W. Efird, Efird Department Stores.

PAR. 2. Respondent, Charlotte Mercantile Company, is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business at 111 College Street, Charlotte, N. C., and is engaged in the business of operating one or more retail department stores located in North and South Carolina.

Respondent, Efird's Department Store of Charlotte, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business at 111 College Street, Charlotte, N. C., and is engaged in the business of operating one or more retail department stores in the States of North Carolina, South Carolina and Virginia.

Respondent, Efird's Department Store of Wilmington, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 222 North Front Street, Wilmington, N. C., and is engaged in the business of operating a retail department store in Wilmington, N. C.

Respondent, Efird's Department Store of Raleigh, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 208 Fayetteville Avenue, Raleigh, N. C., and is engaged in the business of operating a retail department store in Raleigh, N. C.

Respondent, Efird's Department Store, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 131 West 4th Street, Winston Salem, N. C., and is engaged in the business of operating a retail department store in Winston Salem, N. C.

Respondent, Efird's Department Store of Salisbury, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 226 South Main Street, Salisbury, N. C., and is engaged in the business of operating a retail department store in Salisbury, N. C.

Respondent, The Efird Mercantile Co., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 307 West Main Street, Durham, N. C., and is engaged in the business of operating a retail department store in Durham, N. C.

Respondent, Efird's Dept. Store of High Point, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 142 South Main Street, High Point, N. C., and is engaged in the business of operating a retail department store in High Point, N. C.

Respondent, Efird Co., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 146 West Main Street, Gastonia, N. C., and is engaged in the business of operating a retail department store in Gastonia, N. C.

Respondent, Efir'd's Department Store of Lumberton, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Lumberton, N. C., and is engaged in the business of operating a retail department store in Lumberton, N. C.

Respondent, Efir'd-Davis Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 212 South Main Street, Rocky Mount, N. C., and is engaged in the business of operating a retail department store in Rocky Mount, N. C.

Respondent, Efir'd's Dept. Store of Goldsboro, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at West Walnut Street, Goldsboro, N. C., and is engaged in the business of operating a retail department store in Goldsboro, N. C.

Respondent, Efir'd's Department Store of Monroe, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Main and Jefferson Streets, Monroe, N. C., and is engaged in the business of operating a retail department store in Monroe, N. C.

Respondent, Efir'd's Department Store of Lexington, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Lexington, N. C., and is engaged in the business of operating a retail department store in Lexington, N. C.

Respondent, Efir'd's Department Store of Burlington, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at First Floor, East Davis Street, Burlington, N. C., and is engaged in the business of operating a retail department store in Burlington, N. C.

Respondent, Efir'd's Department Store of Wilson, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 229-231 East Nash Street, Wilson, N. C., and is engaged in the business of operating a retail department store in Wilson, N. C.

Respondent, Efir'd's Department Store of Shelby, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Shelby, N. C., and is engaged in the business of operating a retail department store in Shelby, N. C.

Respondent, Efir'd's Department Store of Statesville, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 104 South Center Street, Statesville, N. C., and is engaged in the business of operating a retail department store in Statesville, N. C.

Respondent, Forest City Mercantile Co., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 4 East Main Street, Forest City, N. C., and is engaged in the business of operating a retail department store in Forest City, N. C.

Respondent, John E. Efir'd and Sons, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 145-49 West

Main Street, Albemarle, N. C., and is engaged in the business of operating a retail department store in Albemarle, N. C.

Respondent, Efir's Department Store of Lenoir, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 119 West Avenue, Lenoir, N. C., and is engaged in the business of operating a retail department store in Lenoir, N. C.

Respondent, Efir's Department Store of Laurinburg, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Laurinburg, N. C., and is engaged in the business of operating a retail department store in Laurinburg, N. C.

Respondent, Efir's Department Store of Lincolnton, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at East Main Street, Lincolnton, N. C., and is engaged in the business of operating a retail department store in Lincolnton, N. C.

Respondent, Efir's Department Store of Greensboro, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 230 South Elm Street, Greensboro, N. C., and is engaged in the business of operating a retail department store in Greensboro, N. C.

Respondent, Efir's Department Store of Kannapolis, N. C., Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Kannapolis, N. C., and is engaged in the business of operating a retail department store in Kannapolis, N. C.

Respondent, Efir's Department Store of Hickory, Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Hickory, N. C., and is engaged in the business of operating a retail department store in Hickory, N. C.

Respondent, Efir's Department Store of Kinston, N. C., Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 113 North Queen Street, Kinston, N. C., and is engaged in the business of operating a retail department store in Kinston, N. C.

Respondent, Efir's Department Store of Greenville, N. C., Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 430 Evans Street, Greenville, N. C., and is engaged in the business of operating a retail department store in Greenville, N. C.

Respondent, Efir Bros. Company of Columbia, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 1601 Main Street, Columbia, S. C., and is engaged in the business of operating a retail department store in Columbia, S. C.

Respondent, Efir's Department Store of Anderson, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 104 South Main Street, Anderson, S. C., and is engaged in the business of operating a retail department store in Anderson, S. C.

Respondent, Efir's Department Store of Greenville, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the

State of South Carolina, with its principal office and place of business located at 14 South Main Street, Greenville, S. C., and is engaged in the business of operating a retail department store in Greenville, S. C.

Respondent, Efird's Department Store of Spartanburg, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 129 East Main Street, Spartanburg, S. C., and is engaged in the business of operating a retail department store in Spartanburg, S. C.

Respondent, Efird's Department Store of Greenwood, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at Main Street, Greenwood, S. C., and is engaged in the business of operating a retail department store in Greenwood, S. C.

Respondent, Efird's Department Store of Rock Hill, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 116-118 East Main Street, Rock Hill, S. C., and is engaged in the business of operating a retail department store in Rock Hill, S. C.

Respondent, Efird's Department Store of Sumter, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 102 South Main Street, Sumter, S. C., and is engaged in the business of operating a retail department store in Sumter, S. C.

Respondent, Efird's Department Store of Greer, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 33 Trade Street, Greer, S. C., and is engaged in the business of operating a retail department store in Greer, S. C.

Respondent, Efird Bros. Company of Chester, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 169 Gadsden Street, Chester, S. C., and is engaged in the business of operating a retail department store in Chester, S. C.

Respondent, Efird's Department Store of Danville, Virginia, Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of Virginia, with its principal office and place of business at 411 Main Street, Danville, Va., and is engaged in the business of operating a retail department store in the City of Danville, Va.

All of the above corporate respondents purchase their merchandise requirements in interstate commerce as hereinafter more particularly set out.

All of said corporate respondents herein named and described will hereinafter be referred to as buyer respondents.

PAR. 3. Respondent, Jasper W. Efird, is a stockholder and a director in all of said buyer respondent corporations. He is employed by each of them as vice president to act in the capacity of buyer or purchasing agent for them. Said purchasing services are rendered by said respondent, Jasper W. Efird, from the office located at 200 West 34th Street, New York City, N. Y., which office is listed as J. W. Efird, Efird Department Stores, and which office is held out to the public as the buying office of the said buyer respondents. Orders for merchandise to be purchased and shipped to them are sent by said buyer respondents to respondent, Jasper W. Efird, at said office and all of the requirements of each of said buyer respondents

are thus purchased by or through said respondent, Jasper W. Efirm, or only after his approval first had and obtained. Merchandise so ordered is bought by respondent, Jasper W. Efirm, from various sellers and is then shipped by the various sellers thereof from New York City, N. Y., and elsewhere, into and through the various States of the United States to said buyer respondents located as hereinabove set out in the States of North Carolina, South Carolina and Virginia.

PAR. 4. In the course and conduct of the purchasing transactions above outlined, sellers of merchandise have since June 19, 1936, transmitted, paid and delivered and do transmit, pay and deliver to said respondent, Jasper W. Efirm, brokerage fees or commissions, the same being a percentage of the sales prices agreed upon between each of the various sellers and the buyer respondents through their agent, officer and employee, respondent, Jasper W. Efirm, and said sellers have likewise transmitted, paid and delivered and do transmit, pay and deliver to said respondent, Jasper W. Efirm, payments or allowances in lieu of brokerage and said respondent, Jasper W. Efirm, has since June 19, 1936, received and accepted and is receiving and accepting such brokerage fees and commissions and also payments and allowances in lieu thereof upon purchases of merchandise made through him by said buyer respondents.

PAR. 5. In all of the purchasing transactions hereinabove described, said respondent, Jasper W. Efirm, has been and is subject to the direct control and has been and is acting in fact for and in behalf of said buyer respondents.

PAR. 6. In all of the purchasing transactions hereinabove described in connection with which the said brokerage fees and commissions and payments and allowances in lieu thereof have been and are being paid and transmitted by said sellers and have been and are being accepted and received by said respondent, Jasper W. Efirm, no services whatsoever in connection with said purchases have been rendered or are now being rendered to, for or on behalf of any of said sellers by said respondent, Jasper W. Efirm.

PAR. 7. The said brokerage fees or commissions and payments and allowances in lieu thereof so received and accepted by respondent, Jasper W. Efirm, as hereinabove described, have been used and expended by him as an officer and employee of said buyer respondents in the payment of rent, salaries, wages, traveling expenses and other maintenance costs of said buyer respondents' New York City office at 200 West 34th Street, and for other similar purposes solely for the benefit of said buyer respondents.

PAR. 8. The transmission and payment of said brokerage fees or commissions and the payments and allowances in lieu thereof by the said sellers to and the receipt and acceptance thereof by respondent, Jasper W. Efirm, and said buyer respondents in the manner and under the circumstances hereinabove set forth, is in violation of the provisions of section 2 (c) of the above-mentioned act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (The Clayton Act), as amended by the act of Congress 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).

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 (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 Commission on November 21, 1939, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violating the provisions of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman 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, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report and supplemental report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed in support of and in opposition to the complaint, and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Jasper W. Efir, is an individual, maintaining an office at 200 West 34th Street, New York, N. Y., under the name of J. W. Efir, Efir Department Stores.

PAR. 2. Respondent, Charlotte Mercantile Company, is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business at 111 College Street, Charlotte, N. C., and is engaged in the business of operating one or more retail department stores located in North and South Carolina and is also engaged in selling merchandise at wholesale chiefly to the Efir stores.

Respondent, Efir's Department Store of Charlotte, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business at 111 College Street, Charlotte, N. C., and is engaged in the business of operating one or more retail department stores in the States of North Carolina, South Carolina, and Virginia.

Respondent, Efir's Department Store of Wilmington, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 222 North Front Street, Wilmington, N. C., and is engaged in the business of operating a retail department store in Wilmington, N. C.

Respondent, Efir's Department Store of Raleigh, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 208 Fayetteville Avenue, Raleigh, N. C., and is engaged in the business of operating a retail department store in Raleigh, N. C.

Respondent, Efirde's Department Store, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 131 West 4th Street, Winston Salem, N. C., and is engaged in the business of operating a retail department store in Winston Salem, N. C.

Respondent, Efirde's Department Store of Salisbury, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 226 South Main Street, Salisbury, N. C., and is engaged in the business of operating a retail department store in Salisbury, N. C.

Respondent, The Efirde Mercantile Co., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 307 West Main Street, Durham, N. C., and is engaged in the business of operating a retail department store in Durham, N. C.

Respondent, Efirde's Dept. Store of High Point, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 142 South Main Street, High Point, N. C., and is engaged in the business of operating a retail department store in High Point, N. C.

Respondent, Efirde Co. is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 146 West Main Street, Gastonia, N. C., and is engaged in the business of operating a retail department store in Gastonia, N. C.

Respondent, Efirde's Department Store of Lumberton, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Lumberton, N. C., and is engaged in the business of operating a retail department store in Lumberton, N. C.

Respondent, Efirde-Davis Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 212 South Main Street, Rocky Mount, N. C., and is engaged in the business of operating a retail department store in Rocky Mount, N. C.

Respondent, Efirde's Dept. Store of Goldsboro, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at West Walnut Street, Goldsboro, N. C., and is engaged in the business of operating a retail department store in Goldsboro, N. C.

Respondent, Efirde's Department Store of Monroe, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Main and Jefferson Streets, Monroe, N. C., and is engaged in the business of operating a retail department store in Monroe, N. C.

Respondent, Efirde's Department Store of Lexington, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Lexington, N. C., and is engaged in the business of operating a retail department store in Lexington, N. C.

Respondent, Efirde's Department Store of Burlington, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business

located at First Floor, East Davis Street, Burlington, N. C., and is engaged in the business of operating a retail department store in Burlington, N. C.

Respondent, Efir's Department Store of Wilson, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 229-231 East Nash Street, Wilson, N. C., and is engaged in the business of operating a retail department store in Wilson, N. C.

Respondent, Efir's Department Store of Shelby, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Shelby, N. C., and is engaged in the business of operating a retail department store in Shelby, N. C.

Respondent, Efir's Department Store of Statesville, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 104 South Center Street, Statesville, N. C., and is engaged in the business of operating a retail department store in Statesville, N. C.

Respondent, Forest City Mercantile Co., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 4 East Main Street, Forest City, N. C., and is engaged in the business of operating a retail department store in Forest City, N. C.

Respondent, John E. Efir and Sons, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 145-49 West Main Street, Albemarle, N. C., and is engaged in the business of operating a retail department store in Albemarle, N. C.

Respondent, Efir's Department Store of Lenoir, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 119 West Avenue, Lenoir, N. C., and is engaged in the business of operating a retail department store in Lenoir, N. C.

Respondent, Efir's Department Store of Laurinburg, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Laurinburg, N. C., and is engaged in the business of operating a retail department store in Laurinburg, N. C.

Respondent, Efir's Department Store of Lincolnton, N. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at East Main Street, Lincolnton, N. C., and is engaged in the business of operating a retail department store in Lincolnton, N. C.

Respondent, Efir's Department Store of Greensboro, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 230 South Elm Street, Greensboro, N. C., and is engaged in the business of operating a retail department store in Greensboro, N. C.

Respondent, Efir's Department Store of Kannapolis, N. C., Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Kannapolis, N. C., and is engaged in the business of operating a retail department store in Kannapolis, N. C.

Respondent, Efir's Department Store of Hickory, Incorporated, is a corporation, organized and existing under and by virtue of the laws of the

State of North Carolina, with its principal office and place of business located at Hickory, N. C., and is engaged in the business of operating a retail department store in Hickory, N. C.

Respondent, Efir's Department Store of Kinston, N. C., Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 113 North Queen Street, Kinston, N. C., and is engaged in the business of operating a retail department store in Kinston, N. C.

Respondent, Efir's Department Store of Greenville, N. C., Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 430 Evans Street, Greenville, N. C., and is engaged in the business of operating a retail department store in Greenville, N. C.

Respondent, Efir Bros. Company of Columbia, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 1601 Main Street, Columbia, S. C., and is engaged in the business of operating a retail department store in Columbia, S. C.

Respondent, Efir's Department Store of Anderson, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 104 South Main Street, Anderson, S. C., and is engaged in the business of operating a retail department store in Anderson, S. C.

Respondent, Efir's Department Store of Greenville, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 14 South Main Street, Greenville, S. C., and is engaged in the business of operating a retail department store in Greenville, S. C.

Respondent, Efir's Department Store of Spartanburg, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 129 East Main Street, Spartanburg, S. C., and is engaged in the business of operating a retail department store in Spartanburg, S. C.

Respondent, Efir's Department Store of Greenwood, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at Main Street, Greenwood, S. C., and is engaged in the business of operating a retail department store in Greenwood, S. C.

Respondent, Efir's Department Store of Rock Hill, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 116-118 East Main Street, Rock Hill, S. C., and is engaged in the business of operating a retail department store in Rock Hill, S. C.

Respondent, Efir's Department Store of Sumter, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 102 South Main Street, Sumter, S. C., and is engaged in the business of operating a retail department store in Sumter, S. C.

Respondent, Efir's Department Store of Greer, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 33 Trade Street, Greer, S. C., and is engaged in the business of operating a retail department store in Greer, S. C.

Respondent, Efir Bros. Company of Chester, S. C., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 169 Gadsden Street, Chester, S. C., and is engaged in the business of operating a retail department store in Chester, South Carolina.

Respondent, Efir's Department Store of Danville, Virginia, Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of Virginia, with its principal office and place of business at 411 Main Street, Danville, Va., and is engaged in the business of operating a retail department store in the city of Danville, Va.

All of the above respondent corporations purchase their merchandise requirements in interstate commerce as hereinafter more particularly set out.

All of the respondent corporations herein named and described will hereinafter be referred to as "corporate respondents."

PAR. 3. The active management and control of all of the corporate respondents were exercised and maintained by the respondent, Jasper W. Efir, and his four brothers, Joseph B. Efir, Paul H. Efir, Edward L. Efir, and John Ray Efir, until the death of John Ray Efir in 1938, and since that time by the four surviving Efir brothers. Said brothers or their immediate families own from 80 to 100 percent of all the capital stock of each of the various corporate respondents, but no one of said Efir brothers alone controls any of the corporate respondents. In general, the corporate respondents, in spite of separate corporate identities, constitutes a family enterprise operated for, and by, the Efir family.

Joseph B. Efir is president of each corporate respondent, except Efir's Department Store of Charlotte, N. C., Inc., of which he is vice president. Paul H. Efir is vice president of each corporate respondent except Efir's Department Store of Charlotte, N. C., Inc., of which he is president. Edward L. Efir is secretary and treasurer, and respondent, Jasper W. Efir is vice president, of each of said corporate respondents.

The Efir brothers, at a meeting held each year, determine the salary of each of the officers for the ensuing year and the particular corporate respondents to which each officer's salary shall be charged and in what amounts, based in part upon their ability to pay. When the financial condition of any corporate respondent will not warrant a charge for salaries, no such charge is made.

With the exception of respondent, Jasper W. Efir, the Efir brothers devote most of their time to certain stores in the larger cities and periodically visit all the Efir stores and exercise and maintain a continuous and close supervision over all of them.

PAR. 4. Respondent, Jasper W. Efir, for the past several years has been paid an annual salary of \$9,840 as vice president of the various corporate respondents, which salary was charged in multiples of \$240 to 26 of the 38 corporate respondents. In addition, said respondent received dividends on the shares of capital stock owned by him in the various corporate respondents, amounting to \$4,145 in 1936, \$3,101 in 1937, \$6,285 in 1938, \$6,815 in 1939, and \$4,255 in 1940.

In addition to periodic visits to the various corporate respondents and the maintenance of continuous and close supervision over them in much the same manner as his brothers, respondent, Jasper W. Efir, acted as buyer or purchasing agent for all of the corporate respondents and maintained an office for this purpose in New York City.

PAR. 5. When any of the corporate respondents require merchandise which is to be purchased on the open market, they send orders or requisitions for such merchandise either direct to respondent, Jasper W. Efir, or to Joseph B. Efir, who in some instances approves said orders and forwards them to respondent, Jasper W. Efir, for purchase in the open market. In some instances the store managers of the corporate respondents purchase some merchandise from salesmen calling at their respective stores. No merchandise can be bought in this manner without the approval of either Joseph B. Efir or respondent, Jasper W. Efir. Store managers or buyers of the corporate respondents from time to time make trips to New York for the purpose of purchasing merchandise for their respective stores. In such instances the respondent, Jasper W. Efir, supplies them with a list of manufacturers or sellers, or otherwise assists them. It is the general practice that all orders placed on such trips are submitted to the respondent, Jasper W. Efir, for his approval and further negotiation where necessary. Respondent, Jasper W. Efir, makes purchases on requisitions or orders forwarded to him by the various corporate respondents or by Joseph B. Efir and sometimes makes purchases for the various corporate respondents without such requisitions or orders, based upon his judgment or information received from various of the corporate respondents as to their requirements.

PAR. 6. In his capacity as purchasing agent, respondent, Jasper W. Efir, purchased a substantial part of the merchandise, such as ladies' underwear, gloves, dresses, coats, children's wear, knitwear, corsets, handbags, hats, pajamas, housecoats, and other articles of merchandise, sold to the consuming public by the corporate respondents. When orders for such merchandise were placed with the manufacturers or sellers thereof by the respondent, Jasper W. Efir, the merchandise so purchased was shipped by such manufacturers or sellers, usually from their respective places of business in the State of New York, direct to the particular corporate respondents, located in the States of North Carolina, South Carolina, or Virginia, for which the merchandise was purchased.

PAR. 7. In carrying on his purchasing activities for, and on behalf of, the corporate respondents, respondent, Jasper W. Efir, maintained an office at 200 West 34th Street, New York City. Only his name appears on the door of such office and in the telephone directory, but the building directory, until after issuance of the complaint herein, listed this office as "J. W. Efir, Efir Department Stores." On the stationery used by all the corporate respondents appear all the cities in which the Efir stores are located and also the statements "General Offices Charlotte, N. C." and "New York Office: 200 West 34th Street." The uniform purchase order blank used for all purchases by all the corporate respondents likewise has printed upon it "New York Office, J. W. Efir, 200 W. 34th St." Various mimeographed news letters and instructions sent out to the corporate respondents by the respondent, Jasper W. Efir, are signed "J. W. Efir New York Office." The stationery used by the respondent, Jasper W. Efir, in transacting his business lists at the bottom thereof all of the Efir stores and the cities where located.

PAR. 8. In conducting the business from the New York office, respondent, Jasper W. Efir, estimates that about one-third of his time is spent in buying and selling securities on the stock market for his personal account. The remainder of his time is spent on the business of the corporate respondents and in visiting and interviewing manufacturers and sellers of

merchandise. Respondent, Jasper W. Efirid, represents only the corporate respondents and does no buying for, or in behalf of, any other concern. All transactions with manufacturers and sellers were for the purpose of locating or obtaining merchandise for the corporate respondents in his capacity of buyer or purchasing agent.

PAR. 9. In the course of his purchasing transactions hereinbefore described and while acting for, and in behalf of, the corporate respondents, the respondent, Jasper W. Efirid, has continually and consistently, since June 19, 1936, received and accepted commissions, fees, allowances, brokerage, and occasional lump payments from sellers and manufacturers, based upon the amount of purchases made by him. The commissions, brokerage, and other compensation paid to the respondent, Jasper W. Efirid, by manufacturers and sellers upon purchases made for, and in behalf of, the corporate respondents amounted to approximately \$5,000 annually.

The payments so received by the respondent, Jasper W. Efirid, were deposited in his personal account, together with salaries and dividends received from the corporate respondents, and were used by him to pay the expenses of the New York office of the Efirid stores. No charge was made by the respondent, Jasper W. Efirid, to the respondent corporations for traveling expenses incurred by him or for the expenses of the New York office, which, including rent, telephone, clerk hire, stationery, and postage, ranged from \$5,000 to \$7,000 a year.

From time to time respondent, Jasper W. Efirid, made suggestions to manufacturers and sellers who did not pay him commissions, as well as to those who did, concerning style or design of certain merchandise and suggestions as to layouts of certain swatch books for the purpose of procuring the best possible merchandise at the lowest possible price for the corporate respondents and to facilitate their selection of merchandise for resale in their respective stores.

PAR. 10. The Commission finds that the commissions, and payments and allowances in lieu thereof, paid to the respondent, Jasper W. Efirid, by manufacturers and sellers of merchandise purchased for, or in behalf of, the corporate respondents were used by said Jasper W. Efirid for the sole benefit of the corporate respondents to maintain a buying office in the city of New York. The Commission further finds that such payments were made to the respondent, Jasper W. Efirid, while he was acting in his capacity as an officer of said corporate respondents and constituted in fact a payment to said corporate respondents. Furthermore, in some instances the corporate respondents received the direct benefits of such allowances when respondent, Jasper W. Efirid, was successful in beating down a price of a manufacturer or seller to the point where the commissions which otherwise would have been paid were not permitted by the price allowed but, instead, were included in the discounts allowed by such manufacturer or seller on said transaction.

CONCLUSION

In receiving and accepting brokerage fees or commissions, or allowances and discounts in lieu thereof, from manufacturers and sellers upon purchases of merchandise in the manner and under the circumstances as hereinabove found, the respondent, Jasper W. Efirid, and said corporate respondents have violated the provisions of subsection (c) of section 2 of an

act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before a trial examiner of the Commission theretofore duly designated by it, report and supplemental report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of subsection (c) of section 2 of an act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by act approved June 19, 1936 (Robinson-Patman Act):

I. *It is ordered*, That the individual respondent, Jasper W. Efrd, and his agents, representatives, and employees, directly or through any corporate or other device in, or in connection with, the purchasing of ladies' underwear, gloves, dresses, coats, children's wear, knitwear, corsets, handbags, hats, pajamas, housecoats, and other articles of merchandise in commerce as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from—

1. Receiving or accepting, directly or indirectly, anything of value as brokerage, commission, or other compensation, or any allowance or discount in lieu thereof, from any seller on, or in connection with, purchases made from such seller—

(a) When such purchases are made for respondent's own account; or

(b) When such purchases are made as agent or buying representative of the purchaser; or

(c) When in making such purchases respondent is acting in fact for or in behalf of, or is subject to the direct or indirect control of, the purchaser.

II. *It is further ordered*, That the corporate respondents, Charlotte Mercantile Company; Efrd's Department Store of Charlotte, N. C., Inc.; Efrd's Department Store of Wilmington, N. C., Inc.; Efrd's Department Store of Raleigh, N. C., Inc.; Efrd's Department Store, Inc.; Efrd's Department Store of Salisbury, N. C., Inc.; The Efrd Mercantile Co.; Efrd's Dept. Store of High Point, Inc.; Efrd Co.; Efrd's Department Store of Lumberton, N. C., Inc.; Efrd-Davis Co., Inc.; Efrd's Dept. Store of Goldsboro, N. C., Inc.; Efrd's Department Store of Monroe, N. C., Inc.; Efrd's Department Store of Lexington, N. C., Inc.; Efrd's Department Store of Burlington, N. C., Inc.; Efrd's Department Store of Wilson, N. C., Inc.; Efrd's Department Store of Shelby, N. C., Inc.; Efrd's Department Store of Statesville, N. C., Inc.; Forest City Merchantile Co.; John E. Efrd and Sons, Inc.; Efrd's Department Store of Lenoir, N. C., Inc.; Efrd's Department Store of Laurinburg, Inc.; Efrd's Department Store of Lincolnton, N. C., Inc.; Efrd's Department Store of Greensboro, Inc.; Efrd's Department Store of Kannapolis, N. C., Incorporated; Efrd's Department Store of Hickory, Incorporated; Efrd's Department Store of

Kinston, N. C., Incorporated; Efird's Department Store of Greenville, N. C., Incorporated; Efird Bros. Company of Columbia, S. C., Inc.; Efird's Department Store of Anderson, S. C., Inc.; Efird's Department Store of Greenville, S. C., Inc.; Efird's Department Store of Spartanburg, S. C., Inc.; Efird's Department Store of Greenwood, S. C., Inc.; Efird's Department Store of Rock Hill, S. C., Inc.; Efird's Department Store of Sumter, S. C., Inc.; Efird's Department Store of Greer, S. C., Inc.; Efird Bros. Company of Chester, S. C., Inc.; and Efird's Department Store of Danville, Virginia, Incorporated, and their respective officers, representatives, agents, and employees, directly or through any corporate or other device in, or in connection with, the purchasing of ladies' underwear, gloves, dresses, coats, children's wear, knitwear, corsets, handbags, hats, pajamas, housecoats, and other articles of merchandise in commerce as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from—

1. Receiving or accepting, directly or indirectly, from any manufacturer or seller of merchandise anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon purchases of merchandise made for their own account.

III. *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
MORTON SALT COMPANY

COMPLAINT, MODIFIED FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (A) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 4319. Complaint, Sept. 18, 1940—Decision, Apr. 14, 1945

Where a corporation engaged in the production of salt and in the competitive interstate sale and distribution thereof from its various plants or warehouses to wholesalers or jobbers for resale to the retail trade; to large retail purchasers such as cooperative and corporate chain stores; and to consumers purchasing in large quantities for use in their manufacturing processes, such as meat packers, tanners and many other industries—

- (a) Discriminated in price between different purchasers buying its Blue Label, plain and iodized table salt, of like grade and quality, by selling its products to some of its customers at lower prices than it sold said products of like grade and quality to other of its customers who were competitively engaged therein in the sale of such product within the United States, through selling its said Blue Label Salt to wholesalers and retailers at the delivered price of \$1.60 per case of 24 packages when delivery was made in less than carload lots while concurrently selling said salt to other wholesaler and retailer competitors at a delivered price of \$1.50 per case when delivery was made in carload lots;
- (b) Discriminated in price, as aforesaid, through its 5000 case discount by permitting certain organizations of wholesalers and retailers—the separate wholesale and retail units of which were engaged in competition in the same trade areas with other wholesalers and retailers respectively, who did not receive said 5000 case discount, and no one of whom purchased a sufficient quantity in a twelve-month consecutive period to qualify therefor—to combine the purchases of their said units in order so to do, and thereby receive the benefit of the 10¢ per case rebated by it from its \$1.50 carload price on such annual aggregate purchases to those thus favored;
- (c) Discriminated in price, as aforesaid, through its 50,000 or more case discount, under which four retail chain store organizations, with branches and stores in various cities—no one of which purchased a sufficient amount to qualify therefor, and which were in competition with other retail customer purchasers who did not receive such rebate but purchased said salt from it at car-load price at \$1.50 or the 5000 case quantity discount—were permitted to combine the purchases of all stores and branches, and thereby enjoy such discount, under which purchasers whose purchases aggregated said amount in a twelve-month consecutive period, became entitled to a discount of 15¢ per case on such purchases; and such retail chain grocers in many cases were permitted thereby to sell said Blue Label salt to the consuming public at prices lower than those at which wholesalers could reasonably sell the same to retail customers;
- (d) Discriminated in price, as aforesaid, in connection with the sale and distribution of its table salt other than Blue Label salt, sold at list price plus freight or transportation charges from the plant nearest the customer or the plant serving the area in which the customer was located, and from which delivery was customarily made, through its “unit discount”—amounting to about 5% of the list or plant price and extended to wholesalers and retailers who were in competition in same trade area with other wholesalers and retailers who did not receive the same—under

which one unit was allowed to a customer purchasing in carload lots, and an additional unit to those purchasing in amounts equal to or in excess of \$50,000 during a consecutive twelve-month period, and including, for the purpose of such calculation, purchasers' purchases of Blue Label salt;

- (e) Discriminated in price through certain special, long continued allowances, designated by it as "competitive adjustments" but not shown as made in good faith to meet an equally low price of a competitor, between different purchasers of like grade and quality through such typical discounts to certain customers as a special allowance of $7\frac{1}{2}\text{¢}$ per case from the carload price of \$1.50 on its Blue Label salt, extended to a Louisiana wholesale grocer engaged in the operation of 22 units or branches in competition with other wholesalers who did not receive said special discount, and through the allowance of an additional unit discount on table salt other than Blue Label, to certain affiliated companies, purchases of no one of which amounted to \$50,000 worth of salt during any consecutive twelve month period to entitle it thereto;

With the result that—

1. Discounts allowed by it to some of its wholesaler customers on said staple—sold on a lower margin of profit than other commodities and in which a difference of 5¢ per case might result in the loss of a sale to a customer of not only the salt but other commodities as well—enabled such wholesalers to offer its table salt to retailers at prices equal to those paid by competing wholesalers or at prices less than those at which competing wholesalers could reasonably sell said salt to the retailer customers;

2. Customers who received the benefit of its said discriminatory discounts, prices, rebates and allowances had a substantial advantage in selling its salt in competition with other customers who did not receive the benefit thereof or were obliged to pay its full price;

3. Wholesalers who paid its full price or were denied the discounts or rebates allowed said favored customers, in order to compete therewith, had either to sell at competitive prices and in so doing reduce their possible profits by the amount of the discriminations against them, or attempt to sell at higher prices than those which the favored customers charged, with the result of inability to secure business and a reduction in the volume of their sales;

4. Customers paying the highest prices were discriminated against with respect to all other customers, while those paying the lowest price were given the benefit of the discriminations as against other customers; and the medium-sized wholesaler grocer was discriminated against with respect to his larger competitors and given the benefit of the discrimination as against his smaller competitors; and

5. The discriminations in price based upon the 50,000 or more case discount of Blue Label salt allowed to certain of the large retail chain stores constituted a discrimination not only against the smaller or medium size chain stores that could not purchase in such quantities from it, but also a discrimination against the small retailer who was in competition with such large chain stores and compelled to purchase said Blue Label salt through wholesalers at prices in excess of the retail price maintained by such competitive volume purchasers, and such wholesalers' retailer customers were thereby forced to pay prices which prohibited competition in prices between such small retailers and the large retail chain stores;

Effect of which discriminations in prices, might be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory price was engaged, and to injure, destroy and prevent competition between those purchasers receiving the benefit of said discriminatory prices, discounts, rebates and allowances and those to whom they were denied:

Complaint

40 F. T. C.

Held, That such discriminations in price by it, under the circumstances set forth, constituted violations of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

As respects the justification of certain price differences, in connection with the sale or delivery of respondent's table salt to its customers, as hereinabove indicated, challenged under the provisions of subsection 2(a) of the Clayton Act as amended by the Robinson-Patman Act, and, in this connection, certain testimony and evidence offered by respondent in an attempt to justify its price differentials to various customers, which testimony was stricken, on motion, by the trial examiner as being based upon estimates, hypotheses and mere guesses and as arbitrarily including items of distribution the correctness or applicability of which was doubtful: The Commission nevertheless considered the testimony so stricken, as well as other matters in the record, and was of the opinion, and so found, that respondent's price differences, including the rebates, allowances and discounts hereinabove mentioned, had not been shown to be justified by reason of differences in the cost of manufacture, sale or delivery resulting from differing methods or quantities in which respondent's table salt was sold or delivered to its various customers.

Before *Mr. James A. Purcell*, trial examiner.

Mr. John T. Haslett for the Commission.

Stearns & McBride, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes" (the Clayton Act), as amended by an act approved June 19, 1936, entitled "An act to amend Section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13) and for other purposes" (the Robinson-Patman Act), the Federal Trade Commission having reason to believe that the respondent hereinafter described is violating and has been violating the provisions of said Clayton Act as amended hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Morton Salt Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois and having its principal place of business at 208 West Washington Street, Chicago, Ill.

PAR. 2. Respondent corporation is now and has been engaged in the business of producing, manufacturing, offering for sale, selling and distributing salt in all parts of the United States. The respondent is one of the largest producers and distributors of salt in the United States and occupies a dominating position in said industry. Respondent sells its products to wholesalers, retailers, corporate chains, voluntary chains. Respondent sells and distributes its products in commerce between and among the various States of the United States and in the District of Columbia and preliminary to or as a result of such sale causes such products to be shipped and transported from the places of origin of the shipment to the purchasers thereof who are located in States of the United States and in the District of Columbia other than the State of origin of the shipment,

and there is and has been at all times herein mentioned a continuous current of trade in commerce in said products across state lines between respondent's plants or factories and the purchasers of such products. Said products are sold and distributed for use, consumption 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, individuals, partnerships and firms engaged in the business of selling and distributing salt in commerce between and among the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business as aforesaid since June 19, 1936, respondent has been and is now discriminating in price between different purchasers buying such products of like grade and quality by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers who are competitively engaged one with the other in the sale of said products within the United States.

The said discriminations in price are brought about by the following practices and policy pursued by the respondent, to wit:

1. A discount amounting to approximately five percent of the list price is allowed to all customers who purchase a carload of salt.

2. In addition to the carload discount hereinbefore referred to in paragraph 1 hereof, a five percent discount is allowed to customers whose purchases of salt during a twelve consecutive month period are equal to or in excess of fifty thousand dollars.

3. To customers who purchase five thousand or more cases consisting of twenty-four packages to a case during a twelve consecutive month period of "free running" table salt and "iodized" salt, a discount of 10¢ per case is granted, and to customers who purchase fifty thousand or more cases of the above type salt, a discount of 15¢ per case is granted. Said discount is not in addition to, but in lieu of the discounts referred to in paragraphs 1 and 2 hereinbefore mentioned.

The discount referred to in paragraph 2 heretofore mentioned is allowed to customers of the respondent who do not purchase from the respondent fifty thousand dollars worth of salt during a twelve consecutive month period, provided, however, the total purchases of salt from all sources made by said customer total fifty thousand dollars during said given period of time. In the industry this type of selling is known as "split business," that is, basing the price upon the requirements of a customer and not upon the actual quantity purchased from the respondent.

In addition to the discriminations effected by the aforementioned discounts respondent discriminates in price between different purchasers of its products, and such price discriminations result from respondent's selling said salt to an individual customer where the delivery thereof is made to several branches or outlets of said individual customer at prices based upon the total quantity or volume delivered to all of the separate branches or outlets of said customer provided such total quantity or volume amounts to the required minimums during the twelve consecutive month period as set forth in paragraphs 2 and 3 hereinbefore mentioned and not upon the quantity or volume delivered by the respondent to the respective branches or outlets of such individual customer.

In the industry this type of selling is known as "combine selling," that is, basing the price upon the total quantity delivered to all the separate

branches or outlets of an individual customer and not upon the quantity delivered to the respective branches or outlets of said customer.

PAR. 5. The effect of the discriminations in price generally and specifically mentioned in paragraph 4 herein has been and may be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory prices is engaged and to injure, destroy and prevent competition between those purchasers receiving the benefit of said discriminatory prices and those to whom they are denied, and has been and 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 in which said favored customers and their competitors are engaged in business.

PAR. 6. The foregoing acts and practices of said 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, Sec. 13) and for other purposes."

REPORT, MODIFIED 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 (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 Commission on September 18, 1940, issued and subsequently served its complaint upon the respondent, Morton Salt Company, a corporation, charging it with violating the provisions of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed in support of and in opposition to the complaint, and oral argument of counsel; and the Commission, having considered the matter, made and issued its findings as to the facts and order to cease and desist on July 28, 1944. Thereafter, the respondent filed its petition for review of the order to cease and desist in the United States Circuit Court of Appeals for the Seventh Circuit. Subsequent thereto, by stipulation between the Federal Trade Commission and the respondent by their attorneys, said cause was remanded by the Circuit Court of Appeals to the Federal Trade Commission for the purpose of permitting the Commission to reconsider and modify its findings as to the facts and conclusion and its order to cease and desist issued July 28, 1944; and the Commission, having reconsidered the matter and the record herein, makes this its modified findings as to the facts and its conclusion drawn therefrom.

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Morton Salt Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal place of business at 310 South Michigan Avenue, Chicago, Ill. In addition to its main office, said respondent also maintains branch offices and warehouses in various of the larger cities throughout the United States and also maintains plants for processing and manufacturing salt at Port Huron, Mich.; Manistee, Mich.; Hutchinson, Kans.; Kanopolis, Kans.; Grand Saline, Tex.; Saltair, Utah; and Newark, Calif.

PAR. 2. Since prior to June 19, 1936, respondent has been engaged in the production and manufacture of various kinds and grades of salt and in the sale and distribution of such products in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes its products, when sold, to be transported from its various plants or warehouses to the purchasers thereof located in States other than the State in which such shipments originate. 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. 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 salt in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. The various types of salt processed, manufactured, and sold by the respondent may be divided into four basic classifications: granulated salt, produced from brine and evaporated in vacuum pans; grainer's salt, produced from brine and processed through open-pan evaporation; rock salt, which is mined; and solar salt, which is produced from solar evaporation in open ponds. Table salt may come from all four of these sources.

The principal brand of table salt processed and sold by the respondent is Morton's Free Running Salt, plain and iodized. This brand is the finest grade sold by the respondent and is processed from the granulated or vacuum-pan type of salt. This brand is sold in a round blue package that contains 26 ounces of salt and is generally known as "Blue Label" salt. When sold by the respondent its Blue Label salt is packed twenty-four packages to a case or carton.

Respondent sells its various grades of salt to three classes of customers: (1) wholesalers or jobbers, who in turn resell to the retail trade; (2) retailers who purchase in large quantities, such as cooperative and corporate chain stores; and (3) consumers who purchase in large quantities for use in their manufacturing processes, such as meat packers, tanners, and many other industries. Table salt is the only type of salt involved in this proceeding.

PAR. 5. In the course and conduct of its business since June 19, 1936, in connection with its sale and distribution of its Blue Label plain and iodized salt, the respondent has been, and is now, discriminating in price between different purchasers buying such products of like grade and quality by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers who

are competitively engaged with the former in the sale of such products within the United States. Among the general practices pursued by the respondent in discriminating in price are the following:

1. Respondent has discriminated in price by selling its Blue Label salt to wholesalers and retailers at a delivered price of \$1.60 per case of 24 packages when delivery was made in less-than-carload lots, while at the same time it sold said Blue Label salt to other wholesalers and retailers at a delivered price of \$1.50 per case when delivery was made in carload lots. There were wholesalers and retailers who received the \$1.50 per-case price and wholesalers and retailers who received the \$1.60-per-case price who were in competition each with the other in the same trade areas.

2. Respondent has also discriminated in price in favor of both wholesalers and retailers who purchased 5,000 or more cases of its Blue Label salt in any consecutive 12-month period by granting a rebate to such purchasers of 10 cents per case from the \$1.50-per-case carload price, which rebates were remitted by the respondent to such purchasers in quarterly, semiannual, or other stated periods. Such rebates were referred to, and described by, the respondent as its "5,000-case discount." At the time such rebates were granted, there were other wholesaler or retailer customers of the respondent who were paying the less-than-carload price of \$1.60 per case or the carload price of \$1.50 per case who were in competition with such rebate or 5,000-case-discount customers in the same trade area.

In granting rebates on the purchase of 5,000 or more cases of its Blue Label salt, respondent permitted certain organizations to combine their purchases in order to qualify for the so-called 5,000-case discount; for example, respondent permitted the Thomas & Howard companies, a group of separate corporations, all wholesale grocers, located in various cities in North and South Carolina, to combine their purchases to qualify for said so-called 5,000-case discount on respondent's Blue Label salt. No individual Thomas & Howard Company purchased 5,000 cases of Blue Label salt, but, based upon the combined purchases of all the companies, the respondent remitted a rebate of 10 cents per case to the Thomas & Howard Company at Columbia, South Carolina, for distribution to other Thomas & Howard companies in proportion to their purchases.

In like manner respondent permitted the C. D. Kenny Company to combine the purchases of all its branch stores to qualify for the so-called 5,000-case discount on Blue Label salt. No individual branch store of C. D. Kenny Company purchased 5,000 cases of Blue Label salt, but based upon the combined purchases of all its branch stores the respondent allowed a rebate of 10 cents per case, which it remitted to the C. D. Kenny Company at Baltimore for distribution to its various branches.

The respondent also permitted the National Retailer-Owned Grocers, Inc., to combine the purchases of its members to qualify for the so-called 5,000-case discount on Blue Label salt. This organization acts as purchasing agent for its membership of approximately 18,917 retail stores, located in 42 States of the United States. These members in turn own about 116 wholesale warehouses, which act as wholesalers to such members. No individual wholesale warehouse or retail grocer purchased 5,000 cases of Blue Label salt from respondent, but, based upon combined purchases of all member stores, the respondent allowed a rebate of 10 cents per case, which it remitted to the principal office of the National Retailer-Owned Grocers, Inc., for distribution to its members.

At the time these rebates were granted, there were other wholesalers in competition with Thomas & Howard companies and C. D. Kenny Company in the same trade area, and other retailers in competition with the member stores of the National Retailer-Owned Grocers, Inc., in the same trade areas, who did not receive such rebates.

3. Respondent has also discriminated in price in favor of customers who purchased 50,000 or more cases of its Blue Label salt in any consecutive 12-month period by granting a rebate to such purchasers of 15 cents per case from the \$1.50-per-case carload price. This rebate was not in addition to the rebate allowed to the purchasers of 5,000-case quantities but was made in lieu thereof. The giving of this rebate by the respondent was limited to four customers, whose purchases were sufficient to qualify for this rebate. These were American Stores Company of Philadelphia, Pennsylvania; National Tea Company of Chicago, Illinois; Safeway Stores, Inc., of Oakland, California; and Great Atlantic & Pacific Tea Company of New York. These customers were all retail chain stores with branches and stores located in various cities throughout the United States. No branch or retail store purchased a sufficient quantity of respondent's Blue Label salt to qualify for said rebate, but, instead, the granting thereof was based upon the combined purchases of all stores and branches. Such rebate in many cases permitted such retail chain groceries to sell respondent's Blue Label salt to the consuming public at prices less than those at which wholesalers could reasonably sell said salt to their retail customers. There were other retailers in competition with the above-named retailer customers who purchased Blue Label salt from the respondent and who did not receive such rebate but who, instead, purchased said salt from the respondent at the carload price of \$1.50 or at the 5,000-case quantity discount.

PAR. 6. In the course and conduct of its business since June 19, 1936, in connection with its sale and distribution of table salt other than Blue Label salt, respondent has been, and is now, discriminating in price between different purchasers buying such products of like grade and quality by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers who are competitively engaged with the former in the sale of such products within the United States. Salt sold by respondent other than Blue Label salt was not sold on a delivered-price basis, as was the custom with the Blue Label salt. Instead, such salt was sold at list price plus freight or transportation charges from the plant nearest the customer or from the plant serving the area in which the customer was located and from which delivery was customarily made. On the sale of such salt other than Blue Label the respondent also maintains a schedule of discounts known as the "unit discount." One unit amounts to approximately 5 percent of the list or plant price. One unit, or approximately 5 percent of list price, is allowed to a customer who purchases in car load lots. To those customers who purchase table salt during a consecutive 12-month period in amounts equal to, or in excess of, \$50,000, the respondent allows a so-called additional unit discount amounting to approximately 5 percent of the list price. While this discount does not apply to respondent's Blue Label salt, the amount of Blue Label salt purchased during a 12-month period is included in arriving at the total purchase of \$50,000. There were wholesalers and retailers not receiving such unit discounts who were in competition in the same trade area with wholesalers and retailers who received the unit dis-

count on carload shipments and the additional unit discount based upon total purchases of \$50,000.

PAR. 7. Separate and apart from the practices hereinabove described, the respondent has also discriminated in price between different purchasers of salt of like grade and quality by means of special allowances or discounts to certain customers. For example, the respondent has, for several years, made to the Consolidated Companies, Inc., of Plaquemine, Louisiana, a special allowance of $7\frac{1}{2}$ cents per case from the carload price of \$1.50 on its Blue Label salt. Consolidated Companies, Inc., is engaged in the wholesale grocery business and operates 22 units or branches throughout the State of Louisiana in competition with other wholesale grocers in Louisiana who purchase Blue Label salt from the respondent but who do not receive the special discount of $7\frac{1}{2}$ cents per case allowed by the respondent to Consolidated Companies, Inc.

An additional example is the allowance by the respondent of an additional unit discount on table salt other than Blue Label to the Thomas & Howard companies, although said Thomas & Howard companies do not purchase \$50,000 worth of salt during any consecutive 12-month period to entitle them to the additional unit discount.

The respondent refers to these and other special allowances as "competitive adjustments" and contends that they were arrived at to meet competition. Based upon the record in this case the Commission finds that the respondent has not shown the existence of facts which might indicate or prove that these discriminations in price were made in good faith to meet an equally low price of a competitor. The evidence submitted by the respondent is too vague and indefinite to show that the long-continued discriminations herein described were made in good faith to meet an equally low price of a competitor.

PAR. 8. The Commission finds that the price differences allowed by the respondent in the sale of its Blue Label salt, including price differentials on carload and less-than-carload lots and on purchases in 5,000- and 50,000-case quantities, as well as unit discounts allowed on carload lots and \$50,000 purchases of salt other than Blue Label, constituted discriminations in price between purchasers of commodities of like grade and quality.

Salt is a staple commodity with a medium turnover and is generally sold by wholesalers to their retail customers on a lower margin of profit than that received on other commodities. Consequently, the price at which the wholesaler offers his table salt is usually controlling, and a difference of five cents per case may result in the loss of a sale to a customer, not only of the salt involved but of other commodities as well, the order for which might be placed with the salt purchase.

In some instances the discounts allowed by the respondent to some of its wholesaler customers have enabled such wholesalers to offer respondent's table salt to retail dealers at prices equal to prices paid by competing wholesalers or at prices less than competing wholesalers could reasonably sell said salt to the retailer customers.

The Commission further finds that customers of the respondent who receive the benefit of the various discriminatory prices, discounts, rebates, and allowances granted by the respondent have a substantial advantage in selling respondent's salt in competition with other customers of the respondent who do not receive the benefit of such discriminatory prices, discounts, rebates, and allowances or who are obliged to pay respondent's full price for said salt. In order to sell respondent's table salt in competition with customers of the respondent who receive the benefit of respondent-

ent's discriminations in price, wholesalers who pay respondent's full price or who are denied the discounts or rebates allowed such favored customers must either sell at competitive prices and in so doing reduce their possible profits by the amount of the discriminations against them, or attempt to sell at higher prices than those which the favored customers of respondent charge for the same product, with the result of inability to secure business and a reduction in the volume of their sales.

By respondent's method of selling and the use of the price differences hereinbefore described, customers paying the highest price are discriminated against with respect to all other customers, while the customers paying the lowest price are given the benefit of the discrimination as against other customers of the respondent. Furthermore, the medium-sized wholesale grocer is discriminated against with respect to his larger competitors and is given the benefit of the discrimination as against his smaller competitors.

The discriminations in price based upon the purchase during any consecutive 12-month period of 50,000 or more cases of Blue Label salt allowed to certain of the large retail chain stores constitute a discrimination in price not only against the smaller or medium-sized chain stores that cannot purchase Blue Label salt in such quantities from the respondent, but also constitute a discrimination against the small retail dealer who is in competition with such large chain stores but who is compelled to purchase Blue Label salt through wholesalers at prices in excess of the retail price maintained by such competitive volume purchasers. Respondent, by selling its Blue Label salt to such large retail chain stores at prices below those charged for the same salt when sold to wholesalers, forces retailer customers of such wholesalers to pay prices which prohibit competition in price between such small retailers and the large retail chain stores.

PAR. 9. The respondent, during the course of the hearings, offered some testimony and evidence in an attempt to justify its price differentials to various customers. The trial examiner sustained a motion to strike this testimony as being based upon estimates, hypotheses, and mere guesses and as arbitrarily including items of distribution the correctness or applicability of which was doubtful. The Commission has nevertheless considered the testimony so stricken, as well as other matters in the record, and is of the opinion, and so finds, that respondent's price differences, including the rebates, allowances, and discounts hereinabove mentioned, have not been shown to be justified by reason of differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which respondent's table salt is sold or delivered to its various customers.

PAR. 10. The Commission finds that the effect of the discriminations in price, including discounts, rebates, and allowances, generally and specifically described herein may be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory price is engaged and to injure, destroy, and prevent competition between those purchasers receiving the benefit of said discriminatory prices, discounts, rebates, and allowances and those to whom they are denied.

CONCLUSION

The aforesaid discriminations in price by the respondent, as herein found, constitute violations of subsection (a) of section 2 of an act of Con-

gress 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).

MODIFIED 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 the allegations of said complaint and in opposition 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 the complaint and in opposition thereto, and oral argument of counsel; and the Commission, having considered the matter, made and issued its findings as to the facts, conclusion, and order to cease and desist on July 28, 1944. Thereafter, said cause was remanded by the Circuit Court of Appeals for the further consideration of the Commission, and the Commission, having reconsidered the matter and the record herein, made and issued its modified findings as to the facts and its conclusion that respondent has violated the provisions of subsection (a) of section 2 of an act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by act approved June 19, 1936 (Robinson-Patman Act).

It is ordered, That respondent, Morton Salt Company, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in the sale of Morton's Free Running Table Salt, plain or iodized, or other grades of table salt in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating directly or indirectly in the price of such products of like grade and quality as among wholesale or retail dealers purchasing said salt when the differences in price are not justified by differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such products are sold or delivered,

(a) By selling such products to some wholesalers thereof at prices different from the prices charged other wholesalers who in fact compete in the sale and distribution of such products; provided, however, that this shall not prevent price differences of less than five cents per case which do not tend to lessen, injure, or destroy competition among such wholesalers.

(b) By selling such products to some retailers thereof at prices different from the prices charged other retailers who in fact compete in the sale and distribution of such products; provided, however, that this shall not prevent price differences of less than five cents per case which do not tend to lessen, injure, or destroy competition among such retailers.

(c) By selling such products to any retailer at prices lower than prices charged wholesalers whose customers compete with such retailer.

For the purposes of comparison, the term "price" as used in this order takes into account discounts, rebates, allowances, and other terms and conditions of sale.

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

Syllabus

IN THE MATTER OF
THE DR. D. A. WILLIAMS COMPANY

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

Docket 4759. Complaint, May 7, 1942—Decision, Apr. 19, 1945

Where a corporation engaged in the interstate sale and distribution of a medicinal preparation designated "The Williams Treatment" and intended for use in the treatment of various diseases and conditions; through statements in newspaper advertisements, circulars, pamphlets and other advertising media, directly or by implication—

- (a) Represented that rheumatism, neuritis, neuralgia, arthritis, constipation, sore muscles, stiff joints, bladder disorders, kidney disorders, tired feeling, acid stomach, itchy skin, susceptibility to colds, lack of energy, nervousness, biliousness, headaches, acid poisoning, stomach troubles, urinary disorders, lameness, stiffness and soreness in muscles and joints, aches and pains in various parts of the body, swellings, grouchiness, and irritability of temper are diseases caused by, or symptoms or conditions indicating, an excess uric acid condition of the body; that its preparation would correct and overcome such excess acid condition, and that it was therefore a cure or remedy or a competent and effective treatment for such diseases and conditions; and
- (b) Represented that its said preparation would promote better health, physical comfort, and happier life; that it was effective in preventing the development of, and in correcting the result of, too much uric acid; would chemically correct the condition of excess uric acid and physiologically promote the elimination of excess uric acid from the blood and tissues; would neutralize uric acid excess, correct the prime fundamental cause of predisposition to disease, and cure diseases already developed; would prevent the deposit of uric acid in the kidneys, joints, tissues, or muscles by promoting the excretion of uric acid more easily; overcome the consequences upon the blood and tissues of the irritant and poisonous influences of too much uric acid; enable the body to maintain a proper alkaline balance; overcome damage which might have been done in the body by too much uric acid; and would build up the strength of important organs, induce sound sleep, and lift the strain from frayed nerves;

The facts being that, as established by expert testimony, there is no relation between excess uric acid in the body and the diseases and conditions in question; its preparation was incapable of correcting or overcoming any excess uric acid condition which might exist in the body, was not a cure or remedy nor a competent or effective treatment for the various ailments and conditions set forth; and it was incapable of accomplishing the other results claimed for it, as above set forth;

With the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to its preparation, and to cause it to purchase substantial quantities of the preparation as a result, whereby substantial trade was diverted unfairly to it from its competitors:

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

In a proceeding before the Commission, in which the complaint raised numerous issues with respect to advertising claims made by the respondent, in connection with

products sold by it other than its medicinal preparation, The Williams Treatment, as above set forth, and also referred to certain advertising claims for said last named preparation, not dealt with above: Where the evidence showed that the advertising in question had long since been discontinued, as had also the sale of said other products, and that claims not dealt with in connection with said "Treatment" had long since been discontinued by respondent, the Commission was of the opinion that the complaint should be dismissed as to said matters, without prejudice, however to the right to the Commission to institute further proceedings in the future, should the public interest so require.

Before *Mr. Randolph Preston*, trial examiner.

Mr. John W. Carter and *Mr. DeWitt T. Puckett* for the Commission.

Mr. Clarence McMillan, 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 respondent, The Dr. D. A. Williams 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. Respondent, The Dr. D. A. Williams Company, is a corporation, organized under the laws of the State of Connecticut with its principal office and place of business located at East Hampton, Conn.

PAR. 2. Respondent is engaged in the sale and distribution of an alleged treatment for rheumatism, kidney and bladder disorders and various other disorders, diseases and conditions, designated and hereinafter referred to as "The Williams Treatment" consisting of a medicinal preparation designated "The Williams Treatment" to be used in conjunction with the theories and daily diet program contained in a booklet entitled "Feeling Twenty Years Younger." Respondent is or has been also engaged in the sale and distribution of various other medicinal and vitamin preparations designated respectively:

(a) A medicinal preparation designated "Dr. Williams Special Formula No. 116";

(b) A medicinal preparation designated "Dr. Williams Special Formula No. 707";

(c) A medicinal preparation designated "Dr. Williams Special Formula No. 59";

(d) A medicinal preparation designated "Dr. Williams Special Formula No. 3";

(e) A medicinal preparation designated "Dr. Williams Special Formula No. 206";

(f) A vitamin preparation designated "Special Formula 833"; and

(g) A vitamin preparation designated "Vitamin Concentrates" to be used separately, or in any combination with "The Williams Treatment," or in any combination of the one with the other.

Respondent causes said treatment and the aforesaid preparations, when sold, to be transported from its place of business in the State of Connecticut to purchasers thereof located in various other States of the United States. At all times mentioned herein respondent has maintained a course

of trade in its said treatment and the individual medicinal and vitamin preparations in commerce between and among the various States of the United States. Respondent has been, and is now, in competition with other corporations, partnerships and individuals engaged in the sale and distribution in commerce among and between the various States of the United States of medicinal and vitamin preparations for use in the treatment of the disorders, diseases and conditions for which respondent recommends his said preparations.

PAR. 3. In the course and conduct of its aforesaid business the respondent has disseminated and has caused the dissemination of false advertisements concerning his said products 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 has also caused the dissemination of false advertisements concerning the aforesaid medicinal and vitamin preparations by various means for the purpose of inducing and which was likely to induce, directly or indirectly, the purchase of its aforesaid "The Williams Treatment" and the various medicinal and vitamin preparations designated as aforesaid, in commerce as commerce is defined by the Federal Trade Commission Act.

Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth by the United States mails, by newspapers, circulars, pamphlets, testimonials, booklets and other advertising media, as aforesaid, are the following:

1. *Advertisement of "The Williams Treatment"*

A. In Newspapers

Try This For
URIC ACID
Read Our Offer. Do This

Thousands Report relief from stiff joints; sore muscles; rheumatic pains; neuritis, neuralgia.

Bladder weak? Kidney irritation? Up many times at night? "Worn out?" "Acid" stomach? "Catch cold" easily? Skin itchy? No "pep"? Nervous?

WANT A 75¢ BOTTLE?
(Regular Prescription Quantity)

For more than 46 years The Williams Treatment has been helping others to more comfortable days and restful nights. YOU try it!

We will give *Uric acid sufferers* who send this advertisement, home address and ten cents (stamps or coin) one full size 75¢ bottle (32 doses) of THE WILLIAMS TREATMENT and booklet with DIET and other helpful suggestions. No obligation. No C.O.D. Only one bottle given same person, family or address. Sold since 1892. This advt. and 10¢ must be sent THE DR. D. A. WILLIAMS CO., Offer RG 52 East Hampton, Conn.

B. In Pamphlets and Folders:

FEELING TWENTY YEARS YOUNGER
The Ounce of Prevention.

Those suffering from ailments due to "Too Much Uric Acid" are concerned vitally in finding the way to better health and greater physical comfort.

In sending you this booklet, we do so with the wish that it will be helpful to you.

The information and experience we have gained in our dealing with many hundreds of thousands of suffering people—who have come to us for help—should help you to a more healthy and more happy life.

To the thousands of men and women who have reached the age of forty, we would emphasize the importance of taking “the ounce of prevention” before “Too Much Uric Acid” causes trouble.

Nature forewarns us of impending troubles due to “Too Much Uric Acid.” Susceptibility to colds—to bilious attacks—attendency to constipation—headaches—the little ache here and the occasional pain here—tiring easily—these all may well be considered symptoms that warn of trouble.

Why wait until pains and aches, stiff joints, or sore muscles make you think of “old age”? Do not let your kidneys become affected through neglect. Fight the accumulation of poison in your body. Keep active and “young.” Protect the body from attacks of the insidious enemy—“Too Much Uric Acid.”

Be wise—do not wait until trouble comes. Keep the body free from “acid-poisoning”—make certain of a proper alkaline balance in that wonderful and faithful body of yours.

The great army of men and women who have used THE WILLIAMS TREATMENT believe it is mighty effective in building better health. We suggest that you too, may find it efficacious in preventing the development of, and correcting the result of “Too Much Uric Acid” with all that it means in suffering and unhappiness and the feeling of “growing old.”

“TOO MUCH URIC ACID”

and

The Opinions of Eminent
Medical Authorities

THE WILLIAMS TREATMENT is intended to chemically correct and physiologically promote the elimination of excess Uric Acid from the blood and tissues of the body.

This justly famous medicine is not intended to be a “cure-all,” either in the sense that it will cure all types of disease, or all cases of any type of disease. It is, according to the laws of chemistry and physiology, adapted to neutralization and elimination of acid excess, and thus is corrective of what is now known to be a prime fundamental cause of pre-disposition to disease as well as of diseases already developed. . . .

The Williams Treatment corrects Rheumatic conditions and Kidney and Bladder disorders when caused by the excess of Uric Acid in the system . . . for correction of such conditions as may be caused by the excess of Uric Acid in the system. . . . It is diuretic and so may get rid of Uric Acid which has a tendency to deposit itself in the Kidneys and Joints . . . To excrete Uric Acid more easily and readily and so prevent any deposits within the tissues, muscles and the joints . . . The plan and purpose of THE WILLIAMS TREATMENT is to correct and remove over-acid conditions of the human organism . . . that pain, swelling, and distress, completely disappeared after using it for a reasonable time. It should overcome the consequences of the irritant and poisonous influence of “Too Much Uric Acid” upon the blood and tissues. The practice of taking THE WILLIAMS TREATMENT for the correction of conditions caused by Uric Acid excess is proven . . .

Perhaps you start the day feeling tired and worn-out—you hate to get out of bed—arms and legs stiff—muscles sore—little burning pains in your back—feeling just a little mean and grouchy before breakfast. During the day you are nervous—irritable—lose your temper quickly—nothing goes right. You are depressed; gloomy, you always see the worst side . . . you get nervous—“fly to pieces” . . .

Perhaps your stomach gives trouble . . . If your distress and discomfort is caused by "Too Much Uric Acid"—then your common-sense tells you to reduce the poison by neutralizing and expelling the acid . . . It should work smoothly and gently to overcome all the damage that may have been done in your body during the past years. It should build up the strength of important organs, so that you can sleep soundly at night; lift the strain from the frayed nerves, and drive out the stiffness and soreness; limber up the arms and legs, and end the pains and aches, whether your doctor calls them "neuritis," "neuralgia," or "rheumatism" or "arthritis" . . . To neutralize and drive out the poison that produces pain . . . to successfully combat pains and aches and relieve suffering caused by "Too Much Uric Acid."

HEALTH GIVING AND DISEASE PREVENTING

The Williams Treatment, containing as it does, Alkali Mineral salts, works in harmony with our Vitamin Concentrates. Hence, the importance of The Williams Treatment and Vitamin Concentrates to those earnestly seeking—not only more speedy relief, but more comfortable, energetic activity.

"707"

Rheumatism is the name given to a group of characteristic symptoms that for many years has been attributed to excess acidity of the system.

The claims of self-interested parties, that rheumatic conditions are due to other causes, may be accepted or rejected by each individual sufferer, as he or she may elect. Neutralization of excessive body-acids is the foundation of all acceptable treatment for rheumatic conditions and the fact that rheumatism is only cured by anti-acid treatment may be considered the best proof that it is acid-caused.

Everybody knows the symptoms—lameness, stiffness and soreness in the muscles and joints; aching pains in various parts of the body; hot swellings that are so sensitive at times that the weight of a bed covering cannot be borne.

Digestion is usually impaired by rheumatic cases, because of the disturbing effect of the excess of acids upon the stomach, liver and intestines.

Acid-Caused Pains are like in character, regardless of the parts of the body in which they are felt; and they must be treated upon the same principle, no matter what scientific name they are classified by. Neutralization of excessive acidity is the foundation of successful treatment, and no treatment that does not effect this result has the qualities of success. Its power to overcome acidity in the system is one of the principal reasons why The Williams Treatment has been so grand a success in rheumatic conditions.

"No. 3"

Sour Stomach means just one thing, and that is excess of acid. The distressing symptoms that accompany this very prevalent ailment may be called Indigestion, Dyspepsia, Gastritis, Catarrh of the Stomach or any other of the many terms used to indicate disturbances of digestion; the cause in almost all cases is excessive acidity.

Nervous Indigestion is nothing more or less than acid irritation of the nervous system in persons with sensitive or weak stomachs.

Heaviness after eating, burning pain in the stomach, nausea, wind or flatulence, bloating, belching, "wind hunger," bad taste in the mouth, coated tongue, offensive breath, headache, etc., are the usual symptoms.

Grouchiness and irritability of temper, occasional dizziness and dimness of vision, rapid heart action, unnatural sensations in various parts of the body, and a sense of everything going wrong, are among the effects upon the nervous system.

Among all the ailments to which the human body is subject, there is none that so directly and positively points to excessive acidity as the cause, as does derangement of the digestive organism.

Indigestion is more common in the chronic stage than is any other ordinary disease,

Complaint

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because of the insufficiency of the ordinary treatments, which are mainly designed but to afford temporary relief from suffering."

"No. 116"

The standard medication for Urinary Disorders is THE WILLIAMS TREATMENT; it is anti-acid and promotes the elimination of waste substances that block the kidneys. Its use should be continued for a considerable period, and resorted to occasionally after recovery has been established, as a protection against recurrence.

2. *Advertisements of other medicinal preparations.*

A. *Special Formula No. 116*

DR. WILLIAMS
Special Formula No. 116
(Homeopathic)
and
The Williams Treatment
for the
URINARY DISORDERS
of Excessive Acidity
(Kidneys and Bladder)

For symptoms of irritation and inflammation—discomfort; pain; burning and scalding urine; difficulty of starting and of stopping the flow; dribbling; frequent getting up at night; cloudy dark, colored, strong-smelling urine with heavy deposit; and bed-wetting during infancy and childhood, DR. WILLIAMS SPECIAL FORMULA NO. 116 is used.

This preparation is entirely harmless and may be taken without fear of unfavorable action, by children, delicate females and old people, as well as by those in middle life.

It has produced results in so many hard cases that seemed to be beyond the reach of all ordinary measures, that no case, however, difficult, should be denied an opportunity to benefit by its aid.

The soothing effect of DR. WILLIAMS SPECIAL FORMULA NO. 116 on the irritated and inflamed water passage is especially valuable in cases of gravel. When the lining membrane has been torn by the passage of the stone, and the tract is raw and sore, grateful relief has come speedily in many instances. Healing is promoted.

There is a condition of weakness of the neck of the bladder that permits the escape of a drop of urine at a time, and is almost continual day and night, that has been quickly remedied by the use of Dr. WILLIAMS SPECIAL FORMULA NO. 116.

For children who wet the bed its action upon the urinary organs is demonstrated with convincing emphasis, usually this trouble is checked in a few days, and completely conquered in a reasonable time.

B. *Special Formula No. 707*

DR. WILLIAMS
Special Formula No. 707
and
The Williams Treatment
for
rheumatism, lumbago,
sciatica, neuritis and
neuralgia.

For the symptoms—lameness, stiffness, soreness, aching and pain—DR. WILLIAMS SPECIAL FORMULA NO. 707 is a most successful medication. The definite purpose of No. 707 is to quickly bring comfort to sufferers by relieving distressing, aching, pain and stiffness, while the acid cause is being removed, and thereby promote and facilitate full recovery.

Headaches and many of the pains and aches that women suffer, may be relieved or prevented by the timely use of DR. WILLIAMS SPECIAL FORMULA NO. 707. It is a very useful medicine in any condition of disease or disorder caused by pain.

It should be used in connection with The Williams Treatment.

C. *Special Formula No. 59*

DR. WILLIAMS
Special Formula No. 59
for the liver troubles
of excessive acidity.

D. *Special Formula No. 3*

DR. WILLIAMS
Special Formula No. 3
and
The Williams Treatment
for the
Stomach Troubles of
Excessive Acidity
Indigestion Acid Dyspepsia

The preparation is formulated for the relief of discomfort and pain arising from disturbed digestion, and for building up the tone and natural strength of the stomach.

When used in connection with THE WILLIAMS TREATMENT for the neutralization of acidity of the system, its action is most satisfying.

Long standing cases of dyspepsia, that have failed to improve under symptom medicines like soda, bismuth, magnesia, etc., have been reported to show steady betterment and to attain ultimate recovery.

Acute attacks of dyspepsia brought on by eating too fast or too heartily of foods that digest slowly have been promptly relieved and serious consequences avoided by the timely use of No. 3. Many who are acquainted with the excellence of this formula keep a supply on hand at all times for emergencies.

Its tonic effect upon the lining membrane, muscles and secreting glands of the stomach, tends to build up the ability of the organ to digest the food that is put into it. No. 3 is not intended to do the work of the stomach for it, but to aid in the restoration of natural digestive power.

Recovery from many forms of disturbed digestion, even when they have reached the chronic stage, has been achieved by the systematic use of THE WILLIAMS TREATMENT and DR. WILLIAMS SPECIAL FORMULA NO. 3.

E. *Special Formula No. 206*

DR. WILLIAMS
Special Formula No. 206
for the
female nervousness of
excessive acidity.

3. *Advertisement of Vitamin Preparations.*

(a) *SPECIAL FORMULA NO. 833*

There are many of us who are living on certain diets that are deficient in Vitamin B₁. These diets are for such diseases as diabetes, peptic ulcer, reducing, kidney diseases, etc.

There are many who, because of their dislike of certain Vitamin B₁ containing foods, develop a self-inflicted deficiency of this important Vitamin. And then there are those of us who, although we eat sufficient Vitamin B₁ foods are unable to absorb the Vitamin from the gastro-intestinal tract.

Individuals who have inflammatory processes of the stomach and do not properly digest their foods, are examples of this type.

Disturbances of the digestive tract resulting from Vitamin B₁ deficiency are probably of considerable clinical importance, especially in non-infective colitis and malnutrition.

Vitamin B₁ is essential for such conditions as beri beri with symptoms of neuritis of legs, enlarged heart and rapid heart, difficult breathing, blueness, gastric distress, prostration, and restlessness.

Vitamin B₁ is required for such conditions as: Constipation, Loss of vigor, various nervous disorders, fevers, hyperthyroidism, gradual paralysis of the limbs as well as for enlarged glands as the kidneys, heart, thyroid, ovaries, and liver.

Professor Steinberg has shown that Vitamin B₁ is of "adjunct" value in patients with chronic arthritis, and Professors Hall and Myers have shown that one-half of their cases of infectious arthritis had Vitamin B₁ deficiency.

Professor Staehler has shown that labor in pregnancy is delayed, and uterine contractions are weak where there is a deficiency of Vitamin B₁.

Special Formula No. 833 assures you a rich and abundant supply of this most important Vitamin B₁ that scientists and research workers have found to be most beneficial to such important diseases, and conditions as are described above.

Vitamin B₁ is also required for alcoholic neuritis, pregnancy neuritis, and many other forms such as diabetes neuritis. Where there is a loss of muscular tone of both stomach and bowel, Vitamin B₁ is required.

(b) *VITAMIN CONCENTRATES WITH LIVER EXTRACT AND IRON* as appearing in pamphlet "Health Giving and Disease Preventing."

Vitamin B

This is known as the antineuritic Vitamin because it is necessary to keep our nervous system in the best of health. If we are deprived of this essential Vitamin, we suffer from nervous diseases. This Vitamin has a marked effect upon our appetites, and the health of the entire gastro-intestinal tract.

Vitamin C

This Vitamin is essential for the health of epithelial tissue, and increases our resistance to infections from without or from within. We must have this Vitamin to insure healthy gums and teeth.

Vitamin E

This Vitamin is needed for the reproductive process in both male and female. It is necessary for growth and vigor in both sexes, and a shortage results in mental sluggishness.

Vitamin G

This Vitamin is often called B₁₂ because it is found in food substances along with B₁ and was only recently separated from it. It is the Vitamin which prevents Pellagra. It seems to be necessary for blood regeneration.

Vitamin Concentrates assures you a rich abundant supply of the important Vitamins described in this folder, and IN ADDITION to this Liver Extract and Iron; used so widely by physicians to increase the supply of red blood corpuscles.

Vitamin Concentrates should be considered as aids to the preservation of normal health and as definite factors in restoration of health that has been impaired by Vitamin deficiency.

Vitamin Concentrates are offered to you with confidence their use will give you better health and freedom from pain and distress that follows Vitamin deficiency.

It is important that disease be alleviated when you are afflicted, but the prevention of disease is even more important. Take VITAMIN CONCENTRATES FOR A TIME AS NECESSARY FOOD. Help nature to protect you by putting into your body these "Health-giving and Disease-preventing" substances, prepared with LIVER EXTRACT and IRON.

It has been said that the general function of Vitamins is to promote mineral metabolism. When a deficiency of necessary minerals is indicated, the same evidence of "mineral starvation" in certain forms of vitamin deficiency may be found.

Vitamin—Inflammation and pus formation in the eyes, ears, sinuses, lungs, skin, bladder and kidneys.

- "A" Anemia.
- Retarded growth.
- Loss of appetite.
- Sterility (prevents conception).

Vitamin—Constipation.

- "B" Loss of Vigor.
- Various nervous disorders.
- Gradual paralysis of the limbs.
- Enlarges many glands as the Kidneys, Heart, Thyroid, Ovaries, Liver, etc.

Vitamin—Physical weakness.

- "C" Loss of weight.
- Change in disposition.
- Soreness and stiffness of the joints.
- Shortness of breath and rapid heart beats.

Vitamin—Muscular weakness.

- "D" Lowered resistance to disease.
- Decay of teeth.
- Malformation of the bones.
- Improper calcium phosphorous balance.

Vitamin—Sterility in both male and female.

- "E" Mental sluggishness.
- Loss of weight.
- Wasting of muscles.
- Lowered resistance to infection.

Vitamin—Pellagra.

- "G" Nervous diseases.
- Sore mouth and membranes.
- Dermatitis (skin disease).
- Gastric disorders, colitis, etc.

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

all of which purport to be descriptive of the therapeutic and nutritional properties of respondent's preparations, respondent has represented, directly and by implication, as follows:

1. *Representations as to "The Williams Treatment."*

That rheumatism, neuritis, neuralgia, arthritis, constipation, sore muscles, stiff joints, weak bladder, kidney irritation, weak kidneys, tired feeling, acid stomach, itchy skin, susceptibility to colds, lack of energy, nervousness, billiousness, headaches, kidney infection, acid poisoning, stomach troubles, urinary disorders, lumbago, sciatica, lameness, stiffness, and soreness in muscles and joints, aching pains in various parts of the body, hot swellings, impaired digestion due to the effect of excess acids upon the stomach, liver and intestines, liver troubles, sour stomach, dyspepsia, acid dyspepsia, gastritis, catarrh of the stomach, nervous indigestion, heaviness after eating, burning pains in the stomach, nausea, wind or flatulence, bloating, belching, "wind hunger" or bad taste in the mouth, coated tongue, offensive breath, headache, grouchiness, irritability of temper, dizziness, dimness of vision, rapid heart action, unnatural sensations in various parts of the body, derangement of the digestive organs, and female nervousness are diseases caused by, or symptoms or conditions indicating, excess uric acid condition of the body and that the preparation "The Williams Treatment" used alone or in conjunction with the theories and nutritional suggestions contained in the pamphlet "Feeling Twenty Years Younger" will correct and overcome such excess uric acid condition and is therefore a cure and remedy for and constitutes an effective treatment for such disorders and diseases.

That the said "The Williams Treatment" will promote better health, physical comfort and happier life; that it is efficacious in preventing the development of and in correcting the result of too much uric acid; that it will chemically correct and physiologically promote the elimination of excess uric acid from the blood and tissues; that it will neutralize uric acid excess and is corrective of the prime fundamental cause of predisposition to disease and the cure of disease already developed; that it will prevent the deposit of uric acid in the kidneys, joints, tissues and muscles by promoting the excretion of uric acid more easily; that it will overcome the consequences upon the blood and tissue of the irritant and poisonous influences of too much uric acid; that it will enable the body to maintain a proper alkaline balance; that it will overcome damage that may have been done in the body by too much uric acid; that it will build up the strength of important organs, induce sound sleep and lift the strain from frayed nerves; that due to its alkali mineral salts, it will work in harmony with the preparation designated "Vitamin Concentrates" and will induce a speedy relief and bring about more comfortable and energetic activity.

2. *Representations as to "Dr. Williams Special Formula No. 116."*

That the preparation "Dr. Williams Special Formula No. 116" used alone or in conjunction with the preparation "The Williams Treatment," is a cure and remedy and constitutes an effective or competent treatment for inflammation, irritation and pain accompanying urinary disorders of the kidneys and bladder; that it will overcome and prevent dribbling; that it will correct and prevent burning, scalding, cloudy, dark colored, strong-smelling urine; that it will overcome the difficulty of starting and stopping the flow of urine; that it is a competent and effective treatment for torn

and lacerated membrane caused by the passage of stone; that it will strengthen the muscles controlling the neck of the bladder thus overcoming and preventing the escape or passage of urine; that it will effectively check and overcome in children the habit of bed wetting; that it will produce results where other measures have failed.

3. *Representations as to "Dr. Williams Special Formula No. 707."*

That the preparation designated "Dr. Williams Special Formula No. 707" when used alone or in conjunction with the preparation designated "The Williams Treatment" is a cure and remedy and constitutes a competent and effective treatment for the symptoms lameness, stiffness, soreness, aches and pains, headaches and many of the pains and aches from which women suffer; that it will quickly bring comfort to sufferers; that it is useful for any condition or disorder caused by pains; that its use will promote and facilitate full recovery while the acid cause of such symptoms are being removed; that it is a special medication devised after an experience covering many thousands of cases.

4. *Representations as to "Dr. Williams Special Formula No. 59."*

That the preparation designated "Dr. Williams Special Formula No. 59" used alone or in conjunction with the medicinal preparation, "The Williams Treatment" is a cure and remedy for and constitutes a safe and effective treatment for liver troubles of excessive acidity.

5. *Representations as to "Dr. Williams Special Formula No. 3."*

That the preparation designated "Dr. Williams Special Formula No. 3" used alone or in conjunction with the preparation designated "The Williams Treatment" is a cure and remedy and constitutes a competent and effective treatment for acute attacks of dyspepsia, acute and chronic form of disturbed digestion; that dyspepsia of long standing which has failed to yield to other forms of treatment can be cured by the use of this preparation; that it will build up the tone and natural strength of the stomach; that its tonic effect upon the membrane muscles and secreting glands of the stomach increases the digestive properties of that organ; that it will cure every form of chronic indigestion; and that it will restore to the stomach its natural digestive powers.

6. *Representations as to "Dr. Williams Special Formula No. 206."*

That the preparation designated "Dr. Williams Special Formula No. 206" used alone or in conjunction with the treatment designated "The Williams Treatment" is a cure and remedy for and constitutes a safe and effective treatment for female nervousness of excessive acidity.

7. *Representations as to "Dr. Williams Special Formula No. 833."*

That the preparation designated "Dr. Williams Special Formula No. 833" used alone or in combination with the treatment designated "The Williams Treatment" is a competent, nutritional and corrective treatment for the prevention and cure of diseases or conditions such as constipation, loss of vigor, various nervous disorders, fevers, hyper-thyroidism, gradual paralysis of the limbs, enlarged glands, such as kidneys, heart, thyroid, ovaries and liver, alcoholic neuritis, pregnancy neuritis, chronic arthritis, infectious arthritis, diabetic arthritis, loss of muscular tone of the stomach and bowels, that its use will maintain appetite; that it will correct and properly control weight; that it will strengthen uterine contractions and prevent delayed labor in pregnancy.

It is further represented that diet for such diseases as diabetes, peptic ulcer, reducing, kidney diseases, etc. are all deficient in Vitamin B₁; that Vitamin B₁ deficiency is often self-inflicted because of dislike for certain foods containing this vitamin; that there are persons who eat sufficient food containing Vitamin B₁ yet who are unable to absorb that vitamin; that persons with inflammatory process of the stomach do not properly digest their food and are unable therefore to absorb Vitamin B₁; that Vitamin B₁ is essential for neuritis of legs, enlarged heart and rapid heart, difficult breathing, blueness, gastric distress, prostration and restlessness; and that these are symptoms of beri beri.

8. *Representations as to "Vitamin Concentrates" with liver extract and iron.*

That the preparation designated "Vitamin Concentrates" contains a sufficient supply of multiple vitamin concentrate together with liver extract and iron so that when used alone or in conjunction with the preparation designated "The Williams Treatment" it is a competent, nutritional and corrective treatment for the prevention and cure of diseases or conditions such as inflammation and pus formation in the eyes, ears, sinuses, lungs, skin, bladder and kidneys, anemia, retarded growth, loss of appetite, sterility, constipation, loss of vigor, various nervous disorders, gradual paralysis of the limbs, enlarged glands such as the kidneys, heart, thyroid, ovaries, liver, etc., physical weakness, loss of weight, change in disposition, soreness and stiffness of the joints, shortness of breath, rapid heart beat, muscular weakness, lowered resistance to disease, decay of teeth, malformation of the bones, improper calcium phosphorous balance, sterility in male and female, mental sluggishness, wasting of muscles, lowered resistance to infection, pellagra, nervous diseases, sore mouth and membranes, dermatitis, gastric disorders and colitis.

That it is an effective and competent treatment for all nervous diseases and infectious diseases and will increase one's resistance to such diseases, that it will increase the red blood corpuscles; that the use of this preparation will give you health and prevent disease and that it will promote mineral metabolism.

PAR. 5. The aforesaid advertisements and representations, as well as many others of similar import which have not been specifically set out herein, are grossly exaggerated, false, misleading, and untrue in the following particulars:

1. *With Respect to "The Williams Treatment."*

The symptoms, disorders and diseases, enumerated and set forth hereinabove in subsection 1 of paragraph 4 are not diseases caused by, or symptoms indicating, excess uric acid condition of the body. The preparation designated "The Williams Treatment" used alone or in conjunction with the theories and nutritional suggestions contained in the pamphlet entitled "Feeling Twenty Years Younger" or in any combination with the various medicinal and vitamin preparations set forth hereinabove is not a cure and remedy for, nor a competent or effective corrective treatment for, excess uric acid condition of the body and will not have any generally recognized therapeutic value in the treatment thereof, or in the treatment of any of the conditions, symptoms, disorders and diseases set forth hereinabove in subsection 1 of paragraph 4 in excess of neutralizing temporarily an excess of acid in the stomach.

The said preparation "The Williams Treatment" will not promote better health, physical comfort, or happier life; it is not efficacious in preventing the development of or in correcting the result of too much uric acid; it will not chemically correct or physiologically promote the elimination of excess uric acid from the blood and tissues; it will not neutralize uric acid excess and is not corrective of the prime fundamental cause of pre-disposition to diseases or the cure of diseases already developed; it will not prevent the deposit of uric acid in the kidneys, joints, tissues, or muscles by promoting the excretion of uric acid more easily; it will not overcome the consequences upon the blood and tissue of the irritant and poisonous influences of too much uric acid; it will not enable the body to maintain a proper alkaline balance; it will not overcome damage or correct the damage that may have been done in the body by too much uric acid; it will not build up the strength of important organs; it will not induce sound sleep, and it will not lift the strain from frayed nerves; it will not work in harmony with the preparation designated "Vitamin Concentrates" so as to induce speedy relief and bring about more comfortable and energetic activity.

2. *With Respect to "Dr. Williams Special Formula No. 116."*

In truth and in fact the preparation "Dr. Williams Special Formula No. 116" used alone or in conjunction or combination with the preparation "The Williams Treatment" is not a cure and remedy nor does it constitute an effective or competent treatment for inflammation, irritation, or pain accompanying urinary disorders of the kidneys and bladder; it will not overcome and prevent dribbling; it will not correct and prevent burning, scalding, cloudy, dark colored, strong smelling urine; it will not overcome the difficulty of starting and stopping the flow of urine; it is not a competent and effective treatment for torn and lacerated membrane caused by the passage of stone; it will not strengthen the muscles controlling the neck of the bladder thus overcoming and preventing the escape or passage of urine; it will not effectively check and overcome in children the habit of bed wetting; it will not produce results where other measures have failed.

3. *With Respect to "Dr. Williams Special Formula No. 707."*

The preparation designated "Dr. Williams Special Formula No. 707" when used alone or in conjunction or combination with the preparation designated "The Williams Treatment" is not a cure or remedy nor does it constitute a competent or effective treatment for the underlying cause of lameness, stiffness, soreness, aches and pains, headaches or the cause of any of the pains or aches from which women suffer, and it will have no therapeutic value in the treatment of such conditions in excess of temporarily mitigating the consciousness of pain. It will not promote or facilitate full recovery from any disease or condition. It is not a special medication as respondent indicates but is a common and well known drug designated acetylsalicylic acid or more commonly referred to as aspirin and will have no greater therapeutic value than aspirin.

4. *With Respect to "Dr. Williams Special Formula No. 59."*

The preparation designated "Dr. Williams Special Formula No. 59" used alone or in conjunction or combination with the medicinal preparation "The Williams Treatment" is not a cure or remedy for and does not constitute a safe, effective or competent treatment for liver troubles, irrespective of cause.

5. *With Respect to "Dr. Williams Special Formula No. 3."*

The preparation designated "Dr. Williams Special Formula No. 3" used alone or in conjunction or in combination with the preparation designated "The Williams Treatment" is not a cure or remedy nor does it constitute a competent or effective treatment for acute attacks of dyspepsia, acute or chronic form of disturbed digestion and it will have no generally recognized therapeutic value in the treatment thereof in excess of that of a bitter stomachic and appetizer and carminative; it will not cure dyspepsia; it will not build up the tone and natural strength of the stomach; it will have no tonic effect whatever upon the membrane muscles or secreting glands of the stomach nor increase the digestive properties of that organ; it will not cure any form of chronic indigestion and it will not restore natural digestive powers to the stomach.

6. *With Respect to "Dr. Williams Special Formula No. 206."*

The preparation designated "Dr. Williams Special Formula No. 206" used alone or in conjunction or combination with the treatment designated "The Williams Treatment" is not a cure or remedy for and does not constitute a safe, effective or competent treatment for female nervousness irrespective of cause.

7. *With Respect to "Dr. Williams Special Formula No. 833."*

The preparation designated "Dr. Williams Special Formula No. 833" used alone or in conjunction or combination with the treatment designated "The Williams Treatment" is not a competent, nutritional, or corrective treatment for the prevention and cure of diseases or conditions such as loss of vigor, various nervous disorders, fevers, hyper-thyroidism, gradual paralysis of the limbs, enlarged glands such as kidneys, heart, thyroid, ovaries, and liver, neuritis, chronic arthritis, infectious arthritis, diabetic arthritis; it will not correct or properly control weight; it will not strengthen uterine contractions nor prevent delayed labor in pregnancy.

Constipation, alcoholic neuritis, pregnancy neuritis, loss of muscular tone of the stomach and bowels, loss of appetite may occur in connection with conditions having no relationship whatever to Vitamin B₁ deficiency, in which event respondent's preparation "Dr. Williams Special Formula No. 833" would not be an adequate or competent treatment therefor.

Diet for such diseases as diabetes, peptic ulcer, reducing, kidney diseases, etc., are not deficient in Vitamin B₁; Vitamin B₁ deficiency is not often self-inflicted because of dislike for certain foods containing this vitamin. If a person is unable to absorb the Vitamin B₁ from the food eaten, such person will not be able to absorb the Vitamin B₁ of this preparation.

The symptoms neuritis of the legs, enlarged heart or rapid heart, difficult breathing, blueness, gastric distress, prostration and restlessness may occur in connection with severe Vitamin B₁ deficiency known as beri beri and they may also occur in connection with conditions having no relationship whatever to Vitamin B₁ deficiency. Beri beri is a rare disease in this country and respondent's preparation designated "Dr. Williams Special Formula No. 833" would not be an adequate treatment for the above symptoms except in those rare cases of beri beri.

8. *With Respect to "Vitamin Concentrates" with Liver Extract and Iron.*

The preparation designated "Vitamin Concentrates" with liver extract and iron, when used alone or in conjunction or combination with the

preparation designated "The Williams Treatment" is not a competent, nutritional, or corrective treatment for the prevention and cure of diseases or conditions such as inflammation and pus formation in the eyes, ears, sinuses, lungs, skin, bladder, and kidneys, anemia, sterility, loss of vigor, various nervous disorders, gradual paralysis of the limbs, enlarged glands such as the kidneys, heart, thyroid, ovaries, liver, etc., physical weakness, loss of weight, change in disposition, soreness or stiffness of the joints, shortness of breath, rapid heart beat, muscular weakness, lowered resistance to disease, decay of teeth, sterility in male and female, mental sluggishness, loss of weight, wasting of muscles, lowered resistance to infection, pellagra, nervous diseases, sore mouth and membranes, dermatitis, gastric disorders or colitis.

The conditions such as retarded growth, loss of appetite, constipation, malformation of the bones, improper calcium phosphorous balance, may be caused or occur for reasons of and in connection with conditions having no relationship whatever to vitamin deficiency in which event respondent's preparation designated "Vitamin Concentrates" would not be an adequate or competent treatment therefor.

It is not an effective or competent treatment for all nervous diseases.

Its Vitamin C content is not an effective or competent treatment for infectious diseases nor will it increase one's resistance to such diseases.

The preparation will not increase the red corpuscles of the blood.

The use of this preparation will not give you health nor will it prevent disease or promote mineral metabolism.

PAR. 6. The use by the respondent of the foregoing false and deceptive statements and representations, disseminated as aforesaid, has had, and has, the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and to induce a substantial number of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's preparations. As a result, trade has been diverted unfairly to the respondent from his competitors who are likewise engaged in the sale and distribution in commerce between and among the various States of the United States of preparations for use in the treatment of similar disorders, diseases and conditions who truthfully advertise the effectiveness and therapeutic value of their respective preparations. In consequence thereof injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States.

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 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 May 7, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, The Dr. D. A. Williams 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 that act. After the filing by respondent of its answer to the complaint, testimony and other evi-

dence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, The Dr. D. A. Williams Company, is a corporation, organized under the laws of the State of Connecticut, with its principal office and place of business located in East Hampton, Conn. Respondent is engaged in the sale and distribution of a medicinal preparation designated "The Williams Treatment" and intended for use in the treatment of various diseases and conditions of the human body.

PAR. 2. Respondent causes and has caused its preparation, when sold, to be transported from its place of business in the State of Connecticut to purchasers thereof located in various other States of the United States. Respondent maintains and has maintained a course of trade in its preparation in commerce among and between the various States of the United States.

PAR. 3. Respondent is and has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution, in commerce among and between the various States of the United States, of medicinal preparations intended for use in the treatment of the diseases and conditions for which respondent recommends its preparation.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of its preparation, respondent has disseminated and caused the dissemination of advertisements concerning its 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 caused the dissemination of advertisements concerning its preparation by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of its preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements contained in such advertisements disseminated and caused to be disseminated, as set forth above, by the United States mails and by means of newspapers, circulars, pamphlets, and other advertising media, are the following:

Try This For
URIC ACID
Read Our Offer. Do This

Thousands report relief from stiff joints; sore muscles; rheumatic pains, neuritis; neuralgia.

Bladder weak? Kidney irritation? Up many times at night? "Worn out?"
 "Acid" stomach? "Catch cold" easily? Skin itchy? No "pep"? Nervous?

WANT A 75¢ BOTTLE?
 (Regular Prescription Quantity)

For more than 46 years The Williams Treatment has been helping others to more comfortable days and restful nights.

YOU try it!

We will give *uric acid sufferers* who send this advertisement, home address and ten cents (stamps or coin) one full size 75¢ bottle (32 doses) of THE WILLIAMS TREATMENT and booklet with DIET and other helpful suggestions. No obligation. No C. O. D. Only one bottle given same person, family or address. Sold since 1892. This advt. and 10¢ must be sent THE DR. D. A. WILLIAMS CO., Offer RH 64 East Hampton, Conn. (Comm. Ex. 1)

FEELING TWENTY YEARS YOUNGER
The Ounce of Prevention.

Those suffering from ailments due to "Too Much Uric Acid" are concerned vitally in finding the way to better health and greater physical comfort.

In sending you this booklet, we do so with the wish that it will be helpful to you.

The information and experience we have gained in our dealing with many hundreds of thousands of suffering people—who have come to us for help—should help you to a more healthy and more happy life.

To the thousands of men and women who have reached the age of forty, we would emphasize the importance of taking "the ounce of prevention" before "Too Much Uric Acid" causes trouble.

Nature forewarns us of impending troubles due to "Too Much Uric Acid." Susceptibility to colds—to bilious attacks—a tendency to constipation—headaches—the little ache here and the occasional pain here—tiring easily—these all may well be considered symptoms that warn of trouble.

Why wait until pains and aches, stiff joints, or sore muscles make you think of "old age"? Do not let your kidneys become affected through neglect. Fight the accumulation of poison in your body. Keep active and "young." Protect the body from attacks of the insidious enemy—"Too Much Uric Acid."

Be wise—do not wait until trouble comes. Keep the body free from "acid-poisoning"—make certain of a proper alkaline balance in that wonderful and faithful body of yours.

The great army of men and women who have used THE WILLIAMS TREATMENT believe it is mighty effective in building better health. We suggest that you too, may find it efficacious in preventing the development of, and correcting the result of "Too Much Uric Acid" with all that it means in suffering and unhappiness and the feeling of "growing old."

"TOO MUCH URIC ACID"

and

The Opinions of Eminent
 Medical Authorities

THE WILLIAMS TREATMENT is intended to chemically correct and physiologically promote the elimination of excess Uric Acid from the blood and tissues of the body.

This justly famous medicine is not intended to be a "cure-all," either in the sense that it will cure all types of disease, or all cases of any type of disease. It is, according to the laws of chemistry and physiology, adapted to neutralization and elimination of acid excess, and thus is corrective of what is now known to be a prime fundamental cause of pre-disposition to disease as well as of diseases already developed. . . .

The Williams Treatment corrects Rheumatic conditions and Kidney and Bladder disorders when caused by the excess of Uric Acid in the system . . . for correction of such conditions as may be caused by the excess of Uric Acid in the system. . . . It is diuretic and so may get rid of Uric Acid which has a tendency to deposit itself in the Kidneys and Joints . . . To excrete Uric Acid more easily and readily and so prevent any deposits within the tissues, muscles and the joints . . . The plan and purpose of THE WILLIAMS TREATMENT is to correct and remove over-acid conditions of the human organism . . . that pain, swelling, and distress, completely disappeared after using it for a reasonable time. It should overcome the consequences of the irritant and poisonous influence of "Too Much Uric Acid" upon the blood and tissues. The practice of taking THE WILLIAMS TREATMENT for the correction of conditions caused by Uric Acid excess is proven . . .

Perhaps you start the day feeling tired and worn-out—you hate to get out of bed—arms and legs stiff—muscles sore—little burning pains in your back—feeling just a little mean and grouchy before breakfast. During the day you are nervous—irritable—lose your temper quickly—nothing goes right. You are depressed; gloomy, you always see the worst side . . . you get nervous—"fly to pieces" . . .

Perhaps your stomach gives trouble . . . If your distress and discomfort is caused by "Too Much Uric Acid"—then your common sense tells you to reduce the poison by neutralizing and expelling the acid . . . It should work smoothly and gently to overcome all the damage that may have been done in your body during the past years. It should build up the strength of important organs, so that you can sleep soundly at night; lift the strain from the frayed nerves, and drive out the stiffness and soreness; limber up the arms and legs, and end the pains and aches, whether your doctor calls them "neuritis," "neuralgia," or "rheumatism" or "arthritis" . . . To neutralize and drive out the poison that produces pain . . . to successfully combat pains and aches and relieve suffering caused by "Too Much Uric Acid." (Comm. Ex. 2)

PAR. 5. Through the use of these statements and others of similar import, respondent has represented, directly or by implication, that rheumatism, neuritis, neuralgia, arthritis, constipation, sore muscles, stiff joints, bladder disorders, kidney disorders, tired feeling, acid stomach, itchy skin, susceptibility to colds, lack of energy, nervousness, biliousness, headaches, acid poisoning, stomach troubles, urinary disorders, lameness, stiffness and soreness in muscles and joints, aches and pains in various part of the body, swellings, grouchiness, and irritability of temper are diseases caused by, or symptoms or conditions indicating, an excess uric acid condition of the body, that respondent's preparation will correct and overcome such excess uric acid condition, and that the preparation is therefore a cure or remedy or a competent and effective treatment for such diseases and conditions.

Respondent has further represented through such statements that its preparation will promote better health, physical comfort, and happier life; that it is effective in preventing the development of and in correcting the result of too much uric acid; that it will chemically correct the condition of excess uric acid and physiologically promote the elimination of excess uric acid from the blood and tissues; that it will neutralize uric acid excess, and correct the prime fundamental cause of predisposition to disease, and cure diseases already developed; that it will prevent the deposit of uric acid in

the kidneys, joints, tissues, or muscles by promoting the excretion of uric acid more easily; that it will overcome the consequences upon the blood and tissues of the irritant and poisonous influences of too much uric acid; that it will enable the body to maintain a proper alkaline balance; that it will overcome damage which may have been done in the body by too much uric acid; and that it will build up the strength of important organs, induce sound sleep, and lift the strain from frayed nerves.

PAR. 6. The formula for the preparation, per teaspoonful, is: potassium acetate, U.S.P., $2\frac{3}{4}$ grains; potassium bicarbonate, U.S.P., 1 grain; potassium citrate, U.S.P., 1 grain, dissolved in glycerine and water, and flavored with oil of peppermint, redistilled, and oil of sassafras, natural.

The label on the bottles in which the preparation is packaged contains the following directions:

Directions for Preparing

Shake this bottle well and pour the contents into a large, clean bottle, then add three times as much water, using this bottle as a measure. Cork tight and shake bottle well until all is dissolved. This mixture should make thirty-two teaspoonfuls.

Directions for Taking

After diluting according to Directions for Preparing, take one teaspoonful in one-half glass of water after meals and at bedtime. For children, from one-quarter to one-half the dose. The best results may be obtained by taking the same hour each day. (Comm. Ex. 10)

PAR. 7. Respondent's claims for its preparation are based upon the theory that the diseases and conditions referred to in its advertisements are caused by or are symptoms of excess uric acid in the body, that the use of the preparation corrects such excess uric acid condition, and in consequence the diseases and conditions are cured or relieved.

The expert testimony in the record establishes that there is no relation between excess uric acid in the body and the diseases and conditions in question. The diseases and conditions are not caused by nor are they indicative of excess uric acid. Moreover, respondent's preparation is incapable of correcting or overcoming any excess uric acid condition which may exist in the body. The preparation is not a cure or remedy nor a competent or effective treatment for rheumatism, neuritis, neuralgia, arthritis, constipation, sore muscles, stiff joints, bladder disorders, kidney disorders, tired feeling, acid stomach, itchy skin, susceptibility to colds, lack of energy, nervousness, biliousness, headaches, acid poisoning, stomach troubles, urinary disorders, lameness, stiffness or soreness in muscles or joints, aches or pains in the body, swellings, grouchiness, or irritability of temper.

The preparation is incapable of promoting better health, physical comfort, or happier life. It will not prevent the development, nor correct the result, of too much uric acid, nor will it promote the elimination of excess uric acid from the body. It will not neutralize uric acid excess, correct the fundamental cause of predisposition to disease, nor cure diseases already developed. The preparation is incapable of preventing the deposit of uric acid in the kidneys, joints, tissues, or muscles. It will not overcome the consequences upon the blood and tissues of irritant or poisonous influences of excess uric acid. It will not enable the body to maintain a proper alkaline balance, nor will it overcome damage which may have been done

in the body by too much uric acid. It is incapable of building up the strength of the organs of the body, inducing sound sleep, or lifting the strain from frayed nerves.

PAR. 8. The Commission therefore finds that the representations made by respondent with respect to its preparation, as set forth in paragraphs 4 and 5 hereof, are erroneous and misleading and constitute false advertisements.

PAR. 9. The use by respondent of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic properties and effectiveness of respondent's preparation, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of the preparation as a result of the erroneous and mistaken belief so engendered. In consequence, substantial trade has been diverted unfairly to respondent from its competitors.

PAR. 10. The complaint in this proceeding raised numerous issues with respect to advertising claims made by respondent in connection with certain other products sold by it. The evidence shows, however, that the advertising in question has long since been discontinued, as has also the sale of some of the products. The complaint also referred to certain advertising claims for the preparation "The Williams Treatment" which have not been included in the foregoing findings as to the facts. As in the case of the other products, the record shows that these claims have long since been discontinued by respondent. In the circumstances, the Commission is of the opinion that the complaint should be dismissed as to these matters, such dismissal, however, to be without prejudice to the right of the Commission to institute further proceedings in the future, should the public interest so require.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, The Dr. D. A. Williams 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, or distribution of respondent's medicinal preparation designated "The Williams Treatment," or any other preparation of substantially similar composition or possessing substantially similar proper-

ties, whether sold under the same name or under any other name, do forthwith cease and desist from:

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

(a) that respondent's preparation is a cure or remedy, or a competent or effective treatment, for rheumatism, neuritis, neuralgia, arthritis, constipation, sore muscles, stiff joints, bladder disorders, kidney disorders, tired feeling, acid stomach, itchy skin, susceptibility to colds, lack of energy, nervousness, biliousness, headaches, acid poisoning, stomach troubles, urinary disorders, lameness, stiffness or soreness in muscles or joints, aches or pains in the body, swellings, grouchiness, or irritability of temper;

(b) that said preparation will correct or overcome excess uric acid in the body;

(c) that said preparation will prevent the development or correct the result of too much uric acid in the body, or promote the elimination of excess uric acid from the body;

(d) that said preparation will neutralize uric acid excess, or prevent the deposit of uric acid in the kidneys, joints, tissues, or muscles;

(e) that said preparation will overcome the consequences upon the blood and tissues of the irritant or poisonous influences of excess uric acid, or otherwise overcome damage which may have been done in the body by too much uric acid;

(f) that said preparation will enable the body to maintain a proper alkaline balance;

(g) that said preparation will correct the fundamental cause of predisposition to disease or cure diseases already developed;

(h) that said preparation will promote better health, physical comfort, or happier life;

(i) that said preparation will build up the strength of the organs of the body, induce sound sleep, or lift the strain from frayed nerves.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation 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.

For the reasons stated in the findings as to the facts, it is further ordered that, as to those matters referred to in the complaint which are not covered by this order, the complaint be, and it hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings in the future should the public interest so require.

IN THE MATTER OF

JOE H. BRITT AND S. J. MCKINNEY, DOING BUSINESS AS
BRITT-MCKINNEY COMPANY, AND AS BRITT & COMPANY

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 4792. •Complaint, July 31, 1942—Decision, Apr. 19, 1945

Where two partners engaged as brokers of canned foods and fruits and other food products and miscellaneous merchandise, and also in buying and selling such commodities for their own account for resale, from sellers in other states—

Received and accepted on such purchases of food products and other commodities for their own account in commerce, fees or allowances or discounts in lieu thereof from numerous sellers thereof:

Held, That such receipt and acceptance by said partners of brokerage payments, or allowances or discounts in lieu thereof, on their purchases of food products and other commodities in commerce constituted violations of subsection (c) of Section 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. Stephen Nettles, of Greenville, S. C., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondents 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. Respondents, Joe H. Britt and S. J. McKinney, are partners, doing business under the name and style of Britt-McKinney Company, having their principal office and place of business located at 301 West Washington Street, Greenville, S. C., and having a branch office and warehouse operated under the name and style of Britt & Company located in the Piedmont Northern Building, Spartanburg, S. C.

PAR. 2. The respondents are now, and for many years prior hereto have been, engaged in business as brokers of canned foods and fruits and other miscellaneous merchandise.

PAR. 3. The respondents are now, and for many years prior hereto have also been, engaged in business as jobbers, buying and selling for their own account, canned foods and fruits, and other miscellaneous merchandise. This business has also been carried on under the firm name and style of Britt-McKinney Company and Britt & Company.

PAR. 4. The respondents since June 19, 1936, have made many purchases of canned foods and fruits and other miscellaneous merchandise for their own account for resale from sellers located in States other than the State of South Carolina, pursuant to which purchases such commodities have been shipped and transported by the respective sellers thereof from

the States in which they are located across State lines either to the respondents or pursuant to respondents' instructions to purchasers to whom such commodities have been resold by said respondents.

PAR. 5. In the course and conduct of their business of buying canned foods and fruits and other miscellaneous merchandise for their own account in commerce as aforesaid, the respondents, trading under the firm name and style of Britt-McKinney Company and Britt & Company, have been and are now receiving and accepting from numerous sellers of canned foods and fruits and other miscellaneous merchandise so purchased, brokerage fees or allowances or discounts in lieu thereof, on purchases of said commodities for their own account.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (the Clayton Act) as amended by act approved June 19, 1936, (the Robinson-Patman Act—U. S. C. Title 15, Sec. 13), the Federal Trade Commission on July 31, 1942, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violation of the provisions of subsection (c) of section 2 of said Clayton Act as amended. The respondents filed answer to said complaint, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the facts. Thereafter, this proceeding regularly 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. Respondents, Joe H. Britt and S. J. McKinney, are partners, doing business under the name and style of Britt-McKinney Company, having their principal office and place of business located at 301 West Washington Street, Greenville, S. C., and having a branch office and warehouse operated under the name and style of Britt & Company located in the Piedmont Northern Building, Spartanburg, S. C. For many years last past they have been engaged in business as brokers of food products and other commodities, and also have been engaged in business as jobbers, buying and selling food products and other commodities for their own account.

PAR. 2. Since June 19, 1936, the respondents have made many purchases of canned foods and fruits and other miscellaneous merchandise for resale for their own account from sellers located in States other than the State of South Carolina, pursuant to which purchases such commodities have been shipped and transported by the respective sellers thereof from the States in which they are located across State lines either to the respondents or, pursuant to respondents' instructions, to purchasers to whom such commodities have been resold by said respondents.

Order

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PAR. 3. In the course and conduct of their business of buying food products and other commodities for their own account in commerce as aforesaid, the respondents, trading under the firm names and styles of Britt-McKinney Company and Britt & Company, have been, and are now, receiving and accepting brokerage fees or allowances or discounts in lieu thereof from numerous sellers of food products and other commodities on purchases of said food products and other commodities for their own account.

CONCLUSION

The receipt and acceptance by the respondents of brokerage payments, or allowances or discounts in lieu thereof, on their purchases of food products and other commodities in interstate commerce, as herein found, constitute violations of subsection (c) of section 2 of the aforesaid 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 answer of respondents, in which answer respondents admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of subsection (c) of section 2 of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (the Clayton Act) as amended by act of Congress approved June 19, 1936, (the Robinson-Patman Act—U. S. C. Title 15, Sec. 13).

It is ordered, That respondents Joe H. Britt, an individual, and S. J. McKinney, an individual, and as copartners, trading as Britt-McKinney Company or Britt & Company, or under any other name, jointly or severally, their agents, employees, and representatives, directly or through any corporate or other device, in or in connection with the purchase of food products or other commodities in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting from any seller, directly or indirectly, anything of value as brokerage, or any commission, compensation, allowance or discount in lieu thereof, upon purchases made for respondents' own 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 have complied with this order.

Complaint

IN THE MATTER OF
JAEGER SHOP, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5210. Complaint, Aug. 29, 1944—Decision, Apr. 19, 1945*

Where the brand name "Jaeger" had become well and favorably known in the trade and by the purchasing public, and fine woolen garments, including women's sweaters, coats, suits and dresses made and sold since 1883 by "Jaeger Limited of London" and its subsidiaries had been imported into and extensively sold in the United States and had a well established reputation for quality therein; and thereafter a New York corporation with office and principal place of business in Saranac, engaged in the interstate sale and distribution of women's sportswear, including sweaters, coats and suits—

Made use of the word "Jaeger" in its corporate name and as a trade name on circulars, price lists and other advertising matter and featured the name in its circulars, letterheads and advertising, through such statements as "JAEGER sweaters of fine British wools"; "JAEGER SWEATERS OF IMPORTED YARNS"; "JAEGER Skirt and Sweater Shop"; "JAEGER Saranac Lake, New York"; "JAEGER seventy-six Main St. Saranac Lake, New York"; and "Handsome Tweeds * * * Jaeger Shop, Inc."; notwithstanding the fact it had never been connected or in any way associated with the firms of "Jaeger Limited of London" and the garments sold by it were not manufactured by "Jaeger Limited" or its subsidiaries;

With the capacity to deceive and mislead, and with effect of misleading and deceiving, members of the purchasing public into the belief that its garments were the products of "Jaeger Limited of London" or its subsidiaries, and, as a result, of inducing them 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. 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 Jaeger Shop, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Jaeger Shop, Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 76 Main Street in the city of Saranac, N. Y. Respondent is now, and for more than two years last past has been, engaged in the sale and distribution of women's sportswear, including sweaters, coats and suits. Respondent causes its garments, when sold, to be shipped or transported from its afore-

said place of business in the State of New York to the purchasers thereof at their respective points of location 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 women's garments in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Since 1883, The Jaeger Co., Ltd. of London and its subsidiaries have been engaged in the manufacture and sale of fine woolen garments, including women's sweaters, coats, suits and dresses, which have been imported into the United States where they have been extensively sold to members of the purchasing public. Such garments are well-known by the purchasing public and, as the brand name Jaeger is well and favorably known in the trade and by the purchasing public, have a well-established reputation for quality in the United States.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its garments, the respondent has made use of the word "Jaeger" as a trade name on circulars, price lists and other advertising matter distributed by United States mail to the purchasing public and by advertisements inserted in magazines and periodicals having a general circulation.

Included in such circulars and advertisements distributed as aforesaid are the following statements:

JAEGER sweaters of fine British wools;
JAEGER SWEATERS OF IMPORTED YARNS;
JAEGER Skirt and Sweater Shop;
JAEGER Saranac Lake, New York;
JAEGER seventy-six Main St., Saranac Lake, New York;
Handsome Tweeds * * * Jaeger Shop, Inc.

In all of its circulars, letterheads and printed advertising respondent has caused the word "Jaeger" to be more prominently displayed than the other parts of said advertising.

PAR. 4. Respondent is not now, and has not at any time been, connected with or in any way associated with the firm of Jaeger Limited of London or any of its subsidiaries, and the garments sold by it are not manufactured by Jaeger, Ltd., or its subsidiaries.

PAR. 5. The use by the respondent of the name "Jaeger" as a part of its corporate name and the designation of the garments sold by it as "Jaeger" garments is deceptive and misleading and it has had and now has the capacity to deceive and mislead; and it has deceived and misled members of the purchasing public into the belief that respondent's garments are the products of Jaeger Limited of London or its subsidiaries, and as a result of such erroneous belief the public has been induced to purchase substantial quantities of respondent's garments.

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.

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, 1944, issued and thereafter

served its complaint in this proceeding upon respondent, Jaeger Shop, 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 October 14, 1944, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Jaeger Shop, Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 76 Main Street in the city of Saranac, N. Y. Respondent is now, and for more than two years last past has been, engaged in the sale and distribution of women's sportswear, including sweaters, coats and suits. Respondent causes its garments, when sold, to be shipped or transported from its aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various 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 women's garments in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Since 1883, the Jaeger Co., Ltd. of London and its subsidiaries have been engaged in the manufacture and sale of fine woolen garments, including women's sweaters, coats, suits and dresses, which have been imported into the United States where they have been extensively sold to members of the purchasing public. Such garments are well-known by the purchasing public, and, as the brand name Jaeger is well and favorably known in the trade and by the purchasing public, have a well-established reputation for quality in the United States.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its garments, the respondent has made use of the word "Jaeger" as a trade name on circulars, price lists and other advertising matter distributed by United States mail to the purchasing public and by advertisements inserted in magazines and periodicals having a general circulation.

Included in such circulars and advertisements distributed as aforesaid are the following statements:

- JAEGER sweaters of fine British wools;
- JAEGER SWEATERS OF IMPORTED YARNS;
- JAEGER Skirt and Sweater Shop;
- JAEGER Saranac Lake, New York;
- JAEGER seventy-six Main St. Saranac Lake, New York;
- Handsome Tweeds * * * Jaeger Shop, Inc.

In all of its circulars, letterheads and printed advertising respondent has caused the word "Jaeger" to be more prominently displayed than the other parts of said advertising.

PAR. 4. Respondent is not now, and has not at any time been, connected with or in any way associated with the firm of Jaeger Limited of London or any of its subsidiaries, and the garments sold by it are not manufactured by Jaeger, Ltd., or its subsidiaries.

PAR. 5. The use by the respondent of the name "Jaeger" as a part of its corporate name and the designation of the garments sold by it as "Jaeger" garments are deceptive and misleading and have had and now have the capacity to deceive and mislead; and they have deceived and misled members of the purchasing public into the belief that respondent's garments are the products of Jaeger, Limited, of London or its subsidiaries, and as a result of such erroneous belief the public has been induced to purchase substantial quantities of respondent's garments.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Jaeger Shop, 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 its women's garments in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Jaeger" as a part of its corporate or trade name unless accompanied by a statement in equally conspicuous type to the effect that respondent is not connected with Jaeger, Ltd., of London.

2. Representing directly or by implication that the respondent is a part of, or is in any way connected with, Jaeger, Ltd., of London or any of its subsidiaries or that the garments sold by respondent are manufactured by Jaeger, Ltd., of London or any of its subsidiaries.

3. Directly or indirectly using or causing to be used the word "Jaeger" in any way which may have the tendency and capacity to confuse, mislead, and deceive the purchasing public into the belief that the respondent is associated or connected with or a part of Jaeger, Ltd., of London.

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
 AMERICAN STEEL AND WIRE COMPANY OF
 NEW JERSEY, 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 4802. Complaint, Aug. 6, 1942—Decision, Apr. 20, 1945

Where (1) a corporation engaged in the manufacture and interstate sale and distribution of steel products, including wire and chain-link fencing, and the Philadelphia agent of its fence division, whose practice it was to keep informed concerning projects, particularly in his vicinity, which would require the use of his employer's steel products, obtaining specifications and calculating therefrom the cost of labor and materials, and in the case of large jobs involving special features requiring technical skill and complicated calculations, forwarding the proposed quotations or bids to his superiors for study before finally submitting them; (2) an individual trading as A-C Co., engaged at said city in the sale of wire and other metal fencing and his agent, in competition with the aforesaid corporation and others except insofar as said competition had been hindered, as below set forth; (3) a general contractor engaged in construction work at said city, and, during period concerned, engaged directly or through his two agents in negotiating with and buying products in question from said corporation and others in competition with it;

Following arrangements, during 1940, by the Navy with the Cramp Shipbuilding Company for the construction by the latter of naval vessels, under which the Navy assumed responsibility for the cost of the acquisition and installation of emergency plant facilities at the Cramp Shipyards, required to expedite the national defense program, with the understanding that the expenditure of the said funds for such work would be under the general supervision of, and subject to the approval of, Navy officials; the making of a contract by said corporation with said contractor, pursuant to which he was to undertake certain work in the rehabilitation of the shipbuilding yards of said company at Philadelphia; and following submission to said contractor—who was fully informed that the work to be done by him was in connection with a Navy contract and understood that he was required to obtain the approval of said Company of all costs incurred by him in the performance of his contract and was required to submit a minimum of three competitive bids on all work let to sub-contractors,—by aforesaid agent acting in behalf of the fence division of said corporation, of a bid to furnish and erect certain wire panels for the front of transformers for 59¢ per square foot—

Combined, agreed, and conspired to restrain, and suppress competition in the purchase and sale of the steel products in question in commerce by maintaining a false appearance of competition, and conveying to buyers and prospective buyers, including official awarding authorities of the United States Government, the impression that said corporation and the A-C Co. were rival bidders and competitors when, in fact, they were acting collusively in the submitting of bids; and

Where said contractor, in furtherance of aforesaid combination and conspiracy—

(1) Informed said corporate agent orally that the contract for the installation of said chain-link fencing was awarded to his corporation but asked another bid since he, said contractor, had secured but one other bid and wanted three; and,

Where said agent, in accordance with the request of said contractor's agent—

(2) Requested aforesaid agent of A-C Co. to submit a complimentary bid, prepared

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and tendered such bid—well knowing that it was fictitious—to said agent of A. C. Co. for his signature, and mailed it to aforesaid contractor; and

Where said contractor—

- (3) Submitted to the Shipbuilding Company said three bids including that of aforesaid corporation, the higher bid of another concern, and the fictitious bid of A-C Co.; and
- (4) Following their approval by a Navy representative as evidence of competitive bids, mailed a written contract confirming said award for such chain-link fencing or wire panels, to aforesaid corporation, which accepted the same, completed installation of fencing as required thereby, and was paid therefor;

With the effect of depriving buyers and prospective buyers of metal fencing and other metal products, including contractors and subcontractors with the United States Government and the public in general, of the benefit of competition in commerce between and among said corporation and its fence division, and A-C Co. and others with whom they normally would be in competition in making bids and price quotations:

Held, That such acts, practices, methods, understandings, agreements, combination, and conspiracy of said corporation and individuals were all to the prejudice of the public and had a dangerous tendency to, and did actually, frustrate, hinder, suppress, lessen, restrain, and eliminate competition in the purchase and sale of metal fencing and other metal products in commerce; had the capacity and tendency to restrain unreasonably, and did restrain unreasonably, such commerce in said products; and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Everette MacIntyre and *Mr. V. W. Summers* for the Commission.

Squire, Sanders & Dempsey, of Cleveland, Ohio, for American Steel & Wire Co. of New Jersey and Cyclone Fence Co.

Duane, Morris & Heckscher, of Philadelphia, Pa., for Walter H. Cave.

Mr. James F. Masterson, of Philadelphia, Pa., for Charles F. Rohleder, Allen McLaine Ward and J. R. Baldrige, Jr.

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 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 the said parties, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, American Steel and Wire Company of New Jersey, is a New Jersey corporation, trading under the name and style of American Steel and Wire Company, with its general offices and principal place of business located at Waukegan, Ill., with branch or district offices located at Hoboken, N. J., Newark, N. J., and 247 North Third Street, Philadelphia, Pa. It is engaged directly and through operating divisions, including its Cyclone Fence Company in the manufacture and sale of steel products including wire and chain link fencing.

Respondent, Walter H. Cave, is an individual, who is engaged in the

sale of wire and steel products, including chain link fencing as an agent of respondents, American Steel and Wire Company of New Jersey and Cyclone Fence Company with an office located at 247 North Third Street, Philadelphia, Pa.

Respondent, Paul W. Crawford, is an individual, trading as Adams-Crawford Company, engaged in the sale of wire and other metal fencing with office and principal place of business located at 310 North 4th Street, Philadelphia, Pa.

Respondent, A. F. Crawford, is an individual, engaged in the sale of wire and other metal fencing as an agent of Adams-Crawford Company, with office and principal place of business located at 310 North 4th Street, Philadelphia, Pa.

Respondent, Charles F. Rohleder, is an individual, engaged in general contracting and construction work, with office and principal place of business located at 2134 Cherry Street, Philadelphia, Pa.

Respondent, Allen McLaine Ward, whose residence address is 7415 Bingham Street, Philadelphia, Pa., is an individual, who during the period covered by the activities involved in the charges of this complaint served as an employee and agent of respondent, Charles F. Rohleder.

Respondent, J. R. Baldrige, Jr., whose residence address is 111 East Cliveden Avenue, Philadelphia, Pa., is an individual, who during the period covered by the activities involved in the charges of this complaint, served as an employee and agent of respondent, Charles F. Rohleder.

PAR. 2. At all times hereinafter mentioned, respondent, Charles F. Rohleder, directly and through his agents, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., has been engaged in negotiating with and buying from respondents, American Steel and Wire Company of New Jersey, through one of its operating divisions the Cyclone Fence Company and others in competition with that concern, wire and other steel products, including fencing, which were shipped or caused to be shipped from many points located in States other than the State of Pennsylvania by respondent American Steel and Wire Company of New Jersey, its division the Cyclone Fence Company, and others in competition with that concern to respondent, Charles F. Rohleder, or his agents at Cramp Shipbuilding Company shipyard, Richmond and Norris Streets, Philadelphia, Pa.

At all times hereinafter mentioned respondent, American Steel and Wire Company of New Jersey, and through its operating division the Cyclone Fence Company, has been engaged in the sale of steel products, including wire and chain link fencing and in so doing shipped and caused to be shipped such products from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and to numerous other points in other States.

At all times hereinafter mentioned respondent, Paul W. Crawford, an individual, trading as Adams-Crawford Company, has been engaged in the sale of wire and other metal fencing and in doing so shipped and caused to be shipped such products from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and numerous other points in other States.

At all times hereinafter mentioned respondents, Walter H. Cave and A. F. Crawford, in the course of their employment with and in their capacities as agents of respondent, American Steel and Wire Company of New Jersey, its division the Cyclone Fence Company and Adams-

Crawford Company, respectively, have been engaged in the sale of steel products, including wire metal fencing and in so doing were instrumental in the shipping and causing to be shipped such products from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and to numerous other locations in other States.

PAR. 3. Respondents, American Steel and Wire Company of New Jersey, its division the Cyclone Fence Company, Walter H. Cave, Paul W. Crawford and A. F. Crawford, are engaged in competition in the sale of wire and other metal products, including metal fencing between and among themselves and with others in making or seeking to make sales in "commerce" (as "commerce" is defined in the Federal Trade Commission Act) between and among the various States of the United States, except insofar as said competition has been hindered, lessened, restricted or forestalled by the understanding, cooperation, concert or common course of action, confederation, combination, agreement or conspiracy, or the acts, things, practices, policies or methods done or carried on in pursuance thereto or in furtherance thereof, as hereinafter set forth.

PAR. 4. During 1940, as a part of its work in the Defense Program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Company, whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels, and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities of the said shipyards, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the U. S. Navy Department. Thereupon, the said Cramp Shipbuilding Company contracted with respondent, Charles F. Rohleder, for the latter to construct certain office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that the said Rohleder in securing materials or services would obtain competitive offers from as many as practicable but not less than two (not less than three where specified) reputable firms in a position to provide the materials, equipment or services as required at a reasonable cost, and to award contract to that firm quoting the minimum price, and with the further understanding that the said offers, proposals or bids were to be opened by, or in the presence of, the Supervisor of Ships, U. S. Navy, or his representative, and subject to his approval before award of the said contract for materials, equipment or services.

In connection with his aforesaid contract with Cramp Shipbuilding Company, respondent, Charles F. Rohleder, negotiated with, and made awards of contracts for the purchase directly and through agents of wire and other steel products, including fencing from respondents, American Steel and Wire Company of New Jersey, its division the Cyclone Fence Company and Walter H. Cave.

PAR. 5. Throughout the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, the respondents have, through understanding together and with each other, cooperated, confederated, combined, agreed and conspired to frustrate, hinder, restrain and suppress competition in the purchase and sale of wire and other steel products, including fencing, in "commerce" (as "commerce" is defined in the Federal Trade Commission Act, in which sense it is hereinafter used) and have in fact, through such under-

standing, cooperation, confederation, combination, agreement and conspiracy, frustrated, hindered, restrained and suppressed competition in the purchase and sale of wire and other steel products, including fencing.

Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement and conspiracy the aforesaid respondents have done and performed and used, among other acts, things, practices, policies and methods, the following:

1. Promoted, established, carried out and continued a practice of maintaining a false appearance of competition between and among respondents, American Steel and Wire Company of New Jersey, its division the Cyclone Fence Company and Adams-Crawford Company, and other sellers of wire and other steel products, including fencing, in their submission of price quotations and bids to buyers and prospective buyers;

2. Conveyed to buyers and prospective buyers, including official awarding authorities of the United States Government, and others involved in the purchase of wire and other steel products, including fencing, representations that said respondents, American Steel and Wire Company of New Jersey, its division the Cyclone Fence Company and Adams-Crawford Company, were rival bidders and competitors when they in reality were acting collusively between and among themselves in preparing and submitting bids;

3. Avoided and prevented competition in the purchase and sale of wire and other steel products, including fencing;

4. Prevented consideration of genuinely competitive bids or price quotations by purchasers of said commodities;

5. On numerous occasions, the exact numbers and dates of which are unknown to the Commission, respondent, Charles F. Rohleder, acting directly and through his agents, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., cooperated with respondents, American Steel and Wire Company of New Jersey, its division the Cyclone Fence Company, Walter H. Cave, Paul W. Crawford, Adams-Crawford Company and A. F. Crawford, in the preparation and submission to said respondent, Charles F. Rohleder, his agents and employees, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., sham, false, fictitious, fraudulent and noncompetitive bids and price quotations for the furnishing of wire and other steel products, including fencing, for said Rohleder's use in rehabilitating the facilities of the Cramp Shipbuilding yards, Richmond and Norris Streets, Philadelphia, Pa., and submitted such sham, false, fictitious, fraudulent and noncompetitive bids and price quotations in turn to purchasing officials of the Cramp Shipbuilding Company and representatives of the Supervisor of Ships, U. S. Navy Department, for consideration and approval as genuinely competitive bids and price quotations.

6. On occasion the exact number and dates of which are unknown to the Commission, respondent Walter H. Cave, acting as an individual and in his capacity as an employee and agent of respondent American Steel and Wire Company of New Jersey, and its division the Cyclone Fence Company, with the knowledge and cooperation of respondent, Charles F. Rohleder, his employees and agents, including respondents, Allen McLaine Ward and J. R. Baldrige, Jr., secured from respondent, A. F. Crawford, sham, false, fictitious, fraudulent and noncompetitive bids for the furnishing of wire and other steel products, including fencing, on the stationery bearing the letterheads of Adams-Crawford Company, in which different higher and noncompetitive bids or price quotations on said

products were included than said respondent, Walter H. Cave, specified on each comparable occasion in a bid on the stationery bearing the letter-head and over the name of respondents, American Steel and Wire Company of New Jersey and its division the Cyclone Fence Company, and then proceeded on each such occasion to submit such sham, false, fictitious, fraudulent and noncompetitive bid of respondents, Adams-Crawford Company and A. F. Crawford, along with the bid of respondents, American Steel and Wire Company of New Jersey, and its division the Cyclone Fence Company, prepared as aforesaid to respondent, Charles F. Rohleder, and his agents and employees, including respondents, Allen McLaine Ward and J. R. Baldrige, Jr. Thereupon in each of the said instances where said respondent, Walter H. Cave, thus submitted said sham, false, fictitious, fraudulent and noncompetitive bids for the furnishing of wire and other steel products, including fencing, to respondent, Charles F. Rohleder, his employees and agents, including respondents, Allen McLaine Ward and J. R. Baldrige, Jr., such bids were in turn submitted by said Charles F. Rohleder, his said employees and agents, as and for genuine and competitive bids to officials of Cramp Shipbuilding Company and to representatives of the Supervisor of Ships of the U.S. Navy, who were, through the appearance of such bids, misled, and deceived into considering and approving them as genuine and competitive.

7. Respondent, A. F. Crawford, acting individually, and in his capacity as an employee and agent of respondent, Paul W. Crawford, an individual, trading as Adams-Crawford Company, wilfully and knowingly cooperated with respondent, Walter H. Cave, individually, and in his capacity as an employee and agent of respondents, American Steel and Wire Company of New Jersey, and its division the Cyclone Fence Company, in the preparation and submission of the aforesaid sham, false, fictitious, fraudulent and noncompetitive bids as aforesaid.

8. Respondent, Walter H. Cave, acting as an individual, and in his capacity as an employee and agent of respondents, American Steel and Wire Company of New Jersey, and its division the Cyclone Fence Company, participated in the preparation and submission of the aforesaid sham, false, fictitious, fraudulent and noncompetitive bids or price quotations for the purpose and with the result of deceiving and misleading officials of Cramp Shipbuilding Company and representatives of the Supervisor of Ships, U.S. Navy, into believing, considering and approving the aforesaid bids and price quotations as independent, truthful, genuine and competitive bids for the furnishing of wire and other steel products, including fencing.

9. As a result of the aforesaid bidding practice, respondents, American Steel and Wire Company of New Jersey, and its division, the Cyclone Fence Company, profited by securing awards of contracts for wire and other steel products, including fencing, from respondent, Charles F. Rohleder.

PAR. 6. The doing and performing of the acts and things and the use of methods set forth in the preceding paragraphs hereof tend to have and have had the effect of depriving buyers and prospective buyers of supplies and equipment, including contractors and sub-contractors with the United States Government, and the public in general, of the benefit of competition in commerce between and among respondents American Steel and Wire Company of New Jersey, its division, the Cyclone Fence Company, and Adams-Crawford Company, and others with whom they normally would be in competition in making bids and price quotations.

PAR. 7. The acts, practices, methods, agreements and combination of the respondents, as hereinabove alleged, are all to the prejudice of the public, have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained and eliminated competition in the purchase and sale of wire and steel products, including fencing, in commerce within the intent and meaning of the Federal Trade Commission Act; and 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 monopoly in the purchase, sale and distribution of such products, and constitute 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 6, 1942, issued and subsequently served its complaint upon the respondents, American Steel and Wire Company of New Jersey, a corporation; Walter H. Cave, individually, and as agent of Cyclone Fence Company and American Steel and Wire Company of New Jersey; Paul W. Crawford, an individual, trading as Adams-Crawford Company; A. F. Crawford, individually, and as an agent of Adams-Crawford Company, Charles F. Rohleder; Allen McLaine Ward, individually, and as an agent of Charles F. Rohleder; and J. R. Baldrige, Jr., individually, and as an agent of Charles F. Rohleder, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, the respondents, Paul W. Crawford, A. F. Crawford, Charles F. Rohleder, Allen McLaine Ward, and J. R. Baldrige, Jr., withdrew their original answers and filed in lieu thereof substitute answers admitting all the material allegations set forth in said complaint and waived all intervening procedure and further hearings as to said facts. Thereafter, hearings were held in this matter, at which time testimony and other evidence in support of, and in opposition to, the allegations of said complaint as to the respondents, American Steel and Wire Company of New Jersey, a corporation, and Walter H. Cave, an individual, 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 and substitute answers thereto, testimony and other evidence, 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, finds that this proceeding is in the interest 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 Steel and Wire Company of New Jersey, is a New Jersey corporation, trading under the name and

style of American Steel and Wire Company, with its general offices and principal place of business located in the Rockefeller Building, Cleveland, Ohio. On or about January 22, 1941, said respondent acquired all of the manufacturing property and assets formerly owned by an affiliated company, namely, the Cyclone Fence Company, an Illinois corporation, now dissolved. Said respondent, American Steel and Wire Company, has since January 19, 1941, engaged directly in the manufacture and in the sale and distribution of steel products, including wire and chain-link fencing, through an operating division, styled "Cyclone Fence Division," in commerce among and between the various States of the United States. The Cyclone Fence Division of respondent, American Steel and Wire Company, has manufacturing plants located at Waukegan, Ill., at Cleveland, Ohio, and elsewhere and has a warehouse and district sales office at Newark, N. J., and a branch sales office at 247 North Third Street, Philadelphia, Pa. In the aforesaid plants of its Cyclone Fence Division at Waukegan, Ill., and Cleveland, Ohio, are manufactured steel and other metal products, including wire and chain-link fencing, which it sells in commerce between and among the various States of the United States in competition with other manufacturers and dealers in said products.

Respondent, Walter H. Cave, is an individual, who is engaged in the sale of wire and steel products, including chain-link fencing, as an agent of the Cyclone Fence Division of respondent, American Steel and Wire Company, with his office located at 247 North Third Street, Philadelphia, Pa.

Respondent, Paul W. Crawford, is an individual, trading as Adams-Crawford Company, engaged in the sale of wire and other metal fencing, with his office and principal place of business located at 310 North Fourth Street, Philadelphia, Pa.

Respondent, A. F. Crawford, is an individual, engaged in the sale of wire and other metal fencing as an agent of Adams-Crawford Company, with his office and principal place of business located at 310 North Fourth Street, Philadelphia, Pa.

Respondent, Charles F. Rohleder, is an individual, engaged in general contracting and construction work, with his office and principal place of business located at 2134 Cherry Street, Philadelphia, Pa.

Respondent, Allen McLaine Ward, whose resident address is 7415 Bingham Street, Philadelphia, Pa., is an individual, who during the times mentioned herein, was an employee and agent of respondent, Charles F. Rohleder.

Respondent, J. R. Baldrige, Jr., whose resident address is 111 East Cliveden Avenue, Philadelphia, Pa., is an individual, who during the times mentioned herein, was an employee and agent of respondent, Charles F. Rohleder.

PAR. 2. During all the times hereinafter mentioned, respondent, Charles F. Rohleder, directly or through his agents respondents, Allen McLaine Ward and J. R. Baldrige, Jr., has been engaged in negotiating with, and buying from, respondent, American Steel and Wire Company, through one of its operating divisions,—Cyclone Fence Company,—and others in competition with that concern, wire and other steel products, including fencing, which were, as a result of such negotiations, shipped or caused to be shipped from many points located in States other than the State of Pennsylvania to respondent, Charles F. Rohleder, or his agents at Philadelphia, Pa.

At all times hereinafter mentioned, respondent, American Steel and Wire Company, through its operating division, the Cyclone Fence Company, has been engaged in the sale of steel products, including wire and chain-link fencing, and, in so doing, shipped and caused to be shipped such products from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and to numerous other points in other States.

At all times hereinafter mentioned, respondent, Paul W. Crawford, an individual, trading as Adams-Crawford Company, has been engaged in the sale of wire and other metal fencing and, in doing so, shipped and caused to be shipped such products from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and numerous other points in other States.

At all times hereinafter mentioned, respondents, Walter H. Cave and A. F. Crawford, in the course of their employment with, and in their capacities as agents of respondents, American Steel and Wire Company and Adams-Crawford Company, respectively, have been engaged in the sale of steel products, including wire and metal fencing, and, in so doing, were instrumental in shipping and causing to be shipped, such products from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and to numerous other locations in other States.

PAR. 3. Respondents, American Steel and Wire Company, Walter H. Cave, Paul W. Crawford, and A. F. Crawford, have been, and are, engaged in competition in the sale of wire and other metal products, including metal fencing, between and among themselves and with others in making, or seeking to make, sales of such products in commerce as "commerce" is defined in the Federal Trade Commission Act between and among the various States of the United States except insofar as said competition has been hindered, lessened, restricted, or forestalled by the understanding, cooperation, concert or common course of action, confederation, combination, agreement, or conspiracy or the acts, things, practices, policies, or methods done or carried on in pursuance thereto or in furtherance thereof as hereinafter set forth.

PAR. 4. Respondent, Walter H. Cave, for several years prior to January 22, 1941, was employed by the Cyclone Fence Company, as sales engineer, to sell said steel products and installations thereof, and since that date has been employed by the Cyclone Fence Division of respondent, American Steel and Wire Company, in the same capacity. In serving the Cyclone Fence Company and respondent, American Steel and Wire Company, during the aforesaid periods, it was his practice to keep himself informed concerning the undertaking of projects, particularly in the vicinity of Philadelphia, Pa., which would likely require the use by any purchaser of steel products manufactured by his employers, including installations of wire and chain-link fencing. Where specifications therefor were made available, he obtained such specifications and from the latter calculated the cost of labor and materials necessary. Only in large jobs involving special features requiring technical skill and complicated calculations would respondent, Walter H. Cave, forward the proposed quotations or bids to superior officials for study before finally submitting them.

PAR. 5. In connection with certain contracts for the furnishing of materials and the installation thereof to rehabilitate the shipyards of the Cramp Shipbuilding Company in furtherance of the defense program of the United States, the respondents have combined, agreed, and conspired to frustrate, hinder, restrain, and suppress competition in the purchase and

sale of steel products, including wire and chain-link fencing, in commerce among and between the various States of the United States by maintaining a false appearance of competition between the American Steel and Wire Company and the Adams-Crawford Company and other sellers and conveying to buyers and prospective buyers, including official awarding authorities of the United States Government, that the American Steel and Wire Company and the Adams-Crawford Company were rival bidders and competitors when, in fact, they were acting collusively between and among themselves in submitting such bids.

PAR. 6. During 1940, as a part of its work in the defense program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Company, shipyards of which are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels, and in that connection Cramp Shipbuilding Company entered into a contract with the United States of America, dated October 29, 1940, entitled, "Supplemental Contract for Acquisition and Installation of Emergency Plant Facilities Required to Expedite the National Defense Program, NOd 1550." Pursuant to the terms of this contract, the United States Government, through its Navy Department, assumed responsibility and liability for the cost of the acquisition and installation of emergency plant facilities at the Cramp Shipyards, which were required to expedite the national defense program, with the understanding that the expenditure of the said funds for such work would be under the general supervision of, and subject to the approval of, officials of the United States Navy Department.

PAR. 7. On December 31, 1940, the Cramp Shipbuilding Company entered into a contract with respondent, Charles F. Rohleder, whereby said respondent undertook to perform certain work in the rehabilitation of the shipbuilding yards of the Cramp Shipbuilding Company located at Richmond and Norris Streets, Philadelphia, Pa., which rehabilitation was then being performed by the Cramp Shipbuilding Company under its contract with the Navy Department of October 29, 1940.

During the period from December 1940 through March 1941 respondent, Charles F. Rohleder, employed respondent, J. R. Baldridge, Jr., as his agent, to enter into contracts for the installation of materials under respondent, Charles F. Rohleder's contract of December 31, 1940, with the Cramp Shipbuilding Company for part of the work in connection with the rehabilitation of said shipyards.

In an effort to protect the interests of the Navy Department, the Supervisor of Ships, United States Navy Department, through a duly constituted representative, namely, Lieutenant C. B. S. Bishop, in accordance with a previously announced policy of the Navy Department, visited the Cramp Shipbuilding Company of Philadelphia, Pa., on or about October 28, 1940, and informed H. P. Rust, plant engineer for the Cramp Shipbuilding Company, who had been designated by that company to review and to generally supervise purchasing of supplies, that none of the contracts and subcontracts for the acquisition and rehabilitation of plant facilities should be awarded without competitive bidding, for the same and that a minimum of 3 bids would have to be obtained if at all possible.

Respondent, Charles F. Rohleder, was fully informed that the work to be done by him under his contract was in connection with a contract between the Navy Department and the Cramp Shipbuilding Company, which is further indicated by Exhibit 1, entitled "Specifications—General

Conditions," attached to, and made a part of, the contract of December 31, 1940, between respondent, Charles F. Rohleder, and Cramp Shipbuilding Company, which contains the following statement:

"2. Inspection. The work under this contract is let under a supplemental contract No. NOD-1550 between owner and Navy Department and is subject thereto."

It was further understood by the respondent, Charles F. Rohleder, that he was required to obtain the approval of the Cramp Shipbuilding Company of all costs incurred by him in the performance of his contract and that he was required to submit a minimum of 3 competitive bids on all work let to subcontractors.

PAR. 8. On March 13, 1941, respondent, Walter H. Cave, in his capacity as a sales engineer, and acting on behalf of the Cyclone Fence Division of respondent, American Steel and Wire Company, submitted a bid to respondent, Charles F. Rohleder, to furnish, deliver, and erect certain wire panels for the front of transformers, as per plans and specifications, for the sum of 59 cents per square foot, or a total price of \$991.20. On or about March 12, 1941, Howard Zehr, as representative of the Chain Link Fence Company of Pennsylvania, submitted an oral bid upon the same specifications at 60 cents per square foot, or a total of \$1,008. Said bid was later reduced to writing and submitted to respondent, Charles F. Rohleder, under date of March 14, 1941.

PAR. 9. In furtherance of the combination and conspiracy hereinabove described, the respondent, Charles F. Rohleder, during the negotiations for the above-mentioned bids informed respondent, Walter H. Cave, orally that said contract for the installation of said chain-link fencing was awarded to respondent, American Steel and Wire Company, but that respondent, Charles F. Rohleder, had secured but one other bid and that he wanted three bids and asked respondent, Walter H. Cave, if it would be possible for him to get respondent, Charles F. Rohleder, another bid on said specifications. Thereupon, respondent, Walter H. Cave, in accordance with the request of respondent, J. R. Baldrige, Jr., requested respondent, A. F. Crawford, an agent of respondent, Paul W. Crawford, trading as Adams-Crawford Company, to submit a complimentary bid on said project, which he did. At the time, respondent, A. F. Crawford, understood that respondent, J. R. Baldrige, Jr., had already awarded the contract orally to the Cyclone Fence Division of respondent, American Steel and Wire Company, but that respondent, Rohleder, wanted to secure another bid. Both respondents, Walter H. Cave and A. F. Crawford, well knew that the bid of the Adams-Crawford Company was a complimentary and fictitious bid, obtained for the accommodation of respondent, Charles F. Rohleder. Respondent, Walter H. Cave, conveyed said bid to the office of the respondent, American Steel and Wire Company, at 247 North Third Street, Philadelphia, Pa., where he typed it. Thereafter, he returned it to the said A. F. Crawford, who signed it and mailed it to the respondent, Charles F. Rohleder, dated March 14, 1941. On March 14, 1941, respondent, Charles F. Rohleder, submitted the bids of the American Steel and Wire Company, the Chain Link Fence Company, and the Adams-Crawford Company to the Cramp Shipbuilding Company for approval. The bids so submitted were considered and approved by a representative of the Supervisor of Subcontracts, United States Navy Department, as evidence of competitive bids, offers, and proposals by the parties named therein for furnishing the chain-link fencing or wire panels

specified, The said respondent, Charles F. Rohleder, then mailed a written contract dated March 14, 1941, to the Cyclone Fence Division of respondent, American Steel and Wire Company, confirming said award for the aforesaid chain-link fencing or wire panels, which written contract was accepted by the respondent, American Steel and Wire Company, on March 24, 1941. This contract was subsequently reduced by partial cancellation to \$554.60. The chain-link fencing for the installation covered by said contract was shipped by the Cyclone Fence Division of the respondent, American Steel and Wire Company, from Waverly, N. J., to the Cramp Shipbuilding Company yards at Philadelphia, Pa. Respondent, American Steel and Wire Company, on or about June 20, 1941, completed the installation of said fencing, and final payment was received on August 13, 1941.

PAR. 10. At all times from March 1941 through November 1941 T. C. Sykes, was branch sales manager, of the Philadelphia branch sales office of the Cyclone Fence Division of respondent, American Steel and Wire Company, and the immediate superior of respondent, Walter H. Cave, to whom said respondent reported. At all times from March 1941 through November 1941, S. W. Burr, was district sales manager, of the Newark, N. J. district sales office of the Cyclone Fence Division of respondent, American Steel and Wire Company, and the immediate superior of the said, T. C. Sykes, to whom said T. C. Sykes reported. It was stipulated in this proceeding that if T. C. Sykes and S. W. Burr were called to testify they would state that respondent, Walter H. Cave, did not tell them or, to their knowledge, any other official of respondent, American Steel and Wire Company, of his action in procuring the complimentary and fictitious bid in March 1941; that they had not told him to procure or cause such fictitious bid to be filed; and had no knowledge of the filing of such complimentary and fictitious bid until November 1941.

PAR. 11. The Commission further finds that the transactions hereinabove described came within that class of matters wherein the respondent, Walter H. Cave, was authorized by the respondent, American Steel and Wire Company, to calculate the cost of labor and materials necessary and to submit bids without first obtaining the approval of any of his superior officers and that in accordance with such authority, the respondent, Walter H. Cave, did submit said bid, dated March 13, 1941, over his signature as representative of respondent, American Steel and Wire Company, and the contract arising out of the bid so submitted was subsequently accepted by the respondent, American Steel and Wire Company, and performed by it. The procuring by the respondent, Walter H. Cave, of a complimentary and fictitious bid executed by the Adams-Crawford Company for submission to the respondent, Charles F. Rohleder, was in furtherance of the business of respondent, American Steel and Wire Company, in obtaining said contract for the sale and installation of chain-link fencing.

PAR. 12. The aforesaid understandings, agreements, combination, and conspiracy and the performing of the acts and things and the use of the methods hereinabove set forth, tend to have, and have had, the effect of depriving buyers and prospective buyers of metal fencing and other metal products, including contractors and subcontractors with the United States Government and the public in general of the benefit of competition in commerce between and among respondents, American Steel and Wire Company, its division the Cyclone Fence Company, and Adams-Crawford Company and others, with whom they normally would be in competition in making bids and price quotations.

CONCLUSION

The acts, practices, methods, understandings, agreements, combination, and conspiracy of the respondents as hereinabove set forth are all to the prejudice of the public and have a dangerous tendency to, and have actually, frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the purchase and sale of metal fencing and other metal products 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 products; and constitute 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answers of the respondents, American Steel and Wire Company of New Jersey, a corporation, and Walter H. Cave, and substitute answers of the remaining respondents, in which substitute answers the several respondents admit all material allegations set forth in said complaint and waive all intervening procedure and further hearings as to the facts, 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 Steel and Wire Company of New Jersey, a corporation, and Walter H. Cave, before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, American Steel and Wire Company of New Jersey, a corporation, and its officers; and Walter H. Cave, individually, and as agent of American Steel and Wire Company of New Jersey; Paul W. Crawford, an individual, trading as Adams-Crawford Company; A. F. Crawford, individually, and as agent of Adams-Crawford Company; Charles F. Rohleder, an individual; Allen McLaine Ward, individually, and as agent of Charles F. Rohleder; and J. R. Baldrige, Jr., individually, and as agent of Charles F. Rohleder, and their respective representatives, agents, and employees in connection with the offering for sale, sale, and distribution of steel products, including wire and chain-link fencing, 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 the said respondents or between any one or more of said respondents and any other person, partnership, or corporation not a party hereto to do or perform any of the following acts, things, or practices:

1. Conveying or assisting in conveying to buyers or prospective buyers or to any official or awarding authority of any federal agency or to anyone contracting with such agency or to anyone acting for, or on behalf of, such agency or for, or on behalf of, any contractor with such agency, any repre-

sentation that any two or more apparent sellers are rival bidders or competitors when, in reality, they are acting collusively in preparing and submitting bids.

2. Aiding, assisting, or cooperating in any manner in the submission of any sham, fictitious, fraudulent, or noncompetitive bids or price quotations to any buyer or prospective buyer or to any federal agency or anyone acting for, or on its behalf, or for, or on behalf of, any party purchasing material or equipment in fulfillment of a contract with such agency.

3. Interfering with, or assisting in interfering with, the procurement or consideration of genuinely competitive bids or competitive bids or price quotations by any federal agency or any official agent or awarding authority of such agency or by any buyer or prospective buyer.

4. Promoting, establishing, carrying out, or continuing any act or practice for the purpose, or with the effect, of maintaining or presenting a false appearance of competition between or among any of the respondents or other sellers in the submission of price quotations or bids to buyers or prospective buyers.

5. Arranging, or attempting to arrange, for the filing of any bid in the name of one ostensibly competing bidder when the prices and terms are in fact determined by some other bidder or when in fact the bid is not a bona fide bid.

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

KODIZE PROCESS CORPORATION, AND MAX WRIGHT
TRADING AS KODIZE SALES CORPORATION

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

Docket 5206. Complaint, Aug. 26, 1944—Decision, Apr. 21, 1945

Where a corporation and the individual who was its vice president and general manager, engaged in the manufacture and interstate sale and distribution of their "Kodize" product, which was designed for use, when mixed with water as a treatment for soft coal, and consisted largely of common salt and a very small amount of coloring matter; through statements in circulars, leaflets and other advertising matter—

- (a) Represented and implied falsely that the use of their product "Kodize" in treating or processing soft or bituminous coal resulted in a 25% to 45% saving in coal, labor, and electricity, a reduction in soot and smoke, and increased efficiency with improved combustion; and
- (b) Represented falsely that their product "Kodize" was a secret formula for treating or processing coal, and that said formula had been patented and copyrighted; and, Where said individual, engaged in the sale and distribution of the product "Kodize" made by aforesaid corporation—
- (c) Represented and implied, through use of word "Corporation" in the trade name used by him, that such business was owned and operated by a corporation, when in fact it was individually owned by him;

With result that many members of the public dealt with him as being a legally organized and existing corporation, such as a substantial portion of the purchasing public prefers to do business with, as assuring, in its belief, greater stability and financial responsibility; by reason, among other things, of the provisions of law and the regulations concerning the organization and operation of corporations;

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that the aforesaid misleading representations were true, and thereby into purchase of substantial quantities of 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.

Before *Mr. Randolph Preston*, trial examiner.

Mr. B. G. Wilson for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Kodize Process Corporation, a corporation, and Max Wright, an individual, trading as Kodize Sales 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, Kodize Process Corporation, is a corporation, organized, existing and doing business under and by virtue of the

laws of the State of Georgia with its office and principal place of business at 1026 Virginia Avenue, N. E., Atlanta, Ga.

Respondent, Max Wright, is vice president and general manager of respondent, Kodize Process Corporation, and as such formulates, controls and directs its acts, practices and policies. Respondent, Max Wright, trading under the name Kodize Sales Corporation, sells and distributes the product hereinafter described, known as "Kodize," which is manufactured by respondent, Kodize Process Corporation. Said respondents have acted together and in cooperation with each other in doing the acts and things herein alleged.

PAR. 2. The respondents are now, and for more than two years last past have been, engaged in the sale and distribution of a chemical product designated "Kodize," designed to be used when mixed with water as a treatment for soft or bituminous coal, at wholesale to dealers and at retail to the purchasing public in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause their said product, when sold, to be transported from their 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.

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

PAR. 3. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their said product "Kodize," respondents have distributed or caused to be distributed, to purchasers and prospective purchasers of said product in various States of the United States circulars, leaflets and other advertising matter. In said advertising circulars and leaflets many false and misleading statements and representations are made by respondents in describing their said product and the properties thereof. Among and typical of said statements and representations so made and circulated are the following:

KODIZE—A COAL SAVING PROCESS

KODIZE is a remarkable secret formula for processing coal. After more than two years of exhaustive tests and demonstrations, KODIZE has been acclaimed as the miracle formula and process which is destined to "revolutionize the burning of coal."

SAVES COAL

KODIZE has actually effected savings in apartments, homes, industrial plants, etc., ranging from 25% to 45%, both in stokers and hand firing.

ELIMINATES BLACK SMOKE

KODIZE PROCESSED coal burns freely and clean without draft, thereby burning up the carbon ordinarily escaping from raw coal as black smoke.

REDUCES SOOT

"KODIZED COAL" (ordinary coal to which KODIZE has been applied) positively will burn clean instead of forming the usual thick soot from raw coal. KODIZE reduces soot to a negligible minimum.

IMPROVES COMBUSTION

KODIZE greatly improves combustion, regardless of the method or equipment employed, but greatest economy and best results are obtained when *all drafts are closed*.

REDUCES FIRING PERIODS TO A MINIMUM

APARTMENT HOUSE Janitors report that immediately following the application of KODIZE to their coal, they decrease firings of four, five and six times daily to only two firings in 24 hours in hot water heaters, using from one-fourth to nearly one-half LESS COAL. Fire holds overnight.

KODIZE SAVES 25%

AND MORE IN

Coal . Labor . Electricity

Equipment

SAVES

Grates . Fire Box Linings

Smoke Pipe . Flue Linings.

AMERICA'S FOREMOST COAL SAVING PROCESS.

KODIZE is not mythical or experimental. It is a scientific combination of chemicals (a patented and copyrighted formula) and when applied to your coal, aids in more complete coal combustion.

PAR. 4. The foregoing statements and representations, together with similar statements and representations not specifically set out herein, purport to be descriptive of respondents' said product and of its efficiency and of the benefits to be derived from its use. By means thereof, respondents represent and imply and have represented and implied that the use of their product "Kodize" in treating or processing soft or bituminous coal results in or accomplished a material saving ranging from 25% to 45% in coal, labor and electricity, a reduction in soot and smoke, and increased efficiency with improved combustion. Respondents also represent that their product "Kodize" is a secret formula for treating or processing coal, and that said formula has been patented and copyrighted.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, the use of respondents' said product "Kodize" in treating or processing soft or bituminous coal does not effectuate or result in any appreciable saving in coal, labor and electricity. The use of said product, when applied to soft or bituminous coal, does not reduce soot or smoke nor improve combustion. Respondents' said product, in fact, is a chemical mixture consisting largely of common salt, a very small amount of coloring matter, and has no material or appreciable beneficial effect when used in treating or processing coal. The formula for "Kodize" is not secret, nor has said formula been patented or copyrighted.

PAR. 6. Through the use by the respondent, Max Wright, of the word "corporation" in the trade name Kodize Sales Corporation, he represents and implies that the business conducted under said name is owned and operated by a corporation organized, existing and doing business under and by virtue of the laws of some State of the United States. Said business is not owned and operated by a corporation, but individually by said respondent, Max Wright. A substantial portion of the purchasing public prefer to do business with a lawfully organized and existing corporation for the reason, among others, that it is believed that the provisions of law

and the regulations concerning the organization and operation of corporations are such as to assure greater stability and financial responsibility.

Many members of the public have dealt with respondent, Max Wright, under the mistaken belief that "Kodize Sales Corporation" was a legally organized and existing corporation.

PAR. 7. The aforesaid acts and practices and representations of the respondents have had and now have the tendency and capacity to deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false, misleading and deceptive acts and practices and representations are true, and into the purchase of substantial quantities of respondents' product because of such erroneous and mistaken belief so induced.

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 26, 1944, issued and subsequently served its complaint in this proceeding upon respondents, Kodize Process Corporation, a corporation, and Max Wright, an individual, trading as Kodize Sales Corporation, charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of answer by respondent Max Wright, certain facts were stipulated into the record in lieu of testimony in support of and in opposition to the charges stated in the complaint at a hearing before an examiner of the Federal Trade Commission theretofore duly designated by it, and it was agreed that the Commission may proceed upon said statement of facts to make its findings as to the facts and its conclusion based thereon and issue its order disposing of this proceeding without intervening procedure. Thereafter, this proceeding came on for final hearing before the Commission on the complaint, answer, and stipulation as to the facts, said stipulation having been 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, Kodize Process Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 1026 Virginia Avenue, N. E., Atlanta, Ga. Respondent, Max Wright, is vice president and general manager of respondent, Kodize Process Corporation, and as such helps formulate, control, and direct its acts, practices, and policies. Respondent, Max Wright, formerly trading under the name of Kodize Sales Corporation, but now trading under the name of Kodize Sales Company, sells and distributes the product "Kodize," which is manufactured by respondent, Kodize Process Corporation. Said respondents have acted together and in cooperation with each other in doing the following acts and things.

PAR. 2. For more than two years last past the respondents have been engaged in the sale and distribution, at wholesale to dealers and at retail to the purchasing public, of a chemical product designated "Kodize." This product is designed to be used when mixed with water as a treatment for soft or bituminous coal. Respondents cause their said product, when sold, to be transported from their 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, and 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, and for the purpose of inducing the purchase of their said product "Kodize," respondents have distributed, or caused to be distributed, to purchasers and prospective purchasers of said product in various States of the United States circulars, leaflets, and other advertising matter. In said advertising circulars and leaflets many false and misleading statements and representations are made by respondents in describing their said product and its properties. Among and typical of the statements and representations so made and circulated are the following:

KODIZE—A COAL SAVING PROCESS

KODIZE is a remarkable secret formula for processing coal. After more than two years of exhaustive tests and demonstrations, KODIZE has been acclaimed as the miracle formula and process which is destined to "revolutionize the burning of coal."

SAVES COAL

KODIZE has actually effected savings in apartments, homes, industrial plants, etc., ranging from 25% to 45%, both in stokers and hand firing.

REDUCES SOOT

"KODIZE COAL" (ordinary coal to which KODIZE has been applied) positively will burn clean instead of forming the usual thick soot from raw coal. KODIZE reduces soot to a negligible minimum.

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KODIZE greatly improves combustion, regardless of the method or equipment employed, but greatest economy and best results are obtained when *all drafts are closed*.

REDUCES FIRING PERIODS TO A MINIMUM

APARTMENT HOUSE Janitors report that immediately following the application of KODIZE to their coal, they decrease firings of four, five and six times daily to only two firings in 24 hours in hot water heaters, using from one-fourth to nearly one-half LESS COAL. Fire holds overnight.

* * * * *

KODIZE SAVES 25%
AND MORE IN

Coal . Labor . Electricity
Equipment

Findings

40 F. T. C.

SAVES

Grates . Fire Box Linings
Smoke Pipe . Flue Linings

* * * * *

AMERICA'S FOREMOST COAL SAVING PROCESS

* * * * *

KODIZE is not mythical or experimental. It is a scientific combination of chemicals (a patented and copyrighted formula) and when applied to your coal, aids in more complete coal combustion.

PAR. 4. By means of the foregoing statements and representations, and similar statements and representations not specifically set out herein, respondents represent and imply, and have represented and implied, that the use of their product "Kodize" in treating or processing soft or bituminous coal results in or accomplishes a material saving ranging from 25% to 45% in coal, labor, and electricity, a reduction in soot and smoke, and increased efficiency with improved combustion. Respondents also represent that their product "Kodize" is a secret formula for treating or processing coal and that said formula has been patented and copyrighted.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, the use of respondents' said product "Kodize" in treating and processing soft or bituminous coal does not effectuate or result in any appreciable saving in coal, labor, or electricity. The use of said product, when applied to soft or bituminous coal, does not reduce soot or smoke or improve combustion to the extent claimed. In fact, said product is a chemical mixture consisting largely of common salt and a very small amount of coloring matter. It has no material or appreciable beneficial effect when used in treating or processing coal. The formula for "Kodize" is not secret, nor has said formula been patented or copyrighted.

PAR. 6. Through the use by the respondent, Max Wright, of the word "Corporation" in the trade name "Kodize Sales Corporation," he has represented and implied that the business conducted under said name is owned and operated by a corporation organized, existing, and doing business under and by virtue of the laws of some State of the United States. Said business is not owned and operated by a corporation, but is individually owned by respondent, Max Wright. A substantial portion of the purchasing public prefers to do business with a lawfully organized and existing corporation for the reason, among others, that it is believed that the provisions of law and the regulations concerning the organization and operation of corporations are such as to assure greater stability and financial responsibility. Many members of the public have dealt with respondent, Max Wright, under the mistaken belief that Kodize Sales Corporation was a legally organized and existing corporation.

PAR. 7. The aforesaid acts and practices of respondents have had, and now have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid misleading and deceptive representations are true, and into the purchase of substantial quantities of respondents' product because of the erroneous and mistaken belief so induced.

CONCLUSION

The aforesaid acts and practices of the respondents 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 filed by respondent Max Wright, and a stipulation as to the facts entered into upon the record by and between counsel for the Commission and counsel for the respondents, which stipulation provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon respondents herein findings as to the facts 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, Kodize Process Corporation, a corporation, its officers, agents, representatives, and employees, and respondent, Max Wright, an individual, trading as Kodize Sales Company, or trading under any other name, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of a chemical product for the treatment of coal designated "Kodize," or any other preparation of substantially similar composition, whether sold under the same name or under any other name, do forthwith cease and desist from representing, directly or by implication:

1. That the use of respondents' product "Kodize" in treating or processing coal results in a saving of from 25% to 45%, or any appreciable saving, in coal, labor, and electricity; or results in any appreciable reduction in soot and smoke; or results in increased efficiency or improved combustion.

2. That said product "Kodize" is a secret formula for treating or processing coal, or that said formula has been patented or copyrighted.

It is further ordered, That respondent, Max Wright, do forthwith cease and desist using the word "Corporation" in the trade name used to designate the business operated by him individually, or otherwise representing in any manner that said business is incorporated or operated by a corporation.

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

Complaint

40 F. T. C.

IN THE MATTER OF

E. GRIFFITHS HUGHES, INC.

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

Docket 4711. Complaint, Feb. 19, 1942—Decision, Apr. 25, 1945

Where a corporation engaged in the interstate sale and distribution of its "Kruschen Salts"; in advertisements in newspapers and otherwise—

- (a) Represented falsely, directly and by implication, that its said preparation "Kruschen Salts," taken repetitiously, constituted a cure or remedy for sick headache, biliousness, poor digestion, unnatural fatigue, and constipation, when such symptoms or conditions were caused by deficiency in liver bile secretion; that it would significantly increase the discharge of bile from the liver; was safe and harmless; and was an effective obesity remedy or treatment which would reduce fat promptly and safely, or was an effective part of, or adjunct to, a weight-, fat-, or flesh-reducing regime; and,
- (b) Failed to reveal facts material in the light of such representations, with respect to consequences which might result from the use of said preparation under usual or prescribed conditions, in that it was an irritant laxative and was potentially dangerous when taken by one suffering from abdominal pains, stomach-ache, cramps, nausea, vomiting, or other symptoms of appendicitis;

With the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and that said preparation might be taken under all conditions without ill effects, and thereby to induce the purchase of substantial quantities thereof:

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. William M. King for the Commission.

Strange, Myers, Hinds & Wight, 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 E. Griffiths Hughes, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, E. Griffiths Hughes, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 26 Forbes Street, Rochester, N. Y.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of a drug known and designated as Kruschen Salts. Respondent causes its said product when sold to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times men-

tioned herein has maintained a course of trade in its said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said product, Kruschen Salts, by United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commerce Act, for the purpose of inducing and which are likely to induce; directly or indirectly, the purchase of its said product; 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 United States mails, by printed advertisements in newspapers and other advertising literature and by various other means in commerce, are the following:

DON'T STAY FAT AND UNATTRACTIVE

Read How Many Women Lose Fat Promptly—Safely! No Harmful Drugs.

If you are overweight, try this easy, sensible way to take off fat.

Get on the scales today and see how much you weigh, then get a bottle of Kruschen Salts (a famous English formula), which will last 4 weeks and is inexpensive. Take one-half teaspoonful in a glass of water every morning before breakfast. Cut out pastry and fatty meats—go light on white bread, potatoes, butter and cream, and when you have finished the first bottle weigh yourself again.

Now you'll know the safe, sensible way to lose ugly fat.

To Help Correct that "Half-Sick," "Tired," "All-Gone" Feeling

GIVE LIVER BILE FLOW A BOOST—

Do this Every Morning for 30 Days

Normally the liver should discharge about a quart of digestion-aiding bile juices a day. If it doesn't—a scanty flow—a slowing up may mean Sick Headaches, so-called Biliousness, poor Digestion, with that half-sick, tired, all-gone feeling and most probably Constipation.

There's no need to take Calomel or other risky drugs, just take a little daily dose of that world-famous Kruschen Salts—half a level teaspoonful in a glass of hot or cold water about half an hour before breakfast. This rouses the flow of bile with its gentle bowel action. Try it for 30 days and you, too, may shake off that "run-down" feeling and get a real "lift." But don't start unless you are willing to keep it up for 30 days. If then you do not feel 100% better get your money back.

PAR. 4. Through the use of the aforesaid statements and representations and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that headaches, biliousness, poor digestion, unnatural fatigue, and constipation are symptoms of a liver disorder or are symptoms of a deficiency in bile secretion which can be cured or corrected by the repetitious taking of Kruschen Salts; that in order to secure such relief from the aforesaid ailments or conditions, said preparation should be taken as directed for at least 30 days; that said

preparation, in contrast to calomel or other risky drugs, is safe and harmless; and that said preparation is an effective obesity remedy or treatment which, when taken as directed, will reduce fat promptly and safely, or that said preparation is an effective part of, or an effective adjunct to, a weight, fat or flesh reducing regime.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondent as hereinabove alleged are grossly exaggerated, false and misleading.

In truth and in fact, headaches, biliousness, poor digestion, unnatural fatigue, and constipation are not symptoms of a liver disorder or of a deficiency in bile secretion which can be cured or corrected by the repetitious taking of Kruschen Salts in any dosage or dose schedule. In fact, the taking of the said preparation in the manner directed will interfere with the normal digestive process, thereby tending to produce indigestion rather than to correct such condition. In addition, said preparation is an irritant laxative or cathartic, depending upon the size of the dose, and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramp, nausea, vomiting, or other symptoms of appendicitis. Its daily or repetitious use as recommended, or its continued use for a period of thirty days, may result in dependency upon a laxative. The aforesaid dangers involved in the use of said preparation are concealed in the respondent's advertisement by the statement that the preparation, in contrast to calomel or other risky drugs, is safe.

Said preparation is not an effective obesity remedy or treatment and is not effective as part of a fat reducing program and will not serve as an effective adjunct to a fat reducing regime. Furthermore, said preparation is of no substantial therapeutic value in excess of its laxative or cathartic properties.

PAR. 6. The aforesaid representations and advertisements of respondent's said preparation constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisement relates under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

In truth and in fact, said preparation is an irritant laxative or cathartic, depending upon the size of the dose, and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramp, nausea, vomiting or other symptoms of appendicitis. Its daily or repetitious use as recommended, or its continuous use for a period of thirty days, may result in dependency upon a laxative.

PAR. 7. The use by the respondent of the aforesaid false, misleading and deceptive statements and representations with respect to said product, Kruschen Salts, disseminated as aforesaid, and its failure to reveal the dangers inherent in the use of such preparation, have had and now have the capacity and tendency to 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 into the purchase by the public of substantial quantities of respondent's said product.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 19, 1942, issued and subsequently served its complaint in this proceeding upon respondent, E. Griffiths Hughes, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After respondent filed its answer, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for 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 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 this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, E. Griffiths Hughes, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 26 Forbes Street, Rochester, N. Y.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of a medicinal preparation known and designated as "Kruschen Salts." Respondent causes its said preparation, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation 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 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 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 printed advertisements in

newspapers and other advertising literature, and by various other means in commerce, are the following:

To Help Correct that "Half-Sick,"
"Tired," "All-Gone," Feeling

GIVE LIVER BILE
FLOW A BOOST—

Do this Every Morning for 30 days

Normally the liver should discharge about a quart of digestion-aiding bile juices a day. If it doesn't—a scanty flow,—a slowing up may mean Sick Headaches, so-called Bilioussness, poor Digestion, with that half-sick, tired, all-gone feeling and most probably Constipation.

There's no need to take Calomel or other risky drugs, just take a little daily dose of that world-famous Kruschen Salts—half a level teaspoonful in a glass of hot or cold water about half an hour before breakfast. This rouses the flow of bile with its gentle bowel action. Try it for 30 days and you, too may shake off that "run-down" feeling and get a real "lift." But don't start unless you are willing to keep it up for 30 days. If then you do not feel 100% better get your money back.

* * * * *

DON'T STAY FAT AND UNATTRACTIVE

Read How Many Women Lose Fat
Promptly—Safely!
No Harmful Drugs.

If you are overweight, try this easy, sensible way to take off fat.

Get on the scales today and see how much you weigh, then get a bottle of Kruschen Salts (a famous English formula), which will last 4 weeks and is inexpensive. Take one-half teaspoonful in a glass of water every morning before breakfast. Cut out pastry and fatty meats—go light on white bread, potatoes, butter and cream, and when you have finished the first bottle weigh yourself again.

Now you'll know the safe, sensible way to lose ugly fat.

PAR. 4. Through the use of the aforesaid statements and representations, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that its preparation "Kruschen Salts," taken repetitiously, constitutes a cure or remedy for sick headache, bilioussness, poor digestion, unnatural fatigue, and constipation, when such symptoms or conditions are caused by deficiency in liver bile secretion; that said preparation will significantly increase the discharge of bile from the liver; that said preparation is safe and harmless; and that said preparation is an effective obesity remedy or treatment which, when taken as directed, will reduce fat promptly and safely, or is an effective part of, or an effective adjunct to, a weight-, fat-, or flesh-reducing regime.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondent are grossly exaggerated, false, and misleading. In truth and in fact, the taking of Kruschen Salts in any dosage or on any dose schedule does not constitute a cure or remedy for sick headache, bilioussness, poor digestion, unnatural fatigue, or constipation caused by deficiency in liver bile secretion. Said preparation will not cause any increase in the discharge of bile from the liver. Said preparation is not

an effective obesity remedy or treatment, is not effective as part of a fat-reducing program, will not serve as an effective adjunct to a fat-reducing regime, and is not safe and harmless under all conditions of use.

PAR. 6. The aforesaid representations and advertisements of respondent's said preparation fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisement relates under the conditions prescribed in said advertisements, or under such conditions as are customary or usual. Said preparation is an irritant laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach-ache, cramps, nausea, vomiting, or other symptoms of appendicitis.

PAR. 7. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations, disseminated as aforesaid, and its failure to reveal the dangers inherent in the use of its said preparation, have had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true and that said preparation may be taken under all conditions without ill effects to the user, and to induce the purchase by the public of substantial quantities of respondent's preparation.

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, 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 respondent, E. Griffiths Hughes, Inc., a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of its preparation "Kruschen Salts," 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, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or through inference:

(a) That said preparation will increase the discharge of bile from the liver, or is a cure or remedy for any condition caused by deficiency in bile secretion by the liver.

(b) That said preparation is safe and harmless under all conditions of use.

(c) That said preparation is effective as an obesity remedy or treatment, or is effective as a part of or adjunct to any fat- or weight- reducing regime.

2. 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 fails to reveal that said preparation 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.

3. 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 preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any representation prohibited in paragraph 1 hereof or which fails to comply with the affirmative requirements set out in paragraph 2 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.

Complaint

IN THE MATTER OF

AL ROSENFELD, INC. AND AL ROSENFELD AND S. THEODORE LANDE, INDIVIDUALLY AND AS OFFICERS THEREOF

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

Docket 5051. Complaint, Sept. 20, 1943—Decision, Apr. 26, 1945

Where a corporation and its two officers, engaged in the packaging and competitive interstate sale and distribution of perfumes and toilet preparations, including those made and sold by the firms of Worth, Vigny, and Suzanne, of Paris, France, of which they had been the sole distributor for a number of years and which, prior to 1941, with two exceptions they imported, but which, subsequent thereto, were made in the United States from formulas supplied by said French concerns, by domestic firms, who placed on packages thereof the statement "Made in U. S. A."—Represented since 1941 through use of the trade names "Worth," "Vigny," and "Suzanne" and various French brand names such as "je reviens, WORTH," "Secret de Suzanne," "Heure intime VIGNY," "SUZANNE'S tout de suite," "WORTH Dans la Nuit," "Les Parfums WORTH," "Les Parfums SUZANNE" and "Les Parfums VIGNY," that the perfumes and toilet preparations they sold and distributed were compounded or manufactured in France by the firms of Worth, Vigny, or Suzanne, which had long made and compounded in Paris perfumes, colognes, and toilet preparations of high quality and enjoying general acceptance throughout the world;

With the effect of misleading a substantial part of the purchasing public into the erroneous belief that said perfumes, colognes, and toilet preparations were manufactured or compounded in France and imported into the United States, preferred over the less expensive domestic products, and of inducing it, because of such belief, to purchase substantial quantities of their products, whereby trade was diverted unfairly to them from their competitors who actually import perfumes and similar products, or who compound them in this country, and truthfully represent their place of origin:

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

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

Mr. John M. Russell for the Commission.

Mock & Blum, 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 Al Rosenfeld, Inc., a corporation, and Al Rosenfeld and S. Theodore Lande, individually, and as officers of Al Rosenfeld, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commis-

sion that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Al Rosenfeld, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois. Respondents, Al Rosenfeld and S. Theodore Lande, are individuals, and are president and treasurer, and vice president and secretary, respectively, of the corporate respondent. These individuals formulate, direct and control the policies, acts and practices of corporate respondents. The office and principal place of business of both corporate and individual respondents is 9 East 38th Street in the city of New York, in said State.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the packaging, sale and distribution of perfumes and toilet preparations. Respondents cause said products, when sold by them, to be transported from their aforesaid place of business in the State of New York to purchasers thereof at their points of location 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 products among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with other corporations, and with individuals and firms likewise engaged in the business of selling and distributing perfumes and toilet preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their aforesaid business, respondents cause certain markings, names and designations to be printed on labels and tags attached to the products sold and distributed by them and imprinted on the cartons in which said products are packaged as follows:

WORTH, New York, N. Y. Distributors,
VIGNY, New York, N. Y. Distributors,
SUZANNE, New York, N. Y. Distributors,
BEAU CATCHER Eau de Cologne VIGNY,
Eau de Cologne Secret de Suzanne, SUZANNE,
Eau de Cologne Je Reviens WORTH,
SUZANNE'S tout de suite,
Vigny Parfums de luxe Heure intime.

PAR. 5. Respondents also furnish advertising mats to dealers which are used by said dealers in advertising matter disseminated by means of the United States mails or by other means in commerce for the purpose of inducing the purchase of respondents' products which contain and make use of the various names and phrases quoted in paragraph 4 herein. Respondents pay for, or participate in the payment of, the advertising matter of such dealers. Respondents also publish and distribute price lists in which the aforesaid names, designations and descriptions are employed.

PAR. 6. Perfumes and toilet preparations of high quality and enjoying general acceptance throughout the world have been sold and distributed for many years under the names "Worth," "Vigny" and "Suzanne," which were manufactured by concerns, of ingredients of French and other

foreign origin, in Paris, France. A substantial portion of the purchasing public in the United States associates the words Worth, Vigny and Suzanne with perfumes and toilet preparations manufactured or compounded in France, and when buying products designated by said names believe that they are the products manufactured or compounded in France and known as Worth, Vigny and Suzanne. There is a preference on the part of the purchasing public for certain goods, wares and merchandise which are manufactured in foreign countries and imported into the United States, and this is particularly true regarding perfumes, colognes and toilet preparations manufactured or compounded in France, and such goods so manufactured or compounded and imported command and bring from the purchasing public a higher price in the markets of the United States than perfumes, colognes and toilet preparations manufactured or compounded in the United States.

PAR. 7. Through the use of the aforesaid statements and descriptions in French and the names Worth, Vigny and Suzanne, respondents represent that their said products are compounded or manufactured into the finished product in France; that they are the well-known and preferred French perfumes and toilet preparations known as Worth, Vigny and Suzanne.

PAR. 8. Said statements, representations, descriptions and designations, in French and otherwise, are false, deceptive and misleading. In truth and in fact, respondents' products designated and described by them as aforesaid, and sold since early in 1941, are not compounded or manufactured into the finished product in France and are not the well-known French perfumes and toilet preparations known in the United States as Worth, Vigny and Suzanne, but on the contrary, are manufactured and compounded in the United States entirely or largely of domestic ingredients.

PAR. 9. The statements, representations, descriptions and designations used by respondents in connection with their said products are calculated to, and have a tendency and capacity to, and do, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said products are manufactured or compounded in France and are the highly regarded products known as Worth, Vigny and Suzanne; further, as a direct consequence of the mistaken and erroneous beliefs induced by the misrepresentations of respondents, substantial numbers of the purchasing public have purchased respondents' said products. As a result, trade has been unfairly diverted to respondents from their competitors who actually import into the United States from foreign countries perfumes and similar products compounded in foreign countries, or who compound perfumes and similar products in this country and who truthfully represent and advertise the place of origin and quality of their products. As a result thereof, substantial injury has been done, and is now being done, by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia. Further, the respondents have placed in the hands of dealers and others a means and instrumentality whereby purchasers of said products may be misled into the aforementioned mistaken and erroneous beliefs.

PAR. 10. The acts and practices of respondents 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 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 20, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, Al Rosenfeld, Inc., a corporation, and Al Rosenfeld and S. Theodore Lande, individually, and as officers of Al Rosenfeld, Inc., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were taken 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 of the respondents, 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, Al Rosenfeld, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondents, Al Rosenfeld and S. Theodore Lande, are individuals, and are president and treasurer, and vice president and secretary, respectively, of the corporate respondent. These individual respondents formulate, direct, and control the policies, acts, and practices of the corporate respondent. The office and principal place of business of both the corporate respondent and the individual respondents is 9 East 38th Street in the city of New York, State of New York.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the packaging, sale, and distribution of perfumes and toilet preparations. Respondents cause said products, when sold by them, 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. The respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products among and between the various States of the United States.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with other corporations and with individuals and firms likewise engaged in the business of selling and distributing perfumes and toilet preparations in commerce among and between the various States of the United States.

PAR. 4. Since 1941 and for a number of years prior thereto the corporate respondent has been the sole distributor in the United States of perfumes and toilet preparations manufactured and sold by the firms of Worth, Vigny, and Suzanne, of Paris, France. Prior to 1941 the corporate respondent imported the finished perfumes and toilet preparations manu-

factured and blended by said firms of Worth, Vigny, and Suzanne, of Paris, France, with the exception of two preparations sold under the trade names "Vigny Beau Catcher" and "Vigny Golliwogg," which latter preparations were compounded in the United States. Subsequent to 1941 all of the perfumes and other toilet preparations sold by the respondents under the trade names "Vigny," "Worth," and "Suzanne" have been manufactured and compounded in the United States from formulas supplied by said French concerns. The compounding and blending of said perfumes and other toilet preparations since 1941 have been performed by domestic firms engaged in the business of blending and compounding perfumes and toilet preparations, and there have been used in the course of such manufacture and compounding, certain synthetic materials and domestic alcohol. In packaging said perfumes and toilet preparations which have been compounded in the United States since 1941 the respondents have placed on said packages the statement "Made in U.S.A."

PAR. 5. For the purpose of inducing the purchase of the perfumes and toilet preparations sold and distributed by them, the respondents have, since 1941, published and caused to be published advertisements in various newspapers and periodicals having a general circulation throughout the United States and, in addition, have furnished advertising mats to dealers, which are used by said dealers in advertising the products distributed by the respondents. In most cases where said advertising mats are used by dealers, the respondents pay a portion of the cost of said advertisement. In advertising the perfumes and toilet preparations sold and distributed by the respondents in the manner hereinabove described and by circulars and other printed matter, the respondents have used trade and brand names of French origin to designate, describe, or refer to such perfumes and toilet preparations. Typical of such trade and brand names are the following:

je reviens, WORTH
 Secret de Suzanne
 Heure intime VIGNY
 SUZANNE'S tout de suite
 WORTH Dans la Nuit
 Les Parfums WORTH
 Les Parfums SUZANNE
 Les Parfums VIGNY

PAR. 6. Since 1941 through the use of the trade names "Worth," "Vigny," and "Suzanne" and through the use of the various brand names of French origin hereinabove described, respondents represent that the perfumes and toilet preparations sold and distributed by them are compounded or manufactured in France by the firms of Worth, Vigny, or Suzanne, when in fact such products are manufactured and compounded in the United States.

PAR. 7. Perfumes, colognes, and toilet preparations of high quality enjoying general acceptance throughout the world have for many years been manufactured and compounded in Paris, France, by the firms of Worth, Vigny, and Suzanne. There is a preference on the part of the buying public for perfumes, colognes, and toilet preparations manufactured or compounded in France and imported into the United States and such goods, so manufactured or compounded and imported, command and bring from the purchasing public a higher price in the markets of the

United States than perfumes, colognes, and toilet preparations manufactured or compounded in the United States.

PAR. 8. The use by the respondents of the foregoing representations in designating and describing their products and the source of origin and place of manufacture or compounding thereof has a tendency and capacity to, and does, mislead a substantial part of the purchasing public into the erroneous and mistaken belief that said products are manufactured or compounded in France and are imported into the United States and to induce a portion of the purchasing public, because of such erroneous belief, to purchase substantial quantities of respondents' products. As a result, trade has been diverted unfairly to the respondents from their competitors who actually import into the United States from foreign countries perfumes and similar products compounded in foreign countries or who compound perfumes and similar products in this country for sale to the buying public and who truthfully represent and advertise the place of origin of their products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, testimony and other evidence in support of, and in opposition to, the allegations of 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 in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Al Rosenfeld, Inc., a corporation, and its officers, and the individual respondents, Al Rosenfeld and S. Theodore Lande, 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 perfumes, colognes, and other toilet preparations in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the terms "Worth," "Vigny," "Suzanne," "Secret de Suzanne," "je reviens," "Dans la Nuit," or "Heure intime," or any other French or foreign words or terms, as brand or trade names to in any way designate, describe, or refer to perfumes, colognes, or other toilet preparations made or compounded in the United States, without clearly and conspicuously stating, in immediate connection and conjunction therewith, that such products are made or compounded in the United States.

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

Complaint

IN THE MATTER OF

SAMUEL R. ISRAEL AND AL GOLDSTEIN, TRADING AS
HOUSE OF ROYALSUN

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

Docket 5078. Complaint, Nov. 10, 1943—Decision, Apr. 27, 1945

Where the words "Shetland," "Saxony" and "Scotch" were long and favorably known to the purchasing and consuming public as descriptive, respectively, of products composed of the wool of sheep raised in the Shetland Islands, of products of foreign origin, and of products made from the wool of sheep raised in Scotland; and thereafter two individuals engaged in the interstate sale and distribution of knitting yarn; in catalogues, sample books, labels, letterheads, and otherwise—

Falsely represented the composition and source of their products through use of words "Shetland," "Saxony" and "Scotch"; as respectively descriptive of domestic yarns or yarns not composed of fibers of wool from sheep raised in the Shetland Islands; of yarns not composed entirely of wool nor of wool from sheep raised in the province of Saxony; and of yarns made neither entirely nor in part from the fleece of sheep raised in Scotland;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous belief that said representations were true, on account of which a number thereof purchased a substantial volume of their said products:

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

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

Mr. Carrel F. Rhodes for the Commission.

Mr. Samuel R. Israel, of New York City, for respondents.

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 Commission, having reason to believe that Samuel R. Israel and Al Goldstein, copartners, trading as House of Royalsun, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it

¹ Complaint published as amended by stipulation and agreement, approved April 19, 1945 by the Commission, as follows:

It is hereby stipulated and agreed, By and between Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, and Samuel R. Israel, attorney for the respondents, Samuel R. Israel and Al Goldstein, that the Commission's complaint in this case filed on the 18th day of November 1943, may be and hereby is amended by striking the words "or on islands contiguous to the mainland of Scotland," descriptive of Scotch wool, from the allegations in the indented subparagraph 3 of paragraph 3 and from the indented subparagraph 2 of paragraph 4 thereof.

It is hereby further agreed, By the respondents that the admission answer heretofore submitted by the respondents and dated April 17, 1944, may be received and accepted as the respondents' answer to the Commission's complaint as amended in paragraph 1 above.

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

PARAGRAPH 1. Respondents, Samuel R. Israel and Al Goldstein, are individuals, trading as House of Royalsun, with their principal place of business located at 5 West 36th Street in the city of New York, State of New York.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the sale and distribution of various grades and types of knitting yarn. Respondents cause their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in their said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business in connection with the offering for sale, sale and distribution of their products in commerce, and for the purpose of inducing the purchase thereof by the public, respondents have made or caused to be made various statements and representations purportedly descriptive of their business and their products, and of the place of origin of, and the nature of the constituent fibers or materials of their products to be inserted in catalogs, sample books, labels and other printed and written material and on their letterheads, which they have distributed among customers and prospective customers located in the various States of the United States and in the District of Columbia.

Many of the designations and descriptions of the respondents' said yarns and of their constituent fibers and materials used by respondents are false and misleading. Among and typical, but not exclusive, of such false and misleading designations, descriptions, statements and representations are the following:

"Shetland" used as descriptive of domestic yarns or yarns not composed of fibers of wool from sheep raised in the Shetland Islands.

"Saxony" used as descriptive of yarns not composed entirely of wool and not composed of wool from sheep raised in the province of Saxony.

"Scotch" used as descriptive of yarns made neither entirely nor in part from the fleece of sheep raised in Scotland.

PAR. 4. The word "Shetland" has been long and favorably known to the purchasing and consuming public as descriptive of products composed of the wool of sheep raised in the Shetland Islands.

The word "Saxony" has been long and favorably known to the purchasing and consuming public as descriptive of products composed entirely of wool of foreign origin.

The word "Scotch" has been long and favorably known to the purchasing and consuming public as descriptive of products made from the wool of sheep raised in Scotland.

PAR. 5. The use by the respondents of the foregoing acts and practices 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 respondents have truthfully represented the constituent fiber and material of which their products are made and the source and origin thereof, as well as the nature of their business. On account of these erroneous beliefs a

number of the consuming and purchasing public have purchased a substantial volume of respondents' said products.

PAR. 6. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 10, 1943, issued and duly served its complaint in this proceeding upon Samuel R. Israel and Al Goldstein, copartners, trading as House of Royalsun, 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, the respondents filed their answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts, which said answer was duly filed in the office of the Commission. Thereafter, a stipulation and agreement was entered into between Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, and Samuel R. Israel, attorney for the respondents, whereby the complaint was amended in certain particulars, and it was agreed that the admission answer submitted by respondents and dated April 17, 1944, may be received and accepted as respondent's answer to the Commission's complaint as amended, which stipulation and agreement was duly approved by the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on said amended complaint and answer, and the Commission having duly considered the matter and being now fully advised in the premises, finds this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Samuel R. Israel and Al Goldstein, are individuals, trading as House of Royalsun with their principal place of business located at 5 West 36th Street in the city of New York, State of New York.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the sale and distribution of various grades and types of knitting yarn. Respondents cause their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business in connection with the offering for sale, sale and distribution of their products in commerce, and for the purpose of inducing the purchase thereof by the public, respondents have made or caused to be made various statements and representations purportedly descriptive of their business and their products, and of the place of origin of, and the nature of the constituent

fibers or materials of their products to be inserted in catalogs, sample books, labels, letterheads and other printed and written material, which they have distributed among customers and prospective customers located in the various States of the United States and in the District of Columbia.

Many of the designations and descriptions of the respondents' said yarns and of the constituent fibers and materials used by respondents are false and misleading. Among and typical, but not exclusive, of such false and misleading designations, descriptions, statements and representations are the following:

"Shetland" used as descriptive of domestic yarns or yarns not composed of fibers of wool from sheep raised in the Shetland Islands.

"Saxony" used as descriptive of yarns not composed entirely of wool and not composed of wool from sheep raised in the province of Saxony.

"Scotch" used as descriptive of yarns made neither entirely nor in part from the fleece of sheep raised in Scotland.

PAR. 4. The word "Shetland" has been long and favorably known to the purchasing and consuming public as descriptive of products composed of the wool of sheep raised in the Shetland Islands.

The word "Saxony" has been long and favorably known to the purchasing and consuming public as descriptive of products composed entirely of wool of foreign origin.

The word "Scotch" has been long and favorably known to the purchasing and consuming public as descriptive of products made from the wool of sheep raised in Scotland.

PAR. 5. The use by the respondents of the foregoing acts and practices 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 respondents have truthfully represented the constituent fiber and material of which their products are made and the source and origin thereof, as well as the nature of their business. On account of these erroneous beliefs, a number of the consuming and purchasing public have purchased a substantial volume of respondents' said products.

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 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 respondents, Samuel R. Israel and Al Goldstein, trading as House of Royalsun, whether trading under that name or some other trade name, their representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for

sale, sale, and distribution of knitting yarns in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. 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 yarn or product which is not composed entirely of the wool of Shetland sheep grown on the Shetland Islands; 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.

2. Using the word "Saxony" or any simulation thereof, either alone or in connection or conjunction with any other word or words to designate, describe, or refer to any yarn or product which is not composed entirely of wool imported from the province of Saxony or from sheep raised in the province of Saxony; *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 Saxony 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 "Scotch" to designate or describe any product not made from the wool of sheep raised in 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 Scotch 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.

4. Representing, through the use of the words "Shetland," "Saxony," "Scotch" or any other words or any terms indicating foreign origin, or otherwise, that yarns made or manufactured from domestic products are imported or made from imported products.

It is further ordered, That nothing herein contained shall be construed as prohibiting the use of the word "Shetland" to refer to the wool of Shetland sheep grown on the mainland of Scotland contiguous to the Shetland Islands.

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 method and form in which they have complied with this order.

IN THE MATTER OF
GUSTAVE GOLDSTEIN, TRADING AS
HUMANIA HAIR GOODS & SPECIALTY COMPANY

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

Docket 5249. Complaint, Nov. 21, 1944—Decision, Apr. 27, 1945

Where an individual engaged in the interstate sale and distribution of cosmetic preparations under various names, including Luxe Hair Coloring, Eau Sublime, B. Paul's Compound, Herolin Skin Cream, Godefroy's Larieuse, Apex Skin Bleach, Magic Shaving Powder, Henry's Super-Light Working Oil, Working Oil, Henry's Sulphur Lanolin Treatment for Hair and Scalp, and Humania Dandruff Treatment for Hair and Scalp, and Humania Dandruff Treatment; through advertisements disseminated in catalogs and by other means, based, as asserted by him, on statements supplied to him by the manufacturers of the products involved and without his knowledge of their false or deceptive character—

- (a) Falsely represented that "B. Paul's Compound" hair dye was composed of harmless ingredients and could be used without harmful effects, and that "Herolin Skin Cream" provided a competent and effective treatment for superficial pimples and skin marks of external origin;
- (b) Falsely represented that "Henry's Super-Light Working Oil" and "Working Oil" were competent and effective treatments for itchy scalp and dandruff; that "Henry's Sulphur Lanolin Treatment for Hair and Scalp" was a competent and effective treatment for baldness, falling hair, itchy scalp and dandruff and that "Humania Dandruff Treatment" was a competent and effective treatment and cure for dandruff;

The facts being that none of said preparations was an effective treatment for many of the underlying conditions which cause itching scalp, or dandruff, and their use would not relieve itching in some scalp conditions, though said "Working Oils" and "Sulphur Lanolin Treatment" might temporarily relieve itching caused by minor scalp disorders and make loose dandruff scales less noticeable by matting them to the hair and scalp; and they would not prevent falling hair or baldness;

- (c) Failed in his advertisements of said "Luxe Hair Coloring," "Eau Sublime," "Godefroy's Larieuse," to reveal material facts with respect to the consequences which might result from their use under usual or prescribed conditions, in that said preparations were para-phenylenediamine hair dyes and potentially dangerous in that their use might cause skin irritations; they should not be used for dyeing the eyelashes or eyebrows, as to do so might cause blindness; and they should not be used in case of any disease of or eruptions on the skin or scalp, nor until after a proper patch test demonstrated that the person was not sensitive to them;
- (d) Failed in advertisements of its "B. Paul's Compound" hair dye to reveal facts material, as above set forth, in that said compound contained pyrogallic acid, which is a caustic and may cause skin irritation; should not be permitted to remain on the skin or scalp for prolonged periods of time, should never be used when the skin or scalp is broken or where an eruption is present, and should not be permitted to come into contact with the eyes;
- (e) Failed in advertisements of its "Apex Skin Bleach" to reveal facts material, as above set forth, in that it contained ammoniated mercury and might cause skin irritations; should not be applied to an area of the skin larger than the face and

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neck at any one time; too frequent applications and use over excessive periods of time should be avoided and adequate rest periods between series of treatments should be observed; it should not be used where the skin is cut or broken; and in all cases a proper patch test should be made to determine whether the user is sensitive to the preparation; and

- (f) Failed in advertisements of its "Magic Shaving Powder" to reveal facts material, as aforesaid, in that said powder contained ingredients irritating to the skin and should not be allowed to come into contact with the eyes, as to do so would cause extreme irritation;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations were true, and of inducing it, because of such belief, to purchase substantial quantities of his said cosmetic 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. B. G. Wilson for the Commission.

Reeves, Todd, Ely & Beaty, 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 Gustave Goldstein, an individual, trading as Humania Hair Goods & Specialty 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. The respondent, Gustave Goldstein, is an individual, trading as Humania Hair Goods & Specialty Co., with his office and principal place of business at 303 Fourth Avenue, New York, N. Y.

PAR. 2. The respondent is now and for more than two years last past has been engaged in the business of selling and distributing cosmetic preparations under various names, among them being:

Luxe Hair Coloring, Eau Sublime, B. Paul's Compound, Herolin Skin Cream, Godefroy's Larieuse, Apex Skin Bleach, Magic Shaving Powder, Henry's Super-Light Working Oil, Working Oil, Henry's Sulphur Lanolin Treatment for Hair and Scalp, and Humania Dandruff Treatment, in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes said preparations, when sold, to be transported from his said 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 his said 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 aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said

preparations by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing 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 his said preparations 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 the false advertisements disseminated and caused to be disseminated, as hereinabove set forth, in catalogs distributed throughout the United States by United States mails, and by other means in commerce, are the following:

Representations with respect to B. Paul's Compound:

Made of pulverized roots and other harmless ingredients.

Representations with respect to Herolin Skin Cream:

If your surface skin is too dark due to exposure to sun and wind, and is blemished by superficial pimples and marks of external origin, try Herolin Skin Cream.

Representations with respect to Henry's Super-Light Working Oil and Working Oil:

Wonderful for itchy scalp and dandruff.

Representations with respect to Henry's Sulphur Lanolin Treatment for Hair and Scalp:

Baldness, Itchy-Scalp, Falling out Hair; Dandruff, etc., are not inherited * * * Don't let dry, itchy scalp or dandruff drive you mad. * * * Start Using Henry's Treatment tonight.

Representations with respect to Humania Dandruff Treatment:

Dandruff, the greatest foe of beautiful hair and a healthy scalp is responsible for a large percent of all cases of baldness and falling hair. It is a serious affection and must be given persistent treatment. When the white flakes or scales that indicate this condition begin to disappear, do not stop—but continue the Humania dandruff treatment regularly.

PAR. 4. Through the use of the foregoing statements and representations and others of the same import not specifically set out herein, respondent represents that the preparation, B. Paul's Compound, is composed of harmless ingredients and can be used without harmful effects; that Herolin Skin Cream provides a competent and effective treatment for superficial pimples and skin marks of external origin; that Henry's Super-Light Working Oil and Working Oil are competent and effective treatments for itchy scalp and dandruff; that Henry's Sulphur Lanolin Treatment for Hair and Scalp is a competent and effective treatment for baldness, falling hair, itchy scalp and dandruff and that Humania Dandruff Treatment is a competent and effective treatment for dandruff and will cure dandruff.

PAR. 5. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, the preparation B. Paul's Compound is not harmless as it contains pyrogallic acid, which is a caustic and irritates the skin and mucous membranes. Herolin Skin Cream is not

a competent and effective treatment for superficial pimples and will not remove many marks on the skin, although of external origin. While Henry's Super-Light Working Oil, Working Oil, and Henry's Sulphur Lanolin Treatment for the Hair and Scalp may, in most cases, temporarily relieve itching of the scalp caused by minor scalp disorders and may make loose dandruff scales less noticeable by matting them to the hair and scalp, none of these preparations is a competent, effective, or adequate treatment for many of the underlying conditions which cause itching scalp, or for dandruff. Their use will not relieve itching in some scalp conditions. Henry's Sulphur Lanolin Treatment for Hair and Scalp will not prevent falling hair or baldness and is not a competent or effective treatment therefor. Humania Dandruff Treatment will not cure dandruff and is not a competent or effective treatment for dandruff.

PAR. 6. Respondent has disseminated and is now disseminating advertisements, in the manner aforesaid, with respect to his preparations designated Luxe Hair Coloring, Eau Sublime, Godefroy's Lariouse in which advertisements these preparations are offered as hair dyes. These advertisements, as well as the advertisements above quoted with respect to B. Paul's Compound, a hair dye; and Apex Skin Bleach, and Magic Shaving Powder, both offered as preparations to be applied to the skin, constitute false advertisements for the reason that they fail to reveal facts material in the light of the representations therein contained or 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. The preparations Luxe Hair Coloring, Eau Sublime and Godefroy's Lariouse are para-phenylenediamine hair dyes and are potentially dangerous in that their use may cause skin irritations. Said preparations should not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness. They should not be used in any event when there is any disease of or eruptions on the skin or the scalp, nor until after a proper patch test has demonstrated that the person is not sensitive to and can resist the effects of said preparation without harmful effects.

The preparation B. Paul's Compound contains pyrogallic acid, which is a caustic and may cause skin irritation. It should not be permitted to remain on the skin or scalp for prolonged periods of time, should never be used when the skin or scalp is broken or where an eruption is present, and should not be permitted to come into contact with the eyes.

The preparation Apex Skin Bleach contains ammoniated mercury and is potentially dangerous as it may cause skin irritations. It should not be applied to an area of the skin larger than the face and neck at any one time. Too frequent applications and use over excessive periods of time should be avoided and adequate rest periods between series of treatments should be observed.

This preparation should not be used where the skin is cut or broken and in all cases a proper patch test should be made to determine whether the user is sensitive to the preparation. The preparation Magic Shaving Powder contains ingredients which have an irritating effect upon the skin and should not be used by those having tender skins. It should not be allowed to come into contact with the eyes; to do so would cause extreme irritation.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements has had and now has the capacity and tendency to,

and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations and advertisements are true, and that the preparations enumerated in paragraph 6 hereof are harmless and may be used without ill effects to the user, 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 cosmetic preparations.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 21, 1944, issued and subsequently served its complaint in this proceeding upon respondent, Gustave Goldstein, an individual, trading as Humania Hair Goods & Specialty 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, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondent, Gustave Goldstein, and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding. In said stipulation respondent expressly waived the filing of a Trial Examiner's report upon the evidence. Thereafter this proceeding regularly came on for final hearing before the Commission upon said complaint, answer and stipulations, 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. The respondent, Gustave Goldstein, is an individual, trading as Humania Hair Goods & Specialty Co., with his office and principal place of business at 303 Fourth Avenue, New York, N. Y.

PAR. 2. The respondent is now and for more than two years last past has been engaged in the business of selling and distributing cosmetic preparations under various names, among them being:

Luxe Hair Coloring, Eau Sublime, B. Paul's Compound, Herolin Skin Cream, Godefroy's Lariouse, Apex Skin Bleach, Magic Shaving Powder, Henry's Super-Light Working Oil, Working Oil, Henry's Sulphur Lanolin Treatment for Hair and Scalp, and Humania Dandruff Treatment, in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes said preparations, when sold, to be transported from his said 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 his said 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 aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said preparations by United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing 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 his said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the misleading statements and representations contained in the false advertisements disseminated and caused to be disseminated, as hereinabove set forth, in catalogs distributed throughout the United States by United States mails, and by other means in commerce, are the following:

Representations with respect to B. Paul's Compound:

Made of pulverized roots and other harmless ingredients.

Representations with respect to Herolin Skin Cream:

If your surface skin is too dark due to exposure to sun and wind, and is blemished by superficial pimples and marks of external origin, try Herolin Skin Cream.

Representations with respect to Henry's Super-Light Working Oil and Working Oil:

Wonderful for itchy scalp and dandruff.

Representations with respect to Henry's Sulphur Lanolin, Treatment for Hair and Scalp:

Baldness, Itchy-Scalp, Falling Out Hair; Dandruff, etc., are not inherited * * *
Don't let dry, itchy scalp or dandruff drive you mad * * * Start using Henry's Treatment tonight.

Representations with respect to Humania Dandruff Treatment:

Dandruff, the greatest foe of beautiful hair and a healthy scalp is responsible for a large percent of all cases of baldness and falling hair. It is a serious affection and must be given persistent treatment. When the white flakes or scales that indicates this condition begin to disappear, do not stop—but continue the Humania dandruff treatment regularly.

PAR. 4. Through the use of the foregoing statements and representations and others of the same import not specifically set out herein, respondent represents that the preparation, B. Paul's Compound, is composed of harmless ingredients and can be used without harmful effects; that Herolin Skin Cream provides a competent and effective treatment for superficial

pimples and skin marks of external origin; that Henry's Super-Light Working Oil and Working Oil are competent and effective treatments for itchy scalp and dandruff; that Henry's Sulphur Lanolin Treatment for Hair and Scalp is a competent and effective treatment for baldness, falling hair, itchy scalp and dandruff and that Humania Dandruff Treatment is a competent and effective treatment for dandruff and will cure dandruff.

PAR. 5. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, the preparation B. Paul's Compound is not harmless as it contains pyrogallic acid, which is a caustic and irritates the skin and mucous membranes. Herolin Skin Cream is not a competent and effective treatment for superficial pimples, and will not remove any marks on the skin, although of external origin. While Henry's Super-Light Working Oil, Working Oil, and Henry's Sulphur Lanolin Treatment for the Hair and Scalp may, in most cases, temporarily relieve itching of the scalp caused by minor scalp disorders and may make loose dandruff scales less noticeable by matting them to the hair and scalp, none of these preparations is a competent, effective or adequate treatment for many of the underlying conditions which cause itching scalp, or dandruff. Their use will not relieve itching in some scalp conditions. Henry's Sulphur Lanolin Treatment for Hair and Scalp will not prevent falling hair or baldness and is not a competent or effective treatment therefor. Humania Dandruff Treatment will not cure dandruff and is not a competent or effective treatment for dandruff.

PAR. 6. Respondent has disseminated and is now disseminating advertisements, in the manner aforesaid, with respect to his preparations designated Luxe Hair Coloring, Eau Sublime, Godefroy's Larieuse in which advertisements these preparations are offered as hair dyes. These advertisements, as well as the advertisements above quoted with respect to B. Paul's Compound, a hair dye; and Apex Skin Bleach, and Magic Shaving Powder, both offered as preparations to be applied to the skin, constitute false advertisements for the reason that they fail to reveal facts material in the light of the representations therein contained or 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. The preparations Luxe Hair Coloring, Eau Sublime and Godefroy's Larieuse are para-phenylenediamine hair dyes and are potentially dangerous in that their use may cause skin irritations. Said preparations should not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness. They should not be used in any event when there is any disease of or eruptions on the skin or the scalp, nor until after a proper patch test has demonstrated that the person is not sensitive to and can resist the effects of said preparations without harmful effects.

The preparation B. Paul's Compound contains pyrogallic acid, which is a caustic and may cause skin irritation. It should not be permitted to remain on the skin or scalp for prolonged periods of time, should never be used when the skin or scalp is broken or where an eruption is present, and should not be permitted to come into contact with the eyes.

The preparation Apex Skin Bleach contains ammoniated mercury and is potentially dangerous as it may cause skin irritations. It should not be applied to an area of the skin larger than the face and neck at any one time. Too frequent applications and use over excessive periods of time should be avoided and adequate rest periods between series of treatments

should be observed. This preparation should not be used where the skin is cut or broken and in all cases a proper patch test should be made to determine whether the user is sensitive to the preparation.

The preparation Magic Shaving Powder contains ingredients which have an irritating effect upon the skin and should not be used by those having tender skins. It should not be allowed to come into contact with the eyes; to do so would cause extreme irritation.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations and advertisements are true, and that the preparations enumerated in paragraph 6 hereof are harmless and may be used without ill effects to the user, 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 cosmetic preparations.

PAR. 8. Respondent states that he is a distributor of the aforesaid preparations, that the statements made by him were supplied by the manufacturers of said products and that he had no knowledge that said advertisements were false or deceptive.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and a stipulation as to the facts entered into by the respondent, Gustave Goldstein, 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 Gustave Goldstein, an individual, trading as Humania Hair Goods & Specialty Company, or trading under any other name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of his preparations designated Luxe Hair Coloring, Eau Sublime, B. Paul's Compound, Herolin Skin Cream, Godefroy's Lariouse, Apex Skin Bleach, Magic Shaving Powder, Henry's Super-Light Working Oil, Working Oil, Henry's Sulphur Lanolin Treatment for Hair and Scalp, and Humania Dandruff Treatment, or any other preparations of substantially similar composition or possessing substantially similar properties, under whatever name or names sold, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "com-

merce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication—

(a) That the preparation, B. Paul's Compound, is composed of harmless ingredients or can be used without harmful effects.

(b) That the preparation Herolin Skin Cream constitutes a competent or effective treatment for superficial pimples or marks on the skin.

(c) That the preparations, Henry's Super-Light Working Oil, Working Oil, and Henry's Sulphur Lanolin Treatment for Hair and Scalp constitute competent or effective treatments for dandruff or itchy scalp or will relieve itchy scalp, except that caused by minor scalp irritations.

(d) That the preparation Henry's Sulphur Lanolin Treatment for Hair and Scalp will prevent falling hair or baldness or constitutes a competent or effective treatment therefor.

(e) That the preparation Humania Dandruff Treatment will cure dandruff or constitutes a competent or effective treatment for dandruff.

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:

(a) That the use of the preparations Luxe Hair Coloring, Eau Sublime or Godefroy's Lariouse may cause skin irritations; that said preparations should not be used for dyeing the eyelashes or eyebrows and that to do so may cause blindness; and that said preparations should not be used in any event when there is any disease of or eruptions on the skin or the scalp, nor until after a proper patch test has demonstrated that the person is not sensitive to and can resist the effects of said preparations without harmful effects.

(b) That the use of the preparation B. Paul's Compound may cause skin irritation; that it should not be permitted to remain on the skin or scalp for prolonged periods of time and should not be used when the skin is broken or where an eruption is present, and should not be permitted to come in contact with the eyes.

(c) That the use of the preparation Apex Skin Bleach may cause skin irritations; that it should not be applied to an area of the skin larger than the face and neck at any one time; that frequent applications and use over excessive periods of time should be avoided and adequate rest periods between series of treatments should be observed; that said preparation should not be used where the skin is cut or broken; and in all cases a patch test should be made to determine whether the user is sensitive to the preparation.

(d) That the use of the preparation Magic Shaving Powder may cause irritations of the skin and should not be used by those having tender skin or allowed to come in contact with the eyes; to do so will cause extreme irritation.

Provided, however, that advertisements relating to the preparations designated in paragraph 2 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.

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 preparations, which advertisement

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contains any representation prohibited in paragraph 1 hereof, or which fails to comply with the affirmative requirements set forth in paragraph 2 hereof.

It is further ordered, That the respondent, shall within 10 days after service of this order, file with the Commission an interim report in writing stating whether he intends to comply with this order, and, if so, the manner and form in which he intends to comply; and that within 60 days after service of this order, said respondent shall file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
AMERICAN FLAG COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF THE WOOL
PRODUCTS LABELING ACT OF 1939, APPROVED OCT. 14, 1940

Docket 5261. Complaint, Dec. 15, 1944—Decision, Apr. 27, 1945

Where a corporation engaged in the manufacture and interstate sale and distribution of merchandise of a decorative nature such as flags, banners and pennants, including certain products composed in whole or in part of rayon or wool—

- (a) Sold products which, in texture and appearance, resembled silk, product of the cocoon of the silkworm, long held in great public esteem, without disclosing in words familiar to the purchasing public that such products were made in whole or in part of rayon, whereby many were led to believe that they were silk;
- (b) Represented through use of the words and expressions "rayon silk," "rayon bemberg silk," "rayon celanese taffeta silk," "yellow silk bullion fringe," "yellow silk tassels and cord" in its advertising and invoices and in various other ways, that its said rayon products were silk;

With effect of misleading and deceiving purchasers, including wholesalers and retailers, as to the fiber content of its products and of placing in the hands of its purchasers for resale a means and instrumentality whereby they might and did deceive the purchasing public in said respect; and with the result that substantial quantities thereof were purchased as composed in whole or in part of silk; and,

Where said corporation, engaged as aforesaid—

- (c) Sold products composed in whole or in part of wool, reprocessed wool or reused wool, including flags, banners and pennants, misbranded in violation of the Wool Products Labeling Act and rules and regulations thereunder, in that it did not affix thereto a stamp, tag, label or other means of identification showing the percentage of the total fiber weight of wool, reprocessed wool and reused wool and non-wool fiber and maximum percentage of adulterating matter, etc.; and proper identification of the manufacturer, seller, etc., as thereby required:

Held, That said 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 the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

Mr. DeWitt T. Puckett and Mr. G. M. Martin 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 American Flag 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, American Flag Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 73-77 Mercer Street, New York, N. Y. Respondent is now, and for more than two years last past has been, engaged in the manufacture, sale and distribution of merchandise of a decorative nature, such as flags, banners and pennants to purchasers for resale throughout the United States.

Respondent has caused and is now causing said products when sold by it to be transported from its place of business in the State of New York to purchasers for resale thereof located in the various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a substantial 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. Among the products offered for sale and sold by the respondent, in commerce as aforesaid, are some which are composed wholly or in part of rayon.

PAR. 3. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate silk fibers in texture and in appearance, and fabrics manufactured from such rayon fibers simulate silk fabrics in texture and in appearance. Merchandise manufactured from such rayon fabrics has the appearance and feel of silk and many members of the purchasing public are unable to distinguish between such rayon products and products manufactured from silk, the product of the cocoon of the silkworm. Consequently, such rayon products are readily accepted by some members of the purchasing public as silk products.

PAR. 4. Products manufactured from silk, the product of the cocoon of the silkworm, have for many years been held and still are held in great public esteem because of their outstanding qualities, and there has been for many years, and still is, a public demand for such products.

PAR. 5. The respondent manufactures and sells in commerce, as aforesaid, products composed wholly or in part of rayon, which products simulate in texture and appearance products composed wholly or in part of silk, the product of the cocoon of the silkworm. Respondent does not inform the purchasing public of the fact that the said products which resemble silk in texture and appearance, are made wholly or in part of rayon and not of silk.

PAR. 6. The practice of the respondent in offering for sale and selling said products, manufactured wholly or in part of rayon, which resemble in texture and appearance products manufactured from silk, in commerce as aforesaid, without disclosing in words familiar to the purchasing public the fact that said products are manufactured wholly or in part of rayon, is misleading and deceptive, and many members of the purchasing public are thereby led to believe that the said rayon products are composed wholly or in part of silk, the product of the cocoon of the silkworm.

PAR. 7. The use by respondent of the acts and practices hereinabove described has the capacity and tendency to mislead and deceive and does mislead and deceive wholesalers and retailers who purchase respondent's said products as to the fiber content thereof. By said acts and practices respondent also places in the hands of purchasers of its products for resale a means and instrumentality whereby they may and do deceive the purchasing public as to the fiber content of said products. As a result of this

deception, substantial quantities of respondent's products are purchased in the belief that they are composed wholly or in part of silk, the product of the cocoon of the silkworm.

PAR. 8. In addition to misrepresenting the fiber content of its said products, in the manner described above, the respondent has, in the course and conduct of its said business, further misrepresented the fiber content of its fabrics through the use of the words "rayon silk," "rayon bemberg silk," "rayon celanese taffeta silk," "yellow silk bullion fringe," "yellow silk tassels and cord" in its advertising and invoices and in various other ways.

By and through the use of the expressions "rayon silk," "rayon bemberg silk," "rayon celanese taffeta silk," "yellow silk bullion fringe" and "yellow silk tassels and cord" in the manner above described, the respondent has represented and now represents that its said products composed of rayon are composed of silk, the product of the cocoon of the silkworm.

PAR. 9. The use by the respondent of the acts and practices hereinabove described has the capacity and tendency to and does mislead and deceive the purchasers of its products as to the fiber content thereof. By the use of said acts and practices the respondent also places in the hands of purchasers for resale of its said products a means and instrumentality whereby they may and do mislead and deceive the purchasing public as to the fiber content of its said products. As a result of this deception substantial quantities of respondent's products are purchased in the belief that they are composed of silk.

PAR. 10. Respondent is also 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 wholly 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, 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 the said act and rules and regulations.

PAR. 11. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported and distributed in commerce as aforesaid, were flags, banners and pennants. Exemplifying respondent's practice of violating said act and the rules and regulations promulgated thereunder is its 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 5 percentum of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool if said percentage by weight of such fiber is 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 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. 12. The acts, practices and methods of respondent as alleged in Paragraphs 10 and 11 hereof, constitute misbranding of wool products and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder and all of the aforesaid acts, practices and methods as alleged herein are to the prejudice and injury of the public and constitute unfair or deceptive acts or 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 15th day of December, 1944, issued and subsequently served its complaint in this proceeding upon respondent, American Flag 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 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 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, American Flag Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 73-77 Mercer Street, New York, N. Y. Respondent is now and for more than two years last past has been engaged in the manufacture, sale and distribution of merchandise of a decorative nature, such as flags, banners and pennants to purchasers for resale throughout the United States.

Respondent has caused and is now causing said products when sold by it to be transported from its place of business in the State of New York to purchasers for resale thereof located in the various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a substantial 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. Among the products offered for sale and sold by the respondent, in commerce as aforesaid, are some which are composed wholly or in part of rayon.

PAR. 3. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate silk fibers in texture and in appearance, and fabrics manufactured from such rayon fibers simulate silk fabrics in texture and in appearance. Merchandise manufactured from such rayon fabrics has the appearance and feel of silk and many members of the purchasing public are unable to distinguish between such rayon products and products manufactured from silk, the product of the cocoon of the silkworm. Consequently, such rayon products are readily accepted by some members of the purchasing public as silk products.

PAR. 4. Products manufactured from silk, the product of the cocoon of the silkworm, have for many years been held and still are held in great public esteem because of their outstanding qualities, and there has been for many years, and still is, a public demand for such products.

PAR. 5. The respondent manufactures and sells in commerce, as aforesaid, products composed wholly or in part of rayon, which products simulate in texture and appearance products composed wholly or in part of silk, the product of the cocoon of the silkworm. Respondent does not inform the purchasing public of the fact that the said products which resemble silk in texture and appearance, are made wholly or in part of rayon and not of silk.

PAR. 6. The practice of the respondent in offering for sale and selling said products, manufactured wholly or in part of rayon, which resemble in texture and appearance products manufactured from silk, in commerce as aforesaid, without disclosing in words familiar to the purchasing public the fact that said products are manufactured wholly or in part of rayon, is misleading and deceptive, and many members of the purchasing public are thereby led to believe that the said rayon products are composed wholly or in part of silk, the product of the cocoon of the silkworm.

PAR. 7. The use by respondent of the acts and practices hereinabove described has the capacity and tendency to mislead and deceive and does mislead and deceive wholesalers and retailers who purchase respondent's said products as to the fiber content thereof. By said acts and practices respondent also places in the hands of purchasers of its products for resale a means and instrumentality whereby they may and do deceive the purchasing public as to the fiber content of said products. As a result of this deception, substantial quantities of respondent's products are purchased in the belief that they are composed wholly or in part of silk, the product of the cocoon of the silkworm.

PAR. 8. In addition to misrepresenting the fiber content of its said products, in the manner described above, the respondent has, in the course and conduct of its said business, further misrepresented the fiber content of its fabrics through the use of the words "rayon silk," "rayon bemberg silk," "rayon celanese taffeta silk," "yellow silk bullion fringe," "yellow silk tassels and cord" in its advertising and invoices and in various other ways.

By and through the use of the expressions "rayon silk," "rayon bemberg silk," "rayon celanese taffeta silk," "yellow silk bullion fringe" and "yellow silk tassels and cord" in the manner above described, the respondent has represented and now represents that its said products composed of rayon are composed of silk, the product of the cocoon of the silkworm.

PAR. 9. The use by the respondent of the acts and practices hereinabove described has the capacity and tendency to and does mislead and deceive the purchasers of its products as to the fiber content thereof. By the use

of said acts and practices the respondent also places in the hands of purchasers for resale of its said products a means and instrumentality whereby they may and do mislead and deceive the purchasing public as to the fiber content of its said products. As a result of this deception substantial quantities of respondent's products are purchased in the belief that they are composed of silk.

PAR. 10. Respondent is also 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 wholly 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, 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 the said act and rules and regulations.

PAR. 11. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported and distributed in commerce as aforesaid were flags, banners and pennants. Exemplifying respondent's practice of violating said act and the rules and regulations promulgated thereunder is its 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 5 percentum of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool if said percentage by weight of such fiber is 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 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.

CONCLUSIONS

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 of the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and 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, the American Flag 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 flags or other articles of a decorative nature, or other fiber products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "taffeta" 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 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 clearly and accurately naming the fibers or materials from which such product is made.

2. Using 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.

3. 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, American Flag 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 flags or other articles of a decorative nature 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 affix securely 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.

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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
SCOTCH WOOLEN MILLS

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

Docket 940. Complaint, Nov. 6, 1942¹—Decision, May 1, 1945

Where a corporation engaged in the tailoring of made-to-measure clothing for men and women and in the sale and distribution thereof to purchasers throughout the United States through a retail branch at its home office and through some 2,500 dealers whom it furnished with samples, catalogs, display cards, window display advertisements, circulars for distribution to prospective customers, mats for newspaper advertising, and various other forms of advertising material—

Represented through corporate name "Scotch Woolen Mills" under which it traded and which it used on stationery and featured in its aforesaid catalogs, display cards, etc., frequently followed by a statement such as "World's Greatest Tailors" and, more recently, by the word "Tailors," that it was a manufacturer of woolen cloth, that the cloth used by it in tailoring the "made-to-measure" clothing offered for sale was woven in Scotland, and that it owned, operated, or controlled manufacturing establishments in Scotland in which such cloth was woven, or establishments in the United States in which it was woven from wool or yarn imported from Scotland;

Notwithstanding the fact that it purchased all the woolen cloth it used in tailoring said garments from the manufacturers or jobbers; and only a very small proportion of such cloth—and in some seasons none—was of Scotch wool or imported from Scotland;

With capacity and tendency to mislead a substantial portion of the purchasing public in the aforesaid respects and thereby induce the purchase of the made-to-measure clothing tailored by it by said public, which prefers clothing made of cloth woven from wool or yarn imported from Scotland, esteemed for quality and durability, and to deal directly with a clothing manufacturer who weaves his cloth also, as eliminating the profits of the middlemen and securing other advantages; and with result also of placing in the hands of dealers and others the means whereby members of the public might be misled and deceived concerning its business status and the source of the cloth used in its garments:

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.

As respects the alleged misleading use of the trade and corporate name "Scotch Woolen Mills" by a concern engaged in tailoring made-to-measure clothing which did not also weave the cloth from which its clothing was tailored, the use of words such as "World's Greatest Tailors" or "Tailors" in connection with the name "Scotch Woolen Mills" did not serve to inform the public that it was only a tailor and did not weave the cloth it used, but merely to emphasize the thought that it was a weaver also engaged in tailoring garments from the cloth it wove.

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

Mr. R. P. Bellinger for the Commission.

Mr. Isaac S. Rothschild and *Mr. Arthur B. Schaffner*, of Chicago, Ill., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, on the 12th day of December, 1922, the Federal Trade Commission issued, and on the 14th day of December, 1922, served on the respondent Scotch Woolen Mills, its complaint; and,

Whereas, on the 18th day of July, 1924, the Commission entered its order dismissing said complaint; and,

Whereas, on the 4th day of August, 1942, a petition was filed with the Commission, praying that the order of dismissal be vacated and set aside, that an amended and supplemental complaint be issued and that the case be reopened for further proceedings as the public interest may require; and,

Whereas, on the 7th day of August, 1942, the Commission issued and on the 10th day of August, 1942, served on respondent an order, setting the 9th day of September, 1942, at its offices in Washington, D. C., as the time and place when and where a hearing on said petition would be held; and,

Whereas, after hearing oral argument, both for and against the prayers of the aforesaid petition, after consideration of the answer and brief filed by respondent and upon consideration of the premises, the Commission on the 25th day of September, 1942 issued, and on the 28th day of September, 1942 served on the respondent, its order, directing that the order dismissing the complaint heretofore entered in this matter on the 18th day of July, 1924, as aforesaid, be vacated and set aside and that this case be reopened for further proceedings as public interest may require,

Now therefore, 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 Scotch Woolen Mills, 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 amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Scotch Woolen Mills, is a corporation, organized under the laws of the State of Illinois with its principal place of business located on Adams, Halstead and Green Streets in the city of Chicago, Ill.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the tailoring of "made-to-measure" clothing from wool cloth of various patterns, designs and weaves and in the sale and distribution thereof in commerce among and between the various States of the United States and in the District of Columbia.

Respondent receives and accepts orders for its "made-to-measure" clothing from various local representatives located in the various States of the United States and in the District of Columbia and causes said clothing, when completed, to be transported from its place of business located in the State of Illinois to such local representatives 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 "made-to-measure" clothing in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the furtherance of the sale and distribution of its "made-to-measure" clothing, as aforesaid, respondent has been, and is now, engaged

in falsely representing the nature and extent of the business conducted by it and the source of the woolen cloth used by it in the manufacture of the aforesaid "made-to-measure" clothing, through deceptive and misleading representations and implications disseminated by advertisements inserted in newspapers and other periodicals and on letterheads, billheads, pamphlets, circulars, folders, spot cards and other advertising media.

Among and typical of such deceptive and misleading representations and implications are those made by respondent through the corporate and trade name under which respondent conducts its business. Respondent advertises its tailoring business and its "made-to-measure" clothing under the name "Scotch Woolen Mills" and causes said name to be prominently displayed in newspaper and periodical advertising, and on letterheads, billheads, pamphlets, circulars, folders, spot cards and other advertising media distributed to the various local representatives to be displayed by such representatives to the purchasing public.

PAR. 4. Through the use of the corporate and trade name "Scotch Woolen Mills" and through the use of the words "Scotch," "Woolen" and "Mills" in that corporate and trade name, respondent has variously represented and is now representing, directly and by implications:

1. That it is engaged in the business of manufacturing woolen cloth; and,
2. That the cloth used by it in the tailoring of the "made-to-measure" clothing distributed by it as aforesaid, is manufactured and woven in Scotland; and,
3. That it owns, operates or controls one or more factories or manufacturing plants located in Scotland, in which the cloth used by it, as aforesaid, is woven or manufactured; and,
4. That it owns, operates or controls one or more factories or manufacturing plants located in the United States, in which the cloth used by it, as aforesaid, is woven or manufactured from yarn or wool imported from Scotland.

PAR. 5. The name "Scotch Woolen Mills" and the words, "Scotch," "Woolen" and "Mills," as used by respondent in its corporate and trade name, are false and misleading.

The respondent is not engaged in the business of manufacturing woolen cloth. Respondent does not own, operate or control any factory or manufacturing plant, located either in Scotland or in the United States, in which woolen cloth used by it, as aforesaid, is woven or manufactured. In fact, respondent purchases all of the woolen cloth used by it in tailoring its "made-to-measure" clothing from jobbers or direct from the manufacturers of such woolen cloth.

PAR. 6. There is a preference on the part of a substantial portion of the purchasing public for clothing manufactured from woolen cloth woven in Scotland and for clothing manufactured from woolen cloth woven from wool or yarn imported from Scotland. There is also a preference on the part of a substantial portion of the purchasing and consuming public and dealers to deal direct with the manufacturers of clothing who are also manufacturers or weavers of the cloth from which such clothing is tailored, in the belief that more reliance can be placed on such manufacturer with reference to carrying out contracts and in the further belief that lower prices, elimination of middleman's profits, superior products and other advantages can be obtained.

PAR. 7. The use by respondent of the foregoing false, misleading and deceptive corporate and trade name and representations and implications

arising therefrom, as aforesaid, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent is engaged in the business of manufacturing woolen cloth, as well as the business of manufacturing clothing, that the cloth used by respondent in the tailoring of the aforesaid clothing is manufactured or woven in Scotland, that respondent owns, operates or controls one or more factories or manufacturing plants in Scotland in which the cloth used by it in the tailoring of the aforesaid clothing is woven or manufactured, that respondent owns, operates or controls one or more factories or manufacturing plants located in the United States, in which the woolen cloth used by it, as aforesaid, is manufactured or woven from yarn or wool imported from Scotland and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken beliefs, to purchase respondent's aforesaid "made-to-measure" clothing.

PAR. 8. The use by respondent of the foregoing false and misleading corporate and trade name "Scotch Woolen Mills" places in the hands of its local representatives a means and instrumentality by which said local representatives could and might mislead and deceive the purchasing public into believing any one or more of the erroneous, misleading and deceptive representations and implications set out in paragraph 4 hereof and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken beliefs, to purchase respondent's aforesaid "made-to-measure" clothing.

PAR. 9. The aforesaid acts and practices of said 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 12, 1922, issued and subsequently served its complaint in this proceeding upon respondent, Scotch Woolen Mills, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the filing of respondent's answer to said complaint, testimony and other evidence were taken before trial examiners theretofore duly designated, and said testimony and other evidence were duly recorded and filed in the office of the Commission. The proceeding then came on for hearing on the complaint, answer, testimony and other evidence, briefs in support of and in opposition to the complaint, and the oral arguments of counsel, and the Commission on July 18, 1924, entered an order of dismissal without assignment of reasons.

On August 4, 1942, the Assistant Chief Counsel of the Commission filed a petition praying that the aforesaid order of dismissal be vacated, that an amended and supplemental complaint issue, and that the case be reopened for such further proceedings as the public interest may require. Thereafter, on August 7, 1942, the Commission ordered hearing on said petition, and on August 10, 1942, served said order on Scotch Woolen Mills, together with a copy of the petition. On September 9, 1942, Scotch Woolen Mills filed its answer to said petition, and on the same day oral argument of the matter was had before the Commission. On September 25, 1942, the Commission entered its order setting aside and vacating

the order of dismissal entered in this proceeding on July 18, 1924, and reopened the case for such further proceedings as the public interest required.

On November 6, 1942, the Commission issued and subsequently served upon respondent Scotch Woolen Mills its amended and supplemental complaint charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. After the issuance of said amended and supplemental complaint and the filing of respondent's answer thereto, testimony and other evidence 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, Scotch Woolen Mills, is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business at Adams, Halstead, and Green Streets, Chicago, Ill. Respondent is now, and for many years last past has been, engaged in tailoring "made-to-measure" clothing which it sells to purchasers located throughout the United States.

PAR. 2. In the course and conduct of the aforesaid business, respondent causes said clothing to be transported from its place of business in Chicago, Ill., 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 said "made-to-measure" clothing in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, Scotch Woolen Mills, was incorporated about 1919 and is successor to the business of a partnership which was organized about 1905 or 1906 and which traded under the name "Scotch Woolen Mills" until said business was taken over by the respondent corporation. The partnership and its successor, the respondent corporation, have at all times since 1906 been engaged in the sale and distribution of men's suits and overcoats "made-to-measure" for the ultimate purchasers. Within the last few years respondent has also engaged in the sale and distribution of "made-to-measure" women's suits and other garments. For many years the sale and distribution of merchandise was accomplished through retail establishments operated by the partnership and later by the corporate respondent. These retail branches were operated under the name "Scotch Woolen Mills." In the course of time, a large number of dealers were secured and the number of directly operated branches gradually decreased until at present the only retail branch maintained and operated directly by respondent is at its home office in Chicago. Respondent now has some 2,500 dealers, some of whom handle respondent's products ex-

clusively but who more usually conduct clothing stores, dry cleaning shops, and similar establishments and who handle respondent's products in connection with their other business. These dealers are furnished with samples of woolen cloth for display to their customers in order that selections may be made therefrom for the garments ordered. When a sale is made, the dealer takes the customer's measurements and records them on a form provided by respondent and in accordance with its instructions, and mails the measurements, with an order for the garments desired, to the respondent in Chicago. Respondent makes and ships the clothing so ordered to the dealer or direct to the dealer's customer, if so directed by the dealer. Originally, the business was conducted on a one-price policy; that is, a man's suit made from any sample offered was \$15. About 1919, the single-price policy was discontinued and retail prices of men's suits increased to \$32.50, \$36.50, and \$39.50, respectively. In 1920, two price lines were offered which retailed at \$43.50 and \$51.50, respectively. Since that time prices have fluctuated, the 1943 wholesale prices of men's suits having been in three lines priced at \$25.25, \$29, and \$31, respectively. Respondent has suggested the retail prices at which dealers should sell to the consuming public but has not attempted to control those prices. The number of sample patterns of cloth offered each season from which purchasers may make a selection has varied from about 210 to 300.

PAR. 4. (a) Respondent has at all times traded under its corporate name "Scotch Woolen Mills" and uses this name on its letterheads, envelopes, billheads, and other stationery. It furnishes to its dealers catalogs, display cards, window display advertisements, circulars for distribution to prospective customers, mats for newspaper advertising by dealers, and various other forms of advertising material for use in promoting the sale of its products, all of which feature the name "Scotch Woolen Mills," frequently followed by a statement such as "World's Greatest Tailors" and quite recently by the word "Tailors."

(b) At about the time the predecessor partnership entered the business described, the use of trade names containing the words "Woolen Mills" by tailoring concerns was relatively new. In succeeding years many such concerns were organized and operated upon a national or seminational scale. Typical of the names used to designate this type of business are "Dundee Woolen Mills," "American Woolen Mills," "English Woolen Mills," "Leeds Woolen Mills," "Glasgow Woolen Mills," "United Woolen Mills," and others. These tailoring concerns conducted their business more or less upon the same general plan as Scotch Woolen Mills. From about 1924 and in subsequent years, after suitable proceedings, this Commission issued a number of orders to cease and desist requiring certain tailoring houses operating upon a wide scale to give up the use of "Mills" or "Woolen Mills" as a designation for their business. Other concerns gave up the use of such designations for their tailoring business without any proceeding having been brought by this Commission. The record in this proceeding indicates that there are probably a number of tailors who do a local, intrastate business who designate themselves as "Woolen Mills," but respondent Scotch Woolen Mills is apparently the only tailoring concern carrying on a large interstate business which now characterizes itself as "Woolen Mills," when it does not in fact produce the cloth it uses in its tailoring business.

PAR. 5. By means of the name "Scotch Woolen Mills" used to designate and describe its tailoring business and placed before the public in con-

nection with such business in the manner heretofore described, respondent has represented, and now represents, that it is a manufacturer of woolen cloth, that the cloth used by it in tailoring the "made-to-measure" clothing offered for sale is woven in Scotland, and that it owns, operates, or controls manufacturing establishments in Scotland in which the cloth it uses is woven or establishments in the United States in which the cloth it uses is woven from wool or yarn imported from Scotland.

PAR. 6. There is a preference on the part of a substantial portion of the purchasing public for clothing made of woolen cloth woven in Scotland and for clothing made of woolen cloth woven from wool or yarn imported from Scotland. Such materials have a good reputation for quality and durability and are favorably regarded by large numbers of the purchasing public. There is also a preference on the part of a substantial portion of the purchasing and consuming public for dealing directly with a manufacturer of clothing who also weaves the cloth from which such clothing is tailored, because of the belief on the part of such members of the public that in this manner lower prices or greater value can be secured through the elimination of the profits of the middlemen, that superior products can be had, and other advantages obtained.

PAR. 7. In truth and in fact, respondent is not engaged in the business of manufacturing woolen cloth. The use of words such as "World's Greatest Tailors" or "Tailors" in connection with the name "Scotch Woolen Mills" does not serve to inform the public that respondent is only a tailor and does not weave the cloth it uses. In fact, it merely serves to emphasize the thought that respondent is a weaver also engaged in tailoring garments from the cloth it weaves. Respondent does not own, operate, or control any manufacturing establishment located in Scotland, or elsewhere, in which the woolen cloth used by it in tailoring the garments which it offers for sale and sells is woven. As a matter of fact, respondent purchases all of the woolen cloth used by it from the manufacturers or jobbers. Only a very small proportion of the cloth used by respondent has been of Scotch wool or imported from Scotland. Of the 210 to 300 cloth patterns offered each season, the proportion of Scotch wools has been from 4 to 15 patterns, and in some seasons none of the goods offered was Scotch woolen.

PAR. 8. The use by respondent of the misleading and deceptive corporate and trade name "Scotch Woolen Mills" in the manner heretofore stated has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent manufactures the woolen cloth it uses in tailoring the clothing offered for sale and sold by it; that the cloth used by respondent in tailoring its clothing is woven in Scotland; that respondent owns, operates, or controls manufacturing establishments in Scotland in which the cloth used by it is woven, or owns, operates, or controls such establishments elsewhere in which the cloth it uses is woven from yarn or wool imported from Scotland; and, because of such erroneous and mistaken beliefs, has the capacity and tendency to induce a substantial portion of the purchasing public to purchase the "made-to-measure" clothing tailored by respondent. The use of said misleading and deceptive corporate and trade name in the manner stated also places in the hands of dealers and others the means whereby members of the public may be misled and deceived into erroneous and mistaken beliefs concerning respondent's business status and the source of the cloth of which respondent tailors the garments offered for sale and sold by it.

CONCLUSION

The aforesaid 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.

ORDER TO CEASE AND DESIST

This matter having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission and the other proceedings had, as recited in the findings as to the facts herein, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Scotch Woolen Mills, 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 and like merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Mills," or any other word or words of similar import or meaning, in its corporate or trade name or to designate, describe, or refer to its business; or representing or implying in any manner that it manufactures the cloth used in the articles of clothing sold or offered for sale by it; or representing or implying in any manner that it owns, operates, or controls any mills or manufacturing establishment in which the cloth used in said articles of clothing is produced.

2. Using the word "Scotch," or any simulation thereof, in its corporate or trade name when such corporate or trade name is used to designate or describe a business which deals principally in products not of Scotch origin; or representing or implying in any manner that articles of clothing or materials therein which are not of Scotch origin are of Scotch origin.

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
CHARLES A. BILGMAN, TRADING AS ILLINOIS
HERB COMPANY

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

Docket 4460. Complaint, Feb. 4, 1941—Decision, May 1, 1945

Where an individual engaged in the interstate sale and distribution of various medicinal and cosmetic preparations; through advertisements in newspapers and periodicals, and in almanacs, circulars, pamphlets, etc.—

- (a) Represented falsely that his "Calexa Herb Compound" was a cure and effective treatment for chronic constipation, bloating, gas, and sour stomach; that his "Baya Mate" was of substantial value as a tonic, promoted mental alertness and induced sound sleep, fed the nervous system, was of substantial benefit to the genital organs, and was of substantial value in combating alcoholism; and that his "Sonada Tonic" was a cure and competent treatment for headaches, gas, bloating, and biliousness, stimulated the assimilation of food, and was an effective tonic; The facts being said "Compound" and "Sonada Tonic" possessed no therapeutic value except insofar as their laxative properties might afford temporary relief, and said "Baya Mate" was wholly incapable of feeding the nervous system;
- (b) Represented falsely that its "Diatol" was a competent and effective antiseptic and astringent for use as a nasal and vaginal douche and as a gargle or mouth wash and for use in the treatment of wounds; that its "Verbita Tonic" was a competent and effective tonic and treatment for nervous disorders; and that its "Mari-Tabs" was an effective tonic and was of substantial therapeutic value for weak, run-down, tired, sluggish, restless, nervous and underweight persons;
- (c) Represented falsely that its "Tamrex Herb Compound" was a competent treatment for rheumatism and for the pains and discomforts associated therewith; that its "Lura" was of substantial value in the elimination of halitosis; and that its "Dorelle Herb Douche" was a competent vaginal douche;
- (d) Represented falsely that its "I.H.C. Pectora Compound" was a cure and competent treatment for asthma; that its "Coltsfoot" was a cure and effective treatment for pleurisy, bronchitis, asthmatic attacks, coughs, and congestions; and that its "Garlic Tablets" possessed substantial therapeutic value in the treatment of high blood pressure;
- (e) Represented falsely that its "Golden Seal" was an effective tonic for the stomach and liver, that it stimulated the circulation, and was of substantial therapeutic value in the treatment of nervousness; that its "Blue Vervain" constituted an effective treatment for simple nervous conditions; and that its "Golden Goose Ointment" was a cure or remedy for inflammation and congestion due to bronchial irritation of the chest and throat;
- (f) Represented falsely that its "Boneset" was a cure and competent treatment for colds, La Grippe and influenza; that its "Horsetail Rush" constituted a cure or remedy for diseases and disorders of the kidneys and bladder generally, removed stones from the kidneys and bladder, and was a cure or remedy for blood in the urine and for inflammation and catarrh of the kidneys and bladder; and that its "Life Everlasting" was a cure and effective treatment for colds;
- (g) Represented falsely that its "Mormon Herb Compound" was a competent and effective treatment for minor disorders of the female organs, including menstrual

disorders, and for simple skin eruptions; that its "Mullein Leaves" was a cure and effective treatment for catarrh; and that its "Podex Compound" Tablets was a remedy and competent treatment for sluggish liver;

- (h) Represented falsely that its "Red Clover Tea" was a cure and competent treatment for coughs; that its "Rexora Herb Compound" was a remedy and effective treatment for bladder weakness and bladder irritations; and that its "U. U. Herb Compound" was a cure and effective treatment for bladder weakness;

The facts being said "Compound" possessed no therapeutic value in excess of the slight relief it might afford by reason of its properties as a weak diuretic;

- (i) Represented falsely that its preparation composed of the herbs Wild Plum Bark, Coltsfoot Leaves, Wild Cherry Bark and Linden Flowers, was a competent and effective treatment for asthmatic attacks; its preparation composed of the herbs Marshmallow Root, Couch Grass, Kidney Liver Leaf and Juniper Berries, was a cure and effective treatment for bladder and urinary disorders; and its preparation composed of the herbs Blue Scull-cap, Blue Vervain, German Chamomile and Catnip Leaves was a competent treatment for nervousness;

- (j) Falsely represented that its preparation composed of the herbs May Apple, Cascara Bark, Black Root and Jamaica Ginger was a cure and effective treatment for sluggish liver; its preparation composed of the herbs Wahoo Bark, Rocky Mt. Grape, Black Cohosh and Wintergreen Leaves, was an effective treatment for rheumatic pains; and its preparation composed of the herbs Gentian Root, Cascara Bark, Colombo Root and Peruvian Bark was a cure for impotency;

- (k) Falsely represented that its preparation composed of the herbs Marshmallow, Couch Grass, Uva-ursi and Slippery Elm was a remedy and competent treatment for back pain and kidney strain; that its preparation composed of the herbs Yellow Dock Root, Dandelion Root, Red Clover and Burdock Root was capable of cleansing the blood of impurities; and that its preparation composed of the herbs Yarrow Plant, Blessed Thistle, Yellow Dock Root and Dandelion Root was a cure and effective treatment for anemia;

- (l) Represented falsely that its preparation composed of the herbs Blue Scull-cap, Catnip and Peppermint, was a cure and effective treatment for sleeplessness; that its preparation composed of the herbs Uva-ursi Leaves, Buchu Leaves, Horsetail Grass and Couch Grass constituted an effective treatment for bed wetting; that its preparation composed of the herbs Am. Sarsaparilla, Yellow Dock, Licorice Root and Boneset, was a remedy and competent treatment for catarrh; and that its preparation "I.H.C. Dorelle Hair Tonic" stimulated the growth of hair and prevented falling hair;

- (m) Represented that its preparation "Wahoo Bark" was a competent and effective treatment for dyspepsia, torpid liver, constipation and rheumatic pains, was a competent and effective tonic, and was safe to use;

The facts being said bark possessed no such therapeutic value in excess of such temporary relief as its laxative properties might afford; and it was not safe for use, as it had a powerful digitalis-like action on the heart, and its unsupervised use might produce severe toxic effects upon the heart and circulation;

- (n) Represented that its preparation "Geroeca Herb Compound" was a combination of roots and barks which was entirely safe for use;

The facts being said compound was not in all cases safe for use, as it contained the drug Mistletoe, and might cause serious injury to health when used under prescribed conditions, and in cases of pregnancy might cause abortion; and

- (o) Represented that its preparation "Trilax Herb Tea" was a competent and effective treatment for excess weight, and was entirely safe for use;

The facts being that said "Herb Tea" was of no value in a reducing program in excess of such slight assistance as it might afford by reason of its laxative properties, and

was not in all cases safe for use as it contained iodine and by reason thereof was capable of causing serious injury to health, particularly in cases of goiter or tuberculosis, tending in the former, to convert a benign adenoma into a toxic adenoma, and, in cases of arrested tuberculosis, to dissolve the fibrous tissues about the healed lesions and thereby to reactivate the tubercular process; and

- (p) Failed to reveal facts material in the light of the representations made in said advertisements of its "Wahoo Bark," "Geroca Herb Compound" and "Trilax Herb Tea," in that use of said preparations under prescribed or usual conditions might result in serious injury to health, as hereinbefore set forth;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such misrepresentations were true, and that the preparations "Wahoo Bark," "Geroca Herb Compound" and "Trilax Herb Tea" were safe for use, and thereby causing substantial purchase of his 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 in commerce.

Before *Mr. Randolph Preston*, trial examiner.

Mr. William L. Taggart for the Commission.

Mr. Murray Miller, 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 Charles A. Bilgman, individually, and trading as Illinois Herb 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, Charles A. Bilgman, is an individual, trading and doing business under the name and style of Illinois Herb Company with his office and principal place of business located at 542 South Dearborn Street in the city of Chicago, State of Illinois.

Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of various medicinal and cosmetic preparations in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes said preparations, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in various States of the United States other than the State of Illinois, and in the District of Columbia.

Respondent now maintains, and at all times mentioned herein has maintained, a course of trade in said preparations 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 the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his 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 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. Through 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 in almanacs, circulars, leaflets, pamphlets and other printed or written advertising literature, the respondent represents and has represented, directly or by implication:

1. That respondent's preparation *Calexa Herb Compound* is a cure or remedy for chronic constipation, bloating, gas, and sour stomach, and constitutes a competent and effective treatment therefor.

2. That respondent's preparation *Baya Mate* is of substantial value as a tonic, that it promotes mental alertness and induces sound sleep, that it feeds the nervous system, that it is of substantial benefit to the genital organs, and that it is of substantial value in combatting alcoholism.

3. That respondent's preparation *Sonada Tonic* is a cure or remedy for headaches, gas, bloating, and biliousness, and constitutes a competent and effective treatment therefor, and that it stimulates the assimilation of food; that it is a competent and effective tonic.

4. That respondent's preparation *Diatol* is a competent and effective antiseptic and astringent for use as a nasal and vaginal douche and as a gargle or mouth wash and for use in the treatment of wounds.

5. That respondent's preparation *Verbata Tonic* is a competent and effective tonic and a competent and effective treatment for nervous disorders.

6. That respondent's preparation *Mari-Tabs* is a competent and effective tonic and is of substantial therapeutic value for those who are weak, run-down, tired, sluggish, restless, nervous and underweight.

7. That respondent's preparation *Tamrex Herb Compound* is a competent and effective treatment for rheumatism and for the pains and discomforts associated therewith.

8. That respondent's preparation *Lura* is of substantial value in the elimination of halitosis.

9. That respondent's preparation *Dorelle Herb Douche* is a competent and effective vaginal douche.

10. That respondent's preparation *I.H.C. Pectora Compound* is a cure or remedy for asthma and constitutes a competent and effective treatment therefor.

11. That respondent's preparation *Coltsfoot* is a cure or remedy for pleurisy, bronchitis, asthmatic attacks, coughs, and congestions and constitutes a competent and effective treatment therefor.

12. That respondent's preparation *Garlic Tablets* possesses substantial therapeutic value in the treatment of high blood pressure.

13. That respondent's preparation *Golden Seal* is an effective tonic for the stomach and liver, that it stimulates the circulation, and that it is of substantial therapeutic value in the treatment of nervousness.

14. That respondent's preparation *Blue Vervain* constitutes a competent and effective treatment for simple nervous conditions.

15. That respondent's preparation *Golden Goose Ointment* is a cure or remedy for inflammation and congestion due to bronchial irritation of the chest and throat.

16. That respondent's preparation *Boneset* is a cure or remedy for colds, La Grippe and influenza, and constitutes a competent and effective treatment therefor.

17. That respondent's preparation *Horsetail Rush* constitutes a cure or remedy for diseases and disorders of the kidneys and bladder generally, that it removes stones from the kidneys and bladder, and that it is a cure or remedy for blood in the urine and for inflammation and catarrh of the kidneys and bladder.

18. That respondent's preparation *Life Everlasting* is a cure or remedy for colds and constitutes a competent and effective treatment therefor.

19. That respondent's preparation *Mormon Herb Compound* is a competent and effective treatment for minor disorders of the female organs, including menstrual disorders, and for simple skin eruptions.

20. That respondent's preparation *Mullein Leaves* is a cure or remedy for catarrh and constitutes a competent and effective treatment therefor.

21. That respondent's preparation *Podex Compound Tablets* is a cure or remedy for sluggish liver, and constitutes a competent and effective treatment therefor.

22. That respondent's preparation *Red Clover Tea* is a cure or remedy for coughs and constitutes a competent and effective treatment therefor.

23. That respondent's preparation *Rexora Herb Compound* is a cure or remedy for bladder weakness and bladder irritations, and constitutes a competent and effective treatment therefor.

24. That respondent's preparation *U. U. Herb Compound* is a cure or remedy for bladder weakness and constitutes a competent and effective treatment therefor.

25. That respondent's preparation composed of the herbs *Wild Plum Bark, Coltsfoot Leaves, Wild Cherry Bark* and *Linden Flowers*, is a competent and effective treatment for asthmatic attacks.

26. That respondent's preparation composed of the herbs *Marshmallow Root, Couch Grass, Kidney Liver Leaf* and *Juniper Berries*, is a cure or remedy for bladder and urinary disorders and constitutes a competent and effective treatment therefor.

27. That respondent's preparation composed of the herbs *Blue Scullcap, Blue Vervain, German Chamomile* and *Catnip Leaves*, is a competent and effective treatment for nervousness.

28. That respondent's preparation composed of the herbs *May Apple, Cascara Bark, Black Root* and *Jamaica Ginger*, is a cure or remedy for sluggish liver and constitutes a competent and effective treatment therefor.

29. That respondent's preparation composed of the herbs *Wahoo Bark, Rocky Mt. Grape, Black Cohosh* and *Wintergreen Leaves*, constitutes a competent and effective treatment for rheumatic pains.

30. That respondent's preparation composed of the herbs *Gentian Root, Cascara Bark, Colombo Root* and *Peruvian Bark*, is a cure or remedy for impotency.

31. That respondent's preparation composed of the herbs *Marshmallow, Couch Grass, Uvi Ursi* and *Slippery Elm*, is a cure or remedy for back pain and kidney strain and constitutes a competent and effective treatment therefor.

32. That respondent's preparation composed of the herbs *Yellow Dock Root, Dandelion Root, Red Clover* and *Burdock Root*, is capable of cleansing the blood of impurities.

33. That respondent's preparation composed of the herbs *Yarrow Plant, Blessed Thistle, Yellow Dock Root* and *Dandelion Root*, is a cure or

remedy for anaemia and constitutes a competent and effective treatment therefor.

34. That respondent's preparation composed of the herbs *Blue Scullcap*, *Catnip* and *Peppermint*, is a cure or remedy for sleeplessness and constitutes a competent and effective treatment therefor.

35. That respondent's preparation composed of the herbs *Uva Ursi Leaves*, *Buchu Leaves*, *Horsetail Grass* and *Couch Grass*, constitutes a competent and effective treatment for bed wetting.

36. That respondent's preparation composed of the herbs *Am. Sarsaparilla*, *Yellow Dock*, *Licorice Root* and *Bonesei*, is a cure or remedy for catarrh and constitutes a competent and effective treatment therefor.

37. That respondent's preparation *I.H.C. Dorelle Hair Tonic* stimulates the growth of hair and prevents falling hair.

38. That respondent's preparation *Wahoo Bark* is a competent and effective treatment for dyspepsia, torpid liver, constipation and rheumatic pains, that it is a competent and effective tonic, and that it is safe for use.

39. That respondent's preparation *Geroca Herb Compound* is a combination of roots and barks which is entirely safe for use.

40. That respondent's preparation *Trilax Herb Tea* is a competent and effective treatment for excess weight, and that said preparation is entirely safe for use.

PAR. 3. The aforesaid statements, representations, implications and claims, as well as others of similar import which have not been specifically set out herein, are grossly exaggerated, false and misleading, and constitute false advertisements. In truth and in fact:

1. Respondent's preparation *Calexia Herb Compound* is not a cure or remedy for constipation, bloating, gas, sour stomach or indigestion. Said preparation does not possess any therapeutic value in the treatment of constipation except insofar as the laxative properties of said preparation may afford temporary relief by assisting in the evacuation of the intestinal tract. Said preparation possesses no therapeutic value in the treatment of bloating, gas, sour stomach or indigestion in excess of affording temporary relief from constipation in those cases where such conditions are due to constipation.

2. Respondent's preparation *Baya Mate* is of no substantial therapeutic value as a tonic. It does not promote mental alertness nor induce sound sleep. It is wholly incapable of feeding the nervous system. It is of no substantial benefit to the genital organs nor does it possess any substantial value in the treatment of alcoholism.

3. Respondent's preparation *Sonada Tonic* is not a cure or remedy for headaches, gas, bloating or biliousness, nor does it stimulate the assimilation of food. Said preparation possesses no therapeutic value in the treatment of headaches, gas, bloating or biliousness, in excess of such temporary and palliative relief as it may afford by reason of its laxative properties in those cases in which said conditions are due to constipation. Said preparation possesses no therapeutic value as a tonic.

The use by the respondent of the word "tonic" to designate said preparation constitutes within itself a false and misleading representation that said preparation possesses substantial therapeutic value as a tonic.

4. Respondent's preparation *Diatol* is not a competent or effective antiseptic or astringent for use as a nasal or vaginal douche. It is of no substantial therapeutic value as a gargle or mouth wash, nor does it possess any substantial value in the treatment of wounds.

5. Respondent's preparation *Verbita Tonic* does not constitute a competent or effective tonic, nor does it possess any substantial therapeutic value in the treatment of nervous disorders.

The use by the respondent of the word "tonic" to designate said preparation constitutes within itself a false and misleading representation that said preparation possesses substantial therapeutic value as a tonic.

6. Respondent's preparation *Mari-Tabs* is not a competent or effective tonic, nor does its use constitute a competent or effective treatment for those who are weak, run-down, tired, sluggish, restless, nervous or underweight.

7. Respondent's preparation *Tamrex Herb Compound* is not a competent or effective treatment for rheumatism or for the pains or discomforts associated with such condition.

8. Respondent's preparation *Lura* is wholly incapable of eliminating halitosis. Said preparation has no effect upon halitosis other than to mask such condition temporarily.

9. Respondent's preparation *Dorelle Herb Douche* possesses no substantial value as a vaginal douche.

10. Respondent's preparation *I. H. C. Pectora Compound* does not constitute a cure or remedy for asthma, nor does it possess any substantial therapeutic value in the treatment thereof.

11. Respondent's preparation *Collsfoot* is not a cure or remedy for pleurisy, bronchitis, asthmatic attacks, coughs, or congestions, nor does it possess any substantial therapeutic value in the treatment of any of said conditions.

12. Respondent's preparation *Garlic Tablets* possesses no therapeutic value in the treatment of high blood pressure.

13. Respondent's preparation *Golden Seal* is not an effective tonic for the stomach or liver. It does not stimulate the circulation, nor does it possess any substantial therapeutic value in the treatment of nervousness.

14. Respondent's preparation *Blue Vervain* is wholly without therapeutic value in the treatment of nervous conditions.

15. Respondent's preparation *Golden Goose Ointment* does not constitute a cure or remedy for inflammation or congestion due to bronchial irritation of the chest, or throat, nor does said preparation possess any substantial therapeutic value in the treatment of such conditions.

16. Respondent's preparation *Boneset* is not a cure or remedy for colds, La Grippe or influenza, nor does said preparation possess any substantial therapeutic value in the treatment of such conditions.

17. Respondent's preparation *Horsetail Rush* does not constitute a cure or remedy for any diseases or disorders of the kidneys or bladder. It is wholly incapable of removing stones from the kidneys or bladder. It is not a cure or remedy for blood in the urine or for inflammation or catarrh of the kidneys or bladder.

18. Respondent's preparation *Life Everlasting* is not a cure or remedy for colds, nor does it constitute a competent or effective treatment for such condition.

19. Respondent's preparation *Mormon Herb Compound* is not a competent or effective treatment for any disorders of the female organs generally, or for menstrual disorders. It has no substantial therapeutic value in the treatment of skin eruptions.

20. Respondent's preparation *Mullein Leaves* does not constitute a cure or remedy for catarrh, nor does it possess any substantial therapeutic value in the treatment of such condition.

21. Respondent's preparation *Podex Compound Tablets* is not a cure or remedy for sluggish liver, nor does it possess any substantial therapeutic value in the treatment of such condition.

22. Respondent's preparation *Red Clover Tea* is not a cure or remedy for coughs, nor does it constitute a competent or effective treatment therefor.

23. Respondent's preparation *Rexora Herb Compound* does not constitute a cure or remedy or a competent or effective treatment for bladder weakness. Said preparation possesses no therapeutic value in the treatment of irritations of the bladder, in excess of such slight relief as it may afford by reason of its properties as a weak diuretic.

24. Respondent's preparation *U. U. Herb Compound* is not a cure or remedy for bladder weakness, nor does it possess any therapeutic value in the treatment of such condition.

25. Respondent's preparation composed of the herbs *Wild Plum Bark, Coltsfoot Leaves, Wild Cherry Bark* and *Linden Flowers*, is of no substantial therapeutic value in the treatment of asthmatic attacks.

26. Respondent's preparation composed of the herbs *Marshmallow Root, Couch Grass, Kidney Liver Leaf* and *Juniper Berries*, does not constitute a cure or remedy for bladder or urinary disorders, nor does said preparation possess any substantial therapeutic value in the treatment of such conditions.

27. Respondent's preparation composed of the herbs *Blue Scullcap, Blue Vervain, German Chamomile* and *Catnip Leaves*, possesses no substantial therapeutic value in the treatment of nervousness.

28. Respondent's preparation composed of the herbs *May Apple, Cascara Bark, Black Root* and *Jamaica Ginger*, does not constitute a cure or remedy for sluggish liver, nor does it possess any therapeutic value in the treatment of such condition.

29. Respondent's preparation composed of the herbs *Wahoo Bark, Rocky Mt. Grape, Black Cohosh* and *Wintergreen Leaves*, does not constitute a competent or effective treatment for rheumatic pains.

30. Respondent's preparation composed of the herbs *Gentian Root, Cascara Bark, Colombo Root* and *Peruvian Bark*, does not constitute a cure or remedy for impotency, nor does said preparation possess any therapeutic value in the treatment of such condition.

31. Respondent's preparation composed of the herbs *Marshmallow, Couch Grass, Uvi Urssi*, and *Slippery Elm*, is not a cure or remedy for back pain or kidney strain, nor does it possess any therapeutic value in the treatment of such conditions.

32. Respondent's preparation composed of the herbs *Yellow Dock Root, Dandelion Root, Red Clover* and *Burdock Root*, is wholly incapable of cleansing the blood of impurities.

33. Respondent's preparation composed of the herbs *Yarrow Plant, Blessed Thistle, Yellow Dock Root* and *Dandelion Root*, is not a cure or remedy for anaemia, nor does it possess any therapeutic value in the treatment of such condition.

34. Respondent's preparation composed of the herbs *Blue Scullcap, Catnip* and *Peppermint*, does not constitute a cure or remedy for sleeplessness, nor does it possess any substantial therapeutic value in the treatment of such condition.

35. Respondent's preparation composed of the herbs *Uva Urssi Leaves, Buchu Leaves, Horsetail Grass* and *Couch Grass*, is not a competent or effective treatment for bed wetting.

36. Respondent's preparation composed of the herbs *Am. Sarsaparilla*, *Yellow Dock*, *Licorice Root* and *Boneset*, does not constitute a cure or remedy for catarrh, nor does it possess any therapeutic value in the treatment thereof.

37. Respondent's preparation *I. H. C. Dorelle Hair Tonic* is wholly incapable of stimulating the growth of hair. It is of no value in preventing falling hair, except insofar as it may assist in the temporary removal of dandruff scales.

38. Respondent's preparation *Wahoo Bark* possesses no therapeutic value as a tonic, nor does it possess any therapeutic value in the treatment of rheumatic pains. It possesses no therapeutic value in the treatment of constipation in excess of such temporary relief as its laxative properties may afford by assisting in the temporary evacuation of the intestinal tract. Said preparation possesses no therapeutic value in the treatment of dyspepsia or torpid liver, in excess of such temporary relief as may be afforded by its laxative properties in those cases where such conditions are due to constipation.

Moreover, said preparation is not safe for use, as it is capable of causing serious injury to health, when used under the conditions prescribed in said advertisements or under such conditions as are customary or usual. *Wahoo Bark* has a powerful digitalis-like action on the heart, and its unsupervised use may produce severe toxic effects upon the heart and circulation, resulting in nausea, vomiting, diarrhea, dizziness, and general muscular weakness, with prostration.

39. Respondent's preparation *Geroca Herb Compound* is not in all cases safe for use, as it contains the drug *Mistletoe*, and may cause serious injury to health when used under the conditions prescribed in said advertisements or under such conditions as are customary or usual. The use of said preparation, as aforesaid, in the case of pregnant women, may cause contraction of the uterus, resulting possibly in abortion.

40. Respondent's preparation *Trilax Herb Tea* is not a competent or effective treatment for excess weight. It is of no therapeutic value in a reducing program in excess of such slight assistance as it may afford by reason of its laxative properties.

Said preparation is not in all cases safe for use, as it contains iodine and by reason thereof is capable of causing, in some cases, serious injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual. Said preparation should not be used by those having goiter or arrested tuberculosis. In cases of goiter the tendency of iodine is to convert a benign adenoma to a toxic adenoma. In cases of arrested tuberculosis the tendency of iodine is to dissolve the fibrous tissues about the healed lesions and thereby to reactivate the tubercular process.

PAR. 4. The advertisements with respect to the preparations *Wahoo Bark*, *Geroca Herb Compound* and *Trilax Herb Tea*, disseminated by the respondent as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations contained in said advertisements, and fail to reveal that the use of said preparations under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious injury to health.

PAR. 5. The use by the respondent of the aforesaid false advertisements with respect to his said product, disseminated as aforesaid, has the tend-

ency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the false and misleading representations, implications and claims contained in said advertisements are true, and that the preparations Wahoo Bark, Geroca Herb Compound and Trilax Herb Tea are safe for use. And respondent's said advertisements also have the tendency and capacity to, and do, cause a substantial number of the purchasing public to purchase respondent's products as a result of such erroneous and mistaken belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 4, 1941, issued, and on February 7, 1941, served its complaint in this proceeding upon the respondent, Charles A. Bilgman, trading as Illinois Herb 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, the Commission, by order 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, Charles A. Bilgman, is an individual, trading and doing business under the name and style of Illinois Herb Company with his office and principal place of business located at 542 South Dearborn Street in the city of Chicago, State of Illinois.

Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of various medicinal and cosmetic preparations in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes said preparations, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in various States of the United States other than the State of Illinois, and in the District of Columbia.

Respondent now maintains, and at all times mentioned herein has maintained, a course of trade in said preparations 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 the respondent has disseminated, and has caused the dissemination of, false advertise-

ments concerning his 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 respondent has also disseminated, and has caused 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. Through 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 in almanacs, circulars, leaflets, pamphlets and other printed or written advertising literature, the respondent represents and has represented, directly or by implication:

1. That respondent's preparation Calexa Herb Compound is a cure or remedy for chronic constipation, bloating, gas, and sour stomach, and constitutes a competent and effective treatment therefor.

2. That respondent's preparation Baya Mate is of substantial value as a tonic, that it promotes mental alertness and induces sound sleep, that it feeds the nervous system, that it is of substantial benefit to the genital organs, and that it is of substantial value in combatting alcoholism.

3. That respondent's preparation Sonada Tonic is a cure or remedy for headaches, gas, bloating, and biliousness, and constitutes a competent and effective treatment therefor, and that it stimulates the assimilation of food; that it is a competent and effective tonic.

4. That respondent's preparation Diatol is a competent and effective antiseptic and astringent for use as a nasal and vaginal douche and as a gargle or mouth wash and for use in the treatment of wounds.

5. That respondent's preparation Verbita Tonic is a competent and effective tonic and a competent and effective treatment for nervous disorders.

6. That respondent's preparation Mari-Tabs is a competent and effective tonic and is of substantial therapeutic value for those who are weak, run-down, tired, sluggish, restless, nervous and underweight.

7. That respondent's preparation Tamrex Herb Compound is a competent and effective treatment for rheumatism and for the pains and discomforts associated therewith.

8. That respondent's preparation Lura is of substantial value in the elimination of halitosis.

9. That respondent's preparation Dorelle Herb Douche is a competent and effective vaginal douche.

10. That respondent's preparation I.H.C. Pectora Compound is a cure or remedy for asthma and constitutes a competent and effective treatment therefor.

11. That respondent's preparation Coltsfoot is a cure or remedy for pleurisy, bronchitis, asthmatic attacks, coughs, and congestions and constitutes a competent and effective treatment therefor.

12. That respondent's preparation Garlic Tablets possesses substantial therapeutic value in the treatment of high blood pressure.

13. That respondent's preparation Golden Seal is an effective tonic for the stomach and liver, that it stimulates the circulation, and that it is of substantial therapeutic value in the treatment of nervousness.

14. That respondent's preparation Blue Vervain constitutes a competent and effective treatment for simple nervous conditions.

15. That respondent's preparation Golden Goose Ointment is a cure or remedy for inflammation and congestion due to bronchial irritation of the chest and throat.

16. That respondent's preparation Boneset is a cure or remedy for colds, La Grippe and Influenza, and constitutes a competent and effective treatment therefor.

17. That respondent's preparation Horsetail Rush constitutes a cure or remedy for diseases and disorders of the kidneys and bladder generally, that it removes stones from the kidneys and bladder, and that it is a cure or remedy for blood in the urine and for inflammation and catarrh of the kidneys and bladder.

18. That respondent's preparation Life Everlasting is a cure or remedy for colds and constitutes a competent and effective treatment therefor.

19. That respondent's preparation Mormon Herb Compound is a competent and effective treatment for minor disorders of the female organs, including menstrual disorders, and for simple skin eruptions.

20. That respondent's preparation Mullein Leaves is a cure or remedy for catarrh and constitutes a competent and effective treatment therefor.

21. That respondent's preparation Podex Compound Tablets is a cure or remedy for sluggish liver, and constitutes a competent and effective treatment therefor.

22. That respondent's preparation Red Clover Tea is a cure or remedy for coughs and constitutes a competent and effective treatment therefor.

23. That respondent's preparation Rexora Herb Compound is a cure or remedy for bladder weakness and bladder irritations, and constitutes a competent and effective treatment therefor.

24. That respondent's preparation U. U. Herb Compound is a cure or remedy for bladder weakness and constitutes a competent and effective treatment therefor.

25. That respondent's preparation composed of the herbs Wild Plum Bark, Coltsfoot Leaves, Wild Cherry Bark and Linden Flowers, is a competent and effective treatment for asthmatic attacks.

26. That respondent's preparation composed of the herbs Marsh-mallow Root, Couch Grass, Kidney Liver Leaf and Juniper Berries, is a cure or remedy for bladder and urinary disorders and constitutes a competent and effective treatment therefor.

27. That respondent's preparation composed of the herbs Blue Scullcap, Blue Vervain, German Chamomile and Catnip Leaves is a competent and effective treatment for nervousness.

28. That respondent's preparation composed of the herbs May Apple, Cascara Bark, Black Root and Jamaica Ginger is a cure or remedy for sluggish liver and constitutes a competent and effective treatment therefor.

29. That respondent's preparation composed of the herbs Wahoo Bark, Rocky Mt. Grape, Black Cohosh and Wintergreen Leaves, constitutes a competent and effective treatment for rheumatic pains.

30. That respondent's preparation composed of the herbs Gentian Root, Cascara Bark, Colombo Root and Peruvian Bark is a cure or remedy for impotency.

31. That respondent's preparation composed of the herbs Marshmallow, Couch Grass, Uva-ursi and Slippery Elm is a cure or remedy for back pain and kidney strain and constitutes a competent and effective treatment therefor.

32. That respondent's preparation composed of the herbs Yellow Dock Root, Dandelion Root, Red Clover and Burdock Root is capable of cleansing the blood of impurities.

33. That respondent's preparation composed of the herbs Yarrow Plant, Blessed Thistle, Yellow Dock Root and Dandelion Root is a cure or remedy for anemia and constitutes a competent and effective treatment therefor.

34. That respondent's preparation composed of the herbs Blue Scullcap, Catnip and Peppermint, is a cure or remedy for sleeplessness and constitutes a competent and effective treatment therefor.

35. That respondent's preparation composed of the herbs Uva-ursi Leaves, Buchu Leaves, Horsetail Grass and Couch Grass constitutes a competent and effective treatment for bed wetting.

36. That respondent's preparation composed of the herbs Am. Sarsaparilla, Yellow Dock, Licorice Root and Boneset, is a cure or remedy for catarrh and constitutes a competent and effective treatment therefor.

37. That respondent's preparation I.H.C. Dorelle Hair Tonic stimulates the growth of hair and prevents falling hair.

38. That respondent's preparation Wahoo Bark is a competent and effective treatment for dyspepsia, torpid liver, constipation and rheumatic pains, that it is a competent and effective tonic, and that it is safe to use.

39. That respondent's preparation Geroca Herb Compound is a combination of roots and barks which is entirely safe for use.

40. That respondent's preparation Trilax Herb Tea is a competent and effective treatment for excess weight, and that said preparation is entirely safe for use.

PAR. 3. The aforesaid statements, representations, implications and claims, as well as others of similar import which have not been specifically set out herein, are grossly exaggerated, false and misleading, and constitute false advertisements. In truth and in fact:

1. Respondent's preparation Calexa Herb Compound is not a cure or remedy for constipation, bloating, gas, sour stomach or indigestion. Said preparation does not possess any therapeutic value in the treatment of constipation except insofar as the laxative properties of said preparation may afford temporary relief by assisting in the evacuation of the intestinal tract.

2. Respondent's preparation Baya Mate is of no substantial therapeutic value as a tonic. It does not promote mental alertness nor induce sound sleep. It is wholly incapable of feeding the nervous system. It is of no substantial benefit to the genital organs, nor does it possess any substantial value in the treatment of alcoholism.

3. Respondent's preparation Sonada Tonic is not a cure or remedy for headaches, gas, bloating or biliousness, nor does it stimulate the assimilation of food. Said preparation possesses no therapeutic value in the treatment of headaches, gas, bloating or biliousness, in excess of such temporary and palliative relief as it may afford by reason of its laxative properties in those cases in which said conditions are due to constipation. Said preparation possesses no therapeutic value as a tonic.

The use by the respondent of the word "tonic" to designate said preparation constitutes within itself a false and misleading representation that said preparation possesses substantial therapeutic value as a tonic.

4. Respondent's preparation Diatol is not a competent or effective antiseptic, or astringent, for use as a nasal or vaginal douche. It is of no substantial therapeutic value as a gargle or mouth wash, nor does it possess any substantial value in the treatment of wounds.

5. Respondent's preparation Verbita Tonic does not constitute a competent or effective tonic, nor does it possess any substantial therapeutic value in the treatment of nervous disorders.

The use by the respondent of word "tonic" to designate said preparation constitutes within itself a false and misleading representation that said preparation possesses substantial therapeutic value as a tonic.

6. Respondent's preparation Mari-Tabs is not a competent or effective tonic, nor does its use constitute a competent or effective treatment for those who are weak, run-down, tired, sluggish, restless, nervous or underweight.

7. Respondent's preparation Tamrex Herb Compound is not a competent or effective treatment for rheumatism or for the pains or discomforts associated with such condition.

8. Respondent's preparation Lura is wholly incapable of eliminating halitosis. Said preparation has no effect upon halitosis other than to mask such condition temporarily.

9. Respondent's preparation Dorelle Herb Douche possesses no substantial value as a vaginal douche.

10. Respondent's preparation I.H.C. Pectora Compound does not constitute a cure or remedy for asthma, nor does it possess any substantial therapeutic value in the treatment thereof.

11. Respondent's preparation Coltsfoot is not a cure or remedy for pleurisy, bronchitis, asthmatic attacks, coughs, or congestions, nor does it possess any substantial therapeutic value in the treatment of any of said conditions.

12. Respondent's preparation Garlic Tablets possesses no therapeutic value in the treatment of high blood pressure.

13. Respondent's preparation Golden Seal is not an effective tonic for the stomach or liver. It does not stimulate the circulation, nor does it possess any substantial therapeutic value in the treatment of nervousness.

14. Respondent's preparation Blue Vervain is wholly without therapeutic value in the treatment of nervous conditions.

15. Respondent's preparation Golden Goose Ointment does not constitute a cure or remedy for inflammation or congestion due to bronchial irritation of the chest, or throat, nor does said preparation possess any substantial therapeutic value in the treatment of such conditions.

16. Respondent's preparation Boneset is not a cure or remedy for colds, La Grippe or influenza, nor does said preparation possess any substantial therapeutic value in the treatment of such conditions.

17. Respondent's preparation Horsetail Rush does not constitute a cure or remedy for any diseases or disorders of the kidneys or bladder. It is wholly incapable of removing stones from the kidneys or bladder. It is not a cure or remedy for blood in the urine or for inflammation or catarrh of the kidneys or bladder.

18. Respondent's preparation Life Everlasting is not a cure or remedy for colds, nor does it constitute a competent or effective treatment for such condition.

19. Respondent's preparation Mormon Herb Compound is not a competent or effective treatment for any disorders of the female organs generally, or for menstrual disorders. It has no substantial therapeutic value in the treatment of skin eruptions.

20. Respondent's preparation Mullein Leaves does not constitute a cure or remedy for catarrh, nor does it possess any substantial therapeutic value in the treatment of such condition.

21. Respondent's preparation Podex Compound Tablets is not a cure or remedy for sluggish liver, nor does it possess any substantial therapeutic value in the treatment of such condition.

22. Respondent's preparation Red Clover Tea is not a cure or remedy for coughs, nor does it constitute a competent or effective treatment therefor.

23. Respondent's preparation Rexora Herb Compound does not constitute a cure or remedy or a competent or effective treatment for bladder weakness. Said preparation possesses no therapeutic value in the treatment of irritations of the bladder in excess of such slight relief as it may afford by reason of its properties as a weak diuretic.

24. Respondent's preparation U. U. Herb Compound is not a cure or remedy for bladder weakness, nor does it possess any therapeutic value in the treatment of such condition.

25. Respondent's preparation composed of the herbs Wild Plum Bark, Coltsfoot Leaves, Wild Cherry Bark and Linden Flowers is of no substantial therapeutic value in the treatment of asthmatic attacks.

26. Respondent's preparation composed of the herbs Marshmallow Root, Couch Grass, Kidney Liver Leaf, and Juniper Berries does not constitute a cure or remedy for bladder or urinary disorders, nor does said preparation possess any substantial therapeutic value in the treatment of such conditions.

27. Respondent's preparation composed of the herbs Blue Scullcap, Blue Vervain, German Chamomile and Catnip Leaves possesses no substantial therapeutic value in the treatment of nervousness.

28. Respondent's preparation composed of the herbs May Apple, Cascara Bark, Black Root and Jamaica Ginger, does not constitute a cure or remedy for sluggish liver, nor does it possess any therapeutic value in the treatment of such condition.

29. Respondent's preparation composed of the herbs Wahoo Bark, Rocky Mt. Grape, Black Cohosh and Wintergreen Leaves does not constitute a competent or effective treatment for rheumatic pains.

30. Respondent's preparation composed of the herbs Gentian Root, Cascara Bark, Colombo Root and Peruvian Bark, does not constitute a cure or remedy for impotency, nor does said preparation possess any therapeutic value in the treatment of such condition.

31. Respondent's preparation composed of the herbs Marshmallow, Couch Grass, Uva-ursi, and Slippery Elm is not a cure or remedy for back pain or kidney strain, nor does it possess any therapeutic value in the treatment of such conditions.

32. Respondent's preparation composed of the herbs Yellow Dock Root, Dandelion Root, Red Clover, and Burdock Root is wholly incapable of cleansing the blood of impurities.

33. Respondent's preparation composed of the herbs Yarrow Plant, Blessed Thistle, Yellow Dock Root and Dandelion Root is not a cure or remedy for anemia, nor does it possess any therapeutic value in the treatment of such condition.

34. Respondent's preparation composed of the herbs Blue Scullcap, Catnip and Peppermint, does not constitute a cure or remedy for sleeplessness, nor does it possess any substantial therapeutic value in the treatment of such condition.

35. Respondent's preparation composed of the herbs Uva-ursi Leaves, Buchu Leaves, Horsetail Grass and Couch Grass is not a competent or effective treatment for bed wetting.

36. Respondent's preparation composed of the herbs Am. Sarsaparilla, Yellow Dock, Licorice Root and Boneset does not constitute a cure or

remedy for catarrh, nor does it possess any therapeutic value in the treatment thereof.

37. Respondent's preparation I.H.C. Dorelle Hair Tonic is wholly incapable of stimulating the growth of hair. It is of no value in preventing falling hair, except insofar as it may assist in the temporary removal of dandruff scales.

38. Respondent's preparation Wahoo Bark possesses no therapeutic value as a tonic, nor does it possess any therapeutic value in the treatment of rheumatic pains. It possesses no therapeutic value in the treatment of constipation in excess of such temporary relief as its laxative properties may afford in assisting in the temporary evacuation of the intestinal tract. Said preparation is not safe for use, as it is capable of causing serious injury to health, when used under the conditions prescribed in said advertisements or under such conditions as are customary or usual. Wahoo Bark has a powerful digitalis-like action on the heart, and its unsupervised use may produce severe toxic effects upon the heart and circulation, resulting in nausea, vomiting, diarrhea, dizziness, and general muscular weakness, with prostration.

39. Respondent's preparation Geroca Herb Compound is not in all cases safe for use, as it contains the drug Mistletoe, and may cause serious injury to health when used under the conditions prescribed in said advertisements or under such conditions as are customary or usual. The use of said preparation, as aforesaid, in the case of pregnant women, may cause contraction of the uterus, resulting possibly in abortion.

40. Respondent's preparation Trilax Herb Tea is not a competent or effective treatment for excess weight. It is of no therapeutic value in a reducing program in excess of such slight assistance as it may afford by reason of its laxative properties.

Said preparation is not in all cases safe for use, as it contains iodine and by reason thereof is capable of causing, in some cases, serious injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual. Said preparation should not be used by those having goiter or tuberculosis. In cases of goiter the tendency of iodine is to convert a benign adenoma into a toxic adenoma. In cases of arrested tuberculosis the tendency of iodine is to dissolve the fibrous tissues about the healed lesions and thereby to reactivate the tubercular process.

PAR. 4. The advertisements with respect to the preparations Wahoo Bark, Geroca Herb Compound and Trilax Herb Tea, disseminated by the respondent as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations contained in said advertisements, and fail to reveal that the use of said preparations under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious injury to health.

PAR. 5. The use by the respondent of the aforesaid false advertisements with respect to his said products, 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 the false and misleading representations, implications and claims contained in said advertisements are true, and that the preparations Wahoo Bark, Geroca Herb Compound and Trilax Herb Tea are safe for use. And respondent's said advertisements also have the tendency and capacity to,

Order

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and do, cause a substantial number of the purchasing public to purchase respondent's products as a result 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 answer of the respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Charles A. Bilgman, individually, and trading as Illinois Herb 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 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 any other name or names, do forthwith cease and desist from, directly or indirectly,

I. 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:

1. That the preparation Calexa Herb Compound is a cure or remedy for constipation, bloating, gas, sour stomach, or indigestion; or that said preparation possesses any therapeutic value in the treatment of constipation in excess of providing temporary relief from constipation by reason of its laxative properties.

2. That the preparation Baya Mate has any substantial therapeutic value as a tonic; that it promotes mental alertness or induces sound sleep; that it is capable of feeding the nervous system; that it is of substantial benefit to the genital organs; or that it possesses substantial value in the treatment of alcoholism.

3. That the preparation Sonada Tonic is a cure or remedy for headache, gas, bloating, or biliousness; that it stimulates the assimilation of food; or that said preparation possesses therapeutic value as a tonic.

4. That the preparation Diatol is a competent or effective antiseptic or astringent for use as a nasal or vaginal douche; that it possesses any substantial therapeutic value as a gargle or mouth wash; or that it possesses substantial value in the treatment of wounds.

5. That the preparation Verbita Tonic constitutes a competent or effective tonic, or that it possesses therapeutic value in the treatment of nervous disorders.

6. That the preparation Mari-Tabs is a competent or effective tonic, or that its use constitutes a competent or effective treatment for those who

are weak, run-down, tired, sluggish, restless, nervous, or underweight.

7. That the preparation Tamrex Herb Compound is a competent or effective treatment for rheumatism or for the pains or discomforts associated with such condition.

8. That the preparation Lura is capable of eliminating halitosis or that it has any effect upon halitosis in excess of temporarily masking such condition.

9. That the preparation Dorelle Herb Douche possesses any substantial value as a vaginal douche.

10. That the preparation I.H.C. Pectora Compound constitutes a cure or remedy for asthma or that it possesses any substantial therapeutic value in the treatment of asthma.

11. That the preparation Coltsfoot is a cure or remedy for pleurisy, bronchitis, asthmatic attacks, coughs, or congestions or that it possesses any substantial therapeutic value in the treatment of any of said conditions.

12. That the preparation Garlic Tablets has any therapeutic value in the treatment of high blood pressure.

13. That the preparation Golden Seal is an effective tonic for the stomach or liver; or that it will stimulate the circulation or that it possesses any substantial therapeutic value in the treatment of nervousness.

14. That the preparation Blue Vervain has any therapeutic value in the treatment of nervous conditions.

15. That the preparation Golden Goose Ointment constitutes a cure or remedy for inflammation or congestion due to bronchial irritation of the chest or throat or that it has any therapeutic value in the treatment of such conditions.

16. That the preparation Boneset is a cure or remedy for colds, La Grippe, or influenza or that it possesses any substantial therapeutic value in the treatment of such conditions.

17. That the preparation Horsetail Rush constitutes a cure or remedy for any disease or disorder of the kidneys or bladder; that it is capable of removing stones from the kidneys or bladder; or that it is a cure or remedy for blood in the urine or for inflammation or catarrh of the kidneys or bladder.

18. That the preparation Life Everlasting is a cure or remedy for colds, or that it constitutes a competent or effective treatment for such conditions.

19. That the preparation Mormon Herb Compound is a competent or effective treatment for any disorders of the female organs or for menstrual disorders; or that it has any substantial therapeutic value in the treatment of skin eruptions.

20. That the preparation Mullein Leaves constitutes a cure or remedy for catarrh or that it possesses any substantial therapeutic value in the treatment of such condition.

21. That the preparation Podex Compound Tablets is a cure or remedy for sluggish liver, or that it possesses any substantial therapeutic value in the treatment of such condition.

22. That the preparation Red Clover Tea is a cure or remedy for coughs, or that said preparation constitutes a competent or effective treatment therefor.

23. That the preparation Rexora Herb Compound is a cure or remedy or constitutes a competent or effective treatment for bladder weakness; or

that it possesses any therapeutic value in the treatment of irritations of the bladder, in excess of such slight relief as may be afforded by the use of a weak diuretic.

24. That the preparation U. U. Herb Compound is a cure or remedy for bladder weakness, or that it possesses any therapeutic value in the treatment of such condition.

25. That the preparation composed of the herbs Wild Plum Bark, Coltsfoot Leaves, Wild Cherry Bark, and Linden Flowers has any substantial therapeutic value in the treatment of asthmatic attacks.

26. That the preparation composed of the herbs Marshmallow Root, Couch Grass, Kidney Liver Leaf and Juniper Berries, constitutes a cure or remedy for bladder or urinary disorders, or that it possesses any substantial therapeutic value in the treatment of such conditions.

27. That the preparation composed of the herbs Blue Scullcap, Blue Vervain, German Chamomile, and Catnip Leaves possesses any substantial therapeutic value in the treatment of nervousness.

28. That the preparation composed of the herbs May Apple, Cascara Bark, Black Root, and Jamaica Ginger constitutes a cure or remedy for sluggish liver, or that it possesses any therapeutic value in the treatment of such condition.

29. That the preparation composed of the herbs Wahoo Bark, Rocky Mt. Grape, Black Cohosh, and Wintergreen Leaves constitutes a competent or effective treatment for rheumatic pains.

30. That the preparation composed of the herbs Gentian Root, Cascara Bark, Colombo Root, and Peruvian Bark is a cure or remedy for impotency, or that it possesses any therapeutic value in the treatment of such condition.

31. That the preparation composed of the herbs Marshmallow, Couch Grass, Uva-ursi, and Slippery Elm is a cure or remedy for back pain or kidney strain, or that it possesses any therapeutic value in the treatment of such conditions.

32. That the preparation composed of the herbs Yellow Dock Root, Dandelion Root, Red Clover, and Burdock Root is capable of cleansing the blood of impurities.

33. That the preparation composed of the herbs Yarrow Plant, Blessed Thistle, Yellow Dock Root, and Dandelion Root is a cure or remedy for anemia, or that it possesses any therapeutic value in the treatment of such condition.

34. That the preparation composed of the herbs Blue Scullcap, Catnip, and Peppermint constitutes a cure or remedy for sleeplessness, or that it possesses any substantial therapeutic value in the treatment of such condition.

35. That the preparation composed of the herbs Uva-ursi Leaves, Buchu Leaves, Horsetail Grass, and Couch Grass is a competent or effective treatment for bed wetting.

36. That the preparation composed of the herbs Am. Sarsaparilla, Yellow Dock, Licorice Root, and Boneset constitutes a cure or remedy for catarrh, or that it possesses any therapeutic value in the treatment thereof.

37. That the preparation I.H.C. Dorelle Hair Tonic is capable of stimulating the growth of hair, or that it is of any value in preventing falling hair, except insofar as it may assist in the temporary removal of dandruff scales.

38. That the preparation Wahoo Bark possesses any therapeutic value as a tonic, or that it possesses any therapeutic value in the treatment of

rheumatic pains; that it possesses any therapeutic value in the treatment of constipation in excess of providing temporary relief by reason of its laxative qualities; or that said preparation Wahoo Bark is harmless and safe in use.

39. That the preparation Gerocha Herb Compound is harmless and safe in use.

40. That the preparation Trilax Herb Tea is a competent or effective treatment for excess weight, or possesses any therapeutic value in a reducing program in excess of such slight assistance as it may afford by reason of its laxative properties; or that the said preparation is harmless and safe in use.

II. 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:

1. That the unsupervised use of the preparation Wahoo Bark may produce severe toxic effects upon the heart and circulation;

2. That the use of the preparation Gerocha Herb Compound may cause serious injury to health.

3. That the preparation Trilax Herb Tea should not be used by persons having goiter or tuberculosis and that to do so may result in serious injury to health.

Provided, however, that advertisements relating to the preparations designated in this paragraph 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 or in the labeling, contain a warning to the above effect.

III. Disseminating or causing to be disseminated any advertisements by any means for the purpose of inducing or 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, which advertisements contain any representation prohibited by paragraph I hereof or which fail to comply with the affirmative requirement set forth in paragraph II hereof.

IV. Using the word "tonic" alone or in association with any other word or words to designate, describe, or refer to any preparation which is not a tonic and which does not produce any general tonic effect upon the body or which does not possess any substantial therapeutic value as a tonic.

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

EDWIN M. FREEMAN, WILLIAM A. FREEMAN AND MICHAEL
J. FREEMAN, TRADING AS FREEMAN & FREEMAN

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

Docket 4735. Complaint, Mar. 18, 1942—Decision, May 2, 1945

Where three individuals engaged in manufacture and interstate sale of an automobile polish or paste which was designated "Porcelainize" and which they sold through wholesale jobbers, distributors, garages, and filling stations, for sale to the ultimate consumer-purchaser only "by the job" in units packaged for use in treating only one car; through statements on labels on the product and in advertising circulars, catalogs and periodicals and other matter;

Represented that said product was not an automobile polish but, instead, had properties which structurally changed the finish of the automobile, imparting to it a hard, smooth finish comparable to that produced in the annealing of porcelain, and that use thereof would prevent oxidation of the finish under all conditions of weather, make it more resistant to scratching, preserve the color and finish, and restore the finish of old cars;

The facts being said "Porcelainize" was an automobile polish and contained no ingredients similar to those found in porcelain; it contained very fine abrasives, which made the surface smooth, and polished by removing a portion of the finish; it had no properties which could structurally change the finish of an automobile or impart to it a hard, smooth finish comparable to that produced in the annealing of porcelain; and use thereof would not prevent oxidation of the finish or harden the paint or finish so as to make it more resistant to scratching, nor preserve the color or finish of a car or restore the finish to old cars;

With the effect of misleading and deceiving prospective purchasers thereof into the mistaken belief that the said representations were true and of causing a substantial portion of them, because of such belief, to purchase a substantial quantity of their said product:

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

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

Mr. James M. Hammond and *Mr. D. E. Hoopingarner* for the Commission.

Honorable Lowell B. Mason, 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 Edwin M. Freeman, William A. Freeman and Michael J. Freeman, individually, and trading as Freeman & Freeman, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Edwin M. Freeman, William A. Freeman and Michael J. Freeman, are individuals, trading under the name Freeman & Freeman, with their principal office and place of business at 696 South Broadway, Denver, Colo.

PAR. 2. Respondents are now, and for more than three years last past have been, engaged in manufacturing, selling and distributing an automobile polish or paste designated "Porcelainize" which is used in applying a finish on painted exterior surfaces of automobiles. Said automobile polish or paste is sold in units through wholesale jobbers, distributors, garages and filling stations and is used by garages and filling stations who sell the said units to the ultimate purchaser in the form of an applied polish or paste on the surface of an automobile. Said units are so packaged that they are for use in completing, treating or polishing the finish on only one car and said units are sold to the ultimate consumer "by the job" only.

Respondents cause and have caused their said product, when sold, to be transported from their aforesaid place of business in the State of Colorado to purchasers thereof located in various States of the United States other than the State of Colorado and in the District of Columbia.

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

PAR. 3. In the course and conduct of their business aforesaid, and for the purpose of inducing the purchase of their said product, respondents, through labels appearing on said product and through advertising circulars, catalogs and periodicals having a general circulation, and in other printed or written matter, all of which are distributed among prospective customers in the various States of the United States and in the District of Columbia, have made misleading statements and representations concerning their said product. Among such misleading statements and representations as to said product are the following:

Porcelainize

Trade Mark

PORCELAINIZE is NOT A POLISH, wax or coating. The finish is changed structurally. It prevents oxidation of the finish and makes it more resistant to scratching.

The care of the finish of an automobile after PORCELAINIZING is like the care of a bathtub; * *.

The care of a Porcelainized finish is as simple as the care of a porcelain dish.

Immune to water spotting.

Immune to road tar, tree sap, bug juice, road oil.

Makes paint finish more durable.

It does not hold gritty surface dirt.

Today's automobile paint finishes, fine as they are, are subject to deterioration and fading from the ultra-violet and infra-red rays of the sun. Heat and extreme weather conditions are contributing factors, too.

The Porcelainized process overcomes these difficulties by providing a hard and mirror-like paint surface * * *.

Chemically, and without heat, Porcelainize unites the structure of the paint so tightly that the ordinary lacquer finish of a car becomes a hard and mirror-like surface. PORCELAINIZE ELIMINATES THE PORES.

Porcelainize is a black, jelly-like substance which, astonishing as it may seem, actually changes the finish structurally.

OXIDATION AND DULLING OF THE FINISH IS PREVENTED.

Ultra-violet rays of the sun (the most destructive force to finish), heat, rain, snow, intense cold, rapid changes in temperature, fog, salt scum, and road oil are successfully combatted by Porcelainize.

Porcelainize removes none of the original finish and does not itself become a part of the finish. No Porcelainize is left on the car.

PORCELAINIZE PRESERVES COLOR AND FINISH FOR YEARS.

To restore the original finish of an old car.

An old car, the paint surface of which is still intact, even though faded, can be restored to new car appearance by Porcelainizing.

PAR. 4. Through the use of the statements and representations set forth in paragraph 3 hereof, and others similar thereto not specifically set out herein, respondents have represented that their automobile polish or paste designated "Porcelainize" is porcelain, and that its use produces a porcelain finish or a finish comparable to porcelain. Through the use of the trade name "Porcelainize," on their said product, respondents represents and imply that their said product is in fact porcelain or possesses the attributes of porcelain. Respondents, through the use of the statements, "It is not a wax, polish or coating," and "Porcelainize is a treatment which changes the paint finish structurally," accentuates the representations and implications created through the use of its trade name "Porcelainize." Through said statements respondents represent that the use of said product produces a car finish immune to water spotting, road tar, tree sap, bug juice, road oil and one that will not hold gritty surface dirt. Respondents represent that the use of said product will restore the original finish to old cars and will prevent oxidization of the finish under all conditions of weather. It also represents that the use of said product will not remove any of the original finish, and that it chemically unites the structure of the paint, thereby changing the finish of a car structurally.

PAR. 5. In truth and in fact, respondents' product "porcelainize" is an automobile polish or paste; it is not porcelain and it will not produce a porcelain finish, nor a finish comparable to porcelain. The finish produced by use of respondents' said product is not comparable to that produced in the annealing of porcelain. The use of said product will not make a car's finish immune to water spotting, road tar, tree sap, bug juice or road oil. A finish to which said product is applied will hold gritty surface dirt. Its use will not restore the original finish or color to an automobile unless the original color still exists underneath the surface layer and it will not prevent oxidization of finish. The ingredients in said product are such that it acts as a buffing or light grinding compound and it may grind off the paint or enamel surface so as to give the same a smooth, glassy or mirror-like finish, but there are no structural changes in the finish of a car to which it is applied. Said product does not chemically or otherwise unite the structure of the paint to which it is applied. There is no consistent differences in the nature or degree of weathering destruction to finishes to which Porcelainize is applied and those to which the same was not applied.

PAR. 6. The aforesaid acts and practices of the respondents in connection with the offering for sale, sale and distribution of their said product have had, and now have, the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers thereof into the erroneous and mistaken belief that the aforesaid misleading and deceptive representations are true and cause a substantial portion of the purchasing pub-

lic, because of said mistaken and erroneous belief so engendered, to purchase a substantial quantity of respondents' said product, to their injury and to the injury of the public.

PAR. 7. The aforesaid acts and practices of the respondents are all to the prejudice and injury of the public and constitute unfair 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 18, 1942, issued, and subsequently served, its complaint in this proceeding upon the respondents, Edwin M. Freeman, William A. Freeman, and Michael J. Freeman, individually, and trading as Freeman & Freeman, 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, this proceeding regularly came on for final hearing before the Commission upon said complaint, testimony and other evidence, answer to the complaint, 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, finds that this proceeding is in the interest 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, Edwin M. Freeman, William A. Freeman, and Michael J. Freeman, are individuals, trading under the name Freeman & Freeman, with their principal office and place of business at 696 South Broadway, Denver, Colo.

PAR. 2. Respondents are now, and for several years last past have been, engaged in manufacturing, selling, and distributing an automobile polish or paste designated "Porcelainize." Said automobile polish or paste is sold in units through wholesale jobbers, distributors, garages, and filling stations and is used by garages and filling stations that sell the said units to the ultimate purchaser in the form of an applied polish or paste on the surface of an automobile. Said units are so packaged that they are for use in completing, treating, or polishing the finish on only one car, and said units are sold to the ultimate consumer "by the job" only.

Respondents cause and have caused their said product, when sold, to be transported from their aforesaid place of business in the State of Colorado to purchasers thereof located in various States of the United States other than the State of Colorado and in the District of Columbia.

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

PAR. 3. In the course and conduct of their business aforesaid, and for the purpose of inducing the purchase of their said product, respondents, through labels appearing on said product and through advertising circulars, catalogs, and periodicals having a general circulation, and in other printed or written matter, all of which are distributed among prospective customers in the various States of the United States and in the District of Columbia, have made misleading statements and representations concerning their said product. Among such misleading statements and representations as to said product are the following:

PORCELAINIZE is NOT A POLISH, wax or coating. The finish is changed structurally. It prevents oxidation of the finish and makes it more resistant to scratching.

The care of the finish of an automobile after PORCELAINIZING is like the care of a bathtub; * * *.

The care of a Porcelainized finish is as simple as the care of a porcelain dish.

Immune to water spotting.

Makes paint finish more durable.

It does not hold gritty surface dirt.

PORCELAINIZE ELIMINATES THE PORES.

Porcelainize is a black, jelly-like substance which, astounding as it may seem, actually changes the finish structurally.

OXIDATION AND DULLING OF THE FINISH IS PREVENTED.

Ultra-violet rays of the sun (the most destructive force to finish), heat, rain, snow, intense cold, rapid changes in temperature, fog, salt scum, and road oil are successfully, combated by Porcelainize.

Porcelainize removes none of the original finish and does not itself become a part of the finish. No Porcelainize is left on the car.

PORCELAINIZE PRESERVES COLOR AND FINISH FOR YEARS.

To restore the original finish of an old car.

An old car, the paint surface of which is still intact, even though faded, can be restored to new car appearance by Porcelainizing.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents represent that said product is not an automobile polish but, instead, has properties which structurally change the finish of the automobile to which applied, imparting to it a hard, smooth finish comparable to that produced in the annealing of porcelain and that its use will prevent oxidation of the finish under all conditions of weather, make it more resistant to scratching, preserve the color and finish, and restore the finish of old cars.

PAR. 5. Respondents' product, Porcelainize, is an automobile polish and contains no ingredients similar to those found in porcelain. This product contains very fine abrasives, which have the effect of making the surface smooth and polished by removing a portion of the surface finish. Respondents' product has no properties which can structurally change the finish of an automobile to which applied or impart to it a hard, smooth finish comparable to that produced in the annealing of porcelain. The use of this product will not prevent oxidation of the finish or harden the paint or finish on the automobile so as to make it more resistant to scratching. The use of this product will not preserve the color or finish of a car or restore the finish to old cars.

PAR. 6. The aforesaid acts and practices of the respondents in connection with the offering for sale, sale, and distribution of their said product have had, and now have, the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers thereof into the erroneous and mistaken belief that the aforesaid misleading and deceptive representations are true and cause a substantial portion of the purchasing public, because of said mistaken and erroneous belief so engendered, to purchase a substantial quantity of respondents' 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, answer of the respondents, testimony and other evidence in support of the complaint and in opposition thereto 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 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, Edwin M. Freeman, William A. Freeman, and Michael J. Freeman, individuals, trading under the name Freeman & Freeman, or under any other trade name, and their representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of their product designated "Porcelainize," 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:

1. Representing directly or indirectly that respondents' product will produce a hard, smooth finish comparable to that produced in the annealing of porcelain.

2. Representing directly or indirectly that respondents' product has properties which will structurally change the finish of an automobile, prevent oxidation, or harden the paint or finish so as to make it more resistant to scratching.

3. Representing directly or indirectly that the use of respondents' product will preserve the color or finish of an automobile or restore the finish to old automobiles.

4. Representing directly or indirectly that respondents' product is not a polish or that it has any property or value other than that of an abrasive polish.

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
THE JUNG ARCH BRACE COMPANY

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

Docket 4767. Complaint, May 28, 1942—Decision, May 2, 1945

Where a corporation engaged in the interstate sale and distribution of various devices and medicinal preparations for foot ailments; including its "Jung's Arch Braces," "Jung's Ankle and Foot Braces," etc.; through advertisements in newspapers, periodicals, circulars, pamphlets, letters and other advertising media—

- (a) Falsely represented that a feeling of discomfort or fatigue, tired, aching or strained sensations after use, dull aches in the calf of the leg, knee, hip or lumbar region, sensitiveness beneath the heel, loss of spring or inability to get comfortable shoes, cramps in toes, momentary sharp pains when stepping on uneven surfaces, aches or pains in the anterior or posterior metatarsal region, stiffness or sensitiveness upon arising in the morning or after sitting, a callosity beneath the metatarsal heads, bunions or hammertoes clearly indicate weak foot, splay foot or flat foot, and that its elastic braces constituted a competent treatment for all such symptoms and conditions; and that the use of its elastic braces had simplified and made easier the treatment of flat or splay foot;
- (b) Falsely represented that 90 percent of people do not have normal feet and that most people have undeveloped, relatively weak feet, notwithstanding the absence of any reliable statistics showing said facts, and represented falsely also that all foot troubles are caused by weakened muscles; that diagnosis of foot troubles by the use of the impression of the foot is not satisfactory or reliable; that rigid arch supports are always harmful; and that high arches are often more troublesome than lower ones and higher arched feet are generally weaker than flat feet;
- (c) Falsely represented that complicated and difficult examinations are never necessary in diagnosing foot ailments; that it could diagnose foot ailments and prescribe the right treatment without examination of the foot; that its diagnosis, advice, recommendations, or prescriptions were similar to those given by a doctor after a personal physical examination; that its advice and recommendations could be relied upon to stop foot pains, give complete relief, or permanently correct foot troubles; and that mental and body fatigue, backaches, pains in the hips, aching legs, nervousness, and the discomforts attributed to neuritis, sciatica, rheumatism, lumbago, and arthritis are frequently due to foot ailments;
- (d) Falsely represented that "Jung's Arch Braces" were more effective than the strapping process in the treatment of foot ailments; that they would lift metatarsal bones out of any incorrect position and thereafter hold them properly positioned; that the use of said braces would cure, or correct the cause of or prevent the recurrence of, pains in the feet, ankles, calf, knees, toes, instep, ball or heel of the foot, or prevent excess spreading of the feet; that said braces directly assisted the muscles to function properly and restore muscular activity; acted as an extra muscle; produced a massage action sufficient to stimulate the blood circulation and provided a fresh supply of energy; and that the use of said braces would give immediate relief to foot ailments generally, and that continued use would cure such ailments;
- (e) Falsely represented that "Jung's Ankle and Foot Braces" gave the ankle and foot more perfect bracing than all other devices or methods; that its stock-sized braces usually fitted the foot better than the highest grade, made-to-measure ankle brace;

that said braces would cure weak ankles or foot conditions, would prevent strains or turning of ankles, correct or prevent swellings, hold the muscles or ligaments in place, or restore the arch to normal; and that they would hold the foot and ankle in proper relation, or hold muscles and ligaments in place, or restore the arch to normal;

The facts being that while such braces, by furnishing a measure of support to the ankle, might aid in preventing simple sprains, strains, and turning of ankles, and furnish limited support to weak ankles, aforesaid claims in other respects were false and misleading;

- (f) Falsely represented that its "Posture Correctos" would relieve aches and pains caused by improper posture, eliminate sagging ankles, prevent run-over heels, correct improper distribution of weight and bring about proper balance, and relieve extra strain on arches; and that its "Futuro Knee Braces" would help relieve weak or painful knees regardless of cause, and help secure comfort and relief in all cases of knee troubles whether traumatic, arthritis, neuralgia, ligamentous, or resulting from muscular injuries, and in cases of stiff, unsteady, and swollen knees when not due to infection or pathological changes;
- (g) Falsely represented that its "Sanskin Corn Pads and Meds" would permanently remove corns, warts, calluses and bunions; that its "Callus Pads and Meds" would stop pain instantly and permanently remove calluses; and that its "Toe Guides" would straighten out the distorted large toe, relieve and correct bunions, crooked or overlapping toes and soreness between the toes;

The facts being that any relief afforded by said Callus Pads and Meds would be no more than temporary, and said Guides would not relieve and correct such soreness other than that caused by overlapping toes;

- (h) Falsely represented that the use of its "Foot Balm" would relieve irritated and aching feet, stimulate blood circulation in feet and relieve soreness, sluggishness, and swelling due to congestion, invigorate weak or overstrained muscles, aid in healing irritations, relieve itching, and restore vitality to the feet; that the use of its Foot Soap cleansed the pores and thoroughly deodorized the feet; and that the use of its Nail-Rite quickly relieved ingrown toenails and aided in their correction;

The facts being that said Balm would not relieve irritated, itching and aching feet in excess of affording temporary relief from pain and itching in cases of minor irritations; and while its use stimulated the superficial circulation of the blood, such result would not relieve sluggishness and swelling of the feet due to congestion; and while use of said Nail-Rite might temporarily relieve the pain associated with such a condition, it had no remedial value in the correction thereof;

With the 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 belief, to purchase substantial quantities of its said products: *Held*, That such acts and practices were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Karl Stecher 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 Jung Arch Brace 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. Respondent, Jung Arch Brace Company, is a corporation, duly chartered, organized and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business located in the city of Cincinnati, State of Ohio, at 109 West Central Parkway.

PAR. 2. Respondent is now, and for several years last past has been, engaged in manufacturing and offering for sale and selling various appliances, devices and medicinal preparations. Among such devices and medicinal preparations are those designated by respondent as "Jung's Arch Braces," "Jung's Ankle and Foot Braces," "Jung's Posture Correctors," "Jung's Futuro Knee Braces," "Jung's Sanskin Corn Pads and Meds," "Jung's Sanskin Callus Pads and Meds," "Jung's Toe Guide," "Jung's Foot Balm," "Jung's Foot Soap" and "Jung's Nail-Rite."

Respondent causes and has caused its products when sold to be transported from its place of business in the State of Ohio to purchasers thereof located in the various States of the United States other than the State of Ohio and in the District of Columbia.

Respondent maintains, and at all times herein mentioned 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. 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 products 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 its said products 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, deceptive and misleading statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements inserted in newspapers, magazines and periodicals, and by means of circulars, pamphlets, letters and other advertising media, all of general circulation and distribution in commerce, are the following:

General Advertisements:

Symptoms: A feeling of discomfort or fatigue. Tired, aching or strained sensations after use. Dull aches in the calf of the leg, knee, hip or lumbar region. Sensitiveness beneath the heel, loss of spring or inability to get comfortable shoes, Cramps in toes. Momentarily sharp pains when stepping on uneven surfaces. Aches or pains in the anterior or posterior metatarsal region. Stiffness or sensitiveness upon arising in the morning or after sitting. A callosity beneath the metatarsal heads, bunions or hammer-toes. Any of these common symptoms clearly indicate weak foot (splay foot; flat foot) which constitute more than 95% of all foot affections. "It's the most common and by far the most important of all foot disabilities" says T. L. Stedman, A. M., M. D. New Scientifically designed elastic braces now make the treatment of it simple and easy.

With a proper understanding of foot trouble, it is not difficult to realize why nearly ninety percent of the people do not have normal feet. Foot trouble or foot weakness is today the most prevalent affliction imposed upon us.

Because of present day foot wear, flat, smooth pavements and the universal aversion to walking, most people have undeveloped, relatively weak feet.

Careful studies of the foot and clinical records of every large orthopedic hospital have revealed this information which proves conclusively that almost all foot trouble is caused by weakened muscles. Therefore, foot troubles may generally be considered nothing more or less than weakened foot muscles.

High arches are often more troublesome than lower ones. Therefore the impression of the foot, most extensively used in the past, is a bugaboo which seldom indicates anything.

Because of this, many cases of weak foot, which are easily and quickly relieved, and corrected, receive an improper diagnosis. The impression of the foot, as shown above, does not necessarily indicate anything. Its popularity has been maintained by the "self appointed foot specialist" who has, and is still using it as a bugaboo to sponsor the sale of harmful rigid arch props.

Complicated and difficult examinations unnecessary.

Now, we offer direct to you the same services we have given many doctors for years.

Mr. Leahr wrote, "I have paid over \$200.00 for advice but your free recommendations were worth more. Thanks to you, I haven't the slightest pain."

Tell us about your corns, ingrown toenails, aches, weak ankles, enlarged joints, burning feet, etc. Also, how long you have been bothered . . . the same as you would your doctor. After careful study we will send you our FREE "expert advice and recommendations" showing how to get quick, safe relief.

We guarantee that we "advise and recommend," to give you this complete relief and aid in the permanent correction of your foot troubles.

Well-known doctors have proven that mental and body fatigue, back aches, pain in hips, aching legs, nervousness and the more severe discomforts often attributed to neuritis, sciatica, rheumatism, lumbago and arthritis, as well as the additional discomforts resulting therefrom, may be due to foot ailments.

Advertisements Respecting Jung's Arch Braces:

Jung's Arch Braces are the modern scientific method of relieving and correcting foot troubles. They are based on exactly the same fundamental principles as the strapping process but being elastic and self-sustaining, do away with all the disadvantages and are considerably more effective.

This scientifically constructed lift is not intended to force the metatarsal bones into place, but to lift them out of any incorrect position in which they may have become set. The elastic brace then holds them properly positioned, relieving the muscles of over-strain and assisting them in regaining their strength.

Let us show you how to end foot pains, tiredness, aches, calluses and other foot ailments quickly and surely with Jung's Arch Braces.

PAIN FREE FEET. Jung's "Wonder" arch braces assist weakened muscles, ending pains, aches and tiredness in the feet and legs.

They almost instantly relieve sudden cramp-like pains, Morton's Toe and annoying calluses. That burning, aching, tired or lifeless feeling in the feet and ankles, and pains in toes, instep, ball or heel quickly disappear. Excessive spreading of the feet is overcome as well as other numerous troubles (mentioned on page 6) resulting therefrom. Pains or aches in the ankle, calf or knee which are often the result of foot strain are quickly relieved.

The elastic braces used in the treatment give direct assistance to the muscles and ligaments upon which the foot depends for its support. It is this direct assistance which helps the muscles to function properly, that brings about prompt relief and restitution of muscular vitality.

Like an extra muscle, Jung's "Wonder" Arch Braces Aid Nature by assisting weak or overstrained muscles in restoring the displaced bones to normal.

* * * The painful pressure of the bones upon the sensitive nerves and blood vessels is ended. Then as you walk the massage action begins to stimulate blood circula-

tion. Congestion is removed and a fresh supply of energy begins to trickle through the veins.

Gradually the muscles become stronger and stronger and after a reasonable period of time, depending upon the severity of the trouble, the braces may be discarded. Your feet are well to stay.

Advertisements Respecting Jung's Ankle and Foot Braces:

The new scientific principle embodied in their unique design gives both the ankle and the foot more perfect bracing than has ever been known before.

A stock sized brace fits the foot better than the higher grade, made to measure, ordinary ankle brace.

Weak Ankles, Strains, Sprains. Jung's Ankle and Foot Brace supports and helps strengthen weak ankles. Quickly relieves sprains or strains by giving extra support to that portion of the foot or ankle which is most affected. Braces instep and holds foot and ankle in proper relation.

This new and different brace assists the muscles in holding foot and ankle in proper relation to each other and gives support to the anterior and forward arch as well as the longitudinal or instep arch. Like an extra muscle it helps in rapidly restoring the arch to normal.

Jung's Capital and Paragon Ankle and Foot Braces are exactly of the same design. They relieve and strengthen weakened ankle and foot conditions and prevent turning of ankles. They immediately relieve sprained ankles, reduce swelling and correct foot strains resulting therefrom.

They are designed to assist in the relief and correction of foot trouble as much as possible without impairing their value as a perfect support for the ankle and that portion of the foot which is in direct relation thereto.

Advertisements Respecting Jung's Posture Correctors:

Run-over Heels, Arch Weakness.—Jung's Posture Correctors relieve extra strain on instep arches or outer side of feet by correcting improper distribution of weight. They shift the weight to either side and thus bring about a proper balance. Relieve pains and aches caused by improper posture which usually accompanies all foot troubles. Eliminate inward or outward sagging of ankles and prevent run-over of heels.

Advertisements Respecting Jung's Futuro Knee Braces:

Weak or Painful Knees. New type elastic brace helps secure comfort and relief! Regardless of your knee trouble . . . whether it be traumatic, arthritis or neuralgia—ligamentous or muscular injuries—stiff, unsteady, painful or swollen knees not due to infection or pathological changes—this brace will help you secure comfort and relief—will make walking easier.

Advertisements Respecting Jung's Sanskin Corn Pads and Meds:

The constant wearing of Sanskin Pads or proper shoes is necessary to permanently end corns.

END CORNS, CALLUSES, BUNIONS.—Instant relief—Quick Removal. Jung's Sanskin pads * * * Medicated plasters called "Meds," remove corns and calluses quickly, soothe bunions.

Corns, Warts, Small Calluses, Jung's Sanskin Corn Pads give instant relief to the most pesky corns. These velvety-soft, cushioning pads completely remove the pressure or friction which causes corns * * * Complete relief is yours while separate medicated plasters called "Meds," safely and surely remove every trace of your corn.

Advertisements Respecting Jung's Sanskin Callus Pads and Meds:

Stop pain instantly and remove the callus.

The pain is instantly relieved (sic) when you apply Jung's Sanskin Callus pads * * *.

Advertisements Respecting Jung's Toe Guide:

For the relief and correction of bunions, crooked or overlapped toes and soreness between the toes, we recommend the use of Jung's Toe Guides.

The toe guide will help to correct such a condition by straightening out the distorted large toe.

Advertisements Respecting Jung's Foot Balm:

Jung's Foot Balm quickly relieves dry, burning, irritated and aching feet. A massage with this cooling, soothing analgesic balm, stimulates blood circulation in feet and relieves soreness, sluggishness and swelling due to congestion. Invigorates weak or overstrained muscles, softens dry, rough skin and calluses, aids in healing irritations, relieves itching and restores vitality.

Advertisements Respecting Jung's Foot Soap:

A warm foot bath with this soothing and refreshing cleanser removes surface impurities and thoroughly cleanses the pores. A quick relief for tired and irritated feet and an aid in most foot trouble. Thoroughly deodorizes and promotes foot health.

Advertisements Respecting Jung's Nail-Rite:

Ingrown Toe-Nails—Jung's Nail-Rite is an antiseptic and anesthetic compound which quickly relieves ingrown toenails and aids in their correction.

PAR. 4. Through the use of the statements, representations and advertisements hereinbefore set forth, and others of similar import and meaning, but not specifically set out herein, respondent has represented, and does now represent, directly and by implication:

General Representations:

That the various symptoms and conditions set out in the paragraph entitled "General Advertisements" in Paragraph Three above, clearly indicate weak foot, and that respondent's elastic braces constitute the proper treatment for such symptoms and conditions; that the use of respondent's elastic braces has simplified and made easier the treatment of flat or splay foot. That 90% of people do not have normal feet and most people have undeveloped, relatively weak feet; that almost all foot troubles are caused by weakened muscles; that proper diagnosis cannot be made by the use of the impression of the foot; that rigid arch supports are always harmful; that high arches are often more troublesome than lower ones and higher arched feet are generally weaker than flat feet; that complicated and difficult examinations are unnecessary in diagnosing foot ailments in order to prescribe the proper treatment; that it conducts a consultation service for doctors and that the service previously available only to doctors is now offered to the general public; that its free advice and recommendations are better and more valuable than paid-for advice of a doctor or trained technician; that it can quickly diagnose foot ailments and prescribe the right treatment without examination of the foot; that its diagnosis, advice, recommendations and prescriptions are similar to that given by a doctor after a personal physical examination; that its advice and recommendations are guaranteed to give complete relief and permanent correction of foot troubles and that mental and body fatigue, back aches, pains in the

hips, aching legs, nervousness and the discomforts attributed to neuritis, sciatica, rheumatism, lumbago and arthritis are due to foot ailments.

Representations with respect to Jung's Arch Braces:

That Jung's Arch Braces are more effective than the strapping process, lift metatarsal bones out of any incorrect position and thereafter hold them properly positioned; that the use of said braces ends foot pains, tiredness, aches, calluses and quickly relieves foot cramping pains, Morton's Toe, burning, aching, tired or lifeless feeling in feet, ankles, calves, knees, pains in toes, instep, ball or heel and excessive spreading of the feet; that said braces directly assist the muscles to function properly and restore muscular activity. That they act as an extra muscle; that they produce a massage action, stimulating the blood circulation and providing a fresh supply of energy; that the use of said braces will give immediate relief and if their use is continued for a reasonable time all foot ailments will be completely cured, and braces may be discarded.

Representations with respect to Jung's Ankle and Foot Braces:

That Jung's Ankle and Foot Brace gives the ankle and foot more perfect bracing than has ever been known before; that respondent's stock sized brace fits the foot better than the highest grade, made to measure, ordinary ankle brace; that said braces relieve strains and sprains, strengthen weakened ankles, reduce swelling, prevent turning of ankles, hold the foot and ankle in proper relation, assist in the relief and correction of foot troubles, and hold muscles and ligaments in place and restore the arch to normal.

Representations with respect to Jung's Posture Correctors:

That Jung's Posture Correctors relieve aches and pains caused by improper posture; eliminate sagging ankles, prevent run over heels, correct improper distribution of weight and bring about proper balance and relieve extra strain on arches.

Representations with respect to Jung's Futuro Knee Brace:

That Jung's Futuro Knee Braces will help relieve weak or painful knees regardless of cause and will help secure comfort and relief in all cases of knee troubles whether traumatic, arthritis, neuralgia, ligamentous or resulting from muscular injuries and in cases of stiff, unsteady and swollen knees, when not due to infection or pathological changes.

Representations with respect to Jung's Sanskin Corn Pads and Meds:

That Jung's Sanskin Corn Pads and Meds will permanently remove corns, warts, calluses and bunions.

Representations with respect to Jung's Callus Pads and Meds:

That Jung's Sanskin Callus Pads and Meds will stop pain instantly and permanently remove calluses.

Representations with respect to Jung's Toe Guide:

That the use of Jung's Toe Guides will straighten out the large distorted toe, relieve and correct bunions, crooked or overlapping toes and soreness between the toes.

Representations with respect to Jung's Foot Balm:

That the use of Jung's Foot Balm will relieve irritated and aching feet; stimulate blood circulation in feet and relieve soreness, sluggishness and swelling due to congestion; invigorate weak or overstrained muscles, aid in healing irritations, relieves itching and restores vitality to the feet.

Representations with respect to Jung's Foot Soap:

That the use of Jung's Foot Soap cleanses the pores and thoroughly deodorizes the feet.

Representations with respect to Jung's Nail-Rite:

That use of said product quickly relieves ingrown toe nails and aids in their correction.

PAR. 5. The foregoing statements and representations disseminated as aforesaid are grossly exaggerated, false, deceptive and misleading.

General Representations:

The various symptoms and conditions set out in the paragraph entitled "General Advertisements" in Paragraph Three hereof and any combinations of said symptoms or conditions do not clearly indicate weak or flat foot or splay foot and are not always symptomatic of or attributable to foot disorders or disabilities and respondent's elastic braces do not constitute the proper treatment of all such symptoms and conditions. Respondent's elastic braces have not simplified and made easier the treatment of weak feet. No reliable statistics have been compiled showing any definite proportion of the population to have abnormal feet or showing that most people have undeveloped, relatively weak feet. Most foot troubles are not caused by weakened muscles. The impression of the foot is of great value in properly diagnosing foot trouble. The use of rigid arch supports is not always harmful. Feet having higher arches are not generally weaker than flat feet nor are high arches more troublesome than lower ones. Complicated and difficult examinations are often necessary in diagnosing foot ailments in order to prescribe the proper treatment. Personal examination and individual prescription is essential to the correct diagnosis and proper treatment of many foot disorders and disabilities, and in such cases the services and advice offered by respondent and the use of its appliances does not eliminate the necessity for such examination. Accordingly the advice and service offered for the diagnosis of and prescription for foot troubles is not comparable to or an adequate substitute for the services of doctors and/or trained technicians, and following the respondent's advice and recommendation cannot be relied upon to stop foot pains, give complete relief or permanently correct foot troubles. It is impossible to guarantee that any advice, recommendation or device will give relief from or aid in the correction of foot troubles, disorders or disabilities. While mental and body fatigue, back aches, pains in hips, aching legs, nervousness and the discomforts associated with neuritis, sciatica, rheumatism, lumbago and arthritis may, in some instances, be due to foot ailments, this is an infrequent occurrence and cannot be relied upon to indicate or disclose foot ailments of any nature.

Jung's Arch Braces:

Respondent's arch braces are not more effective than the strapping process in the treatment of foot ailments and cannot be relied upon to

lift the metatarsal bones out of an incorrect position and thereafter hold them properly positioned. The use of said braces will not relieve, cure or correct the cause of or prevent the recurrence of pains in the feet, ankles, calf, knees, toes, instep, ball or heel of the foot and prevent excess spreading of the feet, nor will their use quickly relieve foot cramping pains, Morton's Toe, calluses and other foot ailments. Said device does not assist the muscles to function properly and does not restore muscular activity. They do not act as an extra muscle. They do not produce a sufficient massaging effect so as to stimulate the blood circulation to the extent of providing a fresh supply of energy. The use of said braces will not give immediate relief to foot ailments nor will their continued use cure such ailments.

Jung's Ankle and Foot Braces:

Respondent's ankle and foot braces do not give the ankle and foot more perfect bracing than other devices or methods. Its stock size brace does not give a better fit than a made to measure brace of high quality. Said braces will not relieve, cure, correct or aid in the correction of the causes of, or prevent the recurrence of sprains, strains, weakened ankles or foot conditions, swelling, turning of ankles, nor will they hold muscles or ligaments in place or restore the arch to normal.

Jung's Posture Correctors:

The use of respondent's Posture Correctors cannot be relied upon to relieve aches and pains caused by improper posture or to eliminate sagging ankles, prevent run-over heels, correct improper distribution of weight, relieve extra strain on the arches or bring about proper balance.

Jung's Futuro Knee Brace:

Respondent's knee braces will not help relieve all types of weak or painful knees and will not help secure comfort and relief in all cases of knee troubles not due to infection or pathological changes whether traumatic, arthritis, neuralgia, ligamentous, muscular injuries, stiff, unsteady and swollen knees. In truth and in fact all conditions of weak knees are due to infection or pathological changes.

Jung's Corn Pads and Meds:

Respondent's Corn Pads and Meds will not permanently remove corns, warts, calluses and bunions. Any relief afforded by their use will be only temporary in nature.

Jung's Callus Pads and Meds:

Respondent's Callus Pads and Meds will not stop pain instantly and will not permanently remove the callus. Any relief afforded by their use will be only temporary in nature.

Jung's Toe Guides:

Respondent's Toe Guides will not straighten out the large distorted toe nor will their use relieve and correct bunions, crooked or overlapping toes. They have no remedial or therapeutic value in the treatment of a condition of soreness between the toes.

Jung's Foot Balm:

Respondent's Foot Balm will not relieve irritated and aching feet nor will it invigorate weak or overstrained muscles, aid in healing irritations,

relieve itching nor will it restore vitality to the feet. While its use may stimulate the superficial circulation of the blood such result will not relieve soreness, sluggishness and swelling of the feet due to congestion.

Jung's Foot Soap:

Respondent's Foot Soap will not cleanse the pores nor will it thoroughly deodorize the feet.

Jung's Nail-Rite:

Respondent's Nail-Rite will not relieve ingrown toe nails nor aid in their correction. While its use may temporarily relieve the pain associated with such a condition, it has no remedial value in the correction of said condition.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements, representations and advertisements disseminated as aforesaid with respect to the appliances, devices and medicinal preparations hereinbefore listed has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said products.

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 May 28, 1942, issued and subsequently served its complaint in this proceeding upon respondent, The Jung Arch Brace 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, a stipulation was entered into whereby it was agreed that a statement of facts signed and executed by 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 in lieu of testimony in support of or in opposition to the charges stated in the complaint and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. 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 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, Jung Arch Brace Company, is a corporation, organized and existing under and by virtue of the laws of the State of

Ohio, with its principal office and place of business located at 312 East Court Street, Cincinnati, Ohio.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the sale and distribution of various devices and medicinal preparations, among which are those designated by respondent as "Jung's Arch Braces," "Jung's Ankle and Foot Braces," "Jung's Posture Correctors," "Jung's Futuro Knee Braces," "Jung's Sanskin Corn Pads and Meds," "Jung's Sanskin Callus Pads and Meds," "Jung's Toe Guide," "Jung's Foot-Balm," "Jung's Foot Soap," and "Jung's Nail-Rite." Respondent causes, and has caused, said products, when sold, to be transported from its place of business in the State of Ohio to purchasers thereof located in the various States of the United States other than the State of Ohio and in the District of Columbia, and maintains, and at all times herein mentioned 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. 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 products 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 its said products 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 the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as hereinabove set forth, by United States mails, by advertisements inserted in newspapers, magazines, and periodicals, and by means of circulars, pamphlets, letters, and other advertising media, all of general circulation and distribution in commerce, are the following:

General Advertisements:

Symptoms: A feeling of discomfort or fatigue. Tired, aching or strained sensations after use. Dull aches in the calf of the legs, knee, hip or lumbar region. Sensitiveness beneath the heel, loss of spring or inability to get comfortable shoes, cramps in toes.⁵ Momentarily sharp pains when stepping on uneven surfaces. Aches or pains in the anterior or posterior metatarsal region. Stiffness or sensitiveness upon arising in the morning or after sitting. A callosity beneath the metatarsal heads, bunions or hammertoes. Any of these common symptoms clearly indicate weak foot (splay foot; flat foot) which constitute more than 95% of all foot affections. "It's the most common and by far the most important of all foot disabilities" says T. L. Stedman, A.M., M.D. New Scientifically designed elastic braces now make the treatment of it simple and easy.

With a proper understanding of foot trouble, it is not difficult to realize why nearly ninety percent of the people do not have normal feet. Foot trouble or foot weakness is today the most prevalent affliction imposed upon us.

Because of present day foot wear, flat, smooth pavements and the universal aversion to walking, most people have undeveloped, relatively weak feet.

Careful studies of the foot and clinical records of every large orthopedic hospital have revealed this information which proves conclusively that almost all foot trouble is caused by weakened muscles. Therefore, foot troubles may generally be considered nothing more or less than weakened foot muscles.

High arches are often more troublesome than lower ones. Therefore the impression of the foot, most extensively used in the past, is a bugaboo which seldom indicates anything.

Because of this, many cases of weak foot, which are easily and quickly relieved, and corrected, receive an improper diagnosis. The impression of the foot, as shown above, does not necessarily indicate anything. Its popularity has been maintained by the "self appointed foot specialist" who has, and is still using it as a bugaboo to sponsor the sale of harmful rigid arch props.

Complicated and difficult examinations unnecessary.

Now, we offer direct to you the same services we have given many doctors for years.

Mr. Lehr wrote, "I have paid over \$200.00 for advice but your free recommendations were worth more. Thanks to you, I haven't the slightest pain."

Tell us about your corns, ingrown toenails, aches, weak ankles, enlarged joints, burning feet, etc. Also, how long you have been bothered . . . the same as you would your doctor. After careful study we will send you our FREE "expert advice and recommendations" showing how to get quick, safe relief.

We guarantee that we "advise and recommend," to give you this complete relief and aid in the permanent correction of your foot troubles.

Well-known doctors have proven that mental and body fatigue, back aches, pain in hips, aching legs, nervousness and the more severe discomforts often attributed to neuritis, sciatica, rheumatism, lumbago and arthritis, as well as the additional discomforts resulting therefrom, may be due to foot ailments.

Advertisements Respecting Jung's Arch Braces:

Jung's Arch Braces are the modern scientific method of relieving and correcting foot troubles. They are based on exactly the same fundamental principles as the strapping process but being elastic and self-sustaining, do away with all the disadvantages and are considerably more effective.

This scientifically constructed lift is not intended to force the metatarsal bones into place, but to lift them out of any incorrect position in which they may have become set. The elastic brace then holds them properly positioned, relieving the muscles of overstrain and assisting them in regaining their strength.

Let us show you how to end foot pains, tiredness, aches, calluses and other foot ailments quickly and surely with Jung's Arch Braces.

PAIN FREE FEET, Jung's "Wonder" arch braces assist weakened muscles, ending pains, aches and tiredness in the feet and legs.

They almost instantly relieve sudden cramp-like pains, Morton's Toe and annoying calluses. That burning, aching, tired or lifeless feeling in the feet and ankles, and pains in toes, instep, ball or heel quickly disappear. Excessive spreading of the feet is overcome as well as other numerous troubles (mentioned on page 6) resulting therefrom. Pains or aches in the ankle, calf or knee which are often the result of foot strain are quickly relieved.

The elastic braces used in the treatment give direct assistance to the muscles and ligaments upon which the foot depends for its support. It is this direct assistance which helps the muscles to function properly, that brings about prompt relief and restitution of muscular vitality.

Like an extra muscle, Jung's "Wonder" Arch Braces Aid Nature by assisting weak or overstrained muscles in restoring the displaced bones to normal.

* * * The painful pressure of the bones upon the sensitive nerves and blood vessels is ended. Then as you walk the massage action begins to stimulate blood circulation. Congestion is removed and a fresh supply of energy begins to trickle through the veins.

Gradually the muscles become stronger and stronger and after a reasonable period of time, depending upon the severity of the trouble, the braces may be discarded. Your feet are well to stay.

Advertisements Respecting Jung's Ankle and Foot Braces:

The new scientific principle embodied in their unique design gives both the ankle and the foot more perfect bracing than has ever been known before.

A stock sized brace fits the foot better than the highest grade, made to measure, ordinary ankle brace.

Weak Ankles, Strains, Sprains. Jung's Ankle and Foot Brace supports and helps strengthen weak ankles. Quickly relieves sprains or strains by giving extra support to that portion of the foot or ankle which is most affected. Braces instep and holds foot and ankle in proper relation.

This new and different brace assists the muscles in holding foot and ankle in proper relation to each other and gives support to the anterior and forward arch as well as the longitudinal or instep arch. Like an extra muscle it helps in rapidly restoring the arch to normal.

Jung's Capital and Paragon Ankle and Foot Braces are exactly of the same design. They relieve and strengthen weakened ankle and foot conditions and prevent turning of ankles. They immediately relieve sprained ankles, reduce swelling and correct foot strains resulting therefrom.

They are designed to assist in the relief and correction of foot trouble as much as possible without impairing their value as a perfect support for the ankle and that portion of the foot which is in direct relation thereto.

Advertisements Respecting Jung's Posture Correctors:

Run-over Heels, Arch Weakness. Jung's Posture Correctors relieve extra strain on instep arches or outer side of feet by correcting improper distribution of weight. They shift the weight to either side and thus bring about a proper balance. Relieve pains and aches caused by improper posture which usually accompanies all foot troubles. Eliminate inward or outward sagging of ankles and prevent run-over of heels.

Advertisements Respecting Jung's Futuro Knee Braces:

Weak or Painful Knees. New type elastic brace helps secure comfort and relief! Regardless of your knee trouble . . . whether it be traumatic, arthritis or neuralgia—ligamentous or muscular injuries—stiff, unsteady, painful or swollen knees not due to infection or pathological changes—this brace will help you secure comfort and relief—will make walking easier.

Advertisements Respecting Jung's Sanskin Corn Pads and Meds:

The constant wearing of Sanskin Pads or proper shoes is necessary to permanently end corns.

END CORNS, CALLUSES, BUNIONS.—Instant Relief—Quick Removal. Jung's Sanskin pads * * * Medicated plasters called "Meds," remove corns and calluses quickly, soothe bunions.

Corns, Warts, Small Calluses, Jung's Sanskin Corn Pads give instant relief to the most pesky corns. These velvety-soft, cushioning pads completely remove the pressure or friction which causes corns * * * Complete relief is yours while separate medicated plasters called "Meds," safely and surely remove every trace of your corn.

Advertisements Respecting Jung's Sanskin Callus Pads and Meds:

Stop pain instantly and remove the callus.

The pain is instantly relieved when you apply Jung's Sanskin Callus pads * * *.

Advertisements Respecting Jung's Toe Guide:

For the relief and correction of bunions, crooked or overlapped toes and soreness between the toes, we recommend the use of Jung's Toe Guides.

The toe guide will help to correct such a condition by straightening out the distorted large toe.

Advertisements Respecting Jung's Foot Balm:

Jung's Foot Balm quickly relieves dry, burning, irritated, and aching feet. A massage with this cooling, soothing, analgesic balm, stimulates blood circulation in feet and relieves soreness, sluggishness and swelling due to congestion. Invigorates weak or overstrained muscles, softens dry, rough skin and calluses, aids in healing irritations, relieves itching and restores vitality.

Advertisements Respecting Jung's Foot Soap:

A warm foot bath with this soothing and refreshing cleanser removes surface impurities and thoroughly cleanses the pores. A quick relief for tired and irritated feet and an aid in most foot trouble. Thoroughly deodorizes and promotes foot health.

Advertisements Respecting Jung's Nail-Rite:

Ingrown Toe-Nails—Jung's Nail-Rite is an antiseptic and anesthetic compound which quickly relieves ingrown toenails and aids in their correction.

PAR. 4. Through the use of the statements, representations and advertisements hereinbefore set forth, and others of similar import and meaning, but not specifically set out herein, respondent has represented, and does now represent, directly and by implication:

General Representations:

That the various symptoms and conditions set out under the heading "General Advertisements" in Paragraph Three above, clearly indicate weak feet and that respondent's elastic braces constitute the proper treatment for such symptoms and conditions; that the use of respondent's elastic braces has simplified and made easier the treatment of flat or splay foot; that 90 percent of people do not have normal feet and most people have undeveloped, relatively weak feet; that almost all foot troubles are caused by weakened muscles; that diagnosis of foot troubles by the use of the impression of the foot is not satisfactory or reliable; that rigid arch supports are always harmful; that high arches are often more troublesome than lower ones and higher arched feet are generally weaker than flat feet; that complicated and difficult examinations are unnecessary in diagnosing foot ailments in order to prescribe the proper treatment; that it conducts a consultation service for doctors and that the service previously available only to doctors is now offered to the general public; that its free advice and recommendations are better and more valuable than paid-for advice of a doctor or trained technician; that it can quickly diagnose foot ailments and prescribe the right treatment without examination of the foot; that its diagnosis, advice, recommendations and prescriptions are similar to that given by a doctor after a personal physical examination; that its advice and recommendations are guaranteed to give complete relief and permanent correction of foot troubles and that mental and body fatigue, back aches, pains in the hips, aching legs, nervousness, and the discomforts attributed to neuritis, sciatica, rheumatism, lumbago and arthritis are due to foot ailments.

Representations with respect to Jung's Arch Braces:

That Jung's Arch Braces are more effective than the strapping process, lift metatarsal bones out of any incorrect position and thereafter hold them properly positioned; that the use of said braces ends foot pains, tiredness, aches, calluses and quickly relieves foot cramping pains, Morton's Toe, burning, aching, tired or lifeless feeling in feet, ankles, calves, knees, pains in toes, instep, ball or heel and excessive spreading of the feet; that said braces directly assist the muscles to function properly and restore muscular activity. That they act as an extra muscle; that they produce a massage action, stimulating the blood circulation and providing a fresh supply of energy; that the use of said braces will give immediate relief and if their use is continued for a reasonable time all foot ailments will be completely cured, and braces may be discarded.

Representations with respect to Jung's Ankle and Foot Braces:

That Jung's Ankle and Foot Brace gives the ankle and foot more perfect bracing than has ever been known before; that respondent's stock-sized brace fits the foot better than the highest grade, made-to-measure, ordinary ankle brace; that said braces relieve strains and sprains, strengthen weakened ankles, reduce swelling, prevent turning of ankles, hold the foot and ankle in proper relation, assist in the relief and correction of foot troubles, and hold muscles and ligaments in place and restore the arch to normal.

Representations with respect to Jung's Posture Correctors:

That Jung's Posture Correctors relieve aches and pains caused by improper posture, eliminate sagging ankles, prevent run-over heels, correct improper distribution of weight and bring about proper balance, and relieve extra strain on arches.

Representations with respect to Jung's Futuro Knee Braces:

That Jung's Futuro Knee Braces will help relieve weak or painful knees regardless of cause and will help secure comfort and relief in all cases of knee troubles whether traumatic, arthritis, neuralgia, ligamentous, or resulting from muscular injuries, and in cases of stiff, unsteady, and swollen knees, when not due to infection or pathological changes.

Representations with respect to Jung's Sanskin Corn Pads and Meds:

That Jung's Sanskin Corn Pads and Meds will permanently remove corns, warts, calluses, and bunions.

Representations with respect to Jung's Callus Pads and Meds:

That Jung's Sanskin Callus Pads and Meds will stop pain instantly and permanently remove calluses.

Representations with respect to Jung's Toe Guide:

That the use of Jung's Toe Guides will straighten out the distorted large toe, relieve and correct bunions, crooked or overlapping toes, and soreness between the toes.

Representations with respect to Jung's Foot Balm:

That the use of Jung's Foot Balm will relieve irritated and aching feet, stimulate blood circulation in feet and relieve soreness, sluggishness, and

swelling due to congestion, invigorate weak or overstrained muscles, aid in healing irritations, relieve itching, and restore vitality to the feet.

Representations with respect to Jung's Foot Soap:

That the use of Jung's Foot Soap cleanses the pores and thoroughly deodorizes the feet.

Representations with respect to Jung's Nail-Rite:

That use of said product quickly relieves ingrown toenails and aids in their correction.

PAR. 5. The foregoing statements and representations, disseminated as aforesaid, are grossly exaggerated, false, deceptive, and misleading.

General Representations:

The various symptoms and conditions set out in the paragraph entitled "General Advertisements" in Paragraph Three hereof, and any combinations of said symptoms or conditions, do not clearly indicate weak or flat foot or splay foot and are not always symptomatic of or attributable to foot disorders or disabilities, and respondent's elastic braces do not constitute the proper treatment of all such symptoms and conditions. Respondent's elastic braces have not simplified and made easier the treatment of weak feet. No reliable statistics have been compiled showing that 90 percent of the population have abnormal feet or showing that most people have undeveloped, relatively weak feet. Most foot troubles are not caused by weakened muscles. The impression of the foot is of value in properly diagnosing many foot troubles. The use of rigid arch supports is not always harmful. Feet having higher arches are not generally weaker than flat feet nor are high arches generally more troublesome than lower ones. Complicated and difficult examinations are often necessary in diagnosing foot ailments in order to prescribe the proper treatment. Personal examination and individual prescription is essential to the correct diagnosis and proper treatment of many foot disorders and disabilities, and in such cases the services and advice offered by respondent and the use of its appliances does not eliminate the necessity for such examination. Accordingly, the advice and services offered for the diagnosis of and prescription for foot troubles is not comparable to or an adequate substitute for the services of doctors, and following the respondent's advice and recommendation cannot be relied upon to stop foot pains, give complete relief, or permanently correct foot troubles. It is impossible to guarantee that any advice, recommendation, or device will give relief from or aid in the correction of foot troubles, disorders, or disabilities. While mental and body fatigue, back aches, pains in hips, aching legs, nervousness, and the discomforts associated with neuritis, sciatica, rheumatism, lumbago, and arthritis may, in some instances, be due to foot ailments, this is an infrequent occurrence and cannot be relied upon to indicate or disclose foot ailments of any nature.

Jung's Arch Braces:

Respondent's arch braces are not more effective than the strapping process in the treatment of many foot ailments and cannot be relied upon to lift the metatarsal bones out of an incorrect position and thereafter hold them properly positioned. The use of said braces will not cure or correct

the cause of, or prevent the recurrence of, pains in the feet, ankles, calf, knees, toes, instep, ball or heel of the foot, and prevent excess spreading of the feet; nor will their use relieve many foot cramping pains, calluses, and other foot ailments. Said devices do not assist the muscles to function properly and do not restore muscular activity. They do not act as an extra muscle. They do not produce a sufficient massaging effect so as to stimulate the blood circulation to the extent of providing a fresh supply of energy. The use of said braces will not give immediate relief to foot ailments generally, nor will their continued use cure such ailments.

Jung's Ankle and Foot Braces:

Respondent's ankle and foot braces do not give the ankle and foot more perfect bracing than all other devices or methods. While respondent's stock-size braces may, in certain instances, give a better fit than a high-quality, made-to-measure brace, they cannot be depended upon to do so and it cannot be asserted as a fact that they will do so. Said braces will not cure, correct, or prevent the recurrence of sprains, strains, weakened ankles or foot conditions, swelling or turning of ankles; nor will they hold muscles or ligaments in place or restore the arch to normal. In certain instances these braces, by furnishing a measure of support to the ankle, may be of some assistance and aid in preventing simple sprains, strains, and turning of ankles, and will furnish limited support to weak ankles.

Jung's Posture Correctors:

The use of respondent's Posture Correctors cannot be relied upon to relieve aches and pains caused by improper posture or to eliminate sagging ankles, prevent run-over heels, correct improper distribution of weight, relieve extra strain on the arches, or bring about proper balance.

Jung's Futuro Knee Braces:

Respondent's knee braces will not help relieve all types of weak or painful knees and will not help secure comfort and relief in all cases of knee troubles.

Jung's Corn Pads and Meds:

Respondent's Corn Pads and Meds will not permanently remove corns, warts, calluses, and bunions. Any relief afforded by their use will be only temporary in nature.

Jung's Callus Pads and Meds:

Respondent's Callus Pads and Meds will not stop pain instantly and will not permanently remove the callus. Any relief afforded by their use will be only temporary in nature.

Jung's Toe Guides:

Respondent's Toe Guides will not straighten out the distorted large toe nor will their use relieve and correct bunions, crooked, or overlapping toes. They have no remedial or therapeutic value in the treatment of a condition of soreness between the toes except that caused by the overlapping of toes.

Jung's Foot Balm: †

Respondent's Foot Balm will not relieve irritated, itching and aching feet in excess of affording temporary relief from pain and itching in cases

of minor irritations, nor will it invigorate weak or overstrained muscles. It will not restore vitality to the feet. While its use stimulates the superficial circulation of the blood, such result will not relieve sluggishness and swelling of the feet due to congestion.

Jung's Foot Soap:

Respondent's Foot Soap will not cleanse the pores, nor will it thoroughly deodorize the feet.

Jung's Nail-Rite:

Respondent's Nail-Rite will not relieve ingrown toenails or aid in their correction. While its use may temporarily relieve the pain associated with such a condition, it has no remedial value in the correction of said condition.

PAR. 6. The use by the respondent of the foregoing false, misleading, and deceptive statements, representations, and advertisements disseminated as aforesaid with respect to its devices and medicinal preparations hereinbefore listed has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said products.

CONCLUSION

The aforesaid 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.

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 findings as to the facts and its 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, The Jung Arch Brace 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 its Jung's Arch Braces, Jung's Ankle and Foot Braces, Jung's Posture Correctors, Jung's Futuro Knee Braces, Jung's Sanskin Corn Pads and Meds, Jung's Sanskin Callus Pads and Meds, Jung's Toe Guide, Jung's Foot Balm, and Jung's Nail-Rite, or any products of substantially similar construction or possessing substantially similar properties, whether sold under the same name or names 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 through inference:

(a) That a feeling of discomfort or fatigue, tired, aching or strained sensations after use, dull aches in the calf of the leg, knee, hip or lumbar region, sensitiveness beneath the heel, loss of spring or inability to get comfortable shoes, cramps in toes, momentary sharp pains when stepping on uneven surfaces, aches or pains in the anterior or posterior metatarsal region, stiffness or sensitiveness upon arising in the morning or after sitting, a callosity beneath the metatarsal heads, bunions or hammertoes, necessarily or clearly indicate weak foot, splay foot, or flat foot, or that respondent's elastic braces constitute a competent treatment for all such symptoms and conditions; that the use of respondent's elastic braces has simplified and made easier the treatment of flat or splay foot; that 90 percent, or any other percent, of people do not have normal feet and that most people have undeveloped, relatively weak feet, unless and until reliable statistics demonstrate such to be the fact; that almost all foot troubles are caused by weakened muscles; that diagnosis of foot troubles by the use of the impression of the foot is not satisfactory or reliable; that rigid arch supports are always harmful; that high arches are often more troublesome than lower ones and higher arched feet are generally weaker than flat feet; that complicated and difficult examinations are never necessary in diagnosing foot ailments in order to prescribe the proper treatment; that respondent's advice and recommendations are comparable to or an adequate substitute for the advice of a doctor; that it can diagnose foot ailments and prescribe the right treatment without examination of the foot; that its diagnosis, advice, recommendations, or prescriptions are similar to those given by a doctor after a personal physical examination; that its advice and recommendations, if followed, can be relied upon to stop foot pains, give complete relief, or permanently correct foot troubles; or that mental and body fatigue, backaches, pains in the hips, aching legs, nervousness, and the discomforts attributed to neuritis, sciatica, rheumatism, lumbago, and arthritis are frequently due to foot ailments.

(b) That Jung's Arch Braces are more effective than the strapping process in the treatment of foot ailments; that they will lift metatarsal bones out of any incorrect position and thereafter hold them properly positioned; that the use of said braces will cure, or correct the cause of, or prevent the recurrence of pains in the feet, ankles, calf, knees, toes, instep, ball or heel of the foot, or prevent excess spreading of the feet; that said braces directly assist the muscles to function properly and restore muscular activity; that they act as an extra muscle; that they produce a massage action sufficient to stimulate the blood circulation and provide a fresh supply of energy; that the use of said braces will give immediate relief to foot ailments generally, or that continued use will cure such ailments.

(c) That Jung's Ankle and Foot Braces give the ankle and foot more perfect bracing than all other devices or methods; that respondent's stock-sized braces usually fit the foot better than the highest grade, made-to-measure ankle brace; that said braces will cure weak ankles or foot conditions, will prevent strains or turning of ankles, correct or prevent swellings, hold the muscles or ligaments in place, or restore the arch to normal; that they will hold the foot and ankle in proper relation, or hold muscles and

ligaments in place, or restore the arch to normal; that they will hold the foot and ankle in proper relation, or hold muscles and ligaments in place, or restore the arch to normal. However, nothing in this paragraph shall be construed to prevent respondent representing that the use of said braces will provide some support and may be of some assistance and aid in preventing simple sprains and strains and turning of ankles, and will furnish limited support to weak ankles.

(d) That Jung's Posture Correctors will relieve aches and pains caused by improper posture, eliminate sagging ankles, prevent run-over heels, correct improper distribution of weight, bring about proper balance, or relieve extra strain on arches.

(e) That Jung's Futuro Knee Braces will help relieve weak or painful knees regardless of cause or will help secure comfort and relief in all types of knee troubles.

(f) That Jung's Sanskin Corn Pads and Meds will permanently remove corns, warts, calluses, and bunions.

(g) That Jung's Callus Pads and Meds will stop pain instantly, and permanently remove calluses; or that any relief afforded will be more than temporary in nature.

(h) That Jung's Toe Guides will straighten out the distorted large toe, relieve and correct bunions, crooked or overlapping toes and soreness between the toes, except such soreness as may be caused by overlapping toes.

(i) That Jung's Foot Balm will relieve irritated and aching feet in excess of affording temporary relief from pain and itching caused by minor irritations; will stimulate blood circulation in the feet to the extent that sluggishness and swelling of the feet, due to congestion, will be relieved, or that it will invigorate weak or overstrained muscles or restore vitality to the feet.

(j) That the use of Jung's Nail-Rite relieves ingrown toenails or aids in their correction.

2. Disseminating or causing to be disseminated, by any means, any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said preparations 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 said respondent, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of Jung's Foot Soap, or any similar product, under the same or any other name, do forthwith cease and desist from representing or implying that said product cleanses the pores or thoroughly deodorizes the feet.

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

W. A. SHEAFFER PEN COMPANY

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

Docket 4337. Complaint, Oct. 9, 1940—Decision, May 3, 1945

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of fountain pens and mechanical pencils, including its "Lifetime" fountain pen which it began to sell under a guarantee for the life of the purchaser in 1925, with no charge for service and repair other than for transportation, but for which, following the adoption by leading fountain pen manufacturers of a code under the National Industrial Recovery Act in 1933, it began to make a flat service charge of 35¢ or 25¢ if the pen was delivered in person at its main or branch offices;

Making use of a "guarantee" form providing that it "guarantees for the life of the first user, the LIFETIME pen except against loss, theft and wilful damage, and no charge will be made for repairing so as to put it in good writing condition, except a service and handling charge of 35¢, provided the complete pen, including any broken parts, is sent to our factory or authorized service station accompanied by this guarantee coupon," etc.—

Represented, directly or by implication, through the use of the word "Lifetime" as a trade name for its pens, and statements such as "Lifetime Guaranteed," "Guaranteed for Life," etc. in large and extensive advertisements in periodicals of nationwide circulation and in newspapers published in the principal cities throughout the country in which the trade name "Lifetime" was featured, with no reference in the principal portions of the advertisements to the fact that a service charge was made for servicing and repairing the pen—that its pens were unconditionally guaranteed for the life of the user, that is, that if for any reason other than wilful damage or abuse the pen should fail to give satisfactory service for such period of time, it would be repaired or replaced without charge; and failed to avoid the misleading effects of said representations by the insertion, at or near the bottom of the advertisements and in small type, of a contradictory statement to the effect that such unconditional guarantee was "subject only to insurance, postage, handling charge—35¢";

The facts being that in view of the service charge imposed by it its pens could not properly be represented as guaranteed for life or for any other period of time; the purported guarantee was merely a contract whereby it agreed that during the life of the user it would make necessary repairs and adjustments to the pen at the flat rate of thirty-five cents each time the pen was returned to it for such service, and the most that could be said of the agreement was that it was a guarantee of repair service on the pen;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that its pens were unconditionally guaranteed for the life of the user, and to cause such public to purchase substantial quantities of its pens as a result, whereby substantial trade was diverted unfairly to it from its competitors, among whom were those who did not engage in such acts and practices:

Held, That said acts and practices were all to the prejudice of the public and competitors, and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce.

Complaint

As respects the question of the misleading effect of advertisements by a seller of fountain pens in which in its so-called guarantee of the pen for the life of the user, it undertook to make no charge for repair "except a service and handling charge of 35¢," and which, in periodicals of nation-wide circulation and in newspapers published in many of the principal cities throughout the country, featured tradename "Lifetime" and the statement that the pen was "Lifetime guaranteed," "Guaranteed for Life," etc.: A small type statement at or near the bottom of such advertisements, with no other reference to the fact that a service charge was made for service and repair which, preceded by an asterisk or other symbol referring to the word "Lifetime" in the body of the advertisement, read "* All Lifetime pens are unconditionally guaranteed for the life of the first user except against loss and wilful damage — when serviced, if complete pen is returned," did not avoid the misleading effect of said other representations since, ordinarily, it would escape the attention of the average reader, and even were it displayed prominently, it would still be insufficient, being inconsistent with and contradictory of the representations in the advertisement that the pen was unconditionally guaranteed for the life of the user; and the imposition of a charge for keeping the pen in usable condition was in direct conflict with its representation that the pen was unconditionally guaranteed for life.

Before *Mr. Andrew B. Dwall*, trial examiner.

Mr. Karl Stecher for the Commission.

Pope, Ballard & Loos, of Washington, D. C., and *Mr. E. H. Pollard*, of Fort Madison, 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 W. A. Sheaffer Pen Company, 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, W. A. Sheaffer Pen 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 at Fort Madison, Iowa. It is now, and has been for many years last past, engaged in the business of manufacturing and selling fountain pens and pencils. It causes said fountain pens and pencils, when sold, to be transported from its place of business in Fort Madison, Iowa, or from some other distributing point, to the purchasers thereof at their respective points of location in States other than the State from which said fountain pens or pencils are shipped and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said fountain pens and pencils in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations, and with partnerships and persons also engaged in the business of manufacturing fountain pens and pencils and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of certain of its fountain pens, it has designated the same "Lifetime" pens, and has caused various statements and representations, including pictorial representations, relative to said pens designated "Lifetime" pens, to be inserted in advertisements in newspapers, magazines and other publications having a general circulation throughout the various States of the United States and in the District of Columbia. Among and typical of said statements and representations relative to said fountain pens designated "Lifetime" are the following:

DEMAND THE WHITE DOT

IF IT HASN'T THIS WHITE DOT IT
ISN'T A GENUINE LIFETIME^o PEN

DON'T BE FOOLED!
SHEAFFER MAKES THE ONLY LIFETIME^o PEN

When you pay for a Lifetime^o pen,
Be Sure You Get One! Only Sheaffer's
wear the White Dot, the mark of the
genuine Lifetime^o guaranteed pen.

THERE IS ONLY ONE LIFETIME^o PEN
SHEAFFER'S

THE ONLY LIFETIME^o PEN IS
SHEAFFER'S
DON'T BE MISLED—IDENTIFY IT BY THIS
WHITE DOT^o

THE PEN YOU WANT—YOUR NO. 1 GIFT
BECAUSE IT'S LIFETIME^o GUARANTEED

Near the bottom of the advertisement, in small and inconspicuous type, appears the following:

All Lifetime^o pens are unconditionally
guaranteed for the life of the owner
except against loss and willful damage—
when serviced subject only to insurance,
postage, handling charge—35¢.

The small circle "o" placed above the line of type after the word "Lifetime" appears to represent the white dot which is placed upon the cap of the pen as an identifying mark. Close inspection of the advertisement discloses that at the bottom of the page, most inconspicuously and in very minute type, appears a similar "o" followed by the phrase "Reg. U. S. Pat. Off."

The above quotations and representations are not all-inclusive, but are merely illustrative of the type and character of those used by respondent in advertising its fountain pens which it designates as "Lifetime."

PAR. 4. Through the use of the aforesaid statements and representations by respondent, and others of similar import or meaning not herein

set out, including the use of the word "Lifetime" in the designation of said fountain pens, respondent represents, directly or by implication, that:

1. Said fountain pens designated by the name "Lifetime" are of such superior quality and durability that they will last a lifetime without repair or adjustment.

2. Only respondent makes a fountain pen of such superior quality and durability that it will last a lifetime without repair or adjustment.

3. Respondent's fountain pens designated by the name "Lifetime" are guaranteed for life.

4. Respondent's fountain pens designated by the name "Lifetime" are the only fountain pens guaranteed for life.

PAR. 5. The aforesaid statements and representations so made and used by respondent are false and misleading. Said fountain pens designated by the name "Lifetime" are not of such superior quality and durability that they will last a lifetime without repair or adjustment; nor are said fountain pens of such superior quality as to warrant their being designated or described as "Lifetime."

In truth and in fact, said fountain pens designated "Lifetime" are not guaranteed for life. Whenever one of said fountain pens is sent to respondent for repair or adjustment, respondent exacts a charge of 35 cents purportedly for "insurance, postage, and handling." This charge is made no matter how insignificant the repair or adjustment may be. Respondent's purported "lifetime guarantee" is therefore in no sense a genuine lifetime guarantee, nor is it a guarantee of any sort. It is instead merely a contract whereby respondent agrees for the life of the purchaser to make necessary repairs and adjustments at the flat rate of 35 cents each time the pen is sent to it for such service.

PAR. 6. There are now, and have been, competitors of respondent manufacturing and selling fountain pens in commerce between and among the various States of the United States and in the District of Columbia who do not misrepresent in any manner whatsoever the quality of the products offered for sale and sold by them, nor do they misrepresent the nature of any service offered in connection therewith, nor do they make misrepresentations of any other character or nature to induce the public to purchase the products offered for sale and sold by them.

PAR. 7. The aforesaid acts, practices and representations of the respondent herein detailed in connection with the advertising and sale of its said "Lifetime" fountain pens had, and now have, the capacity and tendency to, and did and do, deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading representations and implications are true, and into the purchase of substantial quantities of respondent's fountain pens because of such erroneous and mistaken belief so induced.

As a direct result of the aforesaid false and misleading representations and implications by respondent, trade in commerce between and among the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its said competitors who do not falsely represent their products or any service offered in connection therewith. In consequence thereof, injury has been, and is being, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 9, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, W. A. Sheaffer Pen 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 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, W. A. Sheaffer Pen 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 in Fort Madison, Iowa. Respondent is now, and for many years last past has been, engaged in the manufacture and sale of fountain pens and mechanical pencils.

PAR. 2. Respondent causes and has caused its fountain pens and pencils, when sold, to be transported from its place of business in the State of Iowa or from some other distributing point to the purchasers thereof at their respective locations in various States of the United States other than the State from which such products are shipped, 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. Respondent is now and has been in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of fountain pens and mechanical pencils in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent began the manufacture of fountain pens in 1912. In 1918 it developed a gold point for its pens which was regarded as possessing unusual sturdiness and durability, and some two years later the name "Lifetime" was adopted as a trade name for the line of pens which carried this particular point. Subsequently, application was made by respondent to the United States Patent Office for the registration of the name, and in 1923 the name was registered by that Office as a trade name

or trade-mark belonging to respondent. Respondent states that its reason for adopting that trade name was that the name suggested durability and long life.

At about the time of the registration of the name by the Patent Office, respondent adopted the policy of guaranteeing the gold point of the pen for the life of the purchaser. Subsequently, in 1925, respondent developed and adopted a pyroxylin plastic barrel or holder for the pen which was regarded as possessing much greater durability than the old type of barrel, which had been made of hard rubber. Thereupon, the "Lifetime Guarantee" was extended by respondent to cover the entire pen rather than the point only.

Originally no charge (other than transportation charges) was made by respondent for servicing and repairing the pen. In 1933, however, under a code adopted by the leading fountain pen manufacturers under the National Industrial Recovery Act, respondent began to make a service charge of thirty-five cents each time the pen was sent in for servicing, which practice has continued to the present time. (The charge is only twenty-five cents if the pen is delivered in person at respondent's main office in Fort Madison, Iowa, or at one of its branch offices, which are located in New York City, Chicago, Ill., and San Francisco, Calif.) The service charge is the same, regardless of whether the repairs to the pen are of a serious or minor nature.

Except for the provision as to the service charge, the terms of the "guarantee" used by respondent have remained substantially the same since the adoption of the policy in 1925. The form presently used reads as follows:

SHEAFFER'S *Lifetime* PEN GUARANTEE

The W. A. Sheaffer Pen Company hereby guarantees for the life of the first user, the LIFETIME pen except against loss, theft and wilful damage, and no charge will be made for repairing so as to put it in good writing condition, except a service and handling charge of 35¢, provided the complete pen, including any broken parts, is sent to our factory or authorized service station accompanied by this guarantee coupon signed by an authorized Sheaffer distributor. Charge will be made for any missing parts, but not for the repair or replacement of any defective or broken parts.

If it is necessary to return your pen to the factory for repair, make sure all broken parts are included and enclose 35¢ to cover return postage, insurance against loss in transit, and handling, with your instructions and this guarantee coupon. Prompt service will be given and this guarantee coupon will be returned to you. In order for a SHEAFFER guarantee to be valid, the pen must be purchased from and guarantee signed by an authorized SHEAFFER dealer.

Effective from this day.....forward. This certifies the undersigned is an authorized SHEAFFER Dealer.

Signature.

W. A. SHEAFFER PEN COMPANY
Fort Madison, Iowa, U.S.A.

C. R. Sheaffer President

PAR. 5. For many years respondent has advertised its "Lifetime" pen extensively throughout the United States, large advertisements being

inserted in periodicals having nation-wide circulation and in newspapers published in many of the principal cities throughout the country. These advertisements feature the trade name "Lifetime," and many of them also state, frequently in heavy and conspicuous type, that the pen is "Lifetime Guaranteed," "Guaranteed for Life," etc. No reference is made in the principal portions of the advertisements to the fact that a service charge is made for servicing and repairing the pen. At or near the bottom of the advertisements, however, there usually appears, in small type, a statement reading substantially as follows:

* All Lifetime pens are unconditionally guaranteed for the life of the first user except against loss and wilful damage—when serviced, if complete pen is returned, subject only to insurance, postage, handling charge—35¢.

The asterisk preceding this statement refers to the word "Lifetime" in the body of the advertisement which is followed by an asterisk. Formerly, instead of asterisks, small circles or dots were used in order to emphasize the identifying mark of the "Lifetime" pen, which is a small white dot on the barrel or cap of the pen.

PAR. 6. The Commission finds that through the use of the word "Lifetime" as a trade name for its pens, and of statements such as "Lifetime Guaranteed" and "Guaranteed for Life" in connection with such pens, respondent represents, directly or by implication, that its pens are unconditionally guaranteed for the life of the user—that is, that if for any reason other than wilful damage or abuse the pen should fail to give satisfactory service for such period of time, it will be repaired or replaced by respondent without charge.

PAR. 7. Respondent concedes that a substantial portion of the pens do not last for the lifetime of the user without repair or adjustment, and the record affirmatively shows that every year many thousands of the pens are returned to respondent for necessary servicing, repair, or replacement of some part of the pen. The following table shows the number of pens returned to respondent for such purposes during each of the years 1935 to 1941, inclusive, as well as the net cost to respondent of servicing and repairing the pens over and above the amount received through the service charge:

<i>Year</i>	<i>Number of Pens Serviced</i>	<i>Net Cost to Respondent</i>
1935	355,600	\$49,685.39
1936	373,253	\$49,012.92
1937	398,389	\$62,077.41
1938	413,482	\$66,862.34
1939	390,813	\$67,475.13
1940	404,217	\$69,053.37
1941	428,712	\$82,105.15

PAR. 8. In view of the service charge imposed by respondent, its pens cannot properly be represented as guaranteed for life or for any other period of time. The purported guarantee is not in fact a guarantee of the pen but is merely a contract whereby respondent agrees that during the life of the user it will make necessary repairs and adjustments to the pen at the flat rate of thirty-five cents each time the pen is returned to respondent for such service. The most that can be said of the agreement

is that it is a guarantee of repair service on the pen. It is in no sense a guarantee of the pen itself.

PAR. 9. The Commission therefore finds that the representations made by respondent with respect to its pens, as set forth in paragraphs 5 and 6 hereof, are erroneous and misleading.

Nor is the misleading effect of respondent's representations avoided by the insertion in the advertisements of the statement (set out in paragraph 5 above) with respect to the service charge. As heretofore pointed out, this statement appears in small type and occupies an inconspicuous position in the advertisement. Ordinarily, it would escape the attention of the average reader. Even were it displayed prominently, however, the statement would still be insufficient, because it is inconsistent with and contradictory of the representations in the advertisement that the pen is unconditionally guaranteed for the life of the user. The imposition of a charge for keeping the pen in usable condition is in direct conflict with respondent's representation that the pen is unconditionally guaranteed for life.

PAR. 10. 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 into the erroneous and mistaken belief that respondent's pens are unconditionally guaranteed for the life of the user, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's pens as a result of the erroneous and mistaken belief so engendered. In consequence thereof, substantial trade has been and is being diverted unfairly to respondent from its competitors among whom are those who do not engage in the acts and practices herein described.

CONCLUSION

The acts and practices of the respondent, as herein found, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce 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 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, W. A. Sheaffer Pen 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 of respondent's fountain pens in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Lifetime," "Lifetime Guaranteed," "Guaranteed for Life," or any word or words of similar import, alone or in con-

junction with any other word or words, to designate, describe, or refer to respondent's pens, or otherwise representing, directly or by implication, that such pens are unconditionally guaranteed for life, unless respondent does in fact make, without expense to the user, any repairs or replacement of parts which may be necessitated during the life of the user by any cause other than wilful damage or abuse.

2. Representing, directly or by implication, that respondent's pens are unconditionally guaranteed for any designated period of time, unless respondent does in fact make, without expense to the user, any repairs or replacement of parts which may be necessitated during such designated period by any cause other than wilful damage or abuse.

Nothing contained in this order, however, shall be construed as prohibiting respondent from representing truthfully that the service on its pens (as distinguished from the pens themselves) is guaranteed for life or other designated period of time, even though a charge is imposed by respondent in connection with such servicing, provided the terms of such guarantee, including the amount of such charge, are clearly and conspicuously disclosed in immediate conjunction with such representation.

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

Syllabus

IN THE MATTER OF
THE PARKER PEN COMPANY

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

Docket 4333. Complaint, Oct. 9, 1940—Decision, May 3, 1945

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution of fountain pens and mechanical pencils, including its "Vacumatic" and "Blue Diamond" line which it sold under a "GUARANTEE" setting forth that the models there specified "are GUARANTEED FOR LIFE of the owner except against loss and wilful damage," and that "Any Parker Major or Maxima Vacumatic pen (not wilfully abused) when returned to us COMPLETE with all damaged parts will be serviced, repaired, or replaced FREE. . . . subject only to insurance, postage, and handling charges of 35¢," etc., and later under a "LIFE CONTRACT GUARANTEE" stating that "Parker's Blue Diamond on the pen clip is our life contract with the owner, guaranteeing to make good any damage to the pen (except loss or wilful abuse) subject only to a charge of 35¢ for postage, insurance, and handling, provided complete pen is returned for service"—

(a) Represented, directly or by implication, through featuring such statements "Guaranteed for Life," "Life Guaranteed," "Guaranteed Life Contract," "Life Contract Guarantee," in extensive advertisements of its pens in periodicals and newspapers of wide circulation in which no reference was made in the principal portions to said service charge that its pens were unconditionally guaranteed for the life of the owner; and failed to avoid the misleading effects of said representations by a small type statement at the bottom of the advertisement to the effect that its said guarantee was "subject only to a charge of 35¢ for postage, insurance, and handling, provided complete pen is returned for service";

The facts being that in view of the service charge imposed by it, its pens could not properly be represented as guaranteed for life or for any other period of time; the purported guarantee was merely a contract whereby it agreed that during the life of the owner it would make necessary repairs and adjustments to the pen at the flat rate of thirty-five cents each, and the most that could be said of the agreement was that it was a guarantee of repair service on the pen; and

(b) Erroneously and misleadingly represented in its advertisements that its pens contained fourteen less parts than other self-filling fountain pens, and that the points on the pens were "Scratch-proof";

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, and to cause such public to purchase substantial quantities of its pens as a result, whereby substantial trade diverted unfairly to it from its competitors:

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

As respects the question of the misleading effect of advertisements by a seller of its "Vacumatic" and "Blue Diamond" line of pens, which featured such statements as "Guaranteed for Life," "Life Guaranteed," "Guaranteed Life Contract," "Life Contract Guarantee," in extensive advertisements of its pens in periodicals and newspapers of wide circulation, and made no reference in the principal portions

thereof to the imposition of a service charge: A small type statement at the bottom of the advertisement to the effect that its said guarantee was "subject only to a charge of 35¢ for postage, insurance, and handling, provided complete pen is returned for service" did not avoid the misleading effect of the aforesaid representations, since ordinarily it would escape the attention of the reader, and, even if displayed prominently, would still be insufficient, it being inconsistent with and contradictory of the representations that the pen was unconditionally guaranteed for the life of the owner; and the imposition of a charge for keeping the pen in usable condition was in direct conflict with its representations that the pen was unconditionally guaranteed for the life of the owner.

Before *Mr. Andrew B. Dwall*, trial examiner.

Mr. Karl Stecher for the Commission.

Jeffris, Mouat, Oestreich, Wood & Cunningham, of Janesville, 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 Parker Pen Company, 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, The Parker Pen 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 at Janesville, Wis. It is now, and has been for many years last past, engaged in the business of manufacturing and selling fountain pens and pencils. It causes said fountain pens and pencils, when sold, to be transported from its place of manufacture in Janesville, Wis., or from some other distributing point, to the purchasers thereof at their respective points of location in States other than the State from which said fountain pens or pencils are shipped and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said fountain pens and pencils in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations, and with partnerships and persons also engaged in the business of manufacturing fountain pens and pencils and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. There is a belief on the part of a substantial portion of the purchasing public that when an article is stated to be guaranteed for life that it is represented to be made of such materials and in such manner that it will last for a lifetime without repair or adjustment when subjected to normal use, and that it will never be necessary to call on the manufacturer to make good on such guarantee except in rare instances in which some hidden defect or weakness accidentally or unavoidably escaped detection during the manufacturer's inspection.

Ever since the advent of self-filling fountain pens, in the case of the vast majority, if not practically all, of such pens made and sold by the manu-

facturers of high-grade fountain pens, the part or portion of the pen first to wear out, rot, deteriorate, or require replacement has been the rubber sac. This fact has been generally known and recognized by the users of such fountain pens.

Complicated filling mechanisms in fountain pens have likewise been subject to getting out of order, and the purchasing and using public therefore has a preference for simplicity in such mechanisms, as well as for long life and durability in all respects.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of certain of its fountain pens designated "Vacumatic," respondent has caused various statements and representations relative to the quality, durability, and construction of said pens to be inserted in advertisements in newspapers, magazines and other publications having a general circulation throughout the various States of the United States and in the District of Columbia, and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate. Among and typical of said statements and representations relative to said fountain pens designated "Vacumatic" are the following:

PARKER'S BLUE DIAMOND (blue diamond outline) MARK
means you'll Never Again have to buy a Pen
means it's GUARANTEED FOR LIFE! (blue diamond outline)

At the bottom of the page is a small blue diamond reference mark to the mark above, following which it is stated:

(Blue diamond outline) Pens marked with the Blue Diamond are guaranteed for the life of the owner against everything except loss or intentional damage, subject only to a charge of 35¢ for postage, insurance, and handling, provided complete pen is returned for service.

its sacless filler abolishes 14 old-style parts.

The reason for its Utopian ink capacity is its patented Diaphragm filler. This provides more room for ink by abolishing 14 old-style parts. No rubber ink sac, no piston pump, no lever filler—it's revolutionary!

That patented *One-Hand* Sacless Filler with a *Big Ink Reserve* in place of a rubber ink sac.

A revolutionary sacless pen

Its Point of Platinum and Solid Gold is utterly Scratch-proof.

step up to any nearby counter and put your hand to this Scratch-Proof Point.

The above quotations and representations are not all-inclusive, but are merely illustrative of the type and character of those used by respondent in advertising its fountain pens which it designates "Vacumatic."

PAR. 5. Through the use of the aforesaid statements and representations by respondent, relative to its fountain pens designated "Vacumatic," and others of similar import or meaning not herein set out, respondent represents, directly or by implication, that:

1. Said fountain pens designated by the name or mark "Blue Diamond" are of such superior quality and durability that they will last a lifetime.

2. Said fountain pens designated by the name or mark "Blue Diamond" are guaranteed for life.

3. Said fountain pens contain 14 less parts than other self-filling fountain pens.

4. In said fountain pens the rubber sac and all of the trouble from wear, rot, deterioration, and the necessity for replacement of a rubber sac, which have long been characteristic of self-filling fountain pens having a rubber sac, have been eliminated.

5. Said fountain pens are equipped with points possessing exceptional qualities not possessed by any other pen points which make them absolutely scratch-proof under all conditions.

PAR. 6. The aforesaid statements and representations so made and used by respondents are false and misleading. Said fountain pens designated by the name Blue Diamond Vacumatic are not of such superior quality and durability that they will last a lifetime.

Said fountain pens designated "Blue Diamond Vacumatic" are not guaranteed for life. Whenever one of said fountain pens is sent to respondent for repair or adjustment, respondent exacts a charge of 35 cents purportedly for "postage, insurance and handling." This charge is made no matter how insignificant the repair or adjustment may be. Respondent's purported lifetime guarantee is therefore in no sense a genuine lifetime guarantee, nor is it a guarantee of any sort. It is instead merely a contract whereby respondent agrees for the life of the purchaser to make necessary repairs and adjustments at a flat rate of 35 cents each time the pen is sent to it for such service.

Respondent's fountain pens designated "Vacumatic" do not possess 14 less parts than other self-filling fountain pens, nor do they possess any less parts than a number of other self-filling fountain pens made and sold by respondent's competitors. Respondent has merely changed the size, shape or function of parts, without their elimination.

Respondent's fountain pens designated "Vacumatic" are not "sac-less," as that term is understood by a substantial portion of the purchasing public. The rubber sac has not been eliminated from the pen. The only change made by respondent is in the function of the sac. In respondent's "Vacumatic" fountain pens the rubber sac is merely inverted and used to create a vacuum in the barrel of the pen outside the sac, instead of inside the sac, as in other self-filling fountain pens using a rubber sac. The ink comes into contact with the sac in respondent's "Vacumatic" fountain pens, the same as in other pens. Said fountain pens are subject to all of the trouble from wear, rot, deterioration, and the necessity for replacement of the rubber sac, which have long been characteristic of self-filling fountain pens having a rubber sac.

Respondent's pen points designated "Scratch-Proof" possess no novel features not heretofore known and used by other manufacturers and sellers of high-grade pen points which make it impossible for them to scratch under all conditions. Said pen points will scratch under substantially the same circumstances and conditions as similar pen points made and sold by other reputable manufacturers.

PAR. 7. There are now, and have been, competitors of respondent manufacturing and selling fountain pens in commerce between and among the various States of the United States and in the District of Columbia who do not misrepresent in any manner whatsoever the quality or construction of the products offered for sale and sold by them, nor do they misrepresent the nature of any service offered in connection therewith, nor do they make misrepresentations of any other character or nature to induce the public to purchase the products offered for sale and sold by them,

PAR. 8. The aforesaid acts, practices and representations of the respondent herein detailed in connection with the advertising and sale of its aforesaid fountain pens had, and now have, the tendency and capacity to, and did and do, deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading acts, practices and representations are true, and into the purchase of substantial quantities of respondent's fountain pens because of such erroneous and mistaken belief so induced.

As a direct result of the aforesaid false and misleading acts, practices and representations by respondent, trade in commerce between and among the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its said competitors who do not falsely represent their products, or any service offered in connection therewith. In consequence thereof, injury has been, and is being done by respondent in competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair 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 9, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, The Parker Pen 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 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, The Parker Pen 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 in Janesville, Wis. Respondent is now, and for many years last past has been, engaged in the manufacture and sale of fountain pens and mechanical pencils.

PAR. 2. Respondent causes and has caused its fountain pens and pencils, when sold, to be transported from its place of business in the State of

Wisconsin or from some other distributing point to the purchasers thereof at their respective locations in various States of the United States other than the State from which such products are shipped, 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. Respondent is now, and has been, in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of fountain pens and mechanical pencils in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In 1933, respondent began the manufacture and sale of a line of fountain pens designated by it as "Vacumatic" pens, and some two or three years later respondent adopted the policy of "guaranteeing" the higher priced models of this pen for the life of the owner. While the guarantee certificate issued with the pen has been changed from time to time as to form, there has been little change as to substance. The form of certificate adopted in 1937 read as follows:

GUARANTEE

Parker Vacumatic pens, Major and Maxima models, priced at \$8.75 and \$10 are GUARANTEED FOR LIFE of the owner except against loss and wilful damage.

Any Parker Major or Maxima Vacumatic pen (not wilfully abused) when returned to us COMPLETE with all damaged parts will be serviced, repaired, or replaced FREE . . . subject only to insurance, postage, and handling charges of 35¢.

All other Parker Vacumatic pens are guaranteed against defective materials and workmanship. Any part missing or broken by accident or ill usage will be replaced at our current nominal charge for such part only, plus insurance, postage, and handling of 35¢.

This guarantee is rendered void if any parts other than genuine Parker parts are fitted to the pen, but it may be reinstated by such substituted parts being replaced by us at our regular repair parts prices.

THE PARKER PEN COMPANY
Janesville, Wisconsin

In 1939, some two years after respondent began the use of this form of certificate, it adopted as a mark of identification for certain of its "Vacumatic" pens the outline of a diamond, in blue, and the pens so marked are designated by respondents as "Blue Diamond" pens. The form of guarantee certificate presently used by respondent in connection with such pens reads as follows:

LIFE CONTRACT GUARANTEE

Parker's Blue Diamond on the pen clip is our life contract with the owner, guaranteeing to make good any damage to the pen (except loss or wilful abuse) subject only to a charge of 35¢ for postage, insurance, and handling, provided complete pen is returned for service.

PARKER PENS NOT BEARING BLUE DIAMOND are guaranteed mechanically perfect. Repairs and replacements of missing or damaged parts will be made at our current nominal charges.

This guarantee is invalid if any parts other than genuine Parker parts are fitted to the pen. However, the guarantee may be reinstated if such substituted parts are replaced by us at our repair parts prices.

THE PARKER PEN COMPANY, Janesville, Wisconsin

As indicated in the foregoing certificates, the owners of respondent's pens are required to pay the sum of 35 cents each time the pen is returned to respondent for repair or adjustment. The record shows that the servicing of the pens is done by respondent at a loss, as the cost averages from 40 to 50 cents on each pen, exclusive of the cost of new parts.

PAR. 5. Respondent advertises its pens extensively throughout the United States, large advertisements being inserted in periodicals having nation-wide circulation and in newspapers published in many of the principal cities throughout the country. These advertisements feature such expressions and statements as "Guaranteed for Life," "Life Guaranteed," "Guaranteed Life Contract," and "Life Contract Guarantee." No reference is made in the principal portions of the advertisement to the fact that a service charge is made by respondent for servicing and repairing the pen. At or near the bottom of the advertisement, however, there usually appears, in small type, a statement reading substantially as follows:

Parker's Blue Diamond on the Pen is our Life Contract with the owner Guaranteeing the pen against everything (except loss and intentional damage) subject only to a charge of 35¢ for postage, insurance, and handling, provided complete pen is returned for service.

Immediately preceding this statement is the outline of a blue diamond, which refers to the word "Guaranteed" in the body of the advertisement, this word being also preceded by a blue diamond. These marks appear to be used by respondent instead of asterisks, the purpose evidently being to emphasize the distinguishing mark of the pen.

PAR. 6. The Commission finds that through the use of the statements "Guaranteed for Life," "Life Guaranteed," "Guaranteed Life Contract," "Life Contract Guarantee," and others of similar import in connection with its pens, respondent represents, directly or by implication, that its pens are unconditionally guaranteed for life of the owner—that is, that if for any reason other than wilful damage or abuse the pen should fail to give satisfactory service for such period of time, it will be repaired or replaced by respondent without charge.

PAR. 7. Respondent concedes that a substantial portion of the pens do not last for the life of the owner without repair or adjustment, and the record affirmatively shows that every year some two hundred thousand of the pens are returned to respondent for necessary servicing, repair, or replacement of some part of the pen.

In view of the service charge imposed by respondent, its pens cannot properly be represented as guaranteed for life or for any other period of time. The purported guarantee is not in fact a guarantee of the pen but is merely a contract whereby respondent agrees that during the life of the owner it will make necessary repairs and adjustments to the pen at the flat rate of 35 cents each time the pen is returned to respondent for such service. The most that can be said of the agreement is that it is a guarantee of repair service on the pen. It is in no sense a guarantee of the pen itself.

PAR. 8. The Commission therefore finds that the foregoing representations made by respondent with respect to its pens are erroneous and misleading.

Nor is the misleading effect of respondent's representations avoided by the insertion in the advertisements of the statement (set out in paragraph

5 above) with respect to the service charge. As heretofore pointed out, this statement appears in small type and occupies an inconspicuous position in the advertisement. Ordinarily, it would escape the attention of the average reader. Even were it displayed prominently, however, the statement would still be insufficient, because it is inconsistent with and contradictory of the representations in the advertisement that the pen is unconditionally guaranteed for the life of the owner. The imposition of a charge for keeping the pen in usable condition is in direct conflict with respondent's representation that the pen is unconditionally guaranteed for life.

PAR. 9. Respondent has also represented in its advertisements that its pens contain fourteen less parts than other self-filling fountain pens and that the points on the pens are "Scratch-proof." These representations are likewise erroneous and misleading. Respondent's pens do not contain fourteen less parts, or any appreciably smaller number of parts, than other self-filling fountain pens, nor are the points scratch-proof. The use of these representations was discontinued by respondent some four years ago.

Complicated filling mechanisms in fountain pens are more likely to get out of order than are mechanisms which are more simple in construction, and the purchasing public therefore has a preference for simplicity in such mechanisms.

PAR. 10. The use by respondent of the erroneous and misleading 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 respondent's pens possess qualities and characteristics which they do not in fact possess and that such pens are unconditionally guaranteed for the life of the owner, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's pens as a result of the erroneous and mistaken belief so engendered. In consequence thereof, substantial trade has been and is being diverted unfairly to respondent from its competitors, among whom are those who do not engage in the acts and practices herein described.

CONCLUSION

The acts and practices of the respondent, as herein found, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce 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 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, The Parker Pen 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 of respondent's fountain pens in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Guaranteed for Life," "Life Guaranteed," "Guaranteed Life Contract," "Life Contract Guarantee," or any word or words of similar import, alone or in conjunction with any other word or words, to designate, describe, or refer to respondent's pens, or otherwise representing, directly or by implication, that such pens are unconditionally guaranteed for life, unless respondent does in fact make, without expense to the owner, any repairs or replacement of parts which may be necessitated during the life of the owner by any cause other than wilful damage or abuse.

2. Representing, directly or by implication, that respondent's pens are unconditionally guaranteed for any designated period of time, unless respondent does in fact make, without expense to the owner, any repairs or replacement of parts which may be necessitated during such designated period by any cause other than wilful damage or abuse.

3. Representing, directly or by implication, that respondent's pens contain fourteen less parts than other self-filling fountain pens; or that respondent's pens contain any smaller number of parts than other pens, when such is not the fact.

4. Representing, directly or by implication, that the points on respondent's pens are "Scratch-proof."

Nothing contained in this order, however, shall be construed as prohibiting respondent from representing truthfully that the service on its pens (as distinguished from the pens themselves) is guaranteed for life or other designated period of time, even though a charge is imposed by respondent in connection with such servicing, provided the terms of such guarantee, including the amount of such charge, are clearly and conspicuously disclosed in immediate conjunction with such representation.

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
EVERSHARP, INC.

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

Docket 4590. Complaint, Sept. 15, 1941—Decision, May 3, 1945

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of fountain pens and mechanical pencils, making use of a guarantee certificate which, prior to institution of instant proceeding, read "GUARANTEED FOREVER The Eversharp Gold Seal Doric Pen is GUARANTEED FOREVER—except against loss, theft, willful damage or abuse. This means specifically it is guaranteed to give you faithful service *without limitation as to years*. No charge will be made for repairs except a slight service charge of thirty-five cents (35¢) to cover handling, postage and insurance," etc.—

Represented, directly or by implication, in advertisements in newspapers, magazines, etc. and through point-of-sale advertising supplied to retailers including display posters, cards, etc., and particularly through radio broadcasts conveying programs to listeners in many states, in which pens and pencils were represented as "guaranteed forever" and customarily as "guaranteed not for years—not for life—but GUARANTEED FOREVER," that such pens and pencils were unconditionally guaranteed forever or without limitation as to time, that is, that if at any time and for any reason other than wilful damage or abuse the pen or pencil should fail to give satisfactory service, it would be repaired or replaced by it without charge; and failed to avoid or correct such misleading representations through the disclosure in its more recent advertisements that a service charge must be paid, and which, furthermore, in some of its radio broadcasts, employed chiefly for its advertising and usually lasting thirty minutes, was not made in connection with each mention of the guarantee but was deferred until near the close of the program;

The facts being that in view of the service charge imposed by its products could not properly be represented as guaranteed forever or for any other period of time; the purported guarantee was in fact merely a contract whereby it agreed that it would at any time make necessary repairs and adjustments to the pen or pencil at the flat rate of thirty-five cents each time the pen or pencil was returned to it for such service; and the most that could be said of the agreement was that it was a guarantee of repair service;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that its pens and pencils were unconditionally guaranteed forever and, as a result, to cause its purchase of substantial quantities thereof:

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

As respects the question of the misleading effect of advertisements by a seller of fountain pens and pencils which in its guarantee certificate entitled, "GUARANTEED FOREVER," set forth that the product was "GUARANTEED FOREVER—except against loss, theft, willful damage or abuse. This means specifically it is guaranteed to give you faithful service *without limitation as to years*," and "No charge will be made for repairs except a slight service charge of thirty-five cent,

(35¢) to cover handling, postage and insurance," and which originally advertised the same as "Guaranteed Forever" or by other words of similar import: Disclosure later in its various advertisements, including broadcasts, that a service charge must be paid, did not avoid said misleading effect, being inconsistent with and contradictory of the representations in the advertisement that the pen or pencil was unconditionally guaranteed forever; and the imposition of a charge for keeping the pen or pencil in usable condition was in direct conflict with its representation that the products were unconditionally guaranteed.

Before *Mr. Andrew B. Duwall*, trial examiner.

Mr. Karl Stecher for the Commission.

Hayes & Sher and *Mr. Robert Jackson*, of Washington, D. C., and *Winston, Strawn & Shaw*, 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 Eversharp, 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, Eversharp, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at Chicago, Ill. It is now, and has been for more than one year last past, engaged in the business of manufacturing and selling fountain pens and pencils. It causes said fountain pens and pencils, when sold, to be transported from its place of manufacture in Chicago, Ill., or from some other distributing point, to the purchasers thereof at their respective points of location in States other than the State from which said fountain pens or pencils are shipped, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said fountain pens and pencils in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of certain of its fountain pens and pencils, respondent has caused various statements and representations relative to the quality and durability of said pens and pencils to be inserted in advertisements in newspapers, magazines and other publications having a general circulation throughout the various States of the United States and in the District of Columbia, and by continuities broadcast from radio stations which have sufficient power to and do convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate. Among and typical of said statements and representations relative to said fountain pens and pencils are the following:

EVERSHARP Skyline Pens and Repeater Pencils, identified by the double check mark on the clips are guaranteed forever. A 35-cent charge is made for postage, insurance and handling. But against everything—except loss or intentional damage—we GUARANTEE FOREVER!

EVERSHARP REPEATING PENCILS are guaranteed not for years, not for life, but GUARANTEED FOREVER!

This sensational—BEAUTIFUL new EVERSHARP Doric pen—is guaranteed—not for years—not for life—but GUARANTEED FOREVER.

The above quotations and representations are not all-inclusive, but are merely illustrative of the type and character of those used by respondent in advertising its fountain pens and pencils which it allegedly guarantees forever.

PAR. 3. Through the use of the aforesaid statements and representations by respondent relative to its fountain pens and pencils, and others of similar import or meaning not herein set out, respondent represent directly or by implication that:

1. That said fountain pens and pencils are of such superior quality and durability that they will last forever, without the necessity of repair or adjustment.

2. That said fountain pens and pencils are guaranteed without limitation as to time.

PAR. 4. The aforesaid statements and representations so made and used by respondent are false, misleading and deceptive. Respondent's said fountain pens and pencils are not of such superior quality and durability that they will last forever, without the necessity of repair or adjustment. Said fountain pens and pencils are not guaranteed without limitation as to time. Whenever one of said fountain pens or pencils is sent to respondent for adjustment, respondent exacts a charge of 35¢ purportedly for postage, insurance and handling. This charge is made no matter how insignificant the repair or adjustment may be. Respondent's purported guarantee is, therefore, in no sense a genuine guarantee without limitation as to time, nor is it a guarantee for any particular time or at all. It is in fact merely a contract whereby respondent, while it continues in business, agrees with the purchaser of one of said fountain pens or pencils to make necessary repairs and adjustments at a flat rate of 35¢ each time the pen or pencil is sent to it for such service.

PAR. 5. The aforesaid acts, practices and representations of the respondent herein detailed in connection with the advertising and sale of its aforesaid fountain pens and pencils had, and now have, the tendency and capacity to, and did and do, deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading acts, practices and representations are true, and into the purchase of substantial quantities of respondent's fountain pens and pencils because of such erroneous and mistaken belief so induced.

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 September 15, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Eversharp, 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, brief in support of the complaint (no brief having been filed by respondent), 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, Eversharp, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in Chicago, Ill. Respondent is now, and for some five years last past has been, engaged in the manufacture and sale of fountain pens and mechanical pencils.

PAR. 2. Respondent causes and has caused its fountain pens and pencils, when sold, to be transported from its place of business in the State of Illinois, or from some other distributing point, to the purchasers thereof at their respective locations in various States of the United States other than the State from which such products are shipped, and in the District of Columbia. Respondent maintains and has maintained a course of trade in its products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of certain of its fountain pens and pencils, respondent advertises such products by means of advertisements inserted in newspapers, magazines and other publications having general circulation throughout the United States, and particularly by means of continuities broadcast from radio stations which convey the programs emanating therefrom to listeners located in many States of the United States other than the State in which such broadcasts originate. Respondent has also used point-of-sale advertising, supplying to its retail dealers posters, cards, etc., for display to the public. At the present time approximately ninety percent of respondent's advertising is done by means of radio broadcasts.

In its advertising respondent has represented, among other things, that the pens and pencils in question are "guaranteed forever," the customary statement being that the pens and pencils are "guaranteed not for years—not for life—but GUARANTEED FOREVER."

A service charge of 35 cents is made by respondent each time one of the pens or pencils is returned to it by the owner for repair. (The charge is only 25 cents if the pen or pencil is delivered in person at respondent's main office or at one of its branch offices.) Formerly, respondent's advertisements made no disclosure of the fact that a service charge must be paid, but the more recent advertisements have contained a reference to the charge. However, in some of the radio broadcasts, which usually last 30 minutes, the reference to the service charge is not made each time the guarantee is mentioned but is deferred until near the close of the program.

The guarantee certificate formerly issued by respondent in connection with its pens read as follows:

GUARANTEED FOREVER

The Eversharp Gold Seal Doric Pen is GUARANTEED FOREVER—except against loss, theft, willful damage or abuse. This means specifically it is guaranteed to give you faithful service *without limitation as to years*.

No charge will be made for repairs except a slight service charge of thirty-five cents (35¢) to cover handling, postage and insurance. Regular charges will be made for missing parts and parts which must be replaced due to willful damage or abuse.

Only genuine Eversharp parts may be used in this pen. If any other are used, the guarantee is void, but may be reinstated by having the pen properly repaired with genuine Eversharp parts at regular list prices.

For prompt service mail, together with all broken parts and guarantee coupon, either to our factory or your Eversharp dealer.

Date..... Dealer's Name.....
Eversharp, Inc. 1800 Rosco Street Chicago

Substantially the same form of certificate has been used in connection with the pencil.

(Since the institution of this proceeding, respondent has revised its advertising and now states that the *service* on the pens and pencils is guaranteed forever. The guarantee certificate has been similarly modified.)

PAR. 4. The Commission finds that through the use of the statement "guaranteed forever" and others of similar import in connection with its pens and pencils, respondent has represented, directly or by implication, that such pens and pencils are unconditionally guaranteed forever or without limitation as to time—that is, that if at any time and for any reason other than wilful damage or abuse the pen or pencil should fail to give satisfactory service, it will be repaired or replaced by respondent without charge.

PAR. 5. The record affirmatively shows that every year many thousands of the pens and pencils are returned to respondent by the owners for necessary servicing, repair, or replacement of parts. The servicing of the pens and pencils is done by respondent at a loss, as the cost of the servicing in the average case exceeds the amount of the service charge.

In view of the service charge imposed by respondent, its products cannot properly be represented as guaranteed forever or for any other period of time. The purported guarantee is not in fact a guarantee of the pen or pencil but is merely a contract whereby respondent agrees that it will at any time make necessary repairs and adjustments to the pen or pencil at the flat rate of 35 cents each time the pen or pencil is returned to the respondent for such service. The most that can be said of the agreement is that it is a guarantee of repair service. It is in no sense a guarantee of the pen or pencil itself.

PAR. 6. The Commission therefore finds that the representations made by respondent with respect to its pens and pencils, as set forth above, are erroneous and misleading.

Nor is the misleading effect of respondent's representations avoided by the insertion in the advertisements of the statement with respect to the service charge. The reason for this is that the statement is inconsistent

with and contradictory of the representations in the advertisement that the pen or pencil is unconditionally guaranteed forever. The imposition of a charge for keeping the pen or pencil in usable condition is in direct conflict with respondent's representation that the products are unconditionally guaranteed.

PAR. 7. The use by respondent of the erroneous and misleading 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 respondent's pens and pencils are unconditionally guaranteed forever, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's products as a result of the erroneous and mistaken belief so engendered.

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, brief in support of the complaint (no brief having been filed by 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, Eversharp, 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 fountain pens and mechanical pencils in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "guaranteed forever," or any word or words of similar import, alone or in conjunction with any other word or words, to designate, describe, or refer to respondent's products, or otherwise representing, directly or by implication, that such products are unconditionally guaranteed forever or without limitation as to time, unless respondent does in fact make, without expense to the user, any repairs or replacement of parts which may be necessitated at any time by any cause other than wilful damage or abuse.

2. Representing, directly or by implication, that respondent's products are unconditionally guaranteed for any designated period of time, unless respondent does in fact make, without expense to the user, any repairs or replacement of parts which may be necessitated during such designated period by any cause other than wilful damage or abuse.

Nothing contained in this order, however, shall be construed as prohibiting respondent from representing truthfully that the service on its products (as distinguished from the products themselves) is guaranteed forever or for any other designated period of time, even though a charge

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is imposed by respondent in connection with such servicing, provided the terms of such guarantee, including the amount of such charge, are clearly and conspicuously disclosed in immediate conjunction with such representation.

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
L. E. WATERMAN COMPANY

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

Docket 4617. Complaint, Oct. 17, 1941—Decision, May 3, 1945

Where a corporation, engaged in the manufacture and interstate sale and distribution of fountain pens and mechanical pencils, including its "100 Year Pen"; making use of a purported guarantee, set forth on a card included in the individual container of said pen, which read "Waterman's HUNDRED YEAR PEN, identified by the words: 'Waterman's Hundred Year Pen' on the point, is guaranteed for one hundred (100) years except against loss or wilful damage, and no charge will be made for putting it in good writing condition at any time within one hundred years from date of purchase provided the pen, complete with all damaged parts, is sent to our factory accompanied by a postage, handling and insurance charge of 35¢ . . ."—

Represented, directly or by implication, through the use of said "Guarantee" and the words "Waterman's Hundred Year Pen" on the pen point, and by said trade-name "100 Year Pen" and the statements "100 Year Guarantee," "Guaranteed for 100 Years," "Guaranteed for a Century" and others similar thereto in advertisements in newspapers, magazines and other publications of general circulation and in catalogs, circulars and other advertising media, that its said pens were unconditionally guaranteed for one hundred years, that is, that if for any reason other than wilful damage or abuse the pen should fail to give satisfactory service for such period of time, it would be repaired or replaced by respondent without charge; and failed to avoid the misleading effect of such representations through the later inclusion in its advertisements, usually in small type and frequently at or near the bottom, of a statement reading, "Waterman's 100 Year Pens are guaranteed for a century against all but loss or wilful damage if returned to factory with 35¢ to cover postage, handling and insurance";

The facts being that in view of the service charge imposed by it, its pen could not properly be represented as guaranteed for one hundred years or for any other period of time; the purported guarantee was not in fact a guarantee of the pen but merely a contract whereby it agreed that for a period of one hundred years it would make necessary repairs and adjustments to the pen at the flat rate of thirty-five cents each time the pen was returned for such service, and the most that could be said of the agreement was that it was a guarantee of repair service on the pen;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that its pens were unconditionally guaranteed for one hundred years, and to cause such public to purchase substantial quantities of its pens as a result thereof:

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

As respects the question of the misleading effect of advertisements by a seller of its "100 Year Pen," featuring said name together with statements such as "Guaranteed for One Hundred Years" and "Guaranteed for a century" which included, usually in small type and at or near the bottom the statement "Waterman's 100

Year Pens are guaranteed for a century against all but loss or willful damage if returned to factory with 35¢ to cover postage, handling and insurance": Latter statement did not avoid the misleading effect of the aforesaid representations since ordinarily it would escape the attention of the reader, and even were it displayed prominently, it would still be insufficient, being inconsistent with and contradictory of the representations that the pen was unconditionally guaranteed for one hundred years; and the imposition of a charge for keeping the pen in usable condition was in direct conflict with its representation that the pen was unconditionally guaranteed for one hundred years.

Before *Mr. Andrew B. Dwall*, trial examiner.

Mr. Karl Stecher for the Commission.

Hughes, Hubbard & Ewing, 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 L. E. Waterman Company, 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, L. E. Waterman Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at New York, N. Y. It is now, and has been for more than one year last past, engaged in the business of manufacturing and selling fountain pens and pencils. It causes said fountain pens and pencils, when sold, to be transported from its place of manufacture in New York, N. Y., or from some other distributing point, to the purchasers thereof at their respective points of location in States other than the State from which said fountain pens or pencils are shipped, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said fountain pens and pencils in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of certain of its fountain pens, respondent has caused various statements and representations relative to the quality and durability of said fountain pens to be inserted in advertisements in newspapers, magazines and other publications having a general circulation throughout the various States of the United States and in the District of Columbia. Among and typical of said statements and representations relative to said fountain pens are the following:

WATERMAN'S 100 YEAR PENS

* * *

Waterman's new 100 year pen

* * *

The *only* pen guaranteed 100 years against all but loss or wilful damage.

Complaint

WATERMAN'S
100 YEAR PEN

* * *

it's guaranteed 100 Years

No statement is made in these advertisements that any service charge will be exacted as a condition to the performance of this guarantee.

There is prominently featured in the top of boxes in which respondent's "Hundred Year Pens" are displayed to the public by dealers a card which reads:

W A T E R M A N ' S
100 YEAR
GUARANTEE

On the lower right hand end of this card is a gold seal on which are impressed the words: "Waterman's Hundred Year Pen." Beneath this seal is a blue ribbon. In small type at the bottom of the card are the words: "See other side." On the other side, or back side, is the following:

WATERMAN'S HUNDRED YEAR PEN, identified by the words: "Waterman's Hundred Year Pen" on the point, is guaranteed for one hundred (100) years except against loss or wilful damage, and no charge will be made for putting it in good writing condition at any time within one hundred years from date of purchase provided the pen, complete with all damaged parts, is sent to our factory accompanied by a postage, handling and insurance charge of 35¢.

* * *

The above quotations and representations are not all-inclusive, but are merely illustrative of the type and character of those used by respondent in advertising its fountain pens which it allegedly guarantees for one hundred years.

PAR. 3. Through the use of the aforesaid statements and representations by respondent relative to its fountain pens, and others of similar import or meaning not herein set out, respondent represents directly, or by implication that:

1. Said fountain pens are of such superior quality and durability that they will last 100 years without the necessity of repair or adjustment.
2. Said fountain pens are guaranteed for 100 years.

The aforesaid statements and representations so made and used by respondent are false, misleading and deceptive. Respondent's said fountain pens are not of such superior quality and durability that they will last 100 years, without the necessity of repair or adjustment. Said fountain pens are not guaranteed for 100 years. Whenever one of said fountain pens is sent to respondent for adjustment, respondent exacts a charge of 35¢, purportedly for postage, insurance and handling. This charge is made no matter how insignificant the repair or adjustment may be. Respondent's purported guarantee is in no sense a genuine guarantee for 100 years, nor is it a guarantee for any particular time, or at all. It is in fact merely a contract whereby respondent agrees with the purchaser of one of said fountain pens to make necessary repairs and adjustments at a flat rate of 35¢ each time a pen is sent to it for such service, for a period of 100 years.

PAR. 4. The aforesaid acts and practices of the respondent in connection with the advertising and sale of its aforesaid fountain pens had, and now have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading representations are true, and into the purchase of substantial quantities of respondent's fountain pens because of such erroneous and mistaken belief so induced.

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 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 17, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, L. E. Waterman Company, 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, L. E. Waterman Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in New York, N. Y. Respondent is now, and for many years last past has been, engaged in the manufacture and sale of fountain pens and mechanical pencils.

PAR. 2. Respondent causes and has caused its fountain pens and pencils, when sold, to be transported from its place of business in the State of New York, or from some other distributing point, to the purchasers thereof at their respective locations in various States of the United States other than the State from which such products are shipped, and in the District of Columbia. Respondent maintains and has maintained a course of trade in its products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In 1939, respondent adopted for its higher-priced fountain pens a new type of holder or barrel, which was regarded by it as possessing unusual strength and durability. Respondent designated this pen as its "100 Year Pen," and also adopted the policy of "guaranteeing" the pen

for one hundred years. Since that time the pen has been widely advertised by respondent by means of advertisements inserted in newspapers, magazines and other publications having general circulation throughout the United States, and also by means of catalogs, circulars and other advertising media distributed among purchasers and prospective purchasers throughout the nation. In all of these advertisements the trade name "100 Year Pen" is featured, as well as statements such as "Guaranteed for 100 Years" and "Guaranteed for a Century." The name "Waterman's Hundred Year Pen" also appears on the point or nib of the pen.

Each pen is packed by respondent in a separate box for display to the public, and in the top of this box is a card which bears on the exposed side the legend, "Waterman's 100 YEAR Guarantee." At the lower right-hand corner of this side of the card there is attached a gold-colored seal which bears the words, "Waterman's Hundred Year Pen." In small type at the bottom of the card are the words, "See Other Side." On the reverse side of the card is the purported guarantee, which reads as follows:

Waterman's HUNDRED YEAR PEN, identified by the words: "Waterman's Hundred Year Pen" on the point, is guaranteed for one hundred (100) years except against loss or wilful damage, and no charge will be made for putting it in good writing condition at any time within one hundred years from date of purchase provided the pen, complete with all damaged parts, is sent to our factory accompanied by a postage, handling and insurance charge of 35¢.

Charge will be made for any missing parts, but not for the repair or replacement of any defective or broken parts.

This guarantee is rendered void if any parts other than genuine Waterman's parts are fitted to this pen but it may be reinstated by such substituted parts being replaced by us at our regular repair parts prices.

Date of Purchase.....

Authorized Dealer.....

L E WATERMAN COMPANY
344 Hudson St., New York, N. Y.

As indicated above, a service charge of 35 cents is made by respondent each time the pen is returned to it for repair or adjustment. The record shows that the servicing of the pens is done by respondent at a loss, as the average cost of servicing each pen is approximately 47 cents, exclusive of the cost of new parts.

Formerly, respondent's advertisements made no reference to the service charge, but it is now respondent's policy to include in all advertisements a statement reading substantially as follows:

Waterman's 100 Year Pens are guaranteed for a century against all but loss or wilful damage if returned to factory with 35¢ to cover postage, handling and insurance.

This statement is usually in small type and frequently appears at or near the bottom of the advertisement rather than in the principal portion thereof. In some of the advertisements the statement is preceded by an asterisk, which refers to the representation as to the guarantee in the body of the advertisement.

PAR. 4. The Commission finds that through the use of the trade name "100 Year Pen" and of the statements "100 Year Guarantee," "Guaranteed for 100 Years," "Guaranteed for a Century" and others of similar

import in connection with its pens, respondent represents, directly or by implication, that its pens are unconditionally guaranteed for one hundred years—that is, that if for any reason other than wilful damage or abuse the pen should fail to give satisfactory service for such period of time, it will be repaired or replaced by respondent without charge.

PAR. 5. Respondent concedes that only in rare instances, if ever, will the pens last one hundred years without repair or adjustment, and the record affirmatively shows that every year many of the pens are returned to respondent for necessary servicing, repair, or replacement of some part of the pen. At the time of the hearings the number of pens which were being returned for such purposes was approximately three hundred per month, and the number was increasing steadily.

In view of the service charge imposed by respondent, its pens cannot properly be represented as guaranteed for one hundred years or for any other period of time. The purported guarantee is not in fact a guarantee of the pen but is merely a contract whereby respondent agrees that for a period of one hundred years it will make necessary repairs and adjustments to the pen at the flat rate of 35 cents each time the pen is returned to respondent for such service. The most that can be said of the agreement is that it is a guarantee of repair service on the pen. It is in no sense a guarantee of the pen itself.

PAR. 6. The Commission therefore finds that the representations made by respondent with respect to its pens, as set forth in paragraphs 3 and 4 hereof, are erroneous and misleading.

Nor is the misleading effect of respondent's representations avoided by the insertion in the advertisements of the statement (set out in paragraph 3 above) with respect to the service charge. As heretofore pointed out, this statement usually appears in small type and frequently occupies an inconspicuous position in the advertisement. Ordinarily, it would escape the attention of the average reader. Even were it displayed prominently, however, the statement would still be insufficient, because it is inconsistent with and contradictory of the representations in the advertisement that the pen is unconditionally guaranteed for one hundred years. The imposition of a charge for keeping the pen in usable condition is in direct conflict with respondent's representation that the pen is unconditionally guaranteed for one hundred years.

PAR. 7. 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 into the erroneous and mistaken belief that respondent's pens are unconditionally guaranteed for one hundred years, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's pens 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, testi-

mony 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, L. E. Waterman 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 of respondent's fountain pens in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Hundred Year," "100 Year," "100 Year Guarantee," "Guaranteed for 100 Years," "Guaranteed for a Century," or any word or words of similar import, alone or in conjunction with any other word or words, to designate, describe, or refer to respondent's pens, or otherwise representing, directly or by implication, that such pens are unconditionally guaranteed for one hundred years, unless respondent does in fact make, without expense to the user, any repairs or replacement of parts which may be necessitated during such period of time by any cause other than wilful damage or abuse.

2. Representing, directly or by implication, that respondent's pens are unconditionally guaranteed for any designated period of time, unless respondent does in fact make, without expense to the user, any repairs or replacement of parts which may be necessitated during such designated period by any cause other than wilful damage or abuse.

Nothing contained in this order, however, shall be construed as prohibiting respondent from representing truthfully that the service on its pens (as distinguished from the pens themselves) is guaranteed for one hundred years or other designated period of time, even though a charge is imposed by respondent in connection with such servicing, provided the terms of such guarantee, including the amount of such charge, are clearly and conspicuously disclosed in immediate conjunction with such representation.

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
LEMUEL FIRTH, 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 5065. Complaint, Oct. 20, 1943—Decision, May 4, 1945

Where 19 individuals, owners and masters of fishing boats operating out of the city of Gloucester, Mass., and comprising practically all the boats catching mackerel in fishing grounds located more than three miles off shore from Massachusetts and adjoining States, with fish capacity ranging from 60,000 pounds to over 100,000 pounds each plus ice to preserve the fish and with crews of from ten to fourteen men, compensated by an agreed share of the profit from each catch of fish; and engaged in the transportation and competitive sale of such fish to dealers in New Bedford, Boston, and Gloucester, Mass., for resale to dealers in various States;

Following dissatisfaction on the part of owners, masters and crew members, caused by a glut in the market when prices, particularly in New Bedford—where there were only about three dealers and sale, unlike that at the Boston Fish Exchange at which it was at public auction, was through private negotiation only—dropped to an extremely low point, and preceding the subsequent scarcity of mackerel, a much stronger market, and substantial price advances, as a result of which they evidently felt the situation had thus corrected itself;

Entered into and put into operation and effect, for a period of one month, an agreement, combination, and conspiracy among themselves and with the Atlantic Fishermen's Union and its members to hinder, restrain, and lessen competition in the production of mackerel and in the sale and distribution of such fish in interstate commerce; and pursuant thereto,

- (a) Agreed to and did limit the catches to 40,000 pounds of mackerel;
- (b) Agreed and abided by agreement that boats carrying their catch to New Bedford (which was the principal port they had in mind in referring to ports on "the westerly side of the Cape Cod Canal" in their formal agreement) would refuse to sell their fish unless the New Bedford dealers would pay a price one-half cent per pound above the prevailing price on the Boston exchange; in order, through said differential, to offset certain freight rate advantages enjoyed by the New Bedford dealers in selling in the New York market, and to offset the effect of apprehended collusion among the New Bedford dealers, which tended to depress the market and afford them an unfair advantage over dealers in Boston, who had to buy at public auction;
- (c) Agreed and abided by agreement that boats going into New Bedford would remain in port for thirty-six hours, as opposed to those going into Boston or Gloucester which were required to remain only twenty-four hours, due to greater nearness of the fishing grounds to New Bedford than to Boston, and their wish to give boats going into Boston opportunity to dispose of their catch and return to the fishing grounds as soon as those going into New Bedford, and thus afford all boats opportunity to make approximately the same number of trips to and from the fishing grounds, encourage boats to go to Boston, and tend to relieve somewhat the glutted condition of the New Bedford market; and
- (d) Agreed to and did discontinue the practice, regarded as unfair, of selling fish via radio phone before the boat reached port, and sometimes even before the fish had been caught;

With the result, by reason of such agreements, etc., carried out for said period, but apparently not longer, and aforesaid acts and things done pursuant thereto, of substantially restraining competition in the production of such fish, and in the sale and distribution thereof in commerce; compelling certain dealers to pay higher prices than they would otherwise have paid; and increasing the price to the consuming public:

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

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

Mr. Everett F. Haycraft for the Commission.

Mr. William J. MacInnis, of Gloucester, Mass., 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 individuals named in the caption hereof, 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, Lemuel Firth, is the owner and master of the boat, Three Sisters, and resides in the city of Gloucester, State of Massachusetts. Respondent, Cyril Dyett, is the owner and master of the boat, American Eagle, and resides in the city of Gloucester, State of Massachusetts. Respondent, Jack Barrett, is the owner and master of the boat, Jackie B., and resides in the city of Gloucester, State of Massachusetts. Respondent, Frank Foote, is the owner and master of the boat, Eleanor, and resides in the city of Gloucester, State of Massachusetts. Respondent, Cy Tysfer, is the owner and master of the boat, Naomi Bruce, and resides in the city of Gloucester, State of Massachusetts. Respondent, Benedetto Randazza, is the owner and master of the boat, Antonina, and resides in the city of Gloucester, State of Massachusetts. Respondent, Phillip Curcuru, is the owner and master of the boat, Bethulia, and resides in the city of Gloucester, State of Massachusetts. Respondent, Thomas Scola, is the master of the boat, Mary W., and resides in the city of Gloucester, State of Massachusetts. Respondent, Joseph Sinagra, is the owner and master of the boat, Frankie & Rose, and resides in the city of Gloucester, State of Massachusetts. Respondent, Peter Scola, is the owner and master of the boat, Rosemarie, and resides in the city of Gloucester, State of Massachusetts. Respondent, Joseph Parisi, is the owner and master of the boat, Rose & Lucy, and resides in the city of Gloucester, State of Massachusetts. Respondent, Frank Mineo, is the master of the boat, Alden, and resides in the city of Gloucester, State of Massachusetts. Respondent, Isodoro Tarantino, is the owner and master of the boat, Captain Drum, and resides in the city of Gloucester, State of Massachusetts. Respondent, Peter Mercurio, is the owner and master of the boat, Santa Maria, and resides in the city of Gloucester, State of Massachusetts. Respondent, Paul Scola, is the owner and master of the boat, Jennie & Julia, and resides in the city of Gloucester, State of Massachusetts. Respondent, Gerome Frontiero, is the owner and master of the boat, Beatrice & Rose,

and resides in the city of Gloucester, State of Massachusetts. Respondent, Philip Nicaastro, is the owner and master of the boat, Serafina N., and resides in the city of Gloucester, State of Massachusetts. Respondent, Leo Favaloro, is the owner and master of the boat, Saint Ann, and resides in the city of Gloucester, State of Massachusetts. Respondent, Alphonse Mineo, is the master of the boat, Frank F. Grinnell, and resides in the city of Gloucester, State of Massachusetts.

PAR. 2. Said respondents are engaged in the business of catching fish in fishing grounds in the Atlantic Ocean three miles or more from shore adjacent to the State of Massachusetts and adjoining States, and in the transportation and sale thereof to dealers located in the cities of Gloucester, Boston and New Bedford, Mass., who in turn sell said fish to dealers located in States other than the State of Massachusetts, causing said fish when sold to be transported from their respective places of business to the purchasers thereof located throughout the several States of the United States and there has been and now is a regular course of interstate trade and commerce in fresh fish to and from and through said dealers located in said cities to dealers located in cities in States other than Massachusetts. Said respondents have been during all times herein mentioned and now constitute more than 90% of all fishermen engaged in catching fish in said fishing grounds. Prior to the adoption of the practices hereinafter alleged, said respondents were in free, active and substantial competition with each other in catching and selling fish to dealers in said commerce and, but for the facts hereinafter alleged, such free, active and substantial competition would have continued and said respondents would now be in free, active and substantial competition with each other.

PAR. 3. Said respondents, acting in cooperation with each other and with the Atlantic Fishermen's Union of Boston and other similar organizations and their members who are members of the crews employed by said respondents on their respective boats during the period of time, to wit, from May, 1941, to the date of this complaint, have from time to time entered into understandings, agreements, combinations and conspiracies among themselves to hinder and suppress competition in the interstate sale and distribution of fresh fish, including particularly, mackerel, red fish and yellow tails, to dealers, and to restrain interstate trade in said fish and to create a monopoly in the interstate sale and distribution of such fish in and around the cities of Gloucester, Boston and New Bedford, Mass. Pursuant to said understanding, agreement, combination and conspiracy and in furtherance thereof, the respondents have acted in concert, have followed a planned common course of action and have cooperated with each other in doing the following acts and things:

(a) Restricted the quantity of fish to be caught and sold to dealers within certain time limits.

(b) Fixed the price at which said fish was to be sold to dealers in the respective markets, particularly in the city of New Bedford.

(c) Restricted the length of time that a fishing boat may stay in said ports for the purpose of selling fish.

(d) Refused to allow each other to receive and dealers to make bids on catches of fish by the use of radio phone before boats are docked.

(e) Refused to sell fish to dealers located in New Bedford, Massachusetts, at prices less than those fixed by respondents pursuant to agreement and understanding as aforesaid.

(f) Held joint meetings with the said Atlantic Fishermen's Union and other similar labor organizations composed of members of crews employed

by said respondents at which agreements were made to boycott or otherwise interfere with the usual operation of fishermen who did not observe and do the acts and things set forth herein in subparagraphs (a) to (e) inclusive.

PAR. 4. The results of such understanding, agreement and conspiracy, of the planned common course of action and cooperation, and of the acts and things done thereunder and pursuant thereto by said respondent as hereinbefore set forth have been and now are:

1. To prevent and hinder respondents from selling their fish in interstate commerce to dealers therein who but for the existence of said understanding, agreement, combination and conspiracy would purchase said fish.

2. To prevent dealers in fish in the city of New Bedford, Mass., and elsewhere from purchasing their requirements of said fish in interstate commerce from the respondents.

3. To force many dealers in fish located in the city of New Bedford, Mass., and elsewhere to discontinue the business of buying and selling certain kinds of fish particularly mackerel, red fish or yellow tails because of their inability to obtain a supply thereof at competitive prices from said respondents.

4. To substantially increase the price of said fish to dealers located in the city of New Bedford, Mass., and elsewhere and to the consuming public.

5. To place in the hands of the respondents control over the business practices of fishermen and dealers in fish and over market prices of fish and the power to exclude from the fishing industry in the territory adjacent to the State of Massachusetts those who do not conform to the rules, regulations and prices established by said respondents.

PAR. 5. The acts and practices of the respondents, as herein alleged, are all to the prejudice of the public, have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of fresh fish in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices in said fish and have tended to create in the respondents a monopoly in the sale of said fish in such commerce, 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 20, 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 in commerce in violation of the provisions of that act. After the filing by respondents of their answer 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, answer, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, and brief in support

of the complaint (no brief having been filed on behalf of 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. All of the respondents reside in the city of Gloucester, Mass. Each is the owner and/or master of a fishing boat operating out of that city. Respondent, Lemuel Firth, is the owner of the boat "Three Sisters." Respondent, Cyril Dyett, is the master of the boat "American Eagle." Respondent, Jack Barrett, is the owner of the boat "Jackie B." Respondent, Frank Foote, is the master of the boat "Eleanor." Respondent, Cy Tysfer, is the master of the boat "Naomi Bruce." Respondent, Benedetto Randazza, is the owner and master of the boat "Antonina." Respondent, Phillip Curcuru, is the owner and master of the boat "Bethulia." Respondent, Thomas Scola, was, during the time hereinafter referred to, the master of the boat "Mary W." Respondent, Joseph Sinaagra, is the owner and master of the boat "Frankie and Rose." Respondent, Peter Scola, is the owner and master of the boat "Rosemarie." Respondent, Joseph Parisi, is the master of the boat "Rose and Lucy." Respondent, Frank Mineo, is the master of the boat "Alden." Respondent, Isodoro Tarantino, is the master of the boat "Captain Drum." Respondent, Peter Mercurio, is the owner and master of the boat "Santa Maria." Respondent, Paul Scola, is the owner and master of the boat "Jennie & Julia." Respondent, Gerome Frontiero, is the owner and master of the boat "Beatrice & Rose." Respondent, Philip Nicastro, is the master of the boat "Serafina N." Respondent, Leo Favaloro, is the master of the boat "Saint Ann." Respondent, Alphonse Mineo, is the master of the boat "Frank F. Grinnell."

PAR. 2. The respondents are engaged in the business of catching fish, particularly mackerel, in fishing grounds located more than three miles from shore in that portion of the Atlantic Ocean adjacent to the State of Massachusetts and adjoining States, and in the transportation and sale of such fish to dealers located in the cities of New Bedford, Boston, and Gloucester, Mass. These dealers resell the fish to dealers located in States other than the State of Massachusetts, causing the fish, when sold, to be transported across State lines to such purchasers. Respondents and the dealers purchasing their fish maintain and have maintained a regular course of trade in such fish in commerce among and between various States of the United States.

PAR. 3. The respondents are in active and substantial competition with one another in catching fish and in the transportation and sale of such fish in commerce as aforesaid, except insofar as such competition has been hindered, lessened, and restrained as a result of the acts and practices hereinafter described.

PAR. 4. The boats operated by the respondents comprise practically all of the boats fishing for mackerel in the fishing grounds in question. The boats range in load capacity from about 60,000 pounds to over 100,000 pounds of fish, plus the amount of ice necessary to preserve the fish until they are unloaded in port. Each boat carries a crew of from ten to fourteen men. The crew members receive for their labor an agreed share o

percentage of the profit accruing from each catch of fish. They are therefore directly interested in the price obtained for the catch. The master or captain of the boat sometimes receives a share as a member of the crew in addition to the commission or other compensation paid him by the owner of the boat. In Boston, fish are sold at public auction on the fish exchange. In New Bedford, however, a different situation prevails. Here there are only about three dealers, and the sale is a matter of private negotiation or bargaining between the dealer and the operators of the boat. The prices prevailing in the Boston market usually govern the prices paid in New Bedford.

PAR. 5. In May, 1941, mackerel were plentiful, and as the boats usually caught and carried into port loads approximating their full capacity, the result was that the market was glutted, particularly in New Bedford. Prices dropped to an extremely low point, and all parties interested in the operation of the boats—owners, masters, and crew members alike—were very much dissatisfied. In an attempt to remedy the situation, the respondents held a meeting in the latter part of May, 1941, and tentatively agreed among themselves upon certain rules or regulations to govern the catching and sale of mackerel. These rules were reduced to memorandum form and submitted to the local representative of the labor union known as the Atlantic Fishermen's Union, to which all of the crew members belonged. After making certain changes in and additions to the rules, the union representative had them reduced to a formal written agreement, and each of the respondents signed a copy of the agreement. The agreement was in the following form:

A G R E E M E N T

THIS AGREEMENT ENTERED into this June 1 to July 1, 1941, by and between ----- Owner, Captain or anyone acting in their behalf, of the American Fishing Vessel -----, hereinafter referred to as the Owner, Party of the First Part and the Atlantic Fishermen's Union, hereinafter referred to as the Union, Party of the Second Part.

WHEREAS, the Owner, Captain or anyone acting in their behalf and the Union are desirous of catching and selling mackerel, and

WHEREAS, the work and expense to the fishermen in catching mackerel is not commensurate with his return on said mackerel,

THEREFORE, it is hereby mutually agreed as follows:

Crew members will work as many hours as it may take to catch 40,000 lbs of mackerel.

Boats going in to the westerly side of the Cape Cod Canal, arriving in any port before noon (on the westerly side) may take out fish at $\frac{1}{2}\%$ above the Boston price in the fish exchange.

Boats arriving after noon in any of the above mentioned ports, shall take out fish the following day at the above mentioned price, and shall stay in 36 hours in port from the time the trip is started.

Boats in Boston or Gloucester shall stay in 24 hours.

From 10,000 lbs. and over, will be considered a trip.

No fish is to be given away to any boats out of the seine.

No fish will be sold by radio phone but fish can be sold by land phone.

One man from the crew shall be permitted to tally fish. (Comm. Ex. 1)

PAR. 6. This agreement, which was signed by the respondents on or about June 1, 1941, covered the thirty-day period from June 1, 1941, to

July 1, 1941. It was in the nature of an experiment, respondents intending to extend the agreement for a longer period if it proved satisfactory. That the agreement was immediately put into effect is evident from the record. Catches were restricted to 40,000 pounds. Boats carrying their catch to New Bedford (which was the principal port respondents had in mind in referring to ports on "the westerly side of the Cape Cod Canal") refused to sell their fish unless the New Bedford dealers would pay a price one-half cent per pound above the prevailing price on the Boston exchange. This price differential was imposed by respondents to offset certain freight rate advantages enjoyed by the New Bedford dealers in selling in the New York market, and also because the respondents felt that there was collusion among the New Bedford dealers, which tended to depress the market and afford the dealers an unfair advantage over dealers in Boston, who had to buy at public auction.

Respondents likewise observed the provision of the agreement requiring boats going into New Bedford to remain in port for thirty-six hours, whereas boats going into Boston or Gloucester were required to remain only twenty-four hours. The reason for this rule was that the fishing grounds were nearer to New Bedford than to Boston, and respondents wished to give boats going into Boston an opportunity to dispose of their catch and return to the fishing grounds by the time boats going into New Bedford could return, thus affording all boats an opportunity to make approximately the same number of trips to and from the fishing grounds. It was thought that this would encourage boats to go to Boston and tend to relieve somewhat the glutted condition of the New Bedford market. Also discontinued, pursuant to the agreement, was the practice of certain of the respondents of selling fish via radio phone before the boat reached port, and sometimes even before the fish had been caught. This was regarded by the respondents generally as an unfair practice.

So far as the record discloses, the agreement was not extended beyond the thirty-day period. The reason for this appears to have been that before the period expired mackerel had become scarce, the market had become much stronger, and prices had advanced substantially. The respondents evidently felt that the situation had thus corrected itself, and that there was therefore no necessity for extending the agreement.

PAR. 7. The Commission finds from the facts, herein set forth, that the respondents entered into and put into operation and effect an agreement, combination, and conspiracy among themselves and with the Atlantic Fishermen's Union and its members to hinder, restrain, and lessen competition in the production of mackerel fish and in the sale and distribution of such fish in interstate commerce. Such agreement, combination, and conspiracy, and the acts and things done pursuant thereto and in furtherance thereof, as herein set forth, had the tendency and capacity to, and did, substantially hinder, restrain, and lessen competition in the production of such fish, and in the sale and distribution thereof in commerce as aforesaid, compel certain dealers to pay higher prices for such fish than they would otherwise have paid, and increase the price of such fish to the consuming public.

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 answer of the respondents, testimony and other evidence introduced 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 brief in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Lemuel Firth, Cyril Dyett, Jack Barrett, Frank Foote, Cy Tysfer, Benedetto Randazza, Phillip Curcuru, Thomas Scola, Joseph Sinagra, Peter Scola, Joseph Parisi, Frank Mineo, Isodoro Tarantino, Peter Mercurio, Paul Scola, Gerome Frontiero, Philip Nicastro, Leo Favalaro, and Alphonse Mineo, 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 fish 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. Restricting the quantity of fish to be caught and sold to dealers.
2. Fixing the price at which fish are to be sold to dealers in any market, or establishing or maintaining any price differential between or among different markets.
3. Prescribing the length of time a boat carrying fish to market shall remain in port.
4. Prohibiting the use of the radio phone in carrying on negotiations for the sale of fish.
5. Holding meetings for the purpose of reaching agreements governing the quantity of fish to be caught or the price at which fish are to be sold.
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 fish.

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
ASSOCIATED MERCHANDISING CORPORATION, ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUB-SEC. (f) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5027. Complaint, Aug. 17, 1943—Decision, May 8, 1945

Where a corporation, the 21 owners and members of which were engaged in the operation of 22 department stores located in Boston, New York, Philadelphia, Baltimore, Richmond, Cleveland, Chicago, Minneapolis, St. Louis, San Francisco and other large cities, with sales in 1941 aggregating 425 million dollars, and individual store sales ranging from two to 40 million dollars; which, reorganized and re-incorporated in 1939, with staffs of market specialists charged primarily with assisting the buyers of the various stores in purchasing from the manufacturers, producers and suppliers at the lowest possible price, merchandise resold in said stores of the members—about 25% of which was bought with its aid; and which, with offices in New York, branch offices in Chicago and Los Angeles, a Boston sub-office and, before the war, buying offices in various cities in Europe and the Orient; and with no warehouses and selling no merchandise to the trade or the consuming public; was maintained and operated by said members as an agency and means whereby they were enabled to act collectively to obtain special allowances and discounts on their purchases of merchandise—

(a) Knowingly induced manufacturers, producers, and suppliers to discriminate in price in favor of said members by selling them merchandise for resale in their respective department stores at lower prices or with higher allowances or discounts than those accorded to stores of non-members in competition with members' stores; and,

Where said members—

(b) Knowingly received the benefits of such discriminatory allowances or discounts granted to said corporation for the use and benefit of said members, through ratable distribution by said corporation of the rebate paid by the manufacturer or other source of supply on the total aggregate purchases from it for a specific period—usually a year—of all the department stores of such members; and

Where said corporation—

(c) Sought to induce manufacturers, producers, and suppliers of merchandise resold in the department stores of the members, to grant the aforesaid special and discriminatory allowances or discounts on the purchase thereof by the members, and approved, classified, and designated a manufacturer agreeing so to do, as a "preferred resource";

(d) As an inducement for, and in consideration of, the aforesaid discriminations in price granted by said "preferred resources," continuously requested, and by various means attempted to influence, the members to confine to said "preferred resources" all of their purchases of the merchandise of which said preferred resources were sources of supply; and

Where said members—

(e) Usually acting directly, but sometimes through such corporation, generally confined purchases to "preferred resources" and withheld them from other sources of supply;

(f) As a further inducement to and in consideration of the aforesaid discriminations in price, gave preference in reselling to merchandise which had been purchased

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from said "preferred resources" and did not push the resale of comparable goods which they had purchased from other sources of supply; and

Where said corporation, and its members, as above set out—

- (g) Knowingly induced and received discriminatory prices from manufacturers, producers, and suppliers by means of special allowances or discounts on their purchases in commerce of the merchandise which was resold in the stores of said members;

With the result that—

1. Manufacturers, producers, and suppliers, who had been and were in competition with such "preferred resources" in seeking to sell, in commerce, to said corporation and to the members for resale, merchandise of like grade and quality as that sold to them by said preferred resources, were prevented from thus selling their goods, due to their refusal to grant the discriminatory prices or discounts granted by said preferred resources; and

2. Department stores which were in competition with members' stores and which individually might purchase merchandise from a particular preferred resource in an amount as great as, or in excess of, that of a competing store of a member were not granted any similar price or discount on their purchases;

Effect of which discriminations in price—

1. Might be substantially to lessen competition in the line of commerce in which the preferred resources were engaged, and to injure, destroy, or prevent competition with said preferred resources in selling merchandise to said members for resale;

2. Might be substantially to lessen competition in the line of commerce in which were engaged the department stores of said members and those of their competitors who did not receive the benefit of said discriminatory prices or discounts; and

3. Might be to injure, destroy, or prevent competition between the stores of said members who received the benefits of said discriminatory price and competing department stores to whom such benefits were denied:

Held, That such acts and practices constituted violations of subsection (f) of Section 2 of the Clayton Act as amended.

Mr. Fletcher G. Cohn for the Commission.

Weil, Gotshal & Manges, of New York City, for Associated Merchandising Corp.

Gardner, Morrison & Rogers, of Washington, D. C., for the other respondents, and along with—

D'Ancona, Pflaum, Wyatt, Marwick & Riskind, of Chicago, Ill., for The Herzfeld-Phillipson Co.;

MacFarlane, Schaefer & Haun, of Los Angeles, Calif., for Bullock's, Inc.;

Kingman, Cross, Morley, Cant & Taylor, of Minneapolis, Minn., for The Dayton Co.; and

Mr. Hal H. Smith and *Mr. Albert E. Meder*, of Detroit, Mich., for The J. L. Hudson Co.

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 been and are now violating the provisions of subsection (f) 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, Associated Merchandising Corporation hereinafter referred to and designated as "respondent A.M.C.," is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business being located at 1440 Broadway, New York, N. Y.

Respondent, Abraham & Straus, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business being located in the city of Brooklyn, N. Y., where it operates a retail department store under the name of Abraham & Straus, Inc.

Respondent, L. S. Ayres & Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Indiana, with its office and principal place of business being located in the city of Indianapolis, Ind., where it operates a retail department store under the name of L. S. Ayres & Company.

Respondent, Bloomingdale Bros., Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business being located at Lexington Avenue and 59th Street in the city of New York, N. Y., where it operates a retail department store under the name of Bloomingdale Bros., Inc.

Respondent, The Herzfeld-Phillipson Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business being located in the city of Milwaukee, Wis., where it operates a retail department store under the name of The Boston Store.

Respondent, Bullock's, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business being located in the city of Los Angeles, Calif., where it operates a retail department store under the name of Bullock's, Inc.

Respondent, Burdine's, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of Florida, with its office and principal place of business being located in the city of Miami, Fla., where it operates a retail department store under the name of Burdine's, Inc.

Respondent, The Dayton Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Minnesota, with its office and principal place of business being located in the city of Minneapolis, Minn., where it operates a retail department store under the name of The Dayton Company.

Respondent, The Emporium-Capwell Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business being located in the city of San Francisco, Calif.; it operates two retail department stores, one in San Francisco, Calif., known as the Emporium, and the other in Oakland, Calif., known as The H. C. Capwell Company.

Respondent, Wm. Filene's Sons Company, is a corporation, duly organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business being located in the city of Boston, Mass., where it operates a retail department store under the name of Wm. Filene's Sons Company.

Respondent, B. Forman Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its

office and principal place of business being located in the city of Rochester, N. Y., where it operates a retail department store under the name of B. Forman Company.

Respondent, Joseph Horne Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business being located in the city of Pittsburgh, Pa., where it operates a retail department store under the name of Joseph Horne Company.

Respondent, The J. L. Hudson Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Michigan, with its office and principal place of business being located in the city of Detroit, Mich., where it operates a retail department store under the name of The J. L. Hudson Company.

Respondent, Hutzler Brothers Co., is a corporation, duly organized and existing under and by virtue of the laws of the State of Maryland, with its office and principal place of business being located in the city of Baltimore, Md., where it operates a retail department store under the name of Hutzler Brothers Co.

Respondent, The F. & R. Lazarus & Co., is a corporation, duly organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business being located in the city of Columbus, Ohio, where it operates a retail department store under the name of The F. & R. Lazarus & Co.

Respondent, The Rike-Kumler Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business being located in the city of Dayton, Ohio, where it operates a retail department store under the name of The Rike-Kumler Company.

Respondent, The John Shillito Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business being located in the city of Cincinnati, Ohio, where it operates a retail department store under the name of The John Shillito Company.

Respondent, Stix, Baer & Fuller Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Missouri, with its office and principal place of business being located in the city of St. Louis, Mo., where it operates a retail department store under the name of Stix, Baer & Fuller Company.

Respondent, Strawbridge & Clothier, is a corporation, duly organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business being located in the city of Philadelphia, Pa., where it operates a retail department store under the name of Strawbridge & Clothier.

Respondent, The Wm. Taylor Son & Co., is a corporation, duly organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business being located in the city of Cleveland, Ohio, where it operates a retail department store under the name of The Wm. Taylor Son & Co.

Respondent, Thalhimer Brothers, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of Virginia, with its office and principal place of business being located in the city of Richmond, Va., where it operates a retail department store under the name of Thalhimer Brothers, Inc.

Respondent, R. H. White Company, is a corporation, duly organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business being located in the city of Boston, Mass., where it operates a retail department store under the name of R. H. White Company.

PAR. 2. Respondents, Abraham & Straus, Inc., L. S. Ayres & Company, Bloomingdale Bros., Inc., The Herzfeld-Phillipson Company, Bullock's Inc., Burdine's, Inc., The Dayton Company, The Emporium-Capwell Company, Wm. Filene's Sons Company, B. Forman Company, Joseph Horne Company, The J. L. Hudson Company, Hutzler Brothers Co., The F. & R. Lazarus & Co., The Rike-Kumler Company, The John Shillito Company, Stix, Baer & Fuller Company, Strawbridge & Clothier, The Wm. Taylor Son & Company, Thalhimer Brothers, Inc., and R. H. White Company, hereinafter referred to collectively as "respondent members," own and operate the various department stores as hereinbefore set forth in paragraph 1. Each of said respondent members is a separate, distinct and independent legal entity, and each one of the department stores which they operate is independent of the stores of all of the other respondent members. The annual volume of sales of the 22 department stores owned and operated by said respondent members (respondent, The Emporium-Capwell Company, owns and operates two stores: The Emporium at San Francisco, Calif., and the H. C. Capwell Company at Oakland, Calif.) in 1941 was approximately \$425,000,000. The annual volume of sales of the respective stores of respondent members ranges from \$2,000,000 to \$40,000,000.

PAR. 3. Respondent, A.M.C., is an outgrowth of the Retail Research Association, hereinafter referred to as "R.R.A.," which was organized in 1916 by ten of the respondent members, with the avowed or ostensible purpose of enabling the department stores owned by said members to operate more efficiently and to obtain and furnish to said members information as to market conditions and other related subjects,

While the R.R.A. was in its formative stage, several of its directors saw the possibility of expanding it into an organization through which the department stores belonging to the respondent members could buy their goods, wares and merchandise collectively. Therefore, in 1918, nine of the ten respondent members who had organized R.R.A., organized respondent, A.M.C.; later the tenth of the respondent members who had organized R.R.A. acquired membership in respondent, A.M.C. By 1934, all but two of the respondent members had become affiliated with respondent, A.M.C. and these joined in 1938, when they adopted, ratified, approved and began taking part in the activities, practices and planned course of action of respondent, A.M.C. and respondent members, which are hereinafter set out. Since 1938, the 21 respondent members, operating the 22 department stores hereinbefore mentioned, have comprised the membership of respondent, A.M.C.

Respondent, A.M.C. was reorganized and reincorporated under the laws of the State of New York in 1939 with a capital stock of \$1,000,000, consisting of 10,000 shares of \$100 par value of which 250 are preferred and 9,750 common. The preferred shares, which are divided equally among all of the respondent members, have full voting power while the common shares have no voting power.

Application for membership in respondent, A.M.C., can be made only upon invitation by respondent, A.M.C., and election is only by unanimous

approval of all of the respondent members. In the event that a member desires to withdraw from respondent, A.M.C., it must sell its preferred and common stock to the remaining members of A.M.C. at a price determined by the book value of A.M.C. shares.

Although R.R.A. and respondent, A.M.C., are separate corporations, they have identical stockholders, boards of directors, executive committees and officers. They occupy jointly several floors at 1440 Broadway, New York, N. Y.; they also have branch offices in Chicago, Ill., and Los Angeles, Calif., and a suboffice in Boston, Mass. Before the war respondent, A.M.C., maintained buying offices in various cities in Europe and the Orient.

In 1938 respondent, A.M.C. and R.R.A., had 430 persons employed, which number was decreased to 325 in 1942 because of the closing of the foreign offices. The cost of operating respondent, A.M.C. and R.R.A., increased from \$25,000 per annum in 1916 to \$1,500,000 in 1941. A budget is prepared in advance to cover annual costs of operations which are borne by respondent members who contribute weighted amounts based on the volume of their previous year's sales. The estimated cost in volume of sales of each of respondent members is approximately one-third of one per cent. However, respondent, A.M.C., claims that through its method of purchasing for respondent members' stores, as hereinafter described, respondent members save from six to seven percent per year.

The principals of respondent members' stores meet twice yearly to discuss policy, but no major steps are adopted without the unanimous approval of all of the respondent members; the ultimate control and direction of respondent, A.M.C., are in the hands of the respondent members who own equal amounts of the preferred voting stock of said respondent.

PAR. 4. Respondent, A.M.C., has eight merchandising divisions, which are conducted by managers, who in turn are under the direct supervision of the director of respondent, A.M.C. Each such division has a staff of recognized market specialists in the particular field of merchandising to which that particular division's activities are directed. The primary responsibility of all of these employees of respondent, A.M.C., is to assist the merchandise buyers of the stores of respondent members in purchasing from the manufacturers, producers and suppliers of such merchandise, at the lowest possible prices, the various goods, wares and merchandise resold in said stores of the respondent members.

Respondent, A.M.C., has no warehouses and does not sell any goods, wares or merchandise to the trade or consuming public. When goods, wares and merchandise are purchased by respondent members, either directly or through or by means of respondent, A.M.C., the same are shipped to their respective stores directly from the manufacturers, producers and suppliers thereof, many of which are located in various States other than those from which such shipments are made.

Approximately 25 percent of all the goods, wares and merchandise trafficked through the stores of respondent members are bought through, by means of, or with the aid of respondent, A.M.C.

PAR. 5. In the course and conduct of their respective businesses, respondent, A.M.C., and respondent members, since June 19, 1936, have entered into and carried out, and are still carrying out, an agreed and planned course of action to secure for respondent members, from the manufacturers, producers and suppliers thereof, special allowances or discounts on their purchases of the goods, wares and merchandise, which are resold in the stores of respondent members.

PAR. 6. Pursuant to, and in furtherance of, said agreed and planned course of action, respondent, A.M.C., with the knowledge, consent and approval of respondent members, has since June 19, 1936, and is now, knowingly inducing said manufacturers, producers and suppliers to discriminate in price in favor of respondent members by selling them, for resale in their respective department stores throughout the United States, goods, wares and merchandise of like grade and quality, at lower prices, or with higher allowances or discounts, than those accorded by said manufacturers, producers and suppliers to stores not belonging to respondent members, but which are in competition with the stores of respondent members in reselling and attempting to resell such goods, wares and merchandise.

Also, pursuant to, and as a result of, the aforesaid agreed and planned course of action, respondent members have been, since June 19, 1936, and are now, knowingly receiving the benefits of said discriminations.

PAR. 7. Generally, the special allowances or discounts granted by the manufacturers or other sources of supply take the form of rebates on the purchases by respondent members for their respective stores during a specified period, which is usually a year. At the end of such a period, the seller pays this rebate to respondent, A.M.C., based on the total purchases of its goods, wares and merchandise by all of the individually owned and operated department stores of respondent members. Respondent, A.M.C., then distributes said rebate to the respective stores of respondent members, according to the amount which each said store has purchased from the particular seller during said specified period.

PAR. 8. Pursuant to, and as a part of, the aforesaid agreed and planned course of action, respondent, A.M.C., with the consent, approbation and cooperation of respondent members, has been since June 19, 1936, and is now, soliciting and requesting manufacturers, producers and suppliers of various goods, wares and merchandise which are resold in the department stores of respondent members, to grant the aforesaid special allowances or discounts on the purchases of same by respondent members. If the manufacturer, producer or supplier agrees to do this, then, and only then, is he approved, classified and designated by respondent, A.M.C., as a "preferred resource."

As an inducement for, and in consideration of, the aforesaid discriminations in price granted by said "preferred resources," respondent, A.M.C., in furtherance of the aforesaid common course of action, constantly and continuously requests, pleads with and cajoles respondent members to confine to said preferred resources, all of their purchases of the types of goods, wares and merchandise of which said preferred resources are sources of supply.

Consequently, in furtherance of the aforesaid planned common course of action, respondent members, usually acting directly, but sometimes through and by means of respondent, A.M.C., in purchasing, in the course of commerce between and among the several States of the United States, the goods, wares and merchandise to be resold in their respective department stores throughout the United States, have been since June 19, 1936, and are now, where such goods, wares and merchandise of like or similar grade and quality are manufactured, produced or supplied by both "preferred resources" and other sources of supply, generally confining such purchases to the former and withholding them from the latter.

Also, as a further inducement for, and in consideration of the aforesaid discriminations in price granted by the "preferred resources," respondent

members, in furtherance of the aforesaid planned common course of action, and with the urging and approval of respondent, A.M.C., in reselling goods, wares and merchandise in their respective stores, give preference to those which have been purchased from said preferred resources and do not "push" the resale of comparable goods, wares and merchandise which they have purchased from other sources of supply.

PAR. 9. The manufacturers, producers and suppliers who are thus classified by respondent, A.M.C. as "preferred resources" are located in various States of the United States, and, pursuant to and as part of such purchases from them by respondent members, they transport, or cause to be transported, such goods, wares and merchandise to the department stores of respondent members which are located in States other than those from which said shipments originate. In the course and conduct of their respective businesses such "preferred resources" also have sold since June 19, 1936, and are now selling and transporting and having transported in trade and commerce among the several States of the United States, to department stores other than those of respondent members, goods, wares and merchandise of like grade and quality as those which said "preferred resources" sell and transport, in the manner hereinbefore described, to the stores of respondent members.

Said "preferred resources" have maintained since June 19, 1936, and still do maintain, a regular current of trade in the goods, wares and merchandise which they manufacture, produce or supply, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 10. There are other manufacturers, producers and suppliers of the goods, wares and merchandise, which are resold in department stores throughout the United States, who are not listed or considered as "preferred resources" by respondent, A.M.C., but who nevertheless are in competition with them, except insofar as such competition has been hindered, restricted or prevented by the acts and practices of respondents herein set forth, in seeking to sell, in trade and commerce among the several States of the United States, their goods, wares and merchandise of like grade and quality as those of said preferred resources, to the department stores of respondent members. Said manufacturers, producers and suppliers often are prevented from selling such goods, wares and merchandise to the stores of respondent members because they refuse, although requested to do so by respondent, A.M.C., to grant to said respondent members the discriminatory prices herein alleged to have been allowed by such "preferred resources" to respondent members.

PAR. 11. There are department stores not owned and operated by respondent members that purchase from said "preferred resources," in the manner and in the commerce hereinbefore described, goods, wares and merchandise of like grade and quality as those purchased by respondent members for their individual stores, and which are in competition with said stores in reselling and seeking to resell such goods, wares and merchandise. Although such competing stores individually may purchase from a particular "preferred resource" such goods, wares and merchandise in an amount as great as, or in excess of that of a competing store of a respondent member, nevertheless they are not granted by the "preferred resource" any similar price or discount on their purchases.

PAR. 12. The effect of the aforesaid discriminations in price may be substantially to lessen competition in the line of commerce in which the

"preferred resources" are engaged, and to injure, destroy or prevent competition with said "preferred resources" in selling goods, wares and merchandise of like grade and quality to respondent members for use or resale by the stores of said members within the United States.

The effect of such discriminations in price also may be substantially to lessen competition in the line of commerce in which are engaged the department stores of respondent members and those of their competitors who do not receive the benefit of the lower prices that said "preferred resources" grant to the stores of respondent members on goods, wares and merchandise of like grade and quality; likewise, the effect may be to injure, destroy or prevent competition between the stores of respondent members who receive the benefits of said discriminatory prices and their competing department stores to whom such benefits are denied.

PAR. 13. The foregoing alleged acts of the respondent, A.M.C., and the respondent members, acting pursuant to a planned and agreed common course of action and in concert and cooperation with each other, are in violation of Section 2(f) of said act of Congress approved June 19, 1936, entitled "An act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies and for other purposes,' approved October 15, 1914, as amended (U.S.C. Title 15, Sec. 13), and for other purposes."

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 (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 Commission on August 17, 1943, issued its complaint in this proceeding upon the respondents named in the caption hereof, 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 respondents' answers thereto, the Commission, by order entered herein, granted respondents' motions for permission to withdraw said answers and to substitute therefor answers admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answers were duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answers, and the Commission, having duly considered the matter and now being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Associated Merchandising Corporation, hereinafter referred to and designated as "respondent A.M.C.," is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business being located at 1440 Broadway, New York, N. Y.

Respondent, Abraham & Straus, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of New York,

with its office and principal place of business being located in the city of Brooklyn, N. Y., where it operates a retail department store under the name of Abraham & Straus, Inc.

Respondent, L. S. Ayres & Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Indiana, with its office and principal place of business being located in the city of Indianapolis, Ind., where it operates a retail department store under the name of L. S. Ayres & Company.

Respondent, Bloomingdale Bros., Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business being located at Lexington Avenue and 59th Street in the city of New York, N. Y., where it operates a retail department store under the name of Bloomingdale Bros., Inc.

Respondent, The Herzfeld-Phillipson Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business being located in the city of Milwaukee, Wis., where it operates a retail department store under the name of The Boston Store.

Respondent, Bullock's, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business being located in the city of Los Angeles, Calif., where it operates a retail department store under the name of Bullock's, Inc.

Respondent, Burdine's, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of Florida, with its office and principal place of business being located in the city of Miami, Fla., where it operates a retail department store under the name of Burdine's, Inc.

Respondent, The Dayton Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Minnesota, with its office and principal place of business being located in the city of Minneapolis, Minn., where it operates a retail department store under the name of The Dayton Company.

Respondent, The Emporium-Capwell Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business being located in the city of San Francisco, Calif.; it operates two retail department stores, one in San Francisco, Calif., known as the Emporium, and the other in Oakland, Calif., known as The H. C. Capwell Company.

Respondent, Wm. Filene's Sons Company, is a corporation, duly organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business being located in the city of Boston, Mass., where it operates a retail department store under the name of Wm. Filene's Sons Company.

Respondent, B. Forman Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business being located in the city of Rochester, N. Y., where it operates a retail department store under the name of B. Forman Company.

Respondent, Joseph Horne Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business being located in the city of Pittsburgh, Pennsylvania, where it operates a retail department store under the name of Joseph Horne Company.

Respondent, The J. L. Hudson Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Michigan, with its office and principal place of business being located in the city of Detroit, Mich., where it operates a retail department store under the name of The J. L. Hudson Company.

Respondent, Hutzler Brothers Co., is a corporation duly organized and existing under and by virtue of the laws of the State of Maryland, with its office and principal place of business being located in the city of Baltimore, Md., where it operates a retail department store under the name of Hutzler Brothers Co.

Respondent, The F. & R. Lazarus & Co., is a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business being located in the city of Columbus, Ohio, where it operates a retail department store under the name of The F. & R. Lazarus & Co.

Respondent, The Rike-Kumler Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business being located in the city of Dayton, Ohio, where it operates a retail department store under the name of The Rike-Kumler Company.

Respondent, The John Shillito Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business being located in the city of Cincinnati, Ohio, where it operates a retail department store under the name of The John Shillito Company.

Respondent, Stix, Baer & Fuller Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Missouri, with its office and principal place of business being located in the city of St. Louis, Mo., where it operates a retail department store under the name of Stix, Baer & Fuller Company.

Respondent, Strawbridge & Clothier, is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business being located in the city of Philadelphia, Pa., where it operates a retail department store under the name of Strawbridge & Clothier.

Respondent, The Wm. Taylor Son & Co., is a corporation, duly organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business being located in the city of Cleveland, Ohio, where it operates a retail department store under the name of The Wm. Taylor Son & Co.

Respondent, Thalhimer Brothers, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of Virginia, with its office and principal place of business being located in the city of Richmond, Va., where it operates a retail department store under the name of Thalhimer Brothers, Inc.

Respondent, R. H. White Company, is a corporation, duly organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business being located in the city of Boston, Mass., where it operates a retail department store under the name of R. H. White Company.

PAR. 2. Respondents, Abraham & Straus, Inc., L. S. Ayres & Company, Bloomingdale Bros., Inc., The Herzfeld-Phillipson Company, Bullock's, Inc., Burdine's Inc., The Dayton Company, The Emporium-Cap-

well-Company, Wm. Filene's Sons Company, B. Forman Company, Joseph Horne Company, The J. L. Hudson Company, Hutzler Brothers Co., the F. & R. Lazarus & Co., The Rike-Kumler Company, The John Shillito Company, Stix, Baer & Fuller Company, Strawbridge & Clothier, The Wm. Taylor Son & Co., Thalheimer Brothers, Inc., and R. H. White Company, hereinafter referred to collectively as "respondent members," own and operate the various department stores as hereinbefore set forth in paragraph 1. Each of said respondent members is a separate, distinct, and independent legal entity, and each one of the department stores which they operate is independent of the stores of all of the other respondent members. The aggregate volume of sales of the 22 department stores owned and operated by said respondent members (respondent, The Emporium-Capwell Company, owns and operates two stores: The Emporium at San Francisco, Calif., and the H. C. Capwell Company at Oakland, Calif.) for the year 1941 was approximately \$425,000,000. The volume of sales for the individual stores of the respective respondent members in 1941 ranged from \$2,000,000 to \$40,000,000.

PAR. 3. Respondent, A.M.C., is an outgrowth of the Retail Research Association, hereinafter referred to as "R.R.A.," which was organized in 1916 by ten of the respondent members, with the avowed or ostensible purpose of enabling the department stores owned by said members to operate more efficiently and to obtain and furnish to said members information as to market conditions and other related subjects.

While the R.R.A. was in its formative stage, several of its directors saw the possibility of expanding it into an organization through which the department stores belonging to the respondent members could buy their goods, wares, and merchandise collectively. Therefore, in 1918, nine of the ten respondent members who had organized R.R.A., organized respondent, A.M.C.; later, the tenth of the respondent members who had organized R.R.A. acquired membership in respondent, A.M.C.

By 1934, all but two of the respondent members had become affiliated with respondent, A.M.C., and those two joined in 1938, when they adopted, ratified, approved, and began taking part in the activities and practices of respondent, A.M.C., and respondent members, which are hereinafter set out. Since 1938, the 21 respondent members, operating the 22 department stores hereinbefore mentioned, have comprised the membership of respondent A.M.C.

Respondent, A.M.C., was reorganized and reincorporated under the laws of the State of New York in 1939, with a capital stock of \$1,000,000, consisting of 10,000 shares of \$100 par value, of which 250 are preferred and 9,750 common. The preferred shares, which are divided equally among all of the respondent members, have full voting power, while the common shares have no voting power.

Application for membership in respondent, A.M.C., can be made only upon invitation by respondent, A.M.C., and election is only by unanimous approval of all of the respondent members. In the event that a member desires to withdraw from respondent, A.M.C., it must sell its preferred and common stock to the remaining members of A.M.C. at a price determined by the book value of A.M.C. shares.

Although R.R.A. and respondent, A.M.C., are separate corporations, they have identical stockholders, boards of directors, executive committees, and officers. They occupy jointly several floors at 1440 Broadway, New York, N. Y.; they also have branch offices in Chicago, Ill., and Los

Angeles, Calif., and a suboffice in Boston, Mass. Before the war respondent, A.M.C., maintained buying offices in various cities in Europe and the Orient.

In 1938 respondent, A.M.C., and R.R.A. had 430 persons employed, which number was decreased to 325 in 1942 because of the closing of the foreign offices. The cost of operating respondent, A.M.C., and R.R.A. increased from \$25,000 per annum in 1916 to \$1,500,000 in 1941. A budget is prepared in advance to cover annual costs of operations, which are borne by respondent members, who contribute weighted amounts based on the volume of their previous year's sales. The estimated cost in volume of sales of each of respondent members is approximately one-third of one percent. However, respondent, A.M.C., claims that through its method of purchasing for respondent members' stores, as hereinafter described, respondent members save from six to seven percent per year.

The principals of respondent members' stores meet twice yearly to discuss policy, but no major steps are adopted without the unanimous approval of all of the respondent members; the ultimate control and direction of respondent, A.M.C., are in the hands of the respondent members, who own equal amounts of the preferred voting stock of said respondent.

Respondent, A.M.C., was created, and is now being maintained and operated, by respondent members as an instrument, method, agency, and means whereby said respondent members are enabled to act collectively to obtain special allowances and discounts on their purchases of goods, wares, and merchandise for resale in their respective stores.

PAR. 4. Respondent, A.M.C., has eight merchandising divisions, which are conducted by managers, who in turn are under the direct supervision of the director of respondent, A.M.C. Each such division has a staff of recognized market specialists in the particular field of merchandising to which that particular division's activities are directed. The primary responsibility of all of these employees of respondent, A.M.C., is to assist the merchandise buyers of the stores of respondent members in purchasing from the manufacturers, producers, and suppliers of such merchandise, at the lowest possible prices, the various goods, wares, and merchandise resold in said stores of the respondent members.

Respondent, A.M.C., has no warehouses and does not sell any goods, wares, or merchandise to the trade or consuming public. When goods, wares, and merchandise are purchased by respondent members, either directly or through or by means of respondent, A.M.C., the same are shipped to their respective stores directly from the manufacturers, producers, and suppliers thereof, many of which are located in various States other than those from which such shipments are made.

Approximately 25 percent of all the goods, wares, and merchandise trafficked through the stores of respondent members are bought through, by means of, or with the aid of respondent, A.M.C.

PAR. 5. In the course and conduct of their respective businesses, respondent, A.M.C., and respondent members, since June 19, 1936, have knowingly induced and received discriminatory prices from manufacturers, producers, and suppliers by means of special allowances or discounts on their purchases in commerce as "commerce" is defined in the Clayton Act of the goods, wares, and merchandise which are resold in the stores of respondent members.

PAR. 6. Respondent, A.M.C., with the knowledge, consent, and approval of, and as an agency and instrument of, said respondent members,

has since June 19, 1936, and is now, knowingly inducing said manufacturers, producers, and suppliers to discriminate in price in favor of respondent members by selling them, for resale in their respective department stores throughout the United States, goods, wares, and merchandise at lower prices or with higher allowances or discounts than those accorded by said manufacturers, producers, and suppliers on their sale of goods, wares, and merchandise of like grade and quality to stores not belonging to respondent members, but which stores are in competition with the stores of respondent members in reselling and attempting to resell such goods, wares, and merchandise. Respondent members have been since June 19, 1936, and are now, knowingly receiving the benefits of said discriminations.

PAR. 7. Generally, the special and discriminatory allowances or discounts granted to respondent, A.M.C., for the use and benefit of respondent members, by the manufacturers or other sources of supply, take the form of rebates on the purchases by respondent members for their respective stores during a specified period, which is usually a year. At the end of such a period, the seller pays this rebate to respondent, A.M.C., based on the total aggregate purchases of its goods, wares, and merchandise by all of the individually owned and operated department stores of respondent members. Respondent, A.M.C., then distributes said rebate to the respective stores of respondent members, according to the amount which each said store has purchased from the particular seller during said specified period.

PAR. 8. Respondent, A.M.C., with the consent, approbation, and cooperation of respondent members, and as an instrument and agency of said respondent members, has been since June 19, 1936, and is now, soliciting, requesting, and seeking to induce manufacturers, producers, and suppliers of various goods, wares, and merchandise which are resold in the department stores of respondent members, to grant the aforesaid special and discriminatory allowances or discounts on the purchase of same by respondent members. If the manufacturer, producer, or supplier agrees to do this, then, and only then, is he approved, classified, and designated by respondent, A.M.C., as a "preferred resource."

As an inducement for, and in consideration of, the aforesaid discriminations in price granted by said preferred resources, respondent, A.M.C., constantly and continuously requests, and by various means and methods attempts to influence, respondent members to confine to said preferred resources, all of their purchases of the types of goods, wares, and merchandise of which said preferred resources are sources of supply.

Consequently, respondent members, usually acting directly, but sometimes through and by means of respondent, A.M.C., in purchasing, in the course of commerce between and among the several States of the United States, the goods, wares, and merchandise to be resold in their respective department stores throughout the United States, where such goods, wares, and merchandise of like or similar grade and quality are manufactured, produced, or supplied by both preferred resources and other sources of supply, have been since June 19, 1936, and are now, generally confining such purchases to the former and withholding them from the latter.

PAR. 9. Also, as a further inducement to, and in consideration of, the aforesaid discriminations in price granted by the preferred resources, respondent members, in reselling goods, wares, and merchandise in their respective stores throughout the United States, give preference to those which have been purchased from said preferred resources and do not

"push" the resale of comparable goods, wares, and merchandise which they have purchased from other sources of supply.

PAR. 10. The manufacturers, producers, and suppliers who are thus classified by respondent, A.M.C., as preferred resources are located in various States of the United States, and, pursuant to and as part of such purchases from them by respondent members, they transport, or cause to be transported, such goods, wares, and merchandise to the department stores of respondent members which are located in States other than those from which said shipments originate. In the course and conduct of their respective businesses such preferred resources also have sold since June 19, 1936, and are now selling and transporting and having transported in trade and commerce among the several States of the United States and in the District of Columbia, to department stores other than those of respondent members, goods, wares, and merchandise of like grade and quality as those which said preferred resources sell and transport, in the manner hereinbefore described, to the stores of respondent members.

PAR. 11. Said preferred resources have maintained since June 19, 1936, and still do maintain, a regular current of trade in the goods, wares, and merchandise which they manufacture, produce, or supply, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 12. There are other manufacturers, producers, and suppliers who have been, and are, in competition with such preferred resources in seeking to sell, in trade and commerce, among the several States of the United States, to the respondent, A.M.C., and the respondent members for resale in the respective department stores of respondent members, goods, wares, and merchandise of like grade and quality as that sought to be sold, and sold, by said preferred resources, in such commerce, to respondent, A.M.C., or respondent members. However, these competing manufacturers, producers, and suppliers often have been, and are now, prevented from thus selling their goods, wares, and merchandise to respondent, A.M.C., or respondent members. The reason for this prevention is that they have refused to grant or allow on such sales the discriminatory and special prices or discounts allowed or granted by said preferred resources, even though respondent, A.M.C., has sought to induce such manufacturers, producers, and suppliers to grant or allow same.

PAR. 13. There are department stores not owned and operated by respondent members that purchase from said preferred resources in the manner and in the commerce hereinbefore described, goods, wares, and merchandise of like grade and quality as those purchased by respondent members for their individual stores which are in competition with said stores in reselling and seeking to resell such goods, wares, and merchandise. Although such competing stores individually may purchase, in such commerce, from a particular preferred resource such goods, wares, and merchandise in an amount as great as, or in excess of, that of a competing store of a respondent member, nevertheless they are not granted by the preferred resource any similar price or discount on their purchases.

PAR. 14. The effect of the aforesaid discriminations in price may be substantially to lessen competition in the line of commerce in which the preferred resources are engaged, and to injure, destroy, or prevent competition with said preferred resources in selling goods, wares, and merchandise of like grade and quality to respondent members for use or resale by the stores of said members within the United States.

PAR. 15. The effect of such discriminations in price also may be substantially to lessen competition in the line of commerce in which are engaged the department stores of respondent members and those of their competitors who do not receive the benefit of the lower and discriminatory prices or the higher and discriminatory discounts which said preferred resources grant or allow to respondent members on goods, wares, and merchandise of like grade and quality; likewise, the effect may be to injure, destroy, or prevent competition between the stores of respondent members who receive the benefits of said discriminatory prices and competing department stores to whom such benefits are denied.

CONCLUSION

The aforesaid acts and practices of respondents constitute violations of subsection (f) of Section 2 of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (The Clayton Act), as amended by act of Congress approved June 19, 1936 (The Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the 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 subsection (f) of Section 2 of an act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies; and for other purposes," approved October 15, 1914 (Clayton Act), as amended by Act approved June 19, 1936 (Robinson-Patman Act).

It is ordered, That the respondents, Associated Merchandising Corporation, a corporation; Abraham & Straus, Inc., a corporation; L. S. Ayres & Company, a corporation; Bloomingdale Bros., Inc., a corporation; The Herzfeld-Phillipson Company, a corporation; Bullock's, Inc., a corporation; Burdine's, Inc., a corporation; The Dayton Company, a corporation; The Emporium-Capwell Company, a corporation; Wm. Filene's Sons Company, a corporation; B. Forman Company, a corporation; Joseph Horne Company, a corporation; The J. L. Hudson Company, a corporation; Hutzler Brothers Co., a corporation; The F. R. Lazarus & Co., a corporation; The Rike-Kumler Company, a corporation; The John Shillito Company, a corporation; Stix, Baer & Fuller Company, a corporation; Strawbridge & Clothier, a corporation; The Wm. Taylor Son & Co., a corporation; Thalhimier Brothers, Inc., a corporation; and R. H. White Company, a corporation, and their respective officers, representatives, agents, and employees, jointly or severally, directly or through any corporate or other device in or in connection with the purchase of goods, wares, and merchandise in commerce as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

1. Knowingly inducing or receiving any discrimination in price through or by means of discounts, rebates, or other allowances on purchases from any manufacturer or seller greater than the discounts or other allowances

currently allowed by such manufacturer or seller to competitors of respondents, or any of them, for merchandise of like grade and quality.

2. Knowingly inducing or receiving any discrimination in price from any manufacturer or seller by means of discounts, rebates, or other allowances based upon the total purchases of the respondents as a group, by or through respondent, Associated Merchandising Corporation, or by any other means, which are not currently allowed by such manufacturer or seller to the individual competitors of respondents, or any of them.

3. Knowingly purchasing from any manufacturer or seller at prices lower than the prices currently charged by such manufacturer or seller to competitors of respondents, or any of them, for merchandise of like grade and quality.

4. Using collective action, in connection with the purchase of merchandise, for the purpose and with the result of inducing any manufacturer or seller to allow any discount, rebate, or other allowance higher than, or price lower than, that allowed by such manufacturer or seller to competitors of the respondents, or any of them, when such allowance results in the receiving of a discrimination in price by the respondents, or any of them.

5. Inducing any manufacturer or seller, by or through any of the following means or methods, to allow any discount, rebate, or other allowance higher than, or price lower than, that allowed by such manufacturer or seller to competitors of respondents, or any of them, when such allowance results in the securing of a discrimination in price by the respondents, or any of them:

a. By employing or utilizing respondent, Associated Merchandising Corporation, or any other medium or central agency as an instrument or vehicle or aid in inducing manufacturers or sellers to allow such higher discounts, rebates, or other allowances or lower prices.

b. By giving preference, either directly or through the respondent, Associated Merchandising Corporation, or any other agency, to those manufacturers or sellers who grant such discriminatory prices.

c. By refusing directly or through the respondent, Associated Merchandising Corporation, or any other agency to purchase merchandise from those manufacturers or sellers who refuse to grant or who refrain from granting such discriminatory prices.

d. By offering or agreeing to give or giving preference in the resale in the respective department stores of the respondents to the merchandise of those manufacturers or sellers who grant such discriminatory prices.

e. By utilizing or employing a preferred group of manufacturers or sellers or preferred resources, classification in which is dependent upon such manufacturers' or sellers' agreeing to allow discriminations in price to the respondents and refusing to buy from manufacturers and sellers who do not allow such discriminatory prices.

6. Knowingly receiving any discriminations in price or the benefits thereof, either directly or indirectly, by or through any of the means or methods 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.

Syllabus

IN THE MATTER OF
GILJAN MEDICINE 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 5216. Complaint, Sept. 14, 1944—Decision, May 10, 1945

Where a corporation and its three officers, engaged in the interstate sale and distribution of a medicinal preparation called "Giljan" and sometimes "Giljan Laxative Compound," together with their advertising agent;

In advertising said preparation in newspapers, reprints thereof, radio broadcasts, leaflets, charts, diagrams and other printed matter and by advertising mats and radio scripts furnished retail drug stores—cost of which they paid in whole or in part—and by oral statements of their officers and agents who called upon wholesalers and druggists and assisted in the sale of said preparations, and which included such statements as "DON'T PAY OVER 25¢ for GILJAN MEDICINE Today, Friday, Saturday CROWDS THROUG CUNNINGHAM'S DRUG STORE TO BUY 25¢ MEDICINE" and "George Remus, the dynamic Giljan 'Miracle Man' will be at Cunningham's in person to explain how this amazing 'natural medicine' works its wonders," along with a picture of said individual and "This offer is made because Cunningham's Drug Store believes it is only fair that everyone who suffers should have a chance to try a medicine at this low cost in order to see if it will help them, before they pay the full size price for it"; and purported testimonial quotations accompanied by depictions of the individual and diagrams, as asserted, of an afflicted liver, stomach, or kidney—

Represented through statements and depictions therein that said preparation was a natural medicine which was made from a new scientific formula and contained 18 ingredients, all of which were of substantial aid in bringing health to the user; constituted a cure or competent treatment for stomach trouble in its various forms, constipation, weak kidneys, rheumatism and neuritis and the pains associated therewith, backaches, night risings, sallowness due to a sluggish liver, gas pains, sour stomach, bloating, belching, stomach, liver and kidney ailments in general, and a general run-down condition; aided in the proper functioning of the kidneys and liver; was effective in relieving headaches, dizziness, a lazy, drowsy, tired feeling, or lack of energy, and was an effective diuretic; made the stomach, liver and kidneys more active and flushed poisons from the kidneys; cleared old bile out of the system; was effective in relieving bladder irritations; strengthened the nerves, and improved the appetite and digestion, relieved digestive disorders and regulated the bowels; and that use thereof made one healthy, feel years younger and brought relief to 87 percent of those who had used it;

The facts being that it was not a natural medicine either in the sense that its ingredients were entirely of natural origin or that it acted in a natural manner upon the system; the formula thereof was neither new nor scientific; with the exception of cascara bark, senna leaves, aloes and mandrake root, the ingredients in said preparation were not in sufficient amounts to have any therapeutic value; it had no value in the treatment of headaches, dizziness or a tired feeling in excess of affording temporary relief when such conditions were caused by constipation; its value in the treatment of constipation was limited to affording temporary relief by reason of its laxative qualities; it was not an effective diuretic; and in other respects it would not accomplish the results claimed since in truth and in fact it was only a laxative with no therapeutic value except as such;

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- (b) Failed to reveal facts material in the light of the representations made in said advertisements and with respect to the consequences which might result from the use of the preparation under prescribed and usual conditions in that, as an irritant laxative, it was potentially dangerous when taken in the presence of abdominal pains, nausea, vomiting or other symptoms of appendicitis;

With the effect of misleading and deceiving a substantial number of the purchasing public into the erroneous belief that such representations were true and that said preparation might be used at all times and under all conditions without ill effects, and of inducing a substantial number of the purchasing public, because of such belief, to purchase the same:

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. D. E. Hoopingarner for the Commission.

Mr. Paul V. Connolly, of Cincinnati, Ohio, and *Mr. M. Manning Marcus*, 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 Giljan Medicine Company, Inc., a corporation, Henry S. Dunlap, George E. Remus and Mrs. Blanche Watson, officers of Giljan Medicine Company, Inc., and The Key Advertising Company, 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, Giljan Medicine Company, Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business at 1002 Keith Building, Cincinnati, Ohio.

Respondents, Henry S. Dunlap, George E. Remus and Mrs. Blanche Watson, individuals, have their office and principal place of business at said address of said Giljan Medicine Company, Inc. Said individual respondents are officers of said corporate respondent and are in active control of its management. They formulate, control and direct its policies and practices in advertising and selling its products.

PAR. 2. Respondent, Giljan Medicine Company, Inc., and said individual respondents, are now, and for more than two years last past have been, engaged in the sale and distribution of a medicinal preparation called "Giljan," also sometimes called "Giljan Laxative Compound" consisting of the following ingredients per fluid ounce:

Cascara Bark	14.22 gr.
Senna Leaves	2.74 gr.
Curacoa Aloes	1.37 gr.
Mandrake Root	.55 gr.
Cayenne Pepper	.08 gr.
Barberry Root	.55 gr.
Wild Cherry Bark	.55 gr.
Sarsaparilla Root	.55 gr.
Burdock Root	.55 gr.

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Licorice Root	.55 gr.
Juniper Berries	.55 gr.
Poke Root	.55 gr.
Gentian Root	.55 gr.
Sodium Benzoate	2.75 gr.
Glycerine	4.80 min.
Caramel	4.80 min.
Saccharin	.28 gr.
Oil Camphor Sassafras	.22 min.
Methyl Salicylate	.22 min.

The composition of said preparation Giljan has been varied from that above from time to time, but such variations have not been sufficient to change the therapeutic value thereof.

PAR. 3. In the course and conduct of their business, respondent, Giljan Medicine Company, Inc., and said individual respondents have caused and now cause said preparation Giljan, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in various States of the United States other than the State of Ohio and in the District of Columbia. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, The Key Advertising Company, is a corporation, organized and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business in the Fountain Square Building, Cincinnati, Ohio. Said last named respondent is the advertising agent of said respondent, Giljan Medicine Company, Inc., and it is engaged in formulating, editing, and causing to be published, the advertisements used in connection with the sale of the products of respondent, Giljan Medicine Company, Inc., including the advertising matter hereinafter set forth.

PAR. 5. In the course and conduct of their businesses, as aforesaid, respondents 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 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 Giljan, in commerce, as commerce is defined in the Federal Trade Commission Act.

PAR. 6. Respondents advertise said preparation Giljan by means of advertisements in newspapers, reprints thereof, radio broadcasts, leaflets, charts, diagrams, and other printed matter, and by advertising mats and radio scripts furnished retail drug stores. The agents, officers and employees of respondent, Giljan Medicine Company, Inc., call upon wholesalers and druggists and make to them the representations contained in said printed matter. Certain drug stores cause advertisements to be placed in newspapers, following said advertising mats, and radio broadcasts to be made, repeating said radio scripts, which are furnished as aforesaid by respondents, a part or all of the cost of which is paid by respondents. By the cooperation of said drug stores, the agents, officers and employees of

respondent, Giljan Medicine Company, Inc., appear at said drug stores and make said representations regarding the preparation Giljan to members of the public at said drug stores and there assist in the sale of, and sell, said preparation to members of the public.

PAR. 7. Among and typical of the advertisements and representations made, published and disseminated by respondents as aforesaid, with reference to the preparation Giljan, are:

**DON'T PAY OVER 25¢ for GILJAN MEDICINE Today, Friday, Saturday
CROWDS THROG CUNNINGHAM'S DRUG STORE TO BUY
25¢ MEDICINE**

(Picture of George
Remus)

George Remus, the dynamic Giljan "Miracle Man" will be at Cunningham's in person" to "explain" how this amazing "natural medicine" works its wonders. If you are now suffering, come in and hear Mr. Remus tell how Giljan has brought "Health from the Good Earth" to others like you.

Immediately following yesterday's announcement that Cunningham's Drug Store would sell medicine to anyone for 25¢—for only 3 days (today, Friday and Saturday)—crowds began thronging this popular drug store.

Reason for Amazing Offer

This offer is made because Cunningham's Drug Store believes it is only fair that everyone who suffers should have a chance to try a medicine at this low cost in order to see if it will help them, before they pay the full size price for it. Cunningham's also believes that a large percentage of the people of Saginaw need a "natural" medicine for such ailments as stomach trouble, constipation, weak kidneys, rheumatic pains and run-down conditions.

18 Helpful Ingredients Used

The medicine referred to is the new, scientific formula of juices made from 18 of Nature's finest health-giving herbs. It is called Giljan. It should be taken before meals, so that it mixes with the food in one's stomach, thus helping to eliminate the poisons that foster stomach trouble and to permit the kidneys and liver to function properly. It is estimated that this medicine has helped 87 percent of those who have taken it. Therefore, we offer each person one introductory bottle for 25¢ (three days ONLY) because we believe those who are benefited will keep on using it. The regular full-sized price of this medicine is \$1.23.

What It Will Do

Giljan will help cleanse your bowels (gradually—not drastically or severely)—as they were **NEVER CLEANSED BEFORE**.

It will aid in bringing out gases and impurities (frequently from the first dose) which may have been inside you a long time, causing you many days of misery with headaches, dizzy spells, skin eruptions, and that lazy, drowsy, tired feeling, Giljan is of genuine assistance in making the digestive organs sweet and clean.

Many who have used Giljan find that Giljan acts as an excellent diuretic to sluggish kidneys and helps flush out quantities of impurities that may have become dammed up inside, causing **BACKACHE, SHARP PAINS and GETTING UP FREQUENTLY AT NIGHT**.

Giljan will assist in clearing up skin eruptions that are caused by the impurities in the organs, will aid in overcoming the sallowness ("muddy" complexion) that is due to sluggish liver, will help relieve rheumatic and neuritis pains by removing accumulations of poisons from the kidneys and bloodstream, and can be of great value in putting the **ROSY GLOW OF HEALTH** into your cheeks.

Complaint

Users say that GILJAN will help make your stomach, liver, kidneys and bowels more active; assist in building you up in general and make you LOOK, ACT and FEEL like a DIFFERENT MAN or WOMAN . . . years younger than your real age.

How It Acts

Giljan is taken before meals and mixes with the food in one's stomach, thus helping to eliminate the poisons that foster stomach troubles and aiding the kidneys and liver in their proper functions. It usually acts within 10 minutes to stop gas pains, sourness, bloat and belching. It will not gripe or nauseate you like ordinary liver medicines, but its effectiveness will go far toward making your liver more active and in clearing away the old bile from your system. At the same time, Giljan tends to drive the poisons from the kidneys and to relieve backache, bladder irritation and weakness. Strengthens the nerves by natural means.

Now, whether or not it will help you as it has helped thousands of others—whether it will end your suffering in a day or a week—remains to be seen. But, in the light of what it has done for others, it is surely a mistake not to try it for 25¢, only a fraction of its actual cost. This offer is good 3 days ONLY, so read the rest of this announcement and act at once. Do this in your own interest and for your own health.

DON'T SUFFER! NEW "NATURAL" MEDICINE OFFERS RELIEF FROM TORTURES OF CONSTIPATION, GAS PAINS, RHEUMATISM, NEURITIS, and other STOMACH, LIVER, AND KIDNEY AILMENTS. Read what these grateful men and women of Detroit have to say about the "amazing" medicine, Giljan, which is bringing "Health From The Good Earth" to Thousands of Sufferers.

We could fill this newspaper with the statements of praise and endorsement that we have received from the users of Giljan. Among them you might find the names of friends, relatives or neighbors who are now feeling fit and enjoying life because they took Giljan to rid themselves from the agonies of stomach, liver, and kidney disorders. They make these statements willingly and gladly because they want to help others, who suffer as they did, regain the good health that makes life worth living.

What is this "Natural" medicine?

Giljan is a new, advanced medicine compound containing juices from 18 health-giving herbs, that is prepared according to a scientific formula to bring you "Health From The Good Earth." It is taken before meals, and mixes with the food in one's stomach, thus helping to eliminate the poisons that foster stomach troubles and to permit the kidneys and liver to function properly. It usually acts within 10 minutes to stop gas pains, sourness, bloat, and belching. Users say it will not gripe or nauseate you like ordinary liver medicines.

It tends to make your liver more active and to clear away the old bile from your system. At the same time, Giljan relieves sluggish kidneys, backache.

But, if you really want to discover what Giljan can do for you, read what these Detroit men and women say Giljan has done for them.

(Diagram of liver, with the word "liver" on it, and the words "afflicted torpid area" identifying a darkened portion.)

The liver when sluggish and inactive, slows down the "bile flow," causing headaches and lack of energy.

Night Risings

(Picture of Thomas Black)

Mr. Thomas Black, Detroit, said: "I have suffered for 10 years from stomach trouble, due to constipation and bloating gas. I wasn't able to sleep at nights because I had to get up several times every night. My digestion and appetite were poor and my bowels irregular. Then I took Giljan. Now, I can eat and enjoy my food, I don't have to get up nights and I feel like a different person. Giljan surely helped me."

HEARTBURN, ACID STOMACH AND GAS BLOATING MADE HIM MISERABLE.

(Picture of Mr. Jay C. Griffin)

(Diagram of stomach with word "stomach" on it, and the words "deep-seated impurity" identifying a darkened portion.)

the agonies of stomach troubles, digestive disorders, and their accompanying aches and pains, come forward with statements of praise and endorsement for this marvelous new medicine, Giljan, which is now being introduced daily to crowds of Detroit people at Cunningham's Drug Stores. And Mr. Griffin's statement, while unusual in many respects, is merely typical of what scores of others have to say in praise of Giljan. Read it.

Mr. Jay C. Griffin, 3340 Mayburg Grand, Detroit, says he felt like a stuffed toad—the very sight of food made him sick—had no energy, couldn't sleep—feels like a different person since taking Giljan.

It is really remarkable to see how many men and women, who have suffered for years from

SOUR STOMACH CAUSED CONSTANT AGONY FROM BLOATING BEFORE SHE GOT HELP FROM GILJAN.

Mrs. J. H. Billadow of Battle Creek, Mich., was in Misery Most Of the Time—Suffered Greatly From Bloating, Gas Pains, Backaches (Due to Kidney Trouble)—Complained of Terrible Headaches and Constipation. Since Taking Giljan She Says, "I have Been Greatly Relieved—I Don't Have Those Terrible Headaches Anymore."

(Picture of Mrs. Billadow)

bloating, and gas pains. I was also suffering from backaches due to bad kidney trouble. But, since taking Giljan I have been greatly relieved."

That's what Mrs. Billadow writes, a woman who has suffered for many years. "Now, due to the proper elimination of the poisons that settle in sluggish kidneys, I don't have those terrible backaches. Giljan has also helped me from suffering from rheumatism because the terrible pains in my arms and legs have been greatly relieved. My bowels have been regulated and I have not been constipated since taking my first dose of Giljan. I sleep better and have renewed energy which makes life seem worthwhile."

(Diagram of kidney with the word "kidney" on it, and the words "acid deposits" identifying a darkened portion.)

of nature's health-giving herbs"—which is now being introduced to crowds of suffering Lansing men and women daily by Cunningham's Drug Store.

Giljan is a Medicinal Compound of Nature's Roots and Herbs—blended with other ingredients—which compose a formula beneficial for common ailments such as occasional Constipation, Rheumatic Pains, Neuritis, and General Nervous condition due to constipation. It acts as a mild diuretic to the kidneys, as a liver activator, and as a stomachic.

Giljan is a liquid mixture of 12 extracts from medicinal herbs, expertly combined with 6 other splendid ingredients. It contains so many fine ingredients that it helps accomplish several things within the human system at the same time.

Giljan, the "natural" medicine, has a direct influence on the whole system.

PAR. 8. By and through the use of the aforesaid statements, representations and depictions, and others of similar import but not set out herein,

respondents represent that said preparation is a natural medicine, is made from a new scientific formula and contains 18 ingredients all of which are of substantial aid in bringing health to the user; that said preparation constitutes a cure and remedy or a competent and effective treatment for stomach trouble in its various forms, constipation, weak kidneys, rheumatism and neuritis and the pains associated therewith, backaches, night risings, sallowness due to a sluggish liver, gas pains, sour stomach, bloating, belching, stomach, liver and kidney ailments in general, and a general run down condition; that it aids in the proper functioning of the kidneys and liver; that it is effective in relieving headaches, dizziness, a lazy, drowsy, tired feeling, or lack of energy; that it is an effective diuretic, makes the stomach, liver and kidneys more active and flushes poisons from the kidneys; that it clears old bile out of the system, is effective in relieving bladder irritations, strengthens the nerves, improves the appetite and digestion, relieves digestive disorders and regulates the bowels; that the use of said preparation makes one healthy, feel years younger and brings relief to 87 percent of those who have used it.

PAR. 9. The aforesaid statements, representations and depictions are false, misleading and deceptive. In truth and in fact, said preparation is not a natural medicine either in the sense that its ingredients are entirely of natural origin or that it acts in a natural manner upon the system. The formula of said preparation is neither new or scientific. With the exception of cascara bark, senna leaves, aloes and mandrake root, the ingredients in said preparation are not in sufficient amounts to afford any therapeutic value. Said preparation is not a cure or remedy and has no therapeutic value in the treatment of stomach trouble in its various forms, weak kidneys, rheumatism and neuritis and the pains associated therewith, backaches, night risings, sallowness from any cause, gas pains, sour stomach, bloating, belching stomach, liver and kidney ailments, or a general run down condition. It has no value in the treatment of kidney or liver ailments and will have no effect on their functioning. It will not relieve a lazy or drowsy feeling or restore energy. It has no value in the treatment of headaches, dizziness or a tired feeling in excess of affording temporary relief when such conditions are caused by constipation. Its value in the treatment of constipation is limited to affording temporary relief by reason of its laxative qualities. Said preparation is not an effective diuretic. It will not make the stomach, liver and kidneys more active. It will not flush poisons from the kidneys, will not clear old bile out of the system, relieve bladder irritations, strengthen the nerves, improve the appetite or digestion, relieve digestive disorders or regulate the bowels. The use of said preparation will not make one healthy or feel younger. There is no basis in fact for respondents' claim that 87 percent, or any other specified number, of those taking this preparation have been benefited. In truth and in fact, said preparation is only a laxative and has no therapeutic value in excess of that of a laxative.

PAR. 10. The foregoing advertisements 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 the consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements and under such conditions as are customary and usual. In truth and in fact, said preparation is an irritant laxative and is potentially dangerous when taken in the presence of abdominal pains, nausea, vomiting, or other symptoms of appendicitis.

PAR. 11. The use by the respondents of the aforesaid false advertisements and said false and deceptive representations and implications with respect to the preparation Giljan has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such advertisements, representations and implications are true and that said preparation may be used at all times and under all conditions without ill effects, and to induce a substantial number of the purchasing public, because of such erroneous and mistaken belief, to purchase said preparation.

PAR. 12. 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 14, 1944, issued and on September 16, 1944, served its complaint in this proceeding upon the respondents, Giljan Medicine Company, Inc., a corporation, Henry S. Dunlap, George E. Remus, and Mrs. Blanche Watson, officers of Giljan Medicine Company, Inc., and The Key Advertising Company, a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Subsequently the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the said facts, and further setting forth that the correct name of respondent, George E. Remus, is George Remus, and the correct name of Mrs. Blanche Watson, is Blanche Watson, and also consented that the complaint herein may be amended to name the respondents, George Remus and Blanche Watson, by such names, being their correct names, instead of as George E. Remus and Mrs. Blanche Watson. Thereafter, this 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, Giljan Medicine Company, Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business at 1002 Keith Building, Cincinnati, Ohio.

Respondents, Henry S. Dunlap, George Remus and Blanche Watson, individuals, have their office and principal place of business at said address of said Giljan Medicine Company, Inc. Said individual respondents are officers of said corporate respondent and are in active control of its management. They formulate, control and direct its policies and practices in advertising and selling its products.

PAR. 2. Respondent, Giljan Medicine Company, Inc., and said individual respondents, are now, and for more than two years last past have been, engaged in the sale and distribution of a medicinal preparation called

"Giljan," also sometimes called "Giljan Laxative Compound" consisting of the following ingredients per fluid ounce:

Cascara Bark	14.22 gr.
Senna Leaves	2.74 gr.
Curacoa Aloes	1.37 gr.
Mandrake Root	.55 gr.
Cayenne Pepper	.08 gr.
Barberry Root	.55 gr.
Wild Cherry Bark	.55 gr.
Sarsaparilla Root	.55 gr.
Burdock Root	.55 gr.
Licorice Root	.55 gr.
Juniper Berries	.55 gr.
Poke Root	.55 gr.
Gentian Root	.55 gr.
Sodium Benzoate	2.75 gr.
Glycerine	4.80 min.
Caramel	4.80 min.
Saccharin	.28 gr.
Oil Camphor Sassafras	.22 min.
Methyl Salicylate	.22 min.

The composition of said preparation Giljan has been varied from that above from time to time, but such variations have not been sufficient to change the therapeutic value thereof.

PAR. 3. In the course and conduct of their business, respondent, Giljan Medicine Company, Inc., and said individual respondents have caused and now cause said preparation Giljan, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in various States of the United States other than the State of Ohio and in the District of Columbia. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, The Key Advertising Company, is a corporation, organized and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business in the Fountain Square Building, Cincinnati, Ohio. Said last named respondent is the advertising agent of said respondent, Giljan Medicine Company, Inc., and it is engaged in formulating, editing, and causing to be published, the advertisements used in connection with the sale of the products of respondent, Giljan Medicine Company, Inc., including the advertising matter hereinafter set forth.

PAR. 5. In the course and conduct of their businesses, as aforesaid, respondents 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 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 Giljan, in commerce, as commerce is defined in the Federal Trade Commission Act.

PAR. 6. Respondents advertise said preparation Giljan by means of advertisements in newspapers, reprints thereof, radio broadcasts, leaflets, charts, diagrams, and other printed matter, and by advertising mats and radio scripts furnished retail drug stores. The agents, officers and employees of respondent, Giljan Medicine Company, Inc., call upon wholesalers and druggists and make to them the representations contained in said printed matter. Certain drug stores cause advertisements to be placed in newspapers, following said advertising mats, and radio broadcasts to be made, repeating said radio scripts, which are furnished as aforesaid by respondents, a part or all of the cost of which is paid by respondents. By the cooperation of said drug stores, the agents, officers and employees of respondent, Giljan Medicine Company, Inc., appear at said drug stores and make said representations regarding the preparation Giljan to members of the public at said drug stores and there assist in the sale of, and sell, said preparation to members of the public.

PAR. 7. Among and typical of the advertisements and representations made, published and disseminated by respondents as aforesaid, with reference to the preparation Giljan, are:

DON'T PAY OVER 25¢ for GILJAN MEDICINE Today, Friday, Saturday

CROWDS THROG CUNNINGHAM'S DRUG STORE TO BUY 25¢ MEDICINE

(Picture of George Remus)

George Remus, the dynamic Giljan "Miracle Man" will be at Cunningham's in person to explain how this amazing "natural medicine" works its wonders. If you are now suffering, come in and hear Mr. Remus tell how Giljan has brought "Health from the Good Earth" to others like you.

Immediately following yesterday's announcement that Cunningham's Drug Store would sell medicine to anyone for 25¢—for only 3 days (today, Friday and Saturday)—crowds began thronging this popular drug store.

Reason for Amazing Offer

This offer is made because Cunningham's Drug Store believes it is only fair that everyone who suffers should have a chance to try a medicine at this low cost in order to see if it will help them, before they pay the full size price for it. Cunningham's also believes that a large percentage of the people of Saginaw need a "natural" medicine for such ailments as stomach trouble, constipation, weak kidneys, rheumatic pains and run-down conditions.

18 Helpful Ingredients Used

The medicine referred to is the new, scientific formula of juices made from 18 of Nature's finest health-giving herbs. It is called Giljan. It should be taken before meals, so that it mixes with the food in one's stomach, thus helping to eliminate the poisons that foster stomach trouble and to permit the kidneys and liver to function properly. It is estimated that this medicine has helped 87 percent of those who have taken it. Therefore, we offer each person one introductory bottle for 25¢ (three days ONLY) because we believe those who are benefited will keep on using it. The regular full-sized price of this medicine is \$1.23.

What It Will Do

Giljan will help cleanse your bowels (gradually—not drastically or severely)—as they were NEVER CLEANSED BEFORE,

It will aid in bringing out gases and impurities (frequently from the first dose) which may have been inside you a long time, causing you many days of misery with headaches, dizzy spells, skin eruptions, and that lazy, drowsy, tired feeling. Giljan is of genuine assistance in making the digestive organs sweet and clean.

Many who have used Giljan find that Giljan acts as an excellent diuretic to sluggish kidneys and helps flush out quantities of impurities that may have become dammed up inside, causing BACKACHE, SHARP PAINS and GETTING UP FREQUENTLY AT NIGHT.

Giljan will assist in clearing up skin eruptions that are caused by the impurities in the organs, will aid in overcoming the sallowness ("muddy" complexion) that is due to sluggish liver, will help relieve rheumatic and neuritis pains by removing accumulations of poisons from the kidneys and bloodstream, and can be of great value in putting the ROSY GLOW OF HEALTH into your cheeks.

Users say that GILJAN will help make your stomach, liver, kidneys and bowels more active; assist in building you up in general and make you LOOK, ACT and FEEL like a DIFFERENT MAN or WOMAN . . . years younger than your real age.

How It Acts

Giljan is taken before meals and mixes with the food in one's stomach, thus helping to eliminate the poisons that foster stomach troubles and aiding the kidneys and liver in their proper functions. It usually acts within 10 minutes to stop gas pains, sourness, bloat and belching. It will not gripe or nauseate you like ordinary liver medicines, but its effectiveness will go far toward making your liver more active and in clearing away the old bile from your system. At the same time, Giljan tends to drive the poisons from the kidneys and to relieve backache, bladder irritation and weakness. Strengthens the nerves by natural means.

Now, whether or not it will help you as it has helped thousands of others—whether it will end your suffering in a day or a week—remains to be seen. But, in the light of what it has done for others, it is surely a mistake not to try it for 25¢, only a fraction of its actual cost. This offer is good 3 days ONLY, so read the rest of this announcement and act at once. Do this in your own interest and for your own health.

DON'T SUFFER! NEW "NATURAL" MEDICINE OFFERS RELIEF FROM TORTURES OF CONSTIPATION, GAS PAINS, RHEUMATISM, NEURITIS, and other STOMACH, LIVER, AND KIDNEY AILMENTS. Read what these grateful men and women of Detroit have to say about the "amazing" medicine, Giljan, which is bringing "Health From The Good Earth" to Thousands of Sufferers.

We could fill this newspaper with the statements of praise and endorsement that we have received from the users of Giljan. Among them you might find the names of friends, relatives or neighbors who are now feeling fit and enjoying life because they took Giljan to rid themselves from the agonies of stomach, liver, and kidney disorders. They make these statements willingly and gladly because they want to help others, who suffer as they did, regain the good health that makes life worth living.

What is this "Natural" medicine?

Giljan is a new, advanced medicine compound containing juices from 18 health-giving herbs, that is prepared according to a scientific formula to bring you "Health From The Good Earth." It is taken before meals, and mixes with the food in one's stomach, thus helping to eliminate the poisons that foster stomach troubles and to permit the kidneys and liver to function properly. It usually acts within 10 minutes to stop gas pains, sourness, bloat, and belching. Users say it will not gripe or nauseate you like ordinary liver medicines.

It tends to make your liver more active and to clear away the old bile from your system. At the same time, Giljan relieves sluggish kidneys, backache.

But, if you really want to discover what Giljan can do for you, read what these Detroit men and women say Giljan has done for them.

(Diagram of liver, with the word "liver" on it, and the words "afflicted torpid area" identifying a darkened portion.)

The liver when sluggish and inactive, slows down the "bile flow," causing headaches and lack of energy.

Night Risings

(Picture of Thomas Black)

Mr. Thomas Black, Detroit, said: "I have suffered for 10 years from stomach trouble, due to constipation and bloating gas. I wasn't able to sleep at nights because I had to get up several times every night. My digestion and appetite were poor and my bowels irregular. Then I took Giljan. Now, I can eat and enjoy my food, I don't have to get up nights and I feel like a different person. Giljan surely helped me."

HEARTBURN, ACID STOMACH AND GAS BLOATING MADE HIM MISERABLE.

(Picture of Mr. Jay C. Griffin)

(Diagram of stomach with word "stomach" on it, and the words "deep-seated impurity" identifying a darkened portion.)

the agonies of stomach troubles, digestive disorders, and their accompanying aches and pains, come forward with statements of praise and endorsement for this marvelous new medicine, Giljan, which is now being introduced daily to crowds of Detroit people at Cunningham's Drug Stores. And Mr. Griffin's statement, while unusual in many respects, is merely typical of what scores of others have to say in praise of Giljan. Read it.

Mr. Jay C. Griffin, 3340 Mayburg Grand, Detroit, says he felt like a stuffed toad—the very sight of food made him sick—had no energy, couldn't sleep—feels like a different person since taking Giljan.

It is really remarkable to see how many men and women, who have suffered for years from

SOUR STOMACH CAUSED CONSTANT AGONY FROM BLOATING BEFORE SHE GOT HELP FROM GILJAN.

Mrs. J. H. Billadow of Battle Creek, Mich., was in Misery Most of the Time—Suffered Greatly From Bloating, Gas Pains, Backaches (Due to Kidney Trouble)—Complained of Terrible Headaches and Constipation. Since Taking Giljan She Says, "I have Been Greatly Relieved—I Don't Have Those Terrible Headaches Anymore."

(Picture of Mrs. Billadow)

bloating, and gas pains. I was also suffering from backaches due to bad kidney trouble. But, since taking Giljan I have been greatly relieved."

"I was troubled with a sour stomach most of the time and also was in constant agony from

That's what Mrs. Billadow writes, a woman who has suffered for many years. "Now, due to the proper elimination of the poisons that settle in sluggish kidneys, I don't have those terrible backaches. Giljan has also helped me from suffering from rheumatism because the terrible pains in my arms and legs have been greatly relieved. My bowels have been regulated and I have not been constipated since taking my first dose of Giljan. I sleep better and have renewed energy which makes life seem worthwhile."

That is what so many people are saying about

(Diagram of kidney with the word "kidney" on it, and the words "acid deposits" identifying a darkened portion.)

Giljan, the "amazing mixture of juices from 18

of nature's health-giving herbs"—which is now being introduced to crowds of suffering Lansing men and women daily by Cunningham's Drug Store.

Giljan is a Medicinal Compound of Nature's Roots and Herbs—blended with other ingredients—which compose a formula beneficial for common ailments such as occasional Constipation, Rheumatic Pains, Neuritis, and General Nervous condition due to constipation. It acts as a mild diuretic to the kidneys, as a liver activator, and as a stomachic.

Giljan is a liquid mixture of 12 extracts from medicinal herbs, expertly combined with 6 other splendid ingredients. It contains so many fine ingredients that it helps accomplish several things within the human system at the same time.

Giljan, the "natural" medicine, has a direct influence on the whole system.

PAR. 8. By and through the use of the aforesaid statements, representations and depictions, and others of similar import but not set out herein, respondents represent that said preparation is a natural medicine, is made from a new scientific formula and contains 18 ingredients, all of which are of substantial aid in bringing health to the user; that said preparation constitutes a cure and remedy or a competent and effective treatment for stomach trouble in its various forms, constipation, weak kidneys, rheumatism and neuritis and the pains associated therewith, backaches, night risings, sallowness due to a sluggish liver, gas pains, sour stomach, bloating, belching, stomach, liver and kidney ailments in general, and a general run down condition; that it aids in the proper functioning of the kidneys and liver; that it is effective in relieving headaches, dizziness, a lazy, drowsy, tired feeling, or lack of energy; that it is an effective diuretic, makes the stomach, liver and kidneys more active and flushes poisons from the kidneys; that it clears old bile out of the system, is effective in relieving bladder irritations, strengthens the nerves, improves the appetite and digestion, relieves digestive disorders and regulates the bowels; that the use of said preparation makes one healthy, feel years younger and brings relief to 87 percent of those who have used it.

PAR. 9. The aforesaid statements, representations and depictions are false, misleading and deceptive. In truth and in fact, said preparation is not a natural medicine either in the sense that its ingredients are entirely of natural origin or that it acts in a natural manner upon the system. The formula of said preparation is neither new or scientific. With the exception of cascara bark, senna leaves, aloes and mandrake root, the ingredients in said preparation are not in sufficient amounts to afford any therapeutic value. Said preparation is not a cure or remedy and has no therapeutic value in the treatment of stomach trouble in its various forms, weak kidneys, rheumatism and neuritis and the pains associated therewith, backaches, night risings, sallowness from any cause, gas pains, sour stomach, bloating, belching, stomach, liver and kidney ailments, or a general run down condition. It has no value in the treatment of kidney or liver ailments and will have no effect on their functioning. It will not relieve a lazy or drowsy feeling or restore energy. It has no value in the treatment of headaches, dizziness or a tired feeling in excess of affording temporary relief when such conditions are caused by constipation. Its value in the treatment of constipation is limited to affording temporary relief by reason of its laxative qualities. Said preparation is not an effective diuretic. It will not make the stomach, liver and kidneys more active. It will not flush poisons from the kidneys, will not clear old bile out of the system, relieve bladder irritations, strengthen the nerves, improve the appetite or

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digestion, relieve digestive disorders or regulate the bowels. The use of said preparation will not make one healthy or feel younger. There is no basis in fact for respondents' claim that 87 percent, or any other specified number, of those taking this preparation have been benefited. In truth and in fact, said preparation is only a laxative and has no therapeutic value in excess of that of a laxative.

PAR. 10. The foregoing advertisements 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 the consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements and under such conditions as are customary and usual. In truth and in fact, said preparation is an irritant laxative and is potentially dangerous when taken in the presence of abdominal pains, nausea, vomiting, or other symptoms of appendicitis.

PAR. 11. The use by the respondents of the aforesaid false advertisements and said false and deceptive representations and implications with respect to the preparation Giljan has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such advertisements, representations and implications are true and that said preparations may be used at all times and under all conditions without ill effects, and to induce a substantial number of the purchasing public, because of such erroneous and mistaken belief, to purchase 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 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 the said facts, and the Commission having made its findings as to the facts and conclusion that the respondents herein have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Giljan Medicine Company, Inc., a corporation, its officers, representatives, agents and employees, Henry S. Dunlap, George Remus and Blanche Watson, individually and as officers of Giljan Medicine Company, Inc., their representatives, agents and employees, and The Key Advertising 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 the preparation "Giljan," sometimes called "Giljan Laxative Compound," 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:

(a) That said preparation is a natural medicine, either in the sense that its ingredients are of natural origin or that it acts in a natural manner upon the system.

(b) That the formula of said preparation is either new or scientific.

(c) That the ingredients as contained in said preparation other than cascara bark, senna leaves, aloes and mandrake root have any therapeutic value.

(d) That said preparation is a cure or remedy for or has any therapeutic value in the treatment of stomach trouble in its various forms, weak kidneys, rheumatism or neuritis or the pains associated therewith, backaches, night risings, sallowness from any cause, gas pains, sour stomach, bloating, belching, liver and kidney ailments or a general run down condition, or that it has any beneficial effect upon the functioning of the kidneys, liver or stomach.

(e) That said preparation will relieve a lazy or drowsy feeling or restore energy.

(f) That said preparation has any therapeutic value in the treatment of headaches, dizziness or a tired feeling in excess of affording temporary relief when such conditions are due to constipation and that it has any therapeutic value in the treatment of constipation in excess of affording temporary relief by reason of its laxative qualities.

(g) That said preparation is an effective diuretic; will flush poisons from the system, will clear old bile out of the system; will relieve bladder irritation, strengthen the nerves, improve the appetite or digestion, relieve digestive disorders or regulate the bowels.

(h) That said preparation will make one healthy or feel younger.

(i) That 87 percent or any specified number of persons have been benefited through the use of said preparation.

(j) That said preparation has any therapeutic value in excess of that of a laxative.

2. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to reveal that said preparation should not be used in the presence of nausea, vomiting, abdominal pains, or other symptoms of appendicitis: *Provided, however,* that such advertisement need contain only the statement, "CAUTION: Use only as Directed," if and when the directions for use, wherever they appear, on the label, in the labeling, or both on the label or 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 of said preparation 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 2 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

CHARLES P. HALFHILL, THEODORE A. HALFHILL, HARRY J. HALFHILL AND HARRY J. HALFHILL, JR. DOING BUSINESS AS THE HALFHILL COMPANY AND AS OCEAN FOOD PRODUCTS COMPANY

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 5267. Complaint, Jan. 26, 1945—Decision, May 12, 1945

Where four partners engaged in buying and in selling and distributing canned salmon, tuna, mackerel, sardines and other canned food products for their own account for resale, (1) to buyers through brokers who acted as said partners' agents and to whom they customarily paid commissions or brokerage fees based on a percentage of the invoice sales prices; and (2) to direct buyers who bought said products in their own names and for their own account for resale, including so-called "buying brokers," chain stores, large wholesalers, members of buying groups and others—Paid to such direct buyers—to whom they invoiced and shipped their food products directly and from whom they collected the purchase price and who, contrary to the manner in which brokers operate, were traders for profit, who purchased and resold such food products in their own names and for their own accounts, took title thereto, assumed all risk incident to ownership, and warehoused and insured the same, and financed their dealing therein—commissions or brokerage fees on their purchases by deducting or allowing from the invoice price an amount approximating the commissions paid by them to their legitimate brokers, or by selling to them at a net price which reflected the same:

Held, That such paying and granting of commissions, brokerage, or other compensation, and allowances or discounts in lieu thereof, to the buyers of said food products on their own purchases, constituted violations of subsection (c) of Section 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.
Tapper & Tapper, of Los Angeles, Calif., 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 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. Respondents, Charles P. Halfhill, Theodore A. Halfhill, Harry J. Halfhill, and his son, Harry J. Halfhill, Jr., are partners, engaged in business under the registered fictitious trade names of The Halfhill Company and Ocean Food Products Company, in accordance with the laws of the State of California, having their principal office and place of business located at 714 West Olympic Boulevard, Los Angeles, Calif.

PAR. 2. The respondents, doing business as The Halfhill Company and Ocean Food Products Company, since June 19, 1936, have been and are now engaged in the business of buying, selling and distributing canned salmon, canned tuna, canned mackerel, canned sardines and other canned food products (all of which are hereinafter designated as "food products") for their own account for resale.

The respondents, since June 19, 1936, in the course and conduct of their said business, have sold and distributed a substantial portion of their food products, directly and through brokers, to buyers located in States other than the State in which the respondents are located, and as a result of said sales and the respondents' instructions, such food products are shipped and transported across State lines to such buyers so located.

PAR. 3. All food products sold by respondents bear a label upon which appears a brand, trade-mark, or trade name. Such labels are attached to such food products to identify and distinguish them as the products of the persons owning the brands from the products of competitors.

A brand, trade-mark, or trade name may be defined as a symbol of business goodwill. Goodwill is an attitude in people which causes them to continue to patronize a certain place or person or to purchase a definite commodity. Upon the brand used depends to whom the goodwill created by the product accrues. Thus, when respondents sell goods which bear their own brand, the goodwill accrues to them; whereas, when they sell goods bearing the brand of another, the goodwill accrues not to the respondents but to the person who owns the brand. That such is the purpose and effect of the use of brands is well known in the industry.

The respondents' food products are sold and distributed under two distinct brand classifications, namely, (1) sellers' brands and (2) distributors' brands.

A seller's brand may be defined as a brand, owned and controlled by the original seller, and as referred to herein designates brands owned and utilized by respondents in the promotion and sale of its products, which brand identifies the particular products for which respondents assume the responsibility all the way through the channels of distribution to the consumer, and whatever goodwill is established thereby accrues to respondents. Respondents determine the sales and price policies with reference to such food products. Among the brands so used by respondents are:

San Nicholas, Halfhill's, Sea Prize, Halfhill's Best Buy, LaFavorita Tonno, Best Buy, Blue Band, Beach Club, Better than Chicken, Cal-Prize, Mediterraneo, Red Sun, Roma, Serenity, Summer Sea, Westminster.

Distributors' brands may be defined as brands owned and controlled by other than the original sellers and as referred to herein designate brands utilized by distributors other than the respondents which identify the food products with the particular distributor and permit such distributors to promote the sale of those food products independently of respondents; and distributors rather than respondents assume the responsibility all the way through the channels of distribution to the consumer, and whatever goodwill is established accrues to the distributors and not to the respondents. Distributors and not respondents determine the sales and price policies with reference to such food products.

PAR. 4. Respondents sell and distribute food products by two separate and distinct methods.

First: The first method is by selling to buyers through brokers of food products.

A broker of food products may be defined as a sales agent who negotiates the sale of food products for and on account of the seller as principal and whose compensation is a commission or brokerage fee paid by the seller. A broker of food products does not buy food products from his principal and sell such products for his own account.

Such brokers act as respondents' sales agents, soliciting and obtaining orders for respondents' food products at respondents' prices and on respondents' terms. Such brokers transmit such purchase orders to respondents who thereafter invoice and ship the food products to the customer. The respondents pay such brokers for their service in negotiating and making such sales for respondents' account, commissions or brokerage fees, which are customarily based on a percentage of the invoice sales prices of the food product sold.

The food products so sold by brokers always bear the brand or label of the respondents or of the buyers to whom respondents sell. Therefore, none of the goodwill established by the products accrues to the brokers. Such brokers are not traders for profit and do not take title to or have any financial interest in the product sold, and neither make a profit nor suffer a loss on the transaction.

Second: The second method is by the sale of food products by the respondents direct to buyers. All such buyers referred to herein are "direct buyers." In transactions between respondents and such buyers, respondents do not use brokers.

There are in fact two separate and distinct classifications of direct buyers. One class is known as "buying brokers" (who designate themselves as brokers but who are not in fact brokers). The other class of direct buyers consists, among others, of chain stores, large wholesalers and members of buying groups.

The food products sold by respondents to such direct buyers principally bear brands or labels owned by such buyers, and as to such food products, all the goodwill established by the products accrues to such direct buyers.

Respondents also sell to other direct buyers (some of whom also incorrectly designate themselves as "brokers") who purchase respondents' food products exclusively under respondents' brands or labels in their own respective names and for their own accounts for resale.

Respondents pay such buyers of their food products, directly or indirectly (regardless of whether such food products are purchased under respondents' labels or distributors' labels), commissions or brokerage fees, or allowances or discounts in lieu thereof on such purchases.

Such direct buyers transmit their own purchase orders for food products directly to the respondents. The respondents thereafter invoice and ship such food products directly to such buyers from whom respondents collect the purchase price of the merchandise. The respondents, among their several methods of sales, pay such buyers commissions or brokerage fees on such purchases by deducting or allowing from the invoice price of the good products purchased an amount which is equal or approximately equal to the commissions or brokerage fees paid by the respondents to their brokers (as illustrated in method one), or by selling to such buyers at a net price which reflects brokerage.

Contrary to the manner in which brokers operate (as described in method one above) such buyers are traders for profit purchasing and reselling such food products in their own names and for their own accounts, taking title to the food products and assuming all risk incident to ownership.

Such resales are not made at the prices, and on the terms dictated by respondents, but at the prices and on the terms determined by the buyer who makes a profit or suffers a loss thereon, as the case may be.

Said direct buyers shop the market, and purchase food products from several sellers, including respondents, and purchase where they are able to secure the most favorable prices and terms, including the payment of commissions and brokerage fees.

Said buyers pay the price of the food products purchased from respondents, as a condition precedent to delivery of such food products by the carrier to them. If the food products shipped by respondent to the buyers are lost or damaged in transit, such buyers file claim with the carrier and collect damages from the carrier for their own accounts.

Such buyers, upon receipt of such food products from respondents, warehouse them in their own warehouses or in public warehouses and insure the products at their own expense and in their own names and for their own accounts against contingent loss or damage. Subsequently, said buyers pledge warehouse receipts and insurance contracts covering these products they have purchased as security for loans from banks.

PAR. 5. The respondents, since June 19, 1936, in connection with the interstate sale of their food products by the second method set forth in paragraph 4 have paid or granted, and are now paying or granting, directly and indirectly, commissions, brokerage, or other compensation, or discounts in lieu thereof, to buyers of their food products, and such acts and practices as set forth above are 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 January 26, 1945, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violation of the provisions of subsection (c) of Section 2 of said act, as amended.

After the issuance of the complaint herein, the respondents filed their answer admitting all material allegations of fact set forth in said complaint and waiving all intervening procedure, further hearings as to said facts, and expressly waiving the filing of briefs and oral argument. The respondents further stated in their answer that they are not now paying or granting, directly or indirectly, commissions, brokerage, or other compensation, or discounts in lieu thereof, to buyers of their food products, as alleged in the complaint, and that they have not done so since January 1, 1944. Thereafter this matter 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. Respondents, Charles P. Halfhill, Theodore A. Halfhill, Harry J. Halfhill, and the latter's son Harry J. Halfhill, Jr., are, and since

November 1, 1943, have been, copartners trading as The Halfhill Company and Ocean Food Products Company, with their principal office and place of business located at 714 West Olympic Boulevard, Los Angeles, Calif. Prior to November 1, 1943, respondents were stockholders in The Halfhill Company, Ltd., a Nevada corporation, which was dissolved on October 31, 1943.

PAR. 2. The respondents, doing business as The Halfhill Company and Ocean Food Products Company, for a period of time since June 19, 1936, have been, and are now, engaged in the business of buying, selling, and distributing canned salmon, canned tuna, canned mackerel, canned sardines, and other canned food products (all of which are hereinafter designated as "food products") for their own account for resale.

The respondents, for a period of time since June 19, 1936, in the course and conduct of their said business, have sold and distributed a substantial portion of their food products, directly and through brokers, to buyers located in States other than the State in which the respondents are located, and as a result of said sales such food products are shipped and transported across State lines to such buyers, who are located in various States of the United States.

PAR. 3. The respondents, to distinguish their food products from the food products sold by competitors and to facilitate sales, utilize brand or trade names for the various food products sold by them. Respondents also sell their products under the label or brand of their buyers. Among the brands used by respondents are:

San Nicholas, Halfhill's, Sea Prize, Halfhill's Best Buy, LaFavorita Tonno, Best Buy, Blue Band, Beach Club, Better than Chicken, Cal-Prize, Mediterraneo, Red Sun, Roma, Serenity, Summer Sea, Westminster.

PAR. 4. Respondents sell and distribute their food products by two separate and distinct methods:

1. By selling to buyers through brokers of food products, who act as respondents' agents in negotiating the sale of their food products, and for which services such brokers customarily are paid commissions or brokerage fees, which are usually based on a percentage of the invoice sales prices of the food product sold; and

2. By the sale of food products by the respondents direct to buyers, who are paid, directly or indirectly, commissions or brokerage fees on their own purchases of such food products from the respondents.

There are in fact two separate and distinct classifications of direct buyers. One class is known as "buying brokers" (who designate themselves as brokers but who are not in fact brokers). The other class of direct buyers consists, among others, of chain stores, large wholesalers, and members of buying groups. The food products sold by respondents to such direct buyers principally bear brands or labels owned by such buyers. Respondents also sell to other direct buyers who purchase respondents' food products exclusively under respondents' brands or labels in their own respective names and for their own account for resale.

Such direct buyers transmit their own purchase orders for food products directly to the respondents. The respondents thereafter invoice and ship such food products directly to such buyers from whom respondents collect the purchase price of the merchandise. The respondents, among their several methods of sales, pay such buyers commissions or brokerage fees on such purchases by deducting or allowing from the invoice price of the

food products purchased an amount which is equal or approximately equal to the commissions or brokerage fees paid by the respondents to their legitimate brokers or by selling to such buyers at a net price which reflects brokerage.

Contrary to the manner in which brokers operate, such buyers are traders for profit purchasing and reselling such food products in their own names and for their own accounts, taking title to the food products and assuming all risk incident to ownership.

Such buyers, upon receipt of such food products from respondents, warehouse them in their own warehouses or in public warehouses and insure the products at their own expense and in their own names and for their own accounts against contingent loss or damage. Subsequently, said buyers pledge warehouse receipts and insurance contracts covering these products they have purchased, as security for loans from banks.

CONCLUSION

The paying and granting by the respondents, Charles P. Halfhill, Theodore A. Halfhill, Harry J. Halfhill, and Harry J. Halfhill, Jr., partners doing business as The Halfhill Company and as Ocean Food Products Company, directly or indirectly, of commissions, brokerage, or other compensation, and allowances or discounts in lieu thereof, to the buyers of said food products on their own purchases, as herein found, constitute violations by the respondents herein 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 of the respondents, which answer admits all material allegations of the complaint to be true and waives all other intervening procedure and further hearings as to said facts; and the Commission having made its findings as to the facts and conclusion that respondents, Charles P. Halfhill, Theodore A. Halfhill, Harry J. Halfhill, and Harry J. Halfhill, Jr., partners doing business as The Halfhill Company and as Ocean Food Products Company, have violated the provisions of subsection (c) of Section 2 of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U.S.C. Title 15, Sec. 13).

It is ordered, That the respondents, Charles P. Halfhill, Theodore A. Halfhill, Harry J. Halfhill and Harry J. Halfhill, Jr., partners doing business as The Halfhill Company and as Ocean Food Products Company, their respective officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale and distribution of food products or other commodities, in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying or granting anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, to any purchaser upon purchases for his own account, or to any agent, represen-

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tative, or other intermediary acting in fact for or in behalf of or subject to the direct or indirect control of the purchaser to whom sale is made.

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 the order.

Syllabus

IN THE MATTER OF

MILITARY ORDER OF THE PURPLE HEART, NATIONAL
PROGRESS LEAGUE, FRANK J. MACKEY AND HAROLD C.
SHERMAN

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

Docket 4721. Complaint, Mar. 5, 1942—Decision, May 26, 1945

Where a corporation and its president and secretary, engaged in the interstate sale and distribution, among other publications and pamphlets, of a twelve-volume set of history books entitled "Progress of Nations," and a two-volume set of history and war pictures entitled "Forward March";

Following adoption of a plan which involved the use, for a consideration, of the name and prestige of the "Military Order of the Purple Heart" in connection with the sale and distribution of said books, in furtherance of which—

- (1) Said president caused to be cancelled a prior contract between another corporation of which he was likewise president, namely, the "Disabled American Veterans of the World War Rehabilitation Department," and the Disabled American Veterans of the World War, whereby latter was to receive a certain income from the sale of publications including said "Progress of Nations" and "Forward March";
 - (2) Said corporate Rehabilitation Department through said president contracted with said "Military Order" to publish aforesaid sets and said other publications and sell the same to the order or its authorized agent at a specified price for a 5-year period and as long thereafter as was mutually satisfactory;
 - (3) Said corporation or National Progress "League" through its said president agreed with said Order to finance and assume complete control of the publications to be supplied by said corporate "Rehabilitation Department" and to use in connection with the sale thereof the name, letterheads, emblem, and official seals of the said Order, and the signature of its National Commander and that of its Americanism Legislative Chairman, to take contracts for the purchase of said books in the name of said Order, to accept checks payable to its order, and to endorse and deposit such checks in a bank account under the sole control of said League, over the funds of which received from the sale of the books said Order had no control except for the right of inspection of its books;
 - (4) Said League agreed to pay over to the said Order certain fixed sums for 11 months, and thereafter amounts ranging from 5 percent to 10 percent on orders depending upon the size thereof, with the further understanding that at the expiration of the contract or the complete liquidation of the business the League would pay over to the Order any profits shown on its books, without liability on the part of said Order for any loss—whereby said League and its said officers were placed in a position to act with full freedom as though they were in fact the Military Order of the Purple Heart; and,
 - (5) The opening of an office in the name of said Order by said League, and officers at the League offices in Chicago, and the employment of salesmen, who were approved by the Americanism Legislative Chairman of the Military Order of the Purple Heart, and were issued a credential letter by it on its stationery—
- (a) Carried out said plan of procedure involving the use of the name and prestige of said Military Order of the Purple Heart, which was designed to, and enabled them to induce the purchasing public to purchase said books in belief they were dealing directly with said Order; and did not through their various salesmen advise pro-

pects that they were engaged in the sale of publications as a commercial enterprise, but, instead, appealed directly to their patriotism and their sympathy for members of the armed forces who had been wounded in action;

- (b) Represented, directly and by implication, through their salesmen that said salesmen were soliciting donations or contributions for the Military Order of the Purple Heart; that all funds received were to be used by such Order in combating anti-Americanism and subversive activities of organizations and in the public schools and colleges and for assisting or financing the Dies Committee and continuing its work; and that the books to be delivered were of secondary importance and would be sent in appreciation of the donation given; without calling to the attention of the purchaser the statement in the contract—which, after reciting the Americanism program of the Order and under its name, put the prospect on record as wishing to express his approval thereof and desiring to support the activity, prior to his order—of “positively no donations accepted,” but, in most cases, hurriedly causing the purchaser to sign it, without reading it, in many cases as evidence of his contribution;

The facts being that during the period from April 1, 1941 to November 1943 none of the funds collected or contracts involved, gross sales on which in the name of said Order, amounted to \$650,000, went direct to the Order itself, but went instead to said League and the former received thereof only approximately \$60,000.00, practically all of which was used by said Order for service work for veterans and to pay the expenses of the Washington office; none of the funds were used to assist the Dies Committee or to combat subversive activities, as represented by the salesmen at the time the orders were obtained; while the contract entered into between the National Progress League and the Military Order of the Purple Heart provided for an annual statement to be supplied by said National Progress League showing expenses and details of operation, there was no evidence that any such statements were supplied or that any supervision was made of their books of account other than occasional examination by officers of said Order; and the amount of supervision maintained by said order over the conduct of said League, and of its said officers in the performance of their contract with the Order was not sufficient to inform either the officers of the Order or the members thereof as to the acts and practices actually being pursued by said League and said individuals, its officers, in the sale and distribution of their said books under the name of the Military Order of the Purple Heart;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and to induce them to purchase said publications for patriotic motives, in belief that the monies so paid were contributions to the Military Order of the Purple Heart, rather than a commercial transaction involving the purchase of a set of books from the National Progress League; only a small portion of the money from which went to said Order:

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. Lewis C. Russell* and *Mr. Randolph Preston*, trial examiners.
Mr. Jesse D. Kash for the Commission.

LaRochelle, Brooks & Beardsley, of Chicago, Ill., *Mr. Adelbert J. Beyer*, of Milwaukee, Wis., and *Mr. Robert G. Thach* and *Mr. Joe W. McQueen*, 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 Com-

mission having reason to believe that Military Order of the Purple Heart, a corporation, and National Progress League, a corporation, Frank J. Mackey and Harold C. Sherman, individually, and as officers of National Progress League, 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, Military Order of the Purple Heart, is a corporation, organized, existing and doing business by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 301 Seymore Street, Lansing, Mich. Respondent also maintains an office at 815 Fifteenth Street, Washington, D. C.

Respondent, National Progress League, is a corporation, organized, existing and doing business by virtue of the laws of the State of Illinois, with its office and principal place of business at 104 South Michigan Avenue, Chicago, Ill.

Respondent, Frank J. Mackey, is an individual, and is president and registered agent, of respondent, National Progress League, with his office and principal place of business at 104 South Michigan Avenue, Chicago, Ill. and whose home address is 1321 East 65th Street, Chicago, Ill.

Respondent, Harold C. Sherman, is an individual, and is secretary of corporate respondent, National Progress League, with his office and principal place of business located at 104 South Michigan Avenue, Chicago, Ill., and whose home address is 238 South Elmwood Avenue, Oak Park, Ill.

The individual respondents formulate, control, direct and dominate the policies, practices and methods of the corporate respondent, National Progress League.

PAR. 2. The respondent, Frank J. Mackey, through various corporations owned or controlled by him is now and for several years last past has been engaged in the publication, sale and distribution of various publications including, among others, two sets of books, one entitled, "Progress of Nations," consisting of a twelve volume set of history books, and the other consisting of two volumes of history and war pictures entitled, "Forward March." The respondent, Frank J. Mackey, has for a number of years fostered and promoted the sale of the above-named publications and others through the means and by the instrumentality of contracts made by corporations, owned and controlled by him, with patriotic or veteran societies or associations. Under the terms of such contracts, the patriotic or veteran societies or associations are paid a royalty of 5% to 10% on collections from sales of said books, in consideration of said societies or associations sponsoring, or endorsing said publications and allowing said respondent's corporations to sell same under the names of said associations or societies or under the names of said respondent's corporations. Under said contracts, the respondent, Frank J. Mackey, through corporations owned or controlled by him, publishes and pays all the expenses incident to the publication of said books, appoints and has supervision over the salesmen selling same and owns and controls the copyrights or plates from which said publications are made.

Among the societies or associations with which said respondent, Frank J. Mackey, through Disabled American Veterans of The World War Rehabilitation Department, Inc., a corporation owned by him, had a contract as hereinabove mentioned, is "Disabled American Veterans of the World War," a corporation.

The corporate respondent, "Military Order of the Purple Heart" had full knowledge of and was familiar with the aforesaid contract.

PAR. 3. In September 1940 respondent, Frank J. Mackey, began negotiating with the respondent, Military Order of the Purple Heart, with the view of obtaining an agreement with said Military Order of the Purple Heart, similar to the contract which existed between Disabled American Veterans of the World War, Rehabilitation Department, a corporation, and Disabled American Veterans of the World War, a corporation. As a result of these negotiations a contract was entered into between the corporate respondent, Military Order of the Purple Heart and corporate respondent, National Progress League sometime during March 1941. Under the terms of said contract the respondent, Frank J. Mackey, was to purchase the books from the Disabled American Veterans of the World War, Department of Rehabilitation, a corporation solely owned by him at cost plus \$1 per set royalty. Respondent, Frank J. Mackey's organization, respondent, National Progress League, Inc., was to advance the money for the payment of these books and was to keep all money collected from the sale of same for the first twelve months of operation under said contract. The contract further provided that after it had been in effect for twelve months the respondent, Military Order of the Purple Heart, was to receive a minimum of five percent and a maximum of ten percent on all sales of books made by corporate respondent, National Progress League, said commission to be based on collections from the sale of the books and not on the actual sale price of said books. The variation of from five to ten percent in the commissions depended upon the sale price of the books, that is, those sets selling at a higher price paid the higher commission.

Respondent, National Progress League, furnished all the money for the financing of the sale of the books and had charge of all sales of same under the name of respondent Military Order of the Purple Heart. Corporate respondent, National Progress League, was to advance the sum of \$9,000 to the corporate respondent, Military Order of the Purple Heart, on a basis of \$600 cash for the purpose of furnishing respondent, Military Order of the Purple Heart, an office in Washington, D. C., and was to pay the sum of \$700 per month for twelve months. This \$9,000 advance was in lieu of any commissions which respondent, Military Order of the Purple Heart, might be entitled to as a result of the sales of books made by respondent, National Progress League, acting as the Military Order of the Purple Heart during the first twelve months of the operation under said contract.

Under the terms of said contract, all advertising, promotional work, employment of salesmen, was handled by corporate respondent, National Progress League.

PAR. 4. On February 22, 1932, by order of the President of the United States, the War Department revived the Order of the Purple Heart an award established by General George Washington at Newburgh, August 7, 1782, during the War of the Revolution. As far as known records show this award was granted to only three men by General Washington, it was granted for unusual gallantry, extraordinary fidelity and essential service, when such facts were certified to the Commander in Chief with certificates from the Commanding Officer of the regiment and brigade to which the candidate for reward belongs, or by other incontestable proofs. Subsequent to the Revolutionary War, the Order of the Purple Heart fell into disuse and no further awards were made. The Order vanished from public

sight and references to the scanty official records concerning it practically ceased.

In recent years public interest was aroused by publication of articles concerning this rare decoration, and its revival was projected and it was revived on the two hundredth anniversary of General Washington's birth. The award of the Purple Heart for acts or services performed prior to February 22, 1932, is confined to those persons who, as members of the Army, were awarded the Meritorious Service Citation Certificate by the Commander in Chief, American Expeditionary Forces, or who were wounded in action in any war, or campaign under conditions which entitled them to wear a wound chevron. The War Department has issued approximately 70,000 of these medals.

The first gathering of the Military Order of the Purple Heart was in 1935, at which time an organization was formed and a constitution was adopted. Shortly afterwards the organization was incorporated as the "Military Order of the Purple Heart." It is now National in scope and has some 4500 members.

PAR. 5. The respondent, National Progress League, and respondents, Frank J. Mackey and Harold C. Sherman, are now and since March, 1941, have been engaged in the sale and distribution of books, including a twelve volume set of books designated "Progress of Nations" and a two volume set entitled "Forward March."

In the course and conduct of their business, the said respondents, National Progress League, Frank J. Mackey and Harold C. Sherman, cause their books, 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, National Progress League, a corporation, Frank J. Mackey and Harold C. Sherman, maintain, and at all times mentioned herein have maintained, a course of trade in their said books in commerce among and between the various States of the United States and in the District of Columbia.

The respondents, Military Order of the Purple Heart, National Progress League, Frank J. Mackey, and Harold C. Sherman, have acted in conjunction and cooperation each with the other in carrying out the acts and practices herein set forth.

PAR. 6. In the course and conduct of their said business and for the purpose of promoting the sale of said books, the corporate respondent, National Progress League, and respondents, Frank J. Mackey and Harold C. Sherman, have made and are now making many false and misleading statements and representations to prospective purchasers of such books, such statements and representations being made through respondents' salesmen and representatives and by other means. Among and typical of said statements and representations, are the following:

That respondents' salesmen and representatives are members of the organization known as the "Military Order of the Purple Heart"; that respondents' books are being sold only to certain selected customers.

That the organization known as the "Military Order of the Purple Heart" receives the entire profit from the sales of said books and that one purchasing such book is in effect making contribution to said organization.

That the funds derived from the sale of said books will be used by said organization known as the "Military Order of the Purple Heart" to defray the expense of said organization's activities and efforts in combatting anti-American and subversive organizations and influences in the United States.

That said organization was attempting to raise a fund to continue the work of the Dies Committee, a Congressional Committee investigating subversive activities in the United States.

That on account of the failure of Congress to make further appropriations to said Committee it was necessary to call upon patriotic citizens to raise a fund to carry on this work.

A further practice on the part of the respondents in promoting the sale of said books is the wrongful use of letters from prominent military men and others prominent in public life endorsing the aims and purposes of the Military Order of the Purple Heart, Inc. Such letters are represented by the respondents as being endorsements of said books, when in truth and in fact such letters have no reference to said books, but relate to the general aims and purposes of said corporation.

¶ In numerous instances the fact that books are being sold by said respondents is concealed from customers and prospective customers, respondents' proposition as presented by their salesmen and representatives taking the form of a patriotic and emotional appeal addressed to said customers and prospective customers. The Military Order of the Purple Heart is represented as having launched a great legislative and educational campaign against subversive influences and activities in the United States and prospective purchasers of respondents' books are urged to participate in and contribute to such campaign. Those subscribing to such purported campaign are finally advised that they will receive a set of books, the books being made to appear as an incidental, however, to the subscription to such campaign fund. In numerous instances copies of contracts for the purchase of said books are not left with the buyers and said buyers are not aware that they have actually purchased a set of books until same are received by them, or until collection letters or acknowledgments of orders in the name of corporate respondent Military Order of the Purple Heart are received by said buyers.

PAR. 7. The foregoing representations made by and on behalf of said respondents are false, misleading, and deceptive. In truth and in fact said respondents' salesmen and representatives are not members of the organization known as Military Order of the Purple Heart. Said organization does not receive the entire profit derived from the sale of said books nor does the profit from the sale of said books constitute a contribution to said organization or to any campaign conducted by it. Said books, on the contrary, are sold by said respondents as an ordinary commercial transaction for the benefit of respondents, National Progress League, Frank J. Mackey and Harold C. Sherman, and the only profit derived by the respondent, Military Order of the Purple Heart, from the sale of such books, is, and has been, the respective royalties hereinabove mentioned, and the proceeds from the sale of said books are used by said corporate respondent, Military Order of the Purple Heart, for maintaining an office in Washington, D. C., in order to be in touch with the Congress of the United States and various Veterans' organizations at the seat of the Government in Washington, D. C., and to promote and sponsor legislation affecting its membership and is not used by said organization to defray its expenses in combatting anti-American and subversive organizations and influences in the United States. The sale of said books is not restricted to any group or number of persons but said books are sold indiscriminately to the general public. Funds derived from the sale of said books are not used to assist the Dies Committee or any other Congressional committee in curbing subversive activities of groups unfriendly to the United States.

PAR. 8. A further deceptive and misleading practice employed by the respondent, Military Order of the Purple Heart, consists of placing in the hands of the corporate respondent, National Progress League, letterheads, stationery and billheads bearing the name, "The Military Order of the Purple Heart," and allowing said corporate respondent, National Progress League, to use contract forms bearing the title "Military Order of the Purple Heart" outlining the "Americanism program" of said organization and containing at the end of same an order blank for purchasing a set of books and directing checks to be made payable to said Order, and bearing the statement, "Positively No Donations Accepted."

A further deceptive and misleading practice of the respondents' salesmen is to represent to prospective purchasers or contributors that prominent citizens, residing in the locality wherein said prospective purchasers reside and who are known to said prospective purchasers, have purchased said books or made donations, when no such purchases have been made or donations given.

PAR. 9. The use by the respondents of the foregoing acts, practices and methods 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 the above said false statements and representations are true, and to induce the purchasing public to purchase substantial quantities of respondents' books as a result of such erroneous and mistaken belief.

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 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 5, 1942, issued and subsequently served its complaint upon the respondents, Military Order of the Purple Heart, a corporation, National Progress League, a corporation, and Frank J. Mackey and Harold C. Sherman, individually, and as officers of National Progress League, a corporation, 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 trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiners upon the evidence and exceptions filed thereto, briefs 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, Military Order of the Purple Heart, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 301 Seymore Street, Lansing, Mich. Said respondent also maintains an office at 815 Fifteenth Street, Washington, D. C. The Military Order of the Purple Heart, which was founded in 1935, is an organization of veterans of the wars of the United States who have been awarded the Order of the Purple Heart, established by General George Washington in 1782 and revived on February 22, 1932, by order of the President of the United States. All veterans and members of the armed forces who receive the Order of the Purple Heart automatically become members of respondent, Military Order of the Purple Heart, but only those members who pay dues have the power to vote.

PAR. 2. Respondent, National Progress League, is a corporation, organized, existing, and doing business by virtue of the laws of the State of Illinois, with its office and principal place of business at 104 South Michigan Avenue, Chicago, Ill.

Respondent, Frank J. Mackey, is an individual, and is president and director of the respondent, National Progress League, with his office and principal place of business at 104 South Michigan Avenue, Chicago, Ill., and whose home address is 1321 East 65th Street, Chicago, Ill. Said respondent is also president of the Disabled American Veterans of the World War Rehabilitation Department, a corporation.

Respondent, Harold C. Sherman, is an individual, and is a director and secretary of the corporate respondent, National Progress League, with his office and principal place of business located at 104 South Michigan Avenue, Chicago, Ill., and whose home address is 238 South Elmwood Avenue, Oak Park, Ill.

The individual respondents formulate, control, direct, and dominate the policies, practices, and methods of the corporate respondent, National Progress League.

PAR. 3. During the latter part of the year 1929 the Disabled American Veterans of the World War Rehabilitation Department entered into a contract with the Disabled American Veterans of the World War, by the terms of which contract the Disabled American Veterans of the World War were to receive a certain income from the sale of certain books and pamphlets, including the publications "Progress of Nations" and "Forward March."

PAR. 4. For several years last past the corporate respondent, National Progress League, and the individual respondents, Frank J. Mackey and Harold C. Sherman, have been engaged in the sale and distribution of certain publications and pamphlets, including two sets of books, one entitled "Progress of Nations," consisting of a twelve-volume set of history books, and the other entitled "Forward March," consisting of two volumes of history and war pictures. The respondents cause said publications, when sold, to be transported from the place of business of the National Progress League in the State of Illinois to purchasers thereof located in various other States of the United States. The respondents maintain, and at all times mentioned herein have maintained, a course of trade in said books and publications in commerce among and between the various States of the United States

PAR. 5. For the purpose of inducing the purchase of the books and publications sold and distributed by them, the respondents, National Progress League, Frank J. Mackey, and Harold C. Sherman, adopted a plan of procedure which involved the use, for a consideration, of the name and prestige of the Military Order of the Purple Heart in connection with the sale and distribution of said books and publications.

In furtherance of this plan of procedure, the respondent, Frank J. Mackey, as president of the Disabled American Veterans of the World War Rehabilitation Department, caused the contract with the Disabled Veterans to be canceled as of April 1, 1941. The Disabled American Veterans of the World War Rehabilitation Department, by its president, respondent, Frank J. Mackey, thereupon entered into a contract with the Military Order of the Purple Heart on March 5, 1941, by the terms of which contract the Disabled American Veterans of the World War Rehabilitation Department, as publishers, agreed to publish the sets of books known as "Progress of Nations" and "Forward March" and certain other publications and to sell said publications to respondent Military Order of the Purple Heart or its authorized agent at manufacturing cost plus a royalty of \$1 per set for a period of five years and as long thereafter as was mutually satisfactory.

Thereafter, the 18th day of March 1941, the respondent, National Progress League, by its president, Frank J. Mackey, entered into an agreement with the Military Order of the Purple Heart to finance and assume complete control of the sale and distribution of the publications to be supplied by the Disabled American Veterans of the World War Rehabilitation Department and to use in connection with the sale of such publications the name, letterheads, emblem, and official seals of the Military Order of the Purple Heart and the signature of its National Commander and that of its Americanism Legislative Chairman. The respondent, National Progress League, was further authorized by this agreement to take contracts for the purchase of said books in the name of the Military Order of the Purple Heart, to accept checks payable to the order of the Military Order of the Purple Heart, and to endorse and deposit such checks in a bank account under the sole control of the respondent, National Progress League. Except for the right of inspection of the books of the National Progress League, the Military Order of the Purple Heart had no control over the funds received from the sale of the publications.

By the terms of this agreement the National Progress League agreed to pay over to the Military Order of the Purple Heart certain fixed sums payable as follows: \$750 each month for the period from May 15, 1941, to April 15, 1942; and on all business sold after April 1, 1942, 5 percent of the amount collected on all orders of \$50 or less, 7 percent of the amount collected on all orders from \$51 to \$100, inclusive, and 10 percent on all orders in excess of \$100, said payments to be made on the 15th of the month following the month in which collections were received, beginning May 15, 1942.

It was further agreed that at the expiration of the contract or the complete liquidation of the business, the respondent, National Progress League, would pay over to the respondent Military Order of the Purple Heart any profits shown on its books of account or, if a loss resulted from the operation of the business, such loss would be assumed by respondent, National Progress League, without any liability on the part of the respondent, Military Order of the Purple Heart.

Since it was provided that the contract should be for a period of five years and should remain in force and effect as long thereafter as was mutually satisfactory and since the profits, if any, were payable to the Military Order of the Purple Heart only at the expiration of this contract or the complete liquidation of the business, it is evident that it was not within the contemplation of the parties that there would be any substantial profits accruing to the Military Order of the Purple Heart over and above the fixed payments provided for in said contract.

PAR. 6. Pursuant to, and in performance of, their contract with the Military Order of the Purple Heart, the respondents, National Progress League, Frank J. Mackey, and Harold C. Sherman, opened an office in the name of the Military Order of the Purple Heart located at the offices of the National Progress League at 104 South Michigan Avenue, Chicago, Ill., and advertised for, investigated, and employed salesmen to sell said publications. After a salesman was selected, he was approved by the Americanism Legislative Chairman of the Military Order of the Purple Heart, who issued a credential letter to said salesman on the stationery of the respondent, Military Order of the Purple Heart.

PAR. 7. By means of the contract, hereinabove described, which authorized and permitted the respondent, National Progress League, to maintain an office in the name of the respondent, Military Order of the Purple Heart, to transact business under said respondent's name, to cash checks and to sign all correspondence in the name of said respondent, and to maintain complete control over all funds received from the sale of said books, the respondents, Frank J. Mackey, Harold C. Sherman, and National Progress League, were placed in a position to act with full freedom as though they were in fact the Military Order of the Purple Heart.

PAR. 8. In the course and conduct of their business of selling the publications hereinbefore described and in furtherance of the plan of procedure adopted to induce the purchase of these various books and publications, the respondents, National Progress League, Frank J. Mackey, and Harold C. Sherman, through their various salesmen, did not advise purchasers and prospective purchasers that they were engaged in the sale of publications as a commercial enterprise but, instead, appealed directly to the patriotism of purchasers and prospective purchasers and their sympathy for veterans and members of the armed forces who had been wounded in action.

The customary procedure of a salesman when contacting a purchaser or prospective purchaser was to inform such prospect that he was connected with the Military Order of the Purple Heart and then discuss in detail the Purple Heart award for those wounded in action and the aims and purposes of the Military Order of the Purple Heart. Considerable emphasis would be placed on subversive activities and anti-American influences of various organizations and in the public schools. It was only after the prospect was placed in a more or less receptive mood to contribute to the Military Order of the Purple Heart that any mention of books was made.

In making this presentation in connection with the offering for sale of said books and publications, the salesmen of said respondents variously represented, directly and by implication, that they were soliciting donations or contributions for the Military Order of the Purple Heart; that all funds received were to be used by the Military Order of the Purple Heart in combating anti-Americanism and subversive activities of organizations and in the public schools and colleges; that they were engaged in raising funds to be used by the Military Order of the Purple Heart for assisting or

financing the Dies Committee and continuing its work; that the funds so raised were to be used to finance an educational campaign against subversive activities and influences; and that the books to be delivered were of secondary importance and would be sent in appreciation of the donation given.

While it is true that the contract used contained the statement, "Positively no donations accepted," this was not called to the purchaser's attention but, instead, in most cases the salesmen hurriedly caused the purchaser to sign the contract without reading it, in many cases as evidence of his contribution. Furthermore, the entire plan of procedure was to convey to the purchaser that contributions were being solicited to carry out the aims and purposes of the Military Order of the Purple Heart. In support of such plan the contract first recited the Americanism program of the Military Order of the Purple Heart and then proceeded with the following:

Military Order of the Purple Heart
104 South Michigan Avenue
Chicago, Illinois

Wishing to express my approval of the above program and desiring to support it actively, I do hereby order and authorize you to deliver to any common carrier, addressed according to instructions attached * * *.

During the period from April 1, 1941, to November 1943 the gross sales on contracts taken in the name of the Military Order of the Purple Heart amounted to \$650,000. These funds so collected on such contracts did not go direct to the Military Order of the Purple Heart but to the National Progress League, and only five to ten percent of the money received, depending on the amount of the purchase, was paid over to the Military Order of the Purple Heart by the respondent, National Progress League. The percentage paid to the Military Order of the Purple Heart by the respondent, National Progress League, under the terms of their said contract amounted to approximately \$60,000, practically all of which was used by the Military Order of the Purple Heart for service work for veterans and to pay the expenses of the Washington office. None of the funds were used to assist the Dies Committee or to combat subversive activities, as represented by the salesmen at the time the orders were obtained.

While the contract entered into between the National Progress League and the Military Order of the Purple Heart provided for an annual statement to be supplied by the respondent, National Progress League, showing expenses and details of operation, there is no evidence that any such statements were supplied or that any supervision was made of respondents' books of account other than occasional examination by officers of respondent, Military Order of the Purple Heart.

PAR. 9. Without detracting from the laudable aims and purposes of the Military Order of the Purple Heart and with full sympathy with the results which it has accomplished in its assistance to veterans, the Commission is nevertheless of the opinion, and so finds, that the acts and practices and the plan of procedure followed by the respondents, National Progress League, Frank J. Mackey, and Harold C. Sherman, have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public and to induce them to purchase the publications sold by said respondents because of patriotic motives, in the belief that the monies

so paid were contributions to support the aims and purposes of the Military Order of the Purple Heart, rather than a commercial transaction involving the purchase of a set of books from the National Progress League, with only a small portion of the money so paid going to the Military Order of the Purple Heart.

PAR. 10. The Commission further finds that the amount of supervision maintained by the Military Order of the Purple Heart over the conduct of the respondents, National Progress League, Frank J. Mackey, and Harold C. Sherman, in the performance of their contract with the Military Order of the Purple Heart was not sufficient to inform either the officers or the members of the Military Order of the Purple Heart as to the acts and practices actually being pursued by said respondents in the sale and distribution of their said books under the name of the Military Order of the Purple Heart.

CONCLUSION

The aforesaid acts and practices of the respondents, National Progress League, a corporation, and Frank J. Mackey and Harold C. Sherman, individually, and as officers of the National Progress League, 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, 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 said complaint and in opposition thereto, report of the trial examiners 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 respondents, National Progress League, a corporation, and Frank J. Mackey and Harold C. Sherman, have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, National Progress League, a corporation, and its officers, agents, representatives, and employees, and the respondents Frank J. Mackey, an individual, and Harold C. Sherman, an individual, and their respective agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of certain sets of books designated "Progress of Nations" and "Forward March" and other books and publications and in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, continuing, or carrying out any contract or plan of procedure involving the use of the name and prestige of the Military Order of the Purple Heart or any other similar patriotic organization, which is designed to or which enables the respondents to induce the purchasing public to purchase respondents' books or other publications in the belief that they are dealing directly with the Military Order of the Purple Heart or any other similar patriotic organization when, in fact, they are dealing with a private concern engaged in the sale of books and other publications as a commercial enterprise for profit.

2. Representing directly or by implication that any customer purchasing any of respondents' books or publications is in effect making a direct contribution to the Military Order of the Purple Heart or any other patriotic organization.

3. Representing directly or by implication that the funds derived from the sale of respondents' books or publications will be used by the Military Order of the Purple Heart or any other similar patriotic organization to defray the expense of such organization's activities and efforts in combating anti-American and subversive organizations and influences in the United States.

4. Representing directly or by implication that the respondents are engaged in raising funds to continue the work of any Congressional investigating committee.

5. Representing directly or by implication that any patriotic organization will participate in the profits derived from books or publications sold and distributed by the respondents without disclosing the extent to which such organization actually participates in the funds collected.

6. Representing directly or by implication that respondents are engaged in any enterprise other than a commercial enterprise for profit.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondent Military Order of the Purple Heart, a corporation.

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

IN THE MATTER OF
LIQUID TIGHT PAPER CONTAINER 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 4675. Complaint, Jan. 22, 1942—Decision, May 29, 1945

Where an association; its secretary; and eight members, engaged in the manufacture and interstate sale and distribution of cylindrical liquid tight paper containers in competition with one another and with others except insofar as such competition had been restrained as below set forth—

Entered into and carried out understandings, agreements, combinations and conspiracies among themselves for the purpose of restraining, and eliminating competition and creating a monopoly in the sale of cylindrical liquid tight paper containers in commerce, pursuant to which they—

- (1) Agreed to and did fix and maintain uniform delivered prices, and uniform discounts and other terms and conditions governing the sale of cylindrical liquid tight paper containers by said members, and standard uniform sizes and colors for such containers, and the quality of material used therein;
- (2) Agreed to and did fix and maintain certain percentage quotas which represented and limited the amount of business which each of said manufacturers should do, and exacted penalties of each member manufacturer whose business exceeded his designated percentage quota, and made payments to any who sold less than his specified quota;
- (3) Agreed to and did establish and maintain geographical zones throughout the United States and uniform price differentials between such zones, so that all purchasers within a given zone area, regardless of the distance of the purchaser from the manufacturer, paid the same delivered price for cylindrical liquid tight paper containers;
- (4) Agreed to and did arbitrarily classify customers either as jobbers or consumers, and established and maintained uniform price differentials between the two classes, and agreed to and did maintain resale prices at which jobber customers were required to sell the products of the said member manufacturers, and enforced such requirement through refusing the usual jobber discounts to jobbers who did not maintain the prices and terms fixed;
- (5) Held and sponsored meetings at which information was exchanged among the said manufacturers with respect to prices, discounts, charges, and other terms and conditions to be fixed for the sale of cylindrical liquid tight paper containers; and
- (6) Agreed to file and in practice did file with the association their price lists for their products, and, pursuant to agreement, abided by such filed prices until they filed new prices and agreed to file and in practice did file with the association invoices or copies thereof showing details of their sales, including price, discount, and terms of sale:

Whereby aforesaid manufacturer members, as an incident to and a necessary result of their members thus making identical delivered prices only, notwithstanding freight differences, arbitrarily and systematically charged and received larger sums of money from customers located near their respective manufacturing establishments than from those customers located farther away; forced their near-by customers to pay more to their manufacturers for their products in order that more distant ones might pay less; deprived their near-by customers of any price advantage

by reason of their proximity to the place of manufacture; and thereby arbitrarily and systematically discriminated in price among their respective customers in bad faith in order to suppress competition in price among themselves;

With the effect of unduly and unlawfully restricting, restraining, hindering, and preventing price competition between and among said manufacturers in the sale of cylindrical liquid tight paper containers in commerce; and of unduly and unlawfully restricting and restraining trade in such products in commerce as aforesaid; and with the tendency and capacity to eliminate competition and create a monopoly in the sale of such products, in such commerce, and of thereby placing in said manufacturers the power to control and enhance the prices of their products:

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

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

Mr. Daniel J. Murphy for the Commission.

Mr. Joseph J. Brown, of Philadelphia, Pa., for respondents generally, and along with—

Mr. Charles H. Farrell, of Kalamazoo, Mich., for Sutherland Paper Co.

Mr. Roderick William Hoag, of Melrose, Mass., for Russell Box Co.

Hiscock, Cowie, Bruce, Lee & MaWhinney, of Syracuse, N. Y., for Seal-right Co., Inc.

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 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, Liquid Tight Paper Container Association, 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 eight individuals, firms or corporations engaged in the manufacture, sale, and distribution of cylindrical liquid tight paper containers.

The business and affairs of respondent Association are conducted under the active management and supervision of a secretary and manager.

Respondent, George J. Lincoln, Jr., is secretary and manager of respondent Association with an office located at 1532 Lincoln-Liberty Building, Philadelphia, Pa.

PAR. 2. Respondent, Boothby Fibre Can 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 84 Linden Park Street, Boston (Roxbury), Mass.

Respondents, Gordon S. Smith and George T. Hynes, are copartners, doing business under the trade name of Champion Container Company, with a principal office and place of business located at Third and Somerset Streets, Philadelphia, Pa.

Respondent, Fonda Container Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 2150 Erie Street, Utica, N. Y.

Respondent, Menasha Products 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 Menasha, Wis.

Respondent, Minkoff & Rosenfield Brothers, Inc., doing business under the trade name of Miro Container 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 557 DeKalb Avenue, Brooklyn, N. Y.

Respondent, Russell Box 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 200 Boston Avenue, Medford, Mass.

Respondent, Sealright Company, Inc., is a corporation, organized existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at Fulton, N. Y.

Respondent, Sutherland Paper Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at Kalamazoo, Mich.

Respondents, Boothby Fibre Can Company, Gordon S. Smith and George T. Hynes, copartners, doing business under the firm name of Champion Container Company, Fonda Container Company, Inc., Menasha Products Company, Minkoff & Rosenfield Brothers, Inc., Russell Box Company, Sealright Company, Inc., Sutherland Paper Company, hereinafter referred to as respondent manufacturers, are all respectively respondent members of the respondent Association.

PAR. 3. Respondent manufacturers are all respectively manufacturers of cylindrical liquid tight paper containers and in the regular course and conduct of their respective businesses sell and distribute cylindrical liquid tight paper containers manufactured by them to the purchasers thereof, and in connection with said sales ship and transport, or cause to be shipped and transported, said cylindrical liquid tight paper containers, in commerce, to the purchasers thereof, located in the various States of the United States other than the States of origin of said shipments, and in the District of Columbia. All respondent manufacturers have maintained, and still do maintain, a regular current of trade in cylindrical liquid tight paper containers in commerce between and among the various States of the United States and in the District of Columbia.

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 and are in active and substantial

competition with each other and with other manufacturers and sellers of cylindrical liquid tight paper containers in the sale thereof to purchasers for shipment 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, during and in the period of more than three years last past, have entered into and thereafter carried out understandings, agreements, combinations, and conspiracies, for the purpose of restricting, restraining, suppressing, and eliminating competition and creating a monopoly in the sale of cylindrical liquid tight paper containers in trade and commerce as aforesaid.

PAR. 7. Pursuant to said understandings, agreements, combinations and conspiracies, and in furtherance thereof, the said respondents have engaged in and performed, and are now engaging in and performing the following acts and practices:

1. Agreed to fix and maintain and have fixed and maintained uniform delivered prices at which cylindrical liquid tight paper containers are to be sold, and are sold, by respondent manufacturers.

2. Agreed to fix and maintain and have fixed and maintained uniform discounts and other terms and conditions for the sale of cylindrical liquid tight paper containers sold and distributed by respondent manufacturers.

3. Agreed to fix and maintain and have fixed and maintained standard uniform sizes, colors, and quality of materials for cylindrical liquid tight paper containers sold and distributed by respondent manufacturers.

4. Agreed to fix and maintain and did fix and maintain certain respective percentage quotas which represented, and limited, the amount of business that each respective respondent manufacturer should do; penalties were exacted from the respondent manufacturer whose business exceeded his respective percentage quota and payments were made to the respondent manufacturer who sold less than his respective percentage quota.

5. Agreed to establish and maintain and have established and maintained geographical zones throughout the United States, and have fixed and maintained uniform price differentials between such zones.

6. Agreed to adopt and maintain and have adopted and maintained a zoning system whereby the United States is divided into certain zone areas so that all purchasers within a given zone area, regardless of the distance of the place of business of said purchaser from the place of business of a respondent manufacturer, received the same delivered price on cylindrical liquid tight paper containers manufactured and sold by respondent manufacturers.

7. Agreed to arbitrarily classify and have arbitrarily classified their respective customers either as jobbers or consumers and have established and maintained uniform price differentials between the respective classes.

8. Agreed to maintain and have maintained resale prices at which their respective jobber customers sell their said products by not allowing usual jobber discounts to those jobbers who do not or will not sell at the manufacturers' published suggested prices and terms.

9. Respondent manufacturers have—

- (a) Agreed to file, and in practice have actually filed, with the respondent Association their price lists for cylindrical liquid tight paper containers.

(b) Agreed to abide by, and in practice did abide by, such filed prices until new and different prices were so filed by them.

(c) Agreed to file, and in practice have actually filed, with the respondent Association invoices covering the sale of cylindrical liquid tight paper containers.

10. Respondents have used, and are now using, other methods and means designed to suppress and prevent competition and restrict and restrain the sale of cylindrical liquid tight paper containers.

PAR. 8. Each of said 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 understandings, agreements, combinations and conspiracies.

PAR. 9. As an incident to and a necessary result of their agreed policy and practices of making delivered prices only and of making such prices identical, notwithstanding differences in the actual freight from the various shipping points to given distances, the respective respondent manufacturers have arbitrarily and systematically demanded, charged, accepted and received larger sums of money for their products from their customers located near their respective manufacturing establishments than from their customers located at greater distances; have thereby forced their near-by customers to pay more to respondent manufacturers for their products in order that more distant ones might pay less; have deprived their near-by customers of any price advantage by reason of their proximity to the place of manufacture; and have thereby arbitrarily and systematically discriminated in price among their respective customers in bad faith in order to suppress competition in price among respondent manufacturers.

PAR. 10. Said understandings, agreements, combinations, and conspiracies, 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 respondents in the sale of cylindrical liquid tight paper containers, in commerce within the intent and meaning of the Federal Trade Commission Act; of unduly and unlawfully restricting and restraining trade and commerce in said products in said commerce; of eliminating competition, with the tendency and capacity of creating a monopoly, in the sale of said products in said commerce; of placing in respondents the power to control and enhance prices; of unreasonably restraining such commerce in said products.

Said understandings, agreements, combinations and conspiracies, 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 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, 1942, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of that act. After the filing by the respondents of their answers to the complaint, and after certain testimony and other evidence had been introduced before a trial

examiner of the Commission theretofore duly designated by it, the respondents requested leave of the Commission to withdraw the answers theretofore filed by them and to substitute therefor answers admitting all of the material allegations of fact set forth in the complaint, and waiving all intervening procedure and further hearings as to the facts. Such leave being granted, the original answers were withdrawn by the respondents and the substitute answers duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, substitute answers, and testimony and other evidence; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Liquid Tight Paper Container Association, 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 membership of the association comprises certain individuals, firms, and corporations engaged in the manufacture, sale, and distribution of cylindrical liquid tight paper containers. The business and affairs of the association are conducted under the active management and supervision of an officer designated as a secretary and manager.

Respondent, George J. Lincoln, Jr., is secretary and manager of the respondent association, his office being located at 1532 Lincoln-Liberty Building, Philadelphia, Pa.

PAR. 2. Respondent, Boothby Fibre Can Company, is a corporation, organized and existing under and by virtue of the laws of the State of Massachusetts, with its office located at 84 Linden Park Street, Boston (Roxbury), Mass. The corporation discontinued active business operations about November, 1942, and withdrew from membership in the respondent association about June, 1941.

Respondents, Gordon S. Smith and George T. Hynes, were until April 9, 1944, copartners, doing business under the trade name Champion Container Company, with their principal office and place of business located at Third and Somerset Streets, Philadelphia, Pa. Respondent, Smith, died on April 9, 1944, and since that date respondent, Hynes, has continued to operate the business under the same trade name.

Respondent, Fonda Container Company, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York. Its principal office and place of business were formerly located at 2150 Erie Street, Utica, N. Y., but since August, 1942, have been located in St. Albans, Vt.

Respondent, Menasha Products 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 in Menasha, Wis. The corporation withdrew from membership in the association about June, 1942.

Respondent, Minkoff & Rosenfield Brothers, 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 537 DeKalb

Avenue, Brooklyn, N. Y. The corporation does business under the trade name Miro Container Company.

Respondent, Russell Box Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located in Kalamazoo, Mich. The corporation withdrew from membership in the association about July 1, 1941, and in December, 1941, discontinued that portion of its business relating to round paper containers.

Respondent, Sealright Company, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in Fulton, N. Y.

Respondent, Sutherland Paper Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located in Kalamazoo, Mich.

The respondents named in this paragraph, frequently referred to hereinafter as respondent manufacturers, have all been members of the respondent association and, with the exceptions noted above, are now members of the association.

PAR. 3. All of the respondent manufacturers are or have been respectively engaged in the manufacture of cylindrical liquid tight paper containers and in the sale and distribution thereof, causing such products, when sold, to be shipped or transported to purchasers located in various States of the United States other than the States in which such shipments originate, and in the District of Columbia. Each of the respondent manufacturers maintains or has maintained a regular current of trade in its products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent association and respondent, George J. Lincoln, Jr., are not engaged in commerce but have aided, abetted, furthered, and participated in the understandings, agreements, combinations, and conspiracies hereinafter described, and have actively cooperated and participated in the performance of the acts and practices done pursuant thereto and in furtherance thereof.

PAR. 5. The respondent manufacturers are or have been in active and substantial competition with one another and with other individuals, firms, and corporations engaged in the sale and distribution of cylindrical liquid tight paper containers in commerce among and between the various States of the United States and in the District of Columbia, except insofar as such competition has been restrained, lessened, injured, and suppressed as a result of the understandings, agreements, combinations and conspiracies hereinafter set forth.

PAR. 6. The respondents have during the last several years entered into and carried out understandings, agreements, combinations, and conspiracies among themselves for the purpose of restricting, restraining, suppressing, and eliminating competition and creating a monopoly in the sale of cylindrical liquid tight paper containers in commerce as aforesaid. Pursuant to and in furtherance of such understandings, agreements, combinations, and conspiracies, the respondents have engaged in the following acts and practices:

1. Agreed to fix and maintain and have fixed and maintained uniform delivered prices governing the sale of cylindrical liquid tight paper containers by the respondent manufacturers,

2. Agreed to fix and maintain and have fixed and maintained uniform discounts and other terms and conditions governing the sale of such containers.

3. Agreed to fix and maintain and have fixed and maintained standard uniform sizes and colors for such containers, and the quality of materials used therein.

4. Agreed to fix and maintain and have fixed and maintained certain percentage quotas which represented and limited the amount of business which each of the respondent manufacturers should do. Penalties were exacted from any respondent manufacturer whose business exceeded his designated percentage quota, and payments were made to any respondent manufacturer who sold less than his specified quota.

5. Agreed to establish and maintain and have established and maintained geographical zones throughout the United States and uniform price differentials between such zones.

6. Agreed to adopt and maintain and have adopted and maintained a zoning system whereby the United States was divided into certain zone areas so that all purchasers within a given zone area, regardless of the distance of the place of business of the purchaser from the place of business of the manufacturer, paid the same delivered price for cylindrical liquid tight paper containers.

7. Agreed to classify arbitrarily and have arbitrarily classified customers either as jobbers or consumers, and have established and maintained uniform price differentials between the two classes.

8. Agreed to maintain and have maintained resale prices at which jobber customers were required to sell the products of the respondent manufacturers, such requirement being enforced through refusal of the respondent manufacturers to allow the usual jobber discounts to those jobbers who did not maintain the prices and terms fixed by such manufacturers.

9. Held and sponsored meetings at which information was exchanged among the respondent manufacturers with respect to prices, discounts, charges, and other terms and conditions to be fixed for the sale of cylindrical liquid tight paper containers.

10. The respondent manufacturers have agreed to file and in practice have filed with the association their price lists for their products, and have, pursuant to agreement, abided by such filed prices until new and different prices were filed by them. They have also agreed to file and in practice have filed with the association invoices or copies thereof showing details of sales made by them, such details including price, discount, and terms of sale.

PAR. 7. Each of the respondents has acted in concert and cooperation with one or more of the other respondents in doing and performing the acts and things set forth above in furtherance of such understandings, agreements, combinations, and conspiracies.

PAR. 8. As an incident to and a necessary result of their agreed policy and practices of making delivered prices only and of making such prices identical, notwithstanding differences in the actual freight from the various shipping points to given distances, the respective respondent manufacturers have arbitrarily and systematically demanded, charged, accepted, and received larger sums of money for their products from their customers located near their respective manufacturing establishments than from their customers located at greater distances; have thereby forced their near-by customers to pay more to respondent manufacturers

for their products in order that more distant ones might pay less; have deprived their near-by customers of any price advantage by reason of their proximity to the place of manufacture; and have thereby arbitrarily and systematically discriminated in price among their respective customers in bad faith in order to suppress competition in price among the respondent manufacturers.

PAR. 9. The aforesaid understandings, agreements, combinations, and conspiracies, and the things done pursuant thereto and in furtherance thereof, as herein set forth, have the effect of unduly and unlawfully restricting, restraining, hindering, and preventing price competition between and among the respondent manufacturers in the sale of cylindrical liquid tight paper containers in commerce as defined in the Federal Trade Commission Act; of unduly and unlawfully restricting and restraining trade in such products in commerce as aforesaid; and the tendency and capacity to eliminate competition and create a monopoly in the sale of such products in such commerce, thereby placing in the respondent manufacturers the power to control and enhance the prices of their products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents admitting all of the material allegations of fact in the complaint and waiving all intervening procedure and further hearings as to the facts, and testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Liquid Tight Paper Container Association, an unincorporated association, and George J. Lincoln, Jr., secretary and manager of said association, and respondent manufacturers, Boothby Fibre Can Company, a corporation, George T. Hynes, individually, and doing business under the name Champion Container Company, Fonda Container Company, Inc., a corporation, Menasha Products Company, a corporation, Minkoff & Rosenfield Brothers, Inc., a corporation doing business under the name Miro Container Company, Russell Box Company, a corporation, Sealright Company, Inc., a corporation, and Sutherland Paper Company, a corporation, and the respondents' respective officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cylindrical liquid tight paper containers 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. Fixing or maintaining certain percentage quotas which represent and limit the amount of business that each respective respondent manufacturer should do in said products.

2. Fixing or maintaining uniform delivered prices for the sale of said products.

3. Fixing or maintaining uniform discounts, terms, and conditions of sale to be observed in the sale of said products.

4. Fixing or maintaining standard uniform sizes, colors, and quality of materials for said products for the purpose or with the effect of restraining competition in the offering for sale or sale of said products.

5. Continuing the delivered price zones heretofore used for making quotations and sales of said products, or establishing or maintaining any delivered price zones which are similar to those heretofore used in that their use would result as heretofore in making the delivered prices of the respective respondent manufacturers identical despite their different costs of delivery.

6. Fixing or maintaining uniform price differentials between such established geographical zones.

7. Fixing or maintaining any classification of customers, either as jobbers or consumers, for the purpose or with the effect of establishing or maintaining uniform price differentials between the respective classes.

8. Fixing or maintaining resale prices at which the respective respondent manufacturers' jobber customers sell said products, and refusing to allow usual jobber discounts to those jobbers who do not sell at the respondent manufacturers' suggested price and terms.

9. Filing with the respondent association, or with any other medium or central agency, price lists or other information showing current or future prices for said products, with the understanding that such price lists or other information showing current or future prices for said products will not be changed or deviated from until new and different price lists or other information showing other current or future prices are so filed by the respondent manufacturers.

10. Forwarding by the respondent manufacturers to the respondent association of invoices or copies thereof showing the details in respect to prices, discounts, and terms of sale at which said products are being sold, for the purpose or with the effect of restraining competition in the offering for sale or sale of said products.

11. Holding and sponsoring meetings of respondent manufacturers for the discussion and interchange of information relating to prices, discounts, conditions, charges, or terms to be fixed for the sale of said products.

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

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondent, Gordon S. Smith, now deceased.

IN THE MATTER OF
ALASKA FUR TRAPPERS, INC. AND MAX FRIEDMAN

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

Docket 5199. Complaint, Aug. 3, 1944—Decision, May 31, 1945

Where a corporation and its president, who formulated, directed and controlled its acts and practices, engaged in the interstate sale and distribution of fur products, and, principally, fur coats and neckpieces—

Represented through use of word "trappers" in its corporate and trade name, featured on letterheads and cards, invoices, circulars and other advertising material, and through word "manufacturing" in phrase "Manufacturing Furriers" in connection therewith, and word "wholesale" also, that they were engaged in the trapping of fur bearing animals, manufactured or produced the fur products sold by them, and were wholesalers of fur products;

The facts being they were neither trappers, manufacturers, nor wholesalers of fur products, with whom a substantial portion of the purchasing public prefer to deal directly as affording, in its belief, lower prices and superior quality, but were engaged exclusively in selling at retail to the consuming public fur products obtained by them from manufacturers or wholesalers thereof;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their business identity and status and the origin of their products, and thereby cause it to purchase substantial quantities thereof:

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

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

Mr. B. G. Wilson for the Commission.

Herbstman & Bleyman, 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 Alaska Fur Trappers, Inc., a corporation, and Max Friedman, individually, and as president of said 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, Alaska Fur Trappers, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 36 West 35th St., New York, N. Y.

Respondent, Max Friedman, is an individual, and president of the corporate respondent, Alaska Fur Trappers, Inc., with his office and principal place of business at 36 West 35th St., New York, N. Y.

Respondent, Max Friedman, controls, formulates, and directs the acts and practices of the corporate respondent.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the business of offering for sale, sale and distribution of fur products, principally fur coats and neck pieces, in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause their said products, when sold, to be transported from their 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 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, and for the purpose of inducing the purchase of their products, said respondents adopted as and for their corporate and trade name the words "Alaska Fur Trappers, Inc." under which to carry on their business, which corporate and trade name they have used continuously for several years last past and are now using in soliciting the sale of and selling their fur products.

Respondents have caused and now cause their said corporate and trade name "Alaska Fur Trappers, Inc." to appear on their letterheads, cards, invoices, circulars and other advertising matter.

In some advertisements in which said corporate name is used, respondents display the words "Alaska Fur Trappers" in very large and conspicuous type. The words "Wholesale" and "Manufacturing Furriers" appear in much smaller type directly thereunder. Among and typical of such false and misleading representations are the following:

ALASKA FUR TRAPPERS, Inc.		
Wholesale		Retail
	Manufacturing Furriers	
Fur Coats		Cloth Coats.
Wholesale & Retail		
London	—	Moscow
* * * Stores in		
Principal Cities	* * *	

PAR. 4. Through the use of the corporate name of said respondent corporation "Alaska Fur Trappers, Inc." in connection with the words "Wholesale" and "Manufacturing Furriers," together with other representations appearing on letterheads, cards, invoices, circulars and other advertising matter circulated among purchasers and prospective purchasers of fur products, the respondents represent that they are engaged in business as producers of Alaskan fur products or in the trapping of Alaskan and other animals for furs; that they make or manufacture the fur products which they offer for sale and sell; that they are wholesalers of fur products and that they have stores located in London, Moscow and other principal cities.

PAR. 5. The foregoing representations are false, misleading and deceptive. In truth and in fact, the respondents are not engaged in business as producers of fur products, nor are they engaged in the trapping of Alaskan or other animals for furs. Respondents do not own and operate or control,

and have not owned and operated or controlled a plant, factory, or machinery for the manufacture of fur products which they sell and distribute. The respondents fill orders for such articles of merchandise with products which are made or manufactured in a plant or factory which they neither own, operate, nor control. Respondents are not wholesalers of fur products, but are only retailers of said merchandise. Respondents do not have stores located in London, Moscow or in other principal cities in the United States or abroad, with the exception of New York City, New York.

PAR. 6. A substantial part of the consumer-user public has a preference for buying merchandise, including products sold by respondents and products similar thereto, directly from manufacturers and wholesalers, believing that by so doing a more uniform line of goods, superior quality, lower prices and other advantages can be obtained.

There has been and is a widespread belief among purchasers and prospective purchasers of fur garments that the fur of animals in Alaska and other northern countries and parts of the world is superior to that of animals living in milder or more temperate climates, and such persons have had and have a preference for the fur products of animals from such northern countries and parts of the world because of such belief in the superiority of the fur products from such animals over the fur products of animals obtained from more temperate climates.

PAR. 7. The use by respondents of the corporate name "Alaska Fur Trappers, Inc." had and has a capacity and tendency to, and did and does, deceive and mislead prospective purchasers and purchasers of fur products with respect to the nature and character of business operated by the said respondents.

PAR. 8. The aforesaid acts and practices and representations of the respondents have had and now have the tendency and capacity to deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive acts and practices, and representations are true, and into the purchase of substantial quantities of respondents' products because of such erroneous and mistaken belief so induced.

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 August 3, 1944, issued and subsequently served its complaint in this proceeding upon the respondents, Alaska Fur Trappers, Inc., a corporation, and Max Friedman, individually, and as president of the corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. In due course the respondents filed their answer to the complaint. Thereafter, at a hearing held before a trial examiner of the Commission theretofore duly designated by it, a stipulation of facts was entered into between the attorney for the Commission and the attorney for the respondents, which provided, among other things, that the facts set forth therein should be taken as the facts in this proceeding, and that the Commission might proceed upon such stipulation to make its findings as

to the facts and dispose of the proceeding, the parties reserving, however, the right to file briefs and argue the matter orally before the Commission. Subsequently, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, stipulation of facts, and briefs in support of and in opposition to the complaint (oral argument having been waived); 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, Alaska Fur Trappers, Inc., is a corporation, organized under the laws of the State of New York, with its office and place of business located at 36 West 35th Street, New York, N. Y.

Respondent, Max Friedman, an individual, is president, of the respondent corporation, and has his office and place of business at the same address as that of the corporation. Respondent, Friedman, formulates, directs, and controls the acts and practices of the corporation.

PAR. 2. The respondents are now, and for several years last past have been, engaged in the sale and distribution of fur products, principally fur coats and neckpieces, causing such 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 various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents have distributed among members of the purchasing public letterheads, cards, invoices, circulars, and other advertising material upon which the respondents' corporate and trade name "Alaska Fur Trappers, Inc." was prominently displayed. In connection with such corporate and trade name, there also appeared the words "Manufacturing Furriers" and the word "Wholesale."

Through the use of the words "trappers" and "manufacturing," as set forth above, the respondents have represented that they are engaged in the trapping of fur bearing animals and that they manufacture or produce the fur products sold by them. Through the use of the word "wholesale," respondents have also represented that they are wholesalers of fur products.

PAR. 4. These representations are false and misleading. Respondents are not engaged in the trapping of fur bearing animals, nor are they manufacturers or wholesalers of fur products. Respondents are in fact engaged exclusively in the operation of a retail store, selling at retail to the consuming public fur products obtained by them from manufacturers or wholesalers of such products.

PAR. 5. There is a preference on the part of a substantial portion of the purchasing public for dealing directly with manufacturers and wholesalers of fur products, such preference being due in part to a belief that by purchasing from such sources lower prices and a superior quality of merchandise may be obtained.

PAR. 6. The use by the respondents of the false and misleading representations herein set forth has the tendency and capacity to mislead and

deceive a substantial portion of the purchasing public with respect to respondents' business identity and status and with respect to the origin of respondents' 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 the respondents, a stipulation of facts entered into between the attorney for the Commission and the attorney for the respondents, and briefs in support of and in opposition to the complaint (oral argument having been waived); 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, Alaska Fur Trappers, Inc., a corporation, its officers, and Max Friedman, individually, and as an officer of said corporation, 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 fur products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Trappers," or any word of similar import, as a part of respondents' corporate or trade name; or otherwise representing, directly or by implication, that respondents are engaged in the trapping of fur bearing animals.

2. Using the word "Manufacturing," or any word of similar import, either alone or in conjunction with other words, to designate, describe, or refer to respondents' business; or otherwise representing, directly or by implication, that respondents manufacture the products sold by them.

3. Using the word "Wholesale," or any word of similar import, either alone or in conjunction with other words, to designate, describe, or refer to respondents' business; or otherwise representing, directly or by implication, that respondents are wholesalers.

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
ULTRA-VIOLET PRODUCTS, INC.

MODIFIED ORDER TO CEASE AND DESIST

Docket 4407. Order, June 7, 1945

Modified order, in accordance with decree below referred to, in proceeding in question, in which original order issued on June 8, 1942, 34 F. T. C. 1325, and in which the Circuit Court of Appeals for the Ninth Circuit on June 30, 1944, in *Ultra-Violet Products, Inc. v. Federal Trade Commission*, 143 F. (2d) 814, 38 F. T. C. 923, rendered its opinion, and on January 24, 1945 issued its decree modifying the aforesaid order in certain respects and affirming the same as therein modified—

Requiring respondent, its officers, etc., in connection with offer, etc., in commerce, of its therapeutic "Life Lite" lamp, to cease and desist from disseminating any advertisements, etc., which misrepresent the nature or benefits of said lamp, or qualities or properties thereof with respect to various ailments, or which fail to make certain disclosures with respect to use thereof, as in said order specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on June 8, 1942, the Commission made its findings as to the facts herein and concluded therefrom that the respondent, Ultra-Violet Products, Inc., a corporation, had violated the provisions of the Federal Trade Commission Act, and on June 8, 1942, issued and subsequently served its order to cease and desist upon said respondent; and it further appearing that on January 24, 1945, the United States Circuit Court of Appeals for the Ninth Circuit issued its decree modifying the aforesaid order in certain respects and affirming said order as therein modified.

Now, therefore, Pursuant to the provisions 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 said respondent, Ultra-Violet Products, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of respondent's therapeutic lamp designated as "Life Lite," or any other lamp of substantially similar construction, 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 represents, directly or by implication,

(a) that said lamp is a sun lamp; or that it affords benefits to the user comparable to those afforded by natural sunlight, other than the benefits resulting from the production of vitamin D, the benefits resulting from the bactericidal action of said lamp upon bacteria existing at the surface or outer layers of the skin, and the benefits resulting from the stimulation or irritation of the skin;

(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 discharges 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 diseases other than those benefited from the development in the body of vitamin D or the lamp's bactericidal action or stimulating effect on the outer layers of the skin;

(g) that said lamp has any tonic effect upon the blood, that it produces any chemical reaction with respect to the blood stream, 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 reactions;

(m) that said lamp tones up the nervous system, induces sleep, or relieves pain;

(n) that said lamp normalizes the chemistry of the body, improves metabolism, or builds or aids in building new tissues, except insofar as such effects are related to the production of vitamin D resulting from the use of the lamp or from the stimulating or bactericidal effect of the lamp on the skin.

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.

It is further ordered, That said respondent corporation shall, within 30 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF
PECK AND HILLS FURNITURE 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 5239. Complaint, Oct. 20, 1944—Decision, June 23, 1945

Where a corporation engaged in the operation in New York City of a so-called dealer or trade showroom for its interstate sale and distribution of household furniture and floor coverings—

- (a) Made false and deceptive representations concerning the values and prices of its said products through catalogs disseminated among small furniture dealers and interior decorators for inspection by their respective consumer purchasers, featuring the word "wholesale" on the cover page and showing a purported "list price" of the items illustrated, and in which, immediately inside the cover, there was included a perforated pink sheet—to be detached by the dealer or interior decorator before showing the catalog to prospective consumer purchasers—stating "YOUR DISCOUNT 60% From Catalog List Prices, But You Do Not Have to Figure It. Your cost is secretly shown in our numbering system. For example: 15J61-19 Each \$47.50," with the explanation that "the '15J61' was the pattern number and that '19' represented \$19.00, or dealer cost on the particular item listed at \$47.50 in the catalog," and the further statement "We show list price to enable you to sell your customer at a profit. Quoting 50% off list price will make a 25% markup over cost. TEAR THIS SHEET OUT"; and
- (b) Furnished small furniture dealers and interior decorators with so-called "courtesy cards" for prospective consumer purchasers of furniture, which, bearing its name and the words "Special Courtesy Card No. —" together with the words "Wholesale Furniture, Floor Covering," requested it, over the name and address of the dealer, to "extend the courtesies of your wholesale showrooms to M—," and admitted only prospective consumer purchasers who presented such cards, or who were accompanied by a dealer or decorator to its showrooms, in which the furniture and floor coverings displayed were tagged with the list price shown in the aforesaid catalog or a price a little higher, and, after inspection, offered the prospect said products at approximately one-half the list prices;

The facts being that the prices for which its products were actually offered and sold were not, as thereby falsely represented and implied, special or wholesale prices or substantially less than regular retail selling prices; the so-called courtesy cards were not of value in the sense that they enabled holders to buy its products for less than its customary prices, and the "list" prices set forth in the catalog and on the tags actually were merely arbitrary figures that would, when reduced by 50%, indicate the approximate prices to be paid by the consumer purchaser;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that the selling prices of its products were special or wholesale prices, or substantially less than the retail selling prices, and into the consequent purchase of 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. Joseph Callaway for the Commission.

Baar, Bennett & Fullen, of New York City, for respondent.

Complaint

40 F. T. C.

COMPLAINT

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

PARAGRAPH 1. Respondent, Peck and Hills Furniture Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal place of business at 42 East 32nd Street, New York, N. Y.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the sale and distribution of household furniture and floor coverings and operates a so-called dealer or trade showroom at said location.

In the course and conduct of its business the respondent causes its said products, 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 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. In the course and conduct of its business and for the purpose of inducing the purchase of its said products in commerce, respondent has made and is now making false deceptive and misleading representations with respect to the values and prices of its products. Respondent has represented and is now representing that its products may be purchased at a special or wholesale price or one that is substantially less than the retail selling price.

As a part of its plan and scheme to so represent the price of its products, respondent issues catalogs which are disseminated among small furniture dealers and interior decorators for inspection by their prospective consumer purchasers. These catalogs feature the word "wholesale" on the cover page thereof and show a price called the list price of each of the various items illustrated therein. Immediately inside the cover is a perforated pink sheet which is to be detached by the dealer or interior decorator before showing the catalog to prospective consumer purchasers. This pink sheet reads in part as follows:

YOUR DISCOUNT

60%

From Catalog List Prices

But You Do Not
Have to Figure It.Your cost is secretly shown in our numbering system.
For example:

15J61-19 Each \$47.50

The pink sheet then explains that the "15J61" is the pattern number and that "19" represents \$19.00 or dealer cost on the particular item listed at \$47.50 in the catalog. The pink sheet states further:

We show list price to enable you to sell your customer at a profit.
Quoting 50% off list price will make a 25% markup over cost.

TEAR THIS SHEET OUT

PAR. 4. Some of the other acts and practices of the respondent in furtherance of its aforesaid plan and scheme to induce the belief on the part of consumer purchasers and prospective consumer purchasers that its products may be purchased at a special or wholesale price or a price that is substantially less than the retail selling price are set forth below.

Respondent furnishes small furniture dealers and interior decorators with blank admission cards or so-called courtesy cards for prospective consumer purchasers of furniture. The following is typical of such cards:

PECK AND HILLS FURNITURE COMPANY, INC., (Special
(Courtesy Card
(No.)

WHOLESALE

Furniture, Floor Covering.

Please extend the courtesies of your wholesale showrooms

to M.....

Dealer

Address

Only the prospective consumer purchaser who presents admission or courtesy card or who is accompanied by a dealer or decorator, is admitted to the showrooms of respondent. There the displayed furniture and floor coverings are tagged with a list price which is approximately the same or a little higher than the list price shown in the aforesaid catalog. By personal statements of its representatives and employees and otherwise, respondent directly and by implication, represents that the list price of its products is the retail selling price. After inspecting the displayed furniture and floor coverings so tagged, the prospect is offered said products at approximately one half the list prices.

PAR. 5. By the aforesaid representations and acts and practices, and others of similar import and meaning not specifically set out herein, respondent directly and by implication has represented and is now representing that the price at which its products are sold and offered for sale is a special or wholesale price or one that is substantially less than the retail selling price.

PAR. 6. The foregoing representations are false, deceptive and misleading. In truth and in fact the prices for which respondent's products are actually sold and offered for sale are not special or wholesale prices and are not substantially lower than the established or regular retail selling prices. The so-called courtesy cards are not of value in the sense that they enable the holders thereof to buy respondent's products for less than the prices customarily charged therefor by the respondent. The "list" prices set forth in the catalog and on the tags do not represent the price at which respondent's products are sold or offered for sale to anyone. Actually said "list" prices are mere arbitrary figures that would when reduced by 50% indicate the approximate prices to be paid by the consumer purchaser.

PAR. 7. The aforesaid representations, acts and practices of respondent in connection with the sale and offering for sale of its products in commerce are parts of and together they constitute a plan or scheme which has the tendency and capacity to and does mislead and deceive a sub-

stantial portion of the purchasing public into the erroneous and mistaken belief that the selling price of respondent's products is a special or wholesale price or one substantially less than the retail selling price, and into the purchase of substantial quantities of respondent's products in commerce, because of such erroneous and mistaken belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 20, 1944, issued and thereafter served its complaint in this proceeding upon the respondent Peck and Hills Furniture Company, 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. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for respondent and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding in lieu of testimony in support of or in opposition to the charges stated in the complaint and that the Commission might proceed upon said complaint and statement of facts to make its report, stating its findings as to the facts (including inferences which might be drawn from said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without any intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and stipulation, said stipulation having been approved, accepted, and filed by the Commission; and the Commission, having duly considered the matter and now being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Peck and Hills Furniture Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal place of business at 42 East 32nd Street, New York, N. Y. It is now, and for more than two years last past has been, engaged in the sale and distribution of household furniture and floor coverings and operates a so-called dealer or trade showroom at said location.

PAR. 2. In the course and conduct of the aforesaid business, respondent causes its said products, 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, and maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. For the purpose of inducing the purchase of its products, respondent has made false, deceptive, and misleading representations concerning the values and prices of its said products. It has issued and dis-

seminated catalogs among small furniture dealers and interior decorators for inspection by their prospective consumer purchasers. These catalogs feature the word "wholesale" on the cover page thereof and show a price called the list price of each of the various items illustrated therein. Immediately inside the cover is a perforated pink sheet which is to be detached by the dealer or interior decorator before showing the catalog to prospective consumer purchasers. This pink sheet reads in part as follows:

YOUR DISCOUNT

60%

From Catalog List Prices

But You Do Not
Have to Figure it.

Your cost is secretly shown in our numbering system. For example:
15J61-19 Each \$47.50

The pink sheet explains that the "15J61" is the pattern number and that "19" represents \$19.00, or dealer cost on the particular item listed at \$47.50 in the catalog. Said sheet contains the further statements:

We show list price to enable you to sell your customer at a profit.
Quoting 50% off list price will make a 25% markup over cost.

TEAR THIS SHEET OUT

PAR. 4. Also for the purpose of causing consumer purchasers and prospective purchasers to believe that its products might be purchased at a special or wholesale price, and thereby inducing the sale of its products, respondent furnished small furniture dealers and interior decorators with blank admission cards or so-called courtesy cards for prospective consumer purchasers of furniture. A typical example of such cards reads:

PECK AND HILLS FURNITURE COMPANY, INC., (Special
(Courtesy Card
(No. -----

WHOLESALE

Furniture, Floor Covering.

Please extend the courtesies of your wholesale showrooms to

M.....

Dealer.....

Address.....

Only prospective consumer purchasers who presented admission or courtesy cards, or who were accompanied by a dealer or decorator, were admitted to the showrooms of respondent. The furniture and floor coverings displayed in said showrooms were tagged with a list price which was approximately the same or a little higher than the list price shown in the aforesaid catalog. After inspecting the displayed furniture and floor coverings so tagged, the prospect was offered said products at approximately one-half the list prices.

PAR. 5. By means of the aforesaid representations, acts, and practices, respondent has falsely represented and implied that the prices at which its products are sold are special or wholesale prices, substantially less than

regular retail selling prices. In truth and in fact, the prices for which respondent's products were, and are, actually sold and offered for sale have never been special or wholesale prices, and have never been substantially lower than the established or regular retail selling prices. The so-called courtesy cards are not, and have never been, of value in the sense that they enable the holders thereof to buy respondent's products for less than the prices customarily charged therefor by the respondent. The "list" prices set forth in the catalog and on the tags did not represent the price at which respondent's products were sold or offered for sale to anyone. Actually, said "list" prices were merely arbitrary figures that would, when reduced by 50%, indicate the approximate prices to be paid by the consumer-purchaser.

PAR. 6. The aforesaid representations, acts, and practices of respondent in connection with the sale and offering for sale of its products in commerce were parts of and together constituted a plan or scheme which had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the selling prices of respondent's products were special or wholesale prices, or prices substantially less than the retail selling prices, and into the purchase of substantial quantities of respondent's products in commerce because of such erroneous and mistaken belief.

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 a stipulation as to the facts entered into between counsel for the respondent herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which stipulation provides, among other things, that without further evidence or other intervening procedure, the Commission may enter its order disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Peck and Hills Furniture Company, Inc, a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of household furniture and floor coverings or other products, do forthwith cease and desist from:

1. Representing, directly or by implication, that the established or regular retail selling prices at which its products are sold or offered for sale to consumer purchasers are special or wholesale prices.

2. Using courtesy cards as a means of representing, directly or by implication, that the holders thereof are thereby enabled to purchase respondent's products for less than the prices customarily charged therefor by the respondent.

Order

3. Using in catalogs or on tags attached to the products offered for sale, or otherwise, "list" or other prices which do not represent the prices at which respondent's products are regularly and customarily sold by respondent in the normal and usual course of business.

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

IN THE MATTER OF
ROBERT W. HAILEY, G. P. HUBBLE, AND H. F. HALL,
TRADING AS COOKWARE ASSOCIATES

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

Docket 5084. Complaint, Nov. 17, 1943—Decision, June 25, 1945

Where two individuals engaged in interstate sale and distribution of cooking utensils which, prior to 1940, they purchased in the form of stainless aluminum castings and finished for the market in their polishing and finishing plant, and, subsequent to 1941, when Government restrictions due to war demand were placed upon the production of aluminum products, were glass and ceramic, known respectively as "fire glass ware" and "Old Hickory Ceramic Ware"; and which they sold direct to the public through agents whose practice it was to arrange demonstration meals involving the use of the utensils at the homes of housewives, to which friends and neighbors were invited, and thereafter solicit orders from those interested at said demonstrations under a plan by which a cash payment was made at the time of the order, which the agent retained as part compensation, and shipment was made C.O.D. either for the balance or, if sold under installment contract, for not less than 40% of the contract price; following a change to a baser alloy in 1940, due to war conditions, in the formula for the castings purchased by them, so that the utensils had a tendency to stain or darken and become pitted—

- (a) Continued, through their said agents, to make demonstrations, using the original stainless aluminum samples, and to take orders without advising the purchasers that utensils of a baser metal would be delivered; and aided and abetted in said deception of purchasers by repeatedly accepting orders taken in said manner; and countenanced the use of the stainless aluminum samples in the making of demonstrations;
- (b) Did not notify purchaser in advance that a baser-metal utensil would be supplied, but, on the same day that a shipment was forwarded, sent a notice advising the purchaser that they were sending utensils made of a newly improved alloy which reached the purchaser at about the time of the C.O.D. shipment, giving him no opportunity to cancel his order because of such change; and in all cases where a purchaser canceled or attempted to cancel the order because of the delivery of utensils different from the samples, refused to make any refund of the down payment; and

Where said individuals, following said discontinuance of the sale of aluminum and metal utensils and at a time when they knew they could not make deliveries—

- (c) Followed a practice of taking all orders possible therefor, instructing their agents to continue taking orders and to collect down payments;
- (d) Endeavored to induce purchasers, secured as aforesaid, to accept partial delivery and let the balance of the order stand until after the duration, or attempted to substitute cooking utensils made of glass or ceramic ware for the aluminum or aluminum alloy ordered by the customer; and
- e) Pursued the policy, if the purchaser was unwilling to accept substitute cooking utensils, of refusing to refund the down payment to the customer or to cancel the contract, and in all such instances notified the purchasers that they could not refund the deposit but would ship the ordered goods as soon as the governmental restrictions on the production of aluminum and aluminum alloy products were lifted;

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Complaint

Whereby they fraudulently induced a substantial portion of the purchasing public to enter into contracts to purchase cooking utensils which they failed to deliver in accordance therewith, and to pay substantial deposits thereon which they refused to refund;

Effect of which practice of procuring orders for merchandise which they could not deliver, together with down payments, and then refusing to cancel such orders or to refund the down payment, enabled them to compel or attempt to compel purchasers to accept partial deliveries or the substitution of glass or ceramic utensils in lieu of the utensils ordered, under penalty of forfeiture of the deposits paid, or to await the termination of the wartime restrictions at an uncertain future date, pending which they were deprived of the use of the goods contracted for at the solicitation of said agents:

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

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

Mr. Merle P. Lyon and *Mr. Clark Nichols* for the Commission.

Mr. Edward A. Myers, of Bucyrus, Ohio, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Robert W. Hailey, G. P. Hubble, and H. F. Hall, individuals, trading as Cookware Associates, 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondents, Robert W. Hailey, G. P. Hubble and H. F. Hall, are individuals, trading under the name and style of Cookware Associates, with their office and principal place of business located at 1101 East Warren Street, Bucyrus, Ohio. Respondents are now, and for several years last past have been, engaged in the sale and distribution of cooking utensils. Respondents cause, and have caused, said cooking utensils, when sold, to be shipped from their place of business in the State of Ohio 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 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 their said business, the respondents have solicited orders for their said cooking utensils by means of traveling salesmen and representatives, who have contacted customers and prospective customers by direct canvassing and house-to-house calls, and have then exhibited their wares by practical cooking demonstrations with utensils alleged by them to be identical with the utensils offered by respondents for sale to said customers. If orders were received, a printed contract was signed by the customer providing for the payment of a deposit to the salesman and future delivery of the cookware by the respondents at a later date to be fixed by the customer.

During the year 1941 and prior thereto, the respondents made their cooking utensils of aluminum or of aluminum alloy, and said utensils were

in high demand by housewives generally and were greatly esteemed for their brilliance, luster and durability. Subsequent to the year 1941 certain restrictions were placed by various governmental agencies on the production and sale of aluminum and aluminum alloy cooking utensils, so that in many instances the respondents were unable to perform contracts providing for the delivery of such utensils, or to deliver such utensils to their customers.

Notwithstanding the inability of respondents to perform such contracts, they continued to solicit sales of aluminum and aluminum alloy cooking utensils through their sales representatives and agents, and continued to accept orders and deposits providing for the sale and delivery of such cooking utensils. The deposits paid by the purchasers were retainers by the salesmen in whole or in part to apply on commissions due said salesmen on said contracts, and the orders were forwarded by said salesmen to the respondents for future delivery in accordance with the terms of said orders. In many instances during the years 1941 and subsequent thereto, the respondents were unable or unwilling to fill said orders in accordance with the terms thereof, and attempted to substitute cooking utensils made of glass or ceramic ware in place of the aluminum or aluminum alloy ware ordered by the customer. If the customer was unwilling to accept the substitute cooking utensils, the respondents pursued the policy of refusing to refund the deposit to the customer or to cancel the contract. In all such instances the respondents notified the purchasers that they would not refund the deposit, but would ship the ordered goods as soon as the governmental restrictions on the sale and delivery of aluminum or aluminum alloy ware were lifted and production of same was again permitted.

PAR. 3. The aforesaid acts and practices of the respondents in offering for sale and selling cooking utensils made of aluminum or aluminum alloy under circumstances where respondents knew or had reason to know that future delivery of said cooking utensils would be impossible or highly improbable due to existing governmental restrictions on the sale of strategic minerals for civilian use, have been and are highly prejudicial to the purchasing and consuming public. The respondents have attempted to compel the purchasers to accept inferior glass or ceramic cooking utensils in lieu of the cookware ordered by them, under the penalty of forfeiture of the deposits paid by them in good faith or of awaiting the termination of wartime restrictions on the sale of aluminum and aluminum alloy products at an uncertain future date, and in the meantime being deprived of the use of goods contracted for in good faith and at the solicitation of the agents and sales representatives of the respondents.

PAR. 4. The acts, practices and methods of respondents as aforesaid in soliciting and accepting orders for cookware, and in accepting deposits from purchasers for cookware, which respondents cannot deliver, if at all, until some uncertain time in the future, are misleading and deceptive and purchasers are mistakenly led to believe that respondents contemplate and can make immediate delivery of such cookware, and a substantial portion of the consuming public is thereby induced to, and does, place orders for, and pay deposits upon, said cookware because of such erroneous and mistaken belief. As a result many members of the public have contracted to purchase, and paid substantial deposits upon, respondents' said cookware products and respondents have failed to make delivery to such purchasers of cookware products of the quality and in the quantity sold.

PAR. 5. The aforesaid acts and practices of the respondents, as herein

alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 17, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, Robert W. Hailey, G. P. Hubble, and H. F. Hall, individually, and as co-partners, trading as Cookware Associates, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the said act. After the issuance of the said complaint, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were taken before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (respondents not having filed brief or requested oral argument); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Robert W. Hailey, G. P. Hubble, and H. F. Hall, are individuals, trading under the name and style of Cookware Associates, with their office and principal place of business located at 1101 East Warren Street, Bucyrus, Ohio. Respondents for several years last past have been engaged in the sale and distribution of cooking utensils. Respondents cause said cooking utensils, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in various other States of the United States 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. Prior to 1940, the respondents were engaged in the sale of stainless aluminum utensils known as "Health-Craft Ware." These utensils were purchased from the Aluminum Company of America and from the National Bronze and Aluminum Company in the form of castings, which the respondents machine-polished and finished for the market in their polishing and finishing plant at Bucyrus, Ohio. In 1940, due to war conditions, the formula for the castings purchased by the respondents was changed, with the result that the utensils had a tendency to stain or darken on use and to become pitted. In 1941, due to the demand for aluminum in the war effort, certain governmental restrictions were placed upon the production and sale of aluminum and aluminum alloy cooking utensils so that the respondents were unable to make delivery of such utensils. As a result, the respondents attempted to market utensils made of glass, which

were known as "Fire Glass Ware," and also ceramic utensils known as "Old Hickory Ceramic Ware."

PAR. 3. In the course and conduct of their business, the respondents sold their cooking utensils direct to the public through agents or field representatives originally designated as "associates" and later as "distributors." The customary procedure was for a field representative to call on a housewife and arrange for a demonstration at her home, to which her friends and neighbors were invited. In the course of this demonstration a meal was cooked and served through the use of the cooking utensils carried by the representative as samples, and the merits of the various utensils were demonstrated and explained by the representative to the assembled guests. The representative usually made no sales at the time of the demonstration but, instead, obtained the names of those persons who might be interested in the purchase of the cooking utensils and arranged to call on such prospective purchasers at a later date. When a purchaser agreed to purchase any of respondents' cooking utensils, said representative caused such purchaser to sign a written order agreeing to purchase the specified merchandise from the respondents. At the time of taking such order the representative invariably secured a down payment from the purchaser, which was retained by the representative as part of his commission, and the merchandise specified in the order was delivered by the respondents C.O.D. for the balance due. The orders taken by the representative for C.O.D. shipment further provided that the order was not subject to cancellation, alteration, substitution, or refund. In some instances installment contracts were entered into with the purchaser, which provided for a cash payment to the representative and a C.O.D. payment on delivery, which together constituted not less than forty percent of the contract price, with the balance paid in monthly installments.

The compensation received by respondents' agents or field representatives was entirely on a commission basis. This commission varied on different articles and sets of articles sold, and averaged approximately thirty-eight percent of the order. Under the plan of procedure developed by the respondents, the representative collected approximately twenty-five percent of this commission as a down payment, which was retained by him. When the entire collection was made, the respondents paid the representative the balance of such commission or credited same to his account.

In addition, the respondents also employed certain so-called "key managers," who were in charge of, and supervised, a number of representatives in a specific area. These key managers were paid a commission based upon the sales made by the representatives working under their supervision.

PAR. 4. After the formula for respondents' utensils was changed in 1940 because of war demands from the original stainless aluminum formula to a baser alloy, respondents' representatives continued to make demonstrations using the original stainless aluminum samples and taking orders for such utensils without advising the purchasers that utensils of a baser metal would be delivered. The respondents aided and abetted in this deception of purchasers by repeatedly accepting orders taken in this manner and countenanced the use of the stainless aluminum samples in the making of demonstrations. Furthermore, for the purpose of inducing the purchaser to accept the order the respondents did not notify such purchaser that a baser-metal utensil would be supplied until shipment was actually made. On the same day that a shipment was forwarded to a purchaser, the re-

spondents sent a notice advising the purchaser that they were sending utensils made of a newly improved alloy, such notices reaching the purchaser at about the time or immediately prior to the delivery of the C.O.D. shipment and without opportunity on the part of the purchaser to cancel said order because of such change. In all cases where a purchaser would cancel or attempt to cancel the order because of the delivery of utensils composed of material different from that of the samples, the respondents refused to make any refund of the down payment.

PAR. 5. After the sale of aluminum and metal utensils was ordered discontinued by the United States Government in 1941 and at a time when respondents knew that they could not make deliveries on orders, the respondents did not discontinue taking orders for such aluminum and metal utensils but, instead, followed the plan and practice of taking all orders possible. Respondents instructed their agents and representatives to continue to take orders for aluminum utensils and to collect down payments.

For example, in instructions dated February 7, 1942, sent out by respondents to all their representatives, the respondents stated:

Now here's what every Associate is to do. Here's orders:—You dive right in and put on all the Healthware dems you can get. Sell every dam order you can get them to sign and pay the downs. * * *

When they are settling on the shipping date, tip em off this way "Why not make the date sometime in May or June—maybe July, Mr. and Mrs. Jones. Im not supposed to know a thing about it—but Ive been tipped off by a friend in the office that the company has been getting ready for something new for months and I have a hunch they'll be coming out with it by April or May. It'll be a knockout, too. Beat this stuff all hollow. If you are willing to wait then you will get the chance to get the new product. The way they'll doubtless do will be to write every customer telling them about the new product and giving them a chance to decide which they want—the old or the new. They'll have to know so they can know how much of the old to make before they dismantle the machinery and get ready to produce the new."

Im not in a position to tell you boys any more than I have told you. Cant mention the material. In fact, use the story like above and you'll be better off without knowing exactly what it is. * * *

* * *

All the aluminum Healthware has been sold that can be delivered. You have orders to demonstrate all you can—sell all you can—collect all the downs you can—— * * * And you have orders to tip em off to "something new" and delay the delivery dates until May or June. * * *

* * *

And, remember, you do not have to taper off Healthware and on to the extractor. Sell ALL THE HEALTHWARE YOU CAN—AND ALL THE EXTRACTORS YOU CAN. Just dont swamp us with more "at once" orders. Tip em off to the "secret" (something new a'coming) and try to date orders off to May, June, etc. And everyone of us will get along OK I am confident.

And remember—when we give you something new it will not be some make-shift merchandise—but it will be Health-ware. It will be something that'll tie in with our present story. Merely a change of the material used.

In accordance with such instructions respondents' representatives continued to take orders for said aluminum Health-Craft Ware and to accept deposits. The respondents would then endeavor to induce such purchasers

to accept partial delivery and let the balance of the order stand until after the duration or attempted to substitute cooking utensils made of glass or ceramic ware in place of the aluminum or aluminum alloy ordered by the customer. If the purchaser was unwilling to accept substitute cooking utensils, the respondents pursued the policy of refusing to refund the down payment to the customer or to cancel the contract. In all such instances the respondents notified the purchasers that they could not refund the deposit but would ship the ordered goods as soon as the governmental restrictions on the sale and delivery of aluminum and aluminum alloy ware was lifted and the production of same was again permitted.

PAR. 6. By means of the acts and practices herein described the respondents have fraudulently induced a substantial portion of the purchasing public to place orders with the respondents for cooking utensils and to pay deposits thereon in the erroneous and mistaken belief that respondents can make immediate delivery thereof or, in the event of inability so to do, that the deposits so made will be returned. As a result, many members of the public have entered into contracts to purchase respondents' cooking utensils and have paid substantial deposits thereon, and the respondents have failed to make delivery of the cooking utensils in accordance with the contract and have refused to refund the deposits made by such purchasers.

The practice of the respondents of procuring orders for merchandise which they could not deliver, together with down payments on such orders, and then refusing to cancel such orders or to refund the down payment, enabled the respondents to compel or attempt to compel purchasers to accept partial deliveries or the substitution of glass or ceramic utensils in lieu of the utensils ordered by them, under penalty of forfeiture of the deposits paid by them in good faith, or to await the termination of the wartime restrictions at an uncertain future date, in the meantime being deprived of the use of the goods contracted for in good faith and at the solicitation of the agents and sales representatives of the respondents.

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, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence, and brief filed in support of the complaint (respondents not having filed brief or requested 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, Robert W. Hailey, G. P. Hubble, and H. F. Hall, individually, and as copartners, trading as Cookware Associates, 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 cooking utensils and other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Soliciting sales or accepting orders and deposits for cooking utensils or other merchandise of a kind and quality which the respondents are not capable of delivering at the time of the sale or within the time specified in the order.

2. Representing directly or by implication that respondents are offering for sale sets of cooking utensils or other merchandise when respondents cannot or do not deliver all the pieces of the set specified or when the pieces or sets actually delivered are not of the kind and quality represented by the respondents.

3. The use of any sales plan or method which involves the taking of orders for merchandise which the respondents cannot or do not supply, together with a deposit or down payment upon such order, to induce the purchaser to accept merchandise of a kind or quality different from that ordered, under penalty of forfeiture of deposit or down payment.

4. The use of any sales plan or method which involves a sales demonstration or display with merchandise of a kind or quality different from that which respondents actually deliver.

5. Refusing to cancel orders or refund deposits or down payments made thereon for merchandise of a kind or quality which respondents cannot deliver within the time specified in the order or within a reasonable time thereafter.

6. Coercing or attempting to coerce purchasers to accept merchandise of a kind or quality different from that ordered by refusing to refund down payment or deposit made at the time the order was placed.

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

IN THE MATTER OF
LOUIS GOLDBERG, TRADING IN THE NAMES OF ACME
AND ACME MAIL ORDER HOUSE

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

Docket 5023. Complaint, Aug. 10, 1943—Decision, June 27, 1945

Where an individual engaged in the interstate sale and distribution to customers for their own use and for resale, of used, worn, or second-hand clothing—

- (a) Represented falsely through statements in advertisements in newspapers, and catalogs that his said products were only slightly used; that much of his said merchandise was brand new and was obtained from bankrupt and close-out sales; and that all his merchandise which was not represented as new was cleaned, pressed, repaired, and ready to be worn;
- (b) Represented, as aforesaid, that dresses which he offered consisted of all silk material and that men's coats were made of all wool fabrics;

The facts being that many of such "silk" dresses were in fact composed in whole or in part of rayon or materials other than silk, and such "All Wool" men's overcoats consisted in part of cotton; and

- (c) Failed to disclose either in his said advertising or by the use of tags or labels or other markings on said merchandise, that certain of said products were second-hand or previously used or worn;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations were true and of thereby inducing the purchase of substantial quantities of his 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. Arthur F. Thomas*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Warner & Birdsall, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Louis Goldberg, an individual, trading in the names of Acme and Acme Mail Order House, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Louis Goldberg, is an individual, trading in the names of Acme and Acme Mail Order House, with his principal place of business located at 120 East Broadway in the city and State of New York.

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 and in the District of Columbia of used,

worn or second-hand clothing, which is bought by his customers both for their own use and for resale.

Respondent causes the said products, when sold, to be transported from his aforesaid place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said 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 his aforesaid business and for the purpose of inducing the purchase of his said products respondent has made false and misleading statements and representations with respect to the physical condition and fiber content thereof by means of insertions in newspapers having general circulations throughout the United States and in catalogs disseminated to purchasers and prospective purchasers through the United States mails. Among and typical of the false and misleading statements and representations so used and circulated are the following:

Ten slightly used, stylish silk dresses, cleaned, ready to wear, \$3 (send \$1, balance C.O.D.); free 32-page catalog; agents wanted. Acme, 164 Henry St., Dept. E, New York City.

Spectacular bargains in women's and misses' silk dresses . . . cleaned and pressed and ready for wear.

SLIGHTLY USED AND BRAND NEW MERCHANDISE FROM BANKRUPT AND CLOSEOUT SALES.

TEN Silk DRESSES \$3.45

CLEANED—PRESSED—READY TO WEAR . . .

Buy them for yourself. Buy them to sell.

ACME PRESENTS THIS 4 **** special to our preferred customers

LADIES' AND MISSES' SLIGHTLY USED SILK DRESSES.

A stunning assortment of silks, crepes, satins and georgettes in the latest styles.

Men's Super Quality ALL WOOL OVERCOATS.

All merchandise which is not listed new is cleaned, pressed, repaired and ready to wear.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not set out herein, the respondent has represented that his said products are only slightly used; that the dresses which he offers for sale consist of all silk material; that much of his said merchandise is brand new and is obtained from bankrupt and closeout sales; that the men's overcoats which he offers for sale are made of all wool fabrics; that all merchandise sold by respondent which is not represented as new is cleaned, pressed, repaired and ready to be worn.

PAR. 5. In truth and in fact the said statements and representations used and disseminated by respondent as aforesaid are false, misleading and deceptive. Many of respondents said products described as "slightly used" are in an advanced state of wear and use. Many of the dresses which respondent described as "silk" are composed of rayon in whole or in part and of other materials than silk. Very little of respondent's merchandise is new, and the bulk of his products do not come from bankrupt or closeout sales. The men's overcoats which respondent advertises as all wool are not all wool but consist in part of cotton materials, and all of respondent's merchandise not represented as new is not cleaned, pressed, repaired and ready to be worn.

PAR. 6. In addition to the misrepresentations, hereinabove set out the respondent has engaged in the use of false, deceptive and misleading methods in his said business by failing to disclose either in said advertising or by the use of tags and labels or other markings on said merchandise that certain of said products were second-hand or previously used or worn, and by failure to disclose the true constituent fiber or material from which certain of his said products were made, thereby placing in the hands of purchasers thereof for resale the means and instrumentalities whereby the consumer-purchasers of said goods can be misled and deceived.

PAR. 7. The acts and practices of respondent, as herein set forth, have had the tendency and capacity to, and do and did, 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 such erroneous and mistaken belief, to purchase substantial quantities of respondent's said products.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 10, 1943, issued and subsequently served its complaint in this proceeding upon respondent, Louis Goldberg, an individual, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence were introduced before an examiner of the Commission theretofore duly designated by it. Thereafter, on September 20, 1944, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondent and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, might be made a part of the record herein and in connection with the testimony and other evidence already received might be taken as the facts in this proceeding and in lieu of further testimony in support of or in opposition to the charges of the complaint, and that the Commission might proceed upon said complaint, testimony and other evidence, and the stipulated 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 the complaint, answer, testimony and other evidence, and the stipulated facts, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Louis Goldberg, formerly traded as an individual, under the names "Acme" and "Acme Mail Order House," at

164 Henry Street, New York, N. Y., and now has associated with him as a partner in said business his brother, Isidore Goldberg, and with said brother is operating under the aforesaid trade names the business hereinafter described at 120 East Broadway, New York, N. Y.

PAR. 2. The respondent is now, and for several years last past has been, engaged in the sale and distribution of used, worn, or second-hand clothing which is bought by his customers both for their own use and for resale. Respondent causes said clothing, when sold, to be transported from his place of business in New York to purchasers at their respective points of location in various other States of the United States and in the District of Columbia, and maintains, and has maintained, a course of trade in said clothing in commerce between and among 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 products, respondent has made false and misleading statements and representations with respect to the physical condition and fiber content thereof by means of insertions in newspapers having general circulation throughout the United States and in catalogs disseminated to purchasers and prospective purchasers through the United States mails. Among and typical of the false and misleading statements and representations so used and circulated are the following:

Ten slightly used, stylish silk dresses, cleaned, ready to wear, \$3 (send \$1, balance C.O.D.); free 32-page catalog; agents wanted. Acme, 164 Henry St., Dept. E, New York City.

* * * * *

Spectacular bargains in women's and misses' silk dresses . . . cleaned and pressed and ready for wear.

* * * * *

SLIGHTLY USED AND BRAND NEW MERCHANDISE FROM BANKRUPT AND CLOSEOUT SALES.

* * * * *

TEN Silk DRESSES \$3.45

CLEANED—PRESSED—READY TO WEAR . . .

Buy them for yourself. Buy them to sell.

* * * * *

ACME PRESENTS THIS 4 **** special to our preferred customers
LADIES' AND MISSES' SLIGHTLY USED SILK DRESSES.

* * * * *

A stunning assortment of silks, crepes, satins and georgettes in the latest styles.

* * * * *

Men's Super Quality ALL WOOL OVERCOATS.

* * * * *

All merchandise which is not listed new is cleaned, pressed, repaired and ready to wear.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not set out herein, the

respondent has represented that his said products are only slightly used; that the dresses which he offers for sale consist of all-silk material; that much of his said merchandise is brand new and is obtained from bankrupt and close-out sales; that the men's overcoats which he offers for sale are made of all-wool fabrics; and that all merchandise sold by respondent which is not represented as new is cleaned, pressed, repaired, and ready to be worn.

PAR. 5. In truth and in fact, the aforesaid statements and representations disseminated by respondent are false, misleading, and deceptive. Many of the respondent's said products described as "slightly used" are in an advanced state of wear and use. Many of the dresses described by respondent as "silk" are in fact composed in whole or in part of rayon or materials other than silk. Very little of the merchandise offered by respondent is new, and the bulk of the products offered do not come from bankrupt or close-out sales. The men's overcoats which respondent advertises as "All Wool" in fact consist in part of cotton. Not all of the merchandise which respondent does not represent as new is in fact cleaned, pressed, repaired, and ready to be worn.

PAR. 6. In addition to the misrepresentations hereinabove set out, the respondent has engaged in the use of false, deceptive, and misleading methods in his said business by failing to disclose either in said advertising or by the use of tags and labels or other markings on said merchandise that certain of said products are second-hand or previously used or worn.

PAR. 7. The aforesaid acts and practices of respondent have had, and have, the capacity and tendency to, and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and, because of such erroneous and mistaken belief, induce the purchase of substantial quantities of respondent's said products.

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, certain testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, and a stipulation as to the facts entered into between the respondent 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 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 respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Louis Goldberg, trading as "Acme" or "Acme Mail Order House," 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 clothing or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Wool" or "All Wool," or any simulation thereof, either alone or in connection with any other word or words, to designate, describe, or refer to any garment not composed entirely of wool: Provided, in the case of a garment composed in part of wool and in part of fibers or materials other than wool, the word "Wool" may be used as descriptive of the wool content if there are used in immediate connection therewith, in letters of at least equal size and conspicuousness, words truthfully describing the constituent fibers or materials of such garment.

2. Using the word "Silk," or any simulation thereof, either alone or in connection with any other word or words, to designate, describe, or refer to any garment not composed entirely of silk, the product of the cocoon of the silkworm: Provided, that in the case of a garment composed in part of silk and in part of other fibers or materials, such word may be used as descriptive of the silk content if there are used in immediate connection therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

3. Representing that the proportion of new and unused merchandise offered by respondent is greater than it is in fact, or that the proportion of respondent's merchandise obtained from bankrupt or close-out sales is greater than it is in fact.

4. Representing that garments in an advanced state of wear are only slightly used or that the condition of used or second-hand garments is materially better than it is in fact.

5. Representing that used or second-hand garments have been cleaned, pressed, or repaired, unless such garments have in fact been cleaned, pressed, or repaired.

6. Representing that any used or second-hand garment is new or unused by failing to disclose, clearly and unequivocally, that it is used or second-hand, or by failing to attach securely to such garment a tag or label or place thereon a stamp, which tag, label or stamp clearly and conspicuously reveals that said garment is used or second-hand.

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
JOSEPH TRINER CORPORATION

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

Docket 5227. Complaint, Sept. 28, 1944—Decision, June 27, 1945

Where a corporation engaged in the manufacture and interstate sale and distribution of a medicinal preparation variously designated as "Triner's Bitter Wine," "Triner's Bitter Wine with Vitamin B₁" and "Triner's American Elixer of Bitter Wine"—

(a) Falsely represented by radio continuities and through advertisements in magazines and newspapers, that said preparation was a cure or remedy for stomach disorders, poor appetite, faulty digestion, headache, nervousness, fatigue, and insomnia; and that it cleansed the stomach and intestines and kept the intestines clean, raised the general vitality of the body, and increased the resistance of the body to germs, thereby preventing colds;

When in fact it had no therapeutic value in the treatment of such conditions in excess of providing temporary relief from headaches when due to constipation; and

(b) Failed to reveal facts material in the light of its representations and with respect to consequences which might result from use of said preparation under usual or prescribed conditions in that, as a laxative, it was potentially dangerous when taken by one suffering from abdominal pain, nausea or other symptoms of appendicitis;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said preparation might be used at all times without ill effects, and thereby into the purchase of substantial quantities thereof:

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

Mr. Joseph Callaway for the Commission.

Kerner, Jaros & Tittle, 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 the Joseph Triner 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, Joseph Triner Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of Illinois with its principal place of business located at 1333-1345 South Ashland Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the manufacture, sale and distribution of a certain medicinal preparation, variously designated as "Triner's Bitter Wine," "Triner's Bitter Wine with Vitamin B₁" and "Triner's American Elixer of Bitter Wine."

In the course and conduct of its business, respondent causes said preparation, when sold, to be transported from its 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. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business respondent has disseminated, and is now disseminating, and has caused and is 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 respondent has also disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by United States mails, by radio continuities and by advertisements inserted in magazines and newspapers are the following:

Triner's Bitter Wine with Vitamin B₁ is the surest refuge in stomach troubles.

If you have no appetite, faulty digestion, headache, nervousness and that chronic tired feeling, do you know what you need? The answer is simple. Nothing else but Triner's Bitter Wine with Vitamin B₁. This product will straighten you out.

It gives a good appetite, aids digestion, influences a healthy sleep.

It promotes healthy sleep because it cleanses the intestines and keeps them clean.

Where did I get that cold? It is often difficult to answer this seasonable question. It is better to improve your general disposition and to shut the door against all colds. A persistent cold means that the body is unable to resist the attack of germs. Raise your general vitality by the help of Triner's Bitter Wine which cleanses the stomach, promotes healthy appetite * * * and increases the resistance of your body.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, respondent has represented, and is now representing, that said preparation is a cure or remedy for stomach disorders, poor appetite, faulty digestion, headache, nervousness, fatigue and insomnia; that it cleanses the stomach and intestines and keeps the intestines clean; that it raises the general vitality of the body and increases the resistance of the body to germs, thereby preventing colds.

PAR. 5. The foregoing statements and representations are false, deceptive and misleading. Respondent's preparation is not a cure or remedy for stomach disorders, poor appetite, faulty digestion, headache, nervousness, fatigue, or insomnia and has no therapeutic value in the treatment of such conditions in excess of providing temporary relief from headache when due to constipation. It does not cleanse the stomach. While it has the temporary effect of a laxative, it does not cleanse the intestines or keep them clean. It does not raise the general vitality of the body or increase the resistance of the body to germs. It has no beneficial effect in the prevention of colds.

PAR. 6. The advertisements disseminated by the respondent, as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations or material with respect to the consequences which may result from the use of the preparation to which the advertisements relate under the condition prescribed in said advertisements or under such conditions as are customary and usual. Respondent's preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, nausea, vomiting or other symptoms of appendicitis.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations, disseminated and caused to be disseminated as aforesaid, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and that said preparation may be used at all times without ill effects and into the purchase of substantial quantities of said preparation because of such erroneous and mistaken belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 28, 1944, issued and subsequently served its complaint in this proceeding upon respondent, Joseph Triner Corporation, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Respondent filed its answer 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, this proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto; and the Commission, having duly considered the matter and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Joseph Triner Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 1333-1345 South Ashland Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the manufacture, sale, and distribution of a certain medicinal preparation, variously designated as "Triner's Bitter Wine," "Triner's Bitter Wine with Vitamin B₁," and "Triner's Llixir of Bitter Wine." Respondent causes said preparation, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a course of trade in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent has disseminated and is now disseminating, and has caused and is 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 respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as hereinabove set forth, by United States mails, by radio continuities, and by advertisements inserted in magazines and newspapers, are the following:

Triner's Bitter Wine with Vitamin B₁ is the surest refuge in stomach troubles.

* * * * *

If you have no appetite, faulty digestion, headache, nervousness and that chronic tired feeling, do you know what you need? The answer is simple. Nothing else but Triner's Bitter Wine with Vitamin B₁. This product will straighten you out.

* * * * *

It gives a good appetite, aids digestion, influences a healthy sleep.

* * * * *

It promotes healthy sleep because it cleanses the intestines and keeps them clean.

* * * * *

Where did I get that cold? It is often difficult to answer this seasonable question. It is better to improve your general disposition and to shut the door against all colds. A persistent cold means that the body is unable to resist the attack of germs. Raise your general vitality by the help of Triner's Bitter Wine which cleanses the stomach, promotes healthy appetite * * * and increases the resistance of your body.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import and meaning or specifically set out herein, respondent has represented, and is now representing, that said preparation is a cure or remedy for stomach disorders, poor appetite, faulty digestion, headache, nervousness, fatigue, and insomnia; that it cleanses the stomach and intestines and keeps the intestines clean; and that it raises the general vitality of the body and increases the resistance of the body to germs, thereby preventing colds.

PAR. 5. The foregoing statements and representations are false, deceptive, and misleading. Respondent's preparations is not a cure or remedy for stomach disorders, poor appetite, faulty digestion, headache, nervousness, fatigue, or insomnia, and has no therapeutic value in the treatment of such conditions in excess of providing temporary relief from headache when due to constipation. It does not cleanse the stomach. While it has the temporary effect of a laxative, it does not cleanse the intestines or keep them clean. It does not raise the general vitality of the body or increase the resistance of the body to germs. It has no beneficial effect in the prevention of colds.

PAR. 6. The advertisements disseminated as aforesaid by the respondent constitute false advertisements for the further reason that they fail to

reveal facts material in the light of such representations, or material with respect to the 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 is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated and caused to be disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and that said preparation may be used at all times without ill effects, and into the purchase of substantial quantities of of said preparation because of such erroneous and mistaken belief.

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 the answer of the respondent, in which answer respondent admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Joseph Triner Corporation, a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its medicinal preparation variously designated as "Triner's Bitter Wine," "Triner's Bitter Wine with Vitamin B₁," and "Triner's American Elixer of Bitter Wine," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same names or any other name, do forthwith cease and desist from:

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 implication:

(a) That said preparation is a cure or remedy for stomach disorders, poor appetite, faulty digestion, headache, nervousness, fatigue, or insomnia, or that it has any therapeutic value in the treatment of such conditions in excess of providing temporary relief from headaches when due to constipation.

(b) That said preparation cleanses the stomach or intestines or keeps the intestines clean.

(c) That the use of said preparation will raise the general vitality of the body, increase the resistance of the body to germs, or prevent or aid in the prevention of colds.

2. 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 fails to reveal that said preparation should not be used in the presence of nausea, vomiting, abdominal pains, or other symptoms of appendicitis: *Provided, however,* that such advertisement need contain only the statement, "CAUTION: Use only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or both on the label and in the labeling, contain a warning to the above effect.

3. Disseminating or causing to be disseminated, by any means, any advertisement for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof, and the respective subdivisions thereof, or which fails to comply with the requirements set forth in paragraph 2 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
SCIENTIFIC APPARATUS MAKERS OF AMERICA, ET AL.

MODIFIED ORDER TO CEASE AND DESIST

Docket 3092. Order, June 23, 1945

Order, pursuant to provisions of Section 5 (b) of the Federal Trade Commission Act, in proceeding in question; in which (1) the original order issued on August 25, 1941, 33 F. T. C. 1130; (2) the Circuit Court of Appeals for the Seventh Circuit, on February 29, 1944, in *Eugene Dietzgen Co. et al. v. Federal Trade Commission*, 142 F. (2d) 321, rendered its opinion, and on May 3, 1944 modified the same, on denial of rehearing, and on May 22, 1944 entered four separate decrees by which the Commission's said order to cease and desist was, with respect to said petitioning respondents only, modified, affirmed, and enforced; (3) the Commission on March 2, 1945¹ (a) modified original order of August 25, 1941, pursuant to said four court decrees and as to the respondents therein named only by requiring (A) said respondents, their officers, etc., to cease and desist from entering into or carrying out any understanding, etc., to restrict, restrain, monopolize, hinder or suppress competition in the sale and distribution in commerce of prepared tracing papers, tracing cloths, drawing tools, and various other articles used by surveyors, engineers, builders, the drafting profession and others, *by doing any of the acts or things therein specified; and from doing any of such acts or things pursuant to any such understanding, etc.*; including among said acts, etc., thus prohibited, the fixing and maintaining of prices and terms and conditions of sale, and the exchanging of information among themselves with respect to prices, etc.; and (B) respondent association, the Surveying-Drafting-Coaters Section of the Scientific Apparatus Makers of America, its manager, etc., to cease and desist from aiding and assisting the members of respondent association in carrying out or engaging in any of the acts and practices theretofore set forth; and particularly through adopting rules and regulations designed to prevent price deviations and through receiving and disseminating price lists; (b) as in original order, dismissed the complaint as to respondent Scientific Apparatus Makers of America and certain others named, for insufficient evidence—

Similarly modifying said original order, under the provisions of Section 5 (b) of the Federal Trade Commission Act as to the other respondents joined therein; dismissing the complaint, as before, as to said Scientific Apparatus Makers of America, etc.; and excusing respondents, upon whom instant modified order is served, from the filing within sixty days of new compliance reports.

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 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 examiner 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

¹ See *ante*, p. 169.

that respondents had violated the provisions of the Federal Trade Commission Act, and having entered an order to cease and desist herein on August 25, 1941; and,

Thereafter, the respondents (1) Keuffel & Esser Company and Karl Keller; (2) Charles Bruning Company, Inc., The Frederick Post Company, Chas. W. Speidel & Company, J. H. Weil & Company, Paul J. Bruning, W. A. Berger, Arthur L. Parker; and the Charles Bruning Company, Inc., The Frederick Post Company and J. H. Weil & Company, as members of the Scientific Apparatus Makers of America, a corporate association; (3) The C. F. Pease Company; and (4) Eugene Dietzgen Company, filed in the United States Circuit Court of Appeals for the Seventh Circuit their four separate petitions for a review of the Commission's said order to cease and desist entered on August 25, 1941. Thereafter, the Circuit Court of Appeals for the Seventh Circuit entered four separate decrees by which the Commission's said order to cease and desist entered on August 25, 1941, was, with respect to the petitioning respondents only, modified, affirmed and enforced; and

It appearing to the Commission that, of the respondents who filed their petitions for review of the Commission's said order to cease and desist with the Circuit Court of Appeals for the Seventh Circuit, only one of said respondents, namely, Eugene Dietzgen Company, filed a petition for certiorari, which said petition was denied by the Supreme Court of the United States on October 9, 1944, and that the time for filing petitions for certiorari as to the remaining said petitions expired on August 22, 1944; and

Thereafter, on March 2, 1945, the Commission having entered its order modifying its order to cease and desist entered on August 25, 1941, with respect to the petitioning respondents only so as to conform to the decrees entered by the United States Circuit Court of Appeals for the Seventh Circuit; and thereafter on motion of the attorney for the Federal Trade Commission, the Commission, on May 10, 1945, having entered an order directing that a copy of said motion be served upon said respondents and requiring said respondents within twenty days after service upon them of said motion to show cause, if any they could, in writing, why said order to cease and desist heretofore entered herein on August 25, 1941, should not be so modified in accordance with said motion so as to correspond with the language used by the Federal Trade Commission in its order of March 2, 1945, modifying the order to cease and desist heretofore entered on August 25, 1941, as to the respondents, Keuffel & Esser Company and Karl L. Keller; Charles Bruning Company, Inc., The Frederick Post Company, Charles W. Speidel and Walter A. Kohn, trading as Chas. W. Speidel & Company, Jacob H. Weil, Edwin H. Weil and Manfred R. Krauskopf trading as J. H. Weil & Company, Paul J. Bruning, W. A. Berger, Arthur L. Parker; and the Charles Bruning Company, Inc., The Frederick Post Company, and J. H. Weil & Company, as members of the Scientific Apparatus Makers of America, a corporate association; The C. F. Pease Company; and Eugene Dietzgen Company only, as to all of said respondents, and, thereafter, the said period of twenty days within which said respondents were directed to show cause why said order should not be so modified in accordance with said motion having expired; now, therefore,

It is ordered, That in accordance with the provisions of Section 5 (b) of the Federal Trade Commission Act, due notice having been served on said respondents, this matter be, and the same hereby is, reopened for the purpose only of modifying the order to cease and desist heretofore entered herein on August 25, 1941.

It is further ordered, That the respondents, Surveying-Drafting-Coaters Section of the Scientific Apparatus Makers of America, an association, and its officers; R. Fred Allin, individually and as a member of the Executive Committee of the Surveying-Drafting-Coaters Section of the Scientific Apparatus Makers of America; and The Huey Company, a corporation, Economy Blue Print Products, Inc., Alphonse A. Brunner, trading as Keystone Blue Paper Company, and United States Blue Print Paper Company, a corporation, all separately and as members and representatives of Surveying-Drafting-Coaters Section of Scientific Apparatus Makers of America, a corporate association, and 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, *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:*

1. Fixing and maintaining, or agreeing to fix and maintain the prices at which said products will be sold by them.
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 upon whom this modified order is served are excused from the filing within (60) days of any new compliance reports, in view of the fact that they have previously filed reports of compliance with the broader form of order originally entered in the case on August 25, 1941.

IN THE MATTER OF
AUTOMATIC ELECTRICAL DEVICES CO.

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

Docket 4741. Complaint, Mar. 31, 1942—Decision, June 29, 1945

Where a corporation engaged in the manufacture and interstate sale and distribution of its "Homozone" devices, designed to generate ozone by the passage of an electrical current through air and to disseminate it through the rooms or enclosures in which the devices were placed, or through water—

- (a) Represented, directly or by implication, through advertisements in circulars, leaflets, pamphlets and other advertising literature, that use of its said devices would give relief to persons afflicted with many ailments, including diseases of the respiratory system, such as asthma, bronchitis and hay fever, sinus trouble and heart ailments; and would avert colds and headaches, destroy bacteria, lessen or avert fatigue, and promote and improve the general health;

The facts being use of said devices produced no beneficial therapeutic consequences; they did not produce, under ordinary conditions of use, a concentration of ozone in the atmosphere sufficient to destroy bacteria, and such a concentration would be extremely dangerous, and even fatal, to humans;

- (b) Represented, falsely, as aforesaid, that use of said devices in connection with poultry would reduce deaths, avert disease and the effects thereof, prevent the spread of infection and infectious diseases, relieve respiratory ailments, cure "Roup," and disinfect places where poultry was kept; and that in connection with animals it was of value in the treatment of respiratory diseases;

The facts being, as noted above, that the device would not produce an ozone concentration in the atmosphere, under ordinary conditions of use, sufficient to have any significant effect upon the organisms of infectious diseases;

- (c) Represented, directly or by implication, through advertisements in folders, circulars, newspapers and magazines that said devices would not merely mask, but would destroy and eliminate, odors of many kinds by oxidation;

The facts being that while it was its purpose, in installing its devices, to have them so adjusted that the amount of free ozone in the atmosphere would be just below that at which its odor is perceptible—approximately 1 part of ozone to 20,000,000 parts of air—changes from the conditions prevailing at the time of installation, such as decreased humidity, less exchange with outside air, less smoke, less odor, might result in an increase in the ratio of ozone to air to a degree which would render it irritant to the respiratory organs; while some odors are oxidizable by ozone, they might be present in such concentrations that they could not be more than partially oxidized by the concentrations of ozone which said devices were capable of producing, and the unoxidized remainder would be perceptible; other odors are not affected by ozone; and both types of odors are rendered less perceptible by reason of fatigue of the organs of smell, with consequent blunting of the sensory capacity, caused by airozone mixtures; and when the odor of ozone is perceptible there is, in addition, a masking effect on other odors;

- (d) Failed to reveal in their advertisements that the concentration of ozone should not be permitted to exceed one-half part of ozone per million parts of air, that breathing near the devices in operation should be avoided, or that the inhalation of an excessive amount of ozone might result in irritation to the respiratory organs; and
- (e) Represented, as above set forth, that said devices would eliminate all offensive

odors and tastes from water, sterilize it, purify it and render it sparkling and free from bacteria;

The facts being that any substantial improvement in sterility, purity, taste, smell or bacteria content of water by ozone in the concentration given by said devices—about 2.65 parts of ozone per million parts of water by weight—would result from their use only in connection with waters but slightly polluted by bacteria or by oxidizable matter causing unpleasant taste or smell; and the ozone generated by said devices would have no effect upon matter suspended in water and would not make cloudy water sparkling or clear:

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

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

Mr. Randolph W. Branch for the Commission.

Nash & Donnelly, 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 Automatic Electrical Devices Co., a corporation, hereinafter referred to as respondent, has violated the provision 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, Automatic Electrical Devices Co., is a corporation, organized under the laws of the State of Ohio, and having its office and principal place of business at 324 East 3rd Street, Cincinnati, Ohio.

PAR. 2. Respondent is now, and has been for more than three years last past, engaged in the business of manufacturing, selling and distributing devices designated as "Homozone," designed and intended to generate ozone by the passage of an electrical current through air and to disseminate it through the rooms or enclosures in which the devices are placed, or through water.

In the course and conduct of its said business, respondent has caused said devices, when sold, to be transported from its aforesaid 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 at all times mentioned herein has maintained a course of trade in said devices in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business respondent has disseminated, and is now disseminating, and has caused, and is now causing the dissemination of, false advertisements concerning its said devices 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 devices; and respondent has also disseminated, and is now disseminating, and has caused and is now causing, the dissemination of false advertisements 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, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as aforesaid, with respect to the beneficial effects of the use of said air-treating devices upon human beings, were the following:

Cardiac patients, as well as those suffering from asthmatic and other temporary afflictions have obtained great relief from the Homozone—.

Ozone also affords a valuable means of assisting in the relief of many human ailments and particularly those of respiratory type, such as Asthma, Bronchitis, Hay Fever, Sinus, etc.—Remember HOMOZONE is nature's pure Ozone.

Homozone greatly reduces colds, etc., and to generally promote the health of those breathing this slightly Ozonized and re-vitalized air.

* * * students—continually complained of colds and headaches, because of impure air, but since installing the Homozone the students have no headaches or colds.—

—ozone—destroys—where present in the necessary concentration, minute animal and plant organisms as well (Bacteria, fungi growth, etc.).

—ozone, in the presence of moisture has fully demonstrated itself capable of destroying even the more resistant types of bacteria.—

In the office—prevents that 3 o'clock "let-down" feeling.

Clean, Pure Health-giving Air as Nature intended we should breathe it.

PAR. 4. By the use of the statements and claims hereinabove set forth and others similar thereto not specifically set out herein, respondent has represented, directly or by implication, that the use of its said devices will give relief to persons afflicted with many ailments, including diseases of the respiratory system, such as asthma, bronchitis and hay fever, sinus trouble and heart ailments; that it will avert colds and headaches, destroy bacteria, lessen or avert fatigue, and promote and improve the general health.

PAR. 5. The aforesaid representations and advertisements used and disseminated by respondent hereinabove described, were exaggerated, misleading and untrue. In truth and in fact the use of respondent's devices produces no beneficial therapeutic consequences. It will not relieve persons afflicted with ailments of the respiratory system, including asthma, bronchitis and hay fever. It will not relieve persons suffering from sinus trouble or heart ailments. It will not avert headaches or colds, lessen or avert fatigue, or improve the general health. The devices are not capable of producing, under ordinary conditions of use, a concentration of ozone in the atmosphere sufficient to destroy bacteria, and such a concentration would be extremely dangerous, if not fatal, to humans.

PAR. 6. Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated by respondent, in the manner set forth in paragraph 3, with respect to the beneficial effects of the use of said air-treating devices upon poultry and in the raising thereof, and upon animals were the following:

(With respect to poultry)

Stops costly losses.

Assists in preventing disease, materially reduces Mortality Losses.

Assists in the relief of many respiratory ailments.

Assists in Preventing Disease and Infection.

Reduces Amount of Disinfectants Required.

Reduces Mortality of baby chicks and grown fowls.

Relieves Many types of ailments.

—ozone has definitely and positively reduced poultry losses thru assisting in the prevention, as well as the spread and effects of many infectious diseases.

—remarkably efficient in treating certain poultry ailments such as "Roup" or as it is more commonly called the "Gaps."

Ozone assists in both preventing, as well as arresting the spread of many infectious poultry diseases. Among these are—respiratory afflictions—

(With respect to animals)

—Ozone is a decided help in the treatment of respiratory diseases.

PAR. 7. By the use of the statements and claims hereinabove set forth and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that the use of the said devices in connection with poultry will reduce deaths among poultry, avert disease, and the effects thereof, prevent the spread of infection and infectious diseases, relieve respiratory ailments, cure "Roup," and will disinfect places where poultry is kept; and that in connection with animals it is of value in the treatment of respiratory diseases.

PAR. 8. The aforesaid representations and advertisements used and disseminated by respondent as hereinabove described, were exaggerated, misleading and untrue. In truth and in fact the use of respondent's devices will not reduce deaths among poultry. It will not prevent diseases among poultry nor avert the effects thereof. It will not produce an ozone concentration in the atmosphere, under ordinary conditions of use, sufficient to have any significant effect upon the bacilli of infectious diseases, and such a concentration would be dangerous or fatal to poultry. It will not benefit respiratory ailments of poultry, nor will it cure "Roup." It is of no value in the treatment of respiratory diseases in animals.

PAR. 9. In addition to the representations hereinabove set forth, respondent has also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated failed to reveal that injury to humans, poultry or animals may result if the ozone concentration exceeds one part in two million of air, or if the output of the devices is breathed before being thoroughly diluted by mixing with air.

PAR. 10. In the course and conduct of its said business and for the purpose of inducing the purchase of the said devices, respondent has made and caused to be made by means of advertising folders and circulars sent through the United States mail to prospective purchasers in various States of the United States, and advertisements in newspapers and magazines of general circulation, representations and claims with respect to the efficacy of its said air-treating devices as deodorizers and the manner in which they accomplish this purpose. Among and typical of the claims and representations so made by respondent were the following:

Unlike strong disinfectants—which merely mask an objectionable odor with one more pleasant, Homozone actually destroys or greatly reduces by oxidation practically all common odors of organic and many of chemical origin.

Many prominent hospitals, sanitariums, Homes for the Aged and Infirm, Insane Asylums, etc., as well as Practicing Physicians, have found the Homozone to be a necessity, both for the elimination of common Hospital and Office Odors as well as in case of decaying flesh and bone, viz: Cancerous growths, Discharging Ulcers, Offensive Forms of Tuberculosis, Osteomyelitis, Peritonitis, Uremic Poisoning, Dysentery, certain types

of Skin Eruptions, Post Mortem Examination, etc., Such obnoxious odors are quickly destroyed—.

The Homozone is also being used—for the destruction of strong smoking, cooking, toilet, washrooms and other odors where it has proven a complete success.

—does not merely mask any odor of organic origin, but actually destroys it through chemically oxidizing it into an entirely different compound, which in most cases is entirely harmless and odorless.

Purifies foul and Tobacco-laden air; destroys smoke and other odors like magic.

Ozone destroys the odors of cooking meats, fish, vegetable and the like as well as those of tobacco smoke, “dead” cigars, stale beer and natural body odors, etc.—.

—the destruction and total elimination of odors.

PAR. 11. By the use of the statements and claims hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that its said devices will not merely mask but destroy and eliminate odors of many kinds by oxidation thereof.

PAR. 12. The aforesaid representations so made and disseminated by respondent in the course of its aforesaid business were misleading and untrue. In truth and in fact the devices will not destroy or eliminate odors, by oxidation or otherwise, but merely mask them or cover them up by the odor of ozone. The ozone produced by the devices also tends to set up, in persons exposed to it, a temporary deadening of the sense of smell.

PAR. 13. In the manner set forth in paragraph 10 hereof, respondent has made and caused to be made representations and claims with respect to its “Homozone” devices for the ozonization of water. Among and typical of the claims and representations so made by respondent were the following:

Now! Pure Spring-Like “Soft” Tasting Drinking Water.—Homozone deodorizes and purifies bad-tasting, evil smelling water instantly!

Now—Sparkling, Aerated, Palatable Drinking Water from your faucet.

Eliminate Objectionable Tastes and Odors.

Making water more pleasant and palatable to drink.

But few water supplies, unless chemically treated therefor, are entirely free from foreign odors and tastes.—The Public—demands—water that is both sparkling clear as well as free from all objectionable odors and taste, and which in our opinion, OZONE, and ozone alone is capable of producing.

Ozone has likewise been used for many years by large beverage manufacturers, to remove foreign odors and tastes from their usual water supply, as well as to make it bacteria free and sparkling.

Ozone has thus definitely proven itself to be a most efficient means for the sterilization of polluted water as well as the last word in removing foreign tastes therefrom—there is now available a small inexpensive water ozonizer—an exclusive HOMOZONE development.

PAR. 14. By the use of the statements and claims hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that the said devices will eliminate all offensive odors and tastes from water, sterilize it, purify it, and render it free from bacteria.

PAR. 15. The aforesaid representations so made and disseminated by respondent in the course and conduct of its business were misleading and untrue. In truth and in fact the devices will not eliminate all offensive odors and tastes from water; neither will they sterilize water, purify it or render it bacteria-free.

PAR. 16. The use by respondent of the foregoing false, deceptive and misleading statements, representations and advertisements with respect to its devices, disseminated as aforesaid, in connection with the sale of its devices 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 to induce a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase respondent's said devices.

PAR. 17. 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 the 31st day of March, 1942, issued and thereafter served its complaint in this proceeding upon said respondent, Automatic Electrical Devices Co., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 21, 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 respondent's counsel 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 said Commission may proceed upon said statement of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved, accepted and filed, and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Automatic Electrical Devices Co., is a corporation, organized under the laws of the State of Ohio, and having its office and principal place of business at 324 East Third Street, Cincinnati, Ohio.

PAR. 2. Respondent is now, and has been for more than three years last past, engaged in the business of manufacturing, selling and distributing devices designated as "Homozone," designed and intended to generate ozone by the passage of an electrical current through air and to disseminate it through the rooms or enclosures in which the devices are placed, or through water.

In the course and conduct of its said business, respondent has caused said devices, when sold, to be transported from its aforesaid 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.

PAR. 3. In the course and conduct of its aforesaid business respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said devices 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 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, by the United States mails, and by circulars, leaflets, pamphlets and other advertising literature, with respect to the beneficial effects of the use of said air-treating devices upon human beings, were the following:

Cardiac patients, as well as those suffering from asthmatic and other temporary afflictions have obtained great relief from the Homozone—.

Ozone also affords a valuable means of assisting in the relief of many human ailments and particularly those of respiratory type, such as Asthma, Bronchitis, Hay Fever, Sinus, etc.—Remember HOMOZONE is nature's pure Ozone.

Homozone greatly reduces colds, etc., and to generally promote the health of those breathing this slightly Ozonized and re-vitalized air.

* * * students—continually complained of colds and headaches, because of impure air, but since installing the Homozone the students have no headaches or colds.—

—ozone—destroys—where present in the necessary concentration, minute animal and plant organisms as well (Bacteria, fungi growth, etc.).

—ozone, in the presence of moisture has fully demonstrated itself capable of destroying even the more resistant types of bacteria.—

in the office—prevents that 3 o'clock "let-down" feeling.

Clean, Pure Health-giving Air as Nature intended we should breathe it.

PAR. 4. By the use of the statements and claims hereinabove set forth and others similar thereto not specifically set out herein, respondent has represented, directly or by implication, that the use of its said devices will give relief to persons afflicted with many ailments, including diseases of the respiratory system, such as asthma, bronchitis and hay fever, sinus trouble and heart ailments; that it will avert colds and headaches, destroy bacteria, lessen or avert fatigue, and promote and improve the general health.

PAR. 5. The use of respondent's devices produces no beneficial therapeutic consequences. It will not relieve persons afflicted with ailments of the respiratory system, including asthma, bronchitis and hay fever. It will not relieve persons suffering from sinus trouble or heart ailments. It will not avert headaches or colds, lessen or avert fatigue, or improve the general health. The devices do not produce, under ordinary conditions of use, a concentration of ozone in the atmosphere sufficient to destroy bacteria, and such a concentration would be extremely dangerous, if not fatal, to humans.

PAR. 6. Among and typical of the statements and representations contained in said false advertisements disseminated and caused to be disseminated by respondent, in the manner set forth in paragraph 3, with respect to the beneficial effects of the use of said air-treating devices upon poultry and in the raising thereof, and upon animals were the following:

(With respect to poultry)

Stops costly losses.

Assists in preventing disease, materially reduces Mortality Losses.

Assists in the relief of many respiratory ailments.

Assists in Preventing Disease and Infection.

Reduces Amount of Disinfectants Required.

Reduces Mortality of baby chicks and grown fowls.

Relieves Many types of ailments.

—ozone has definitely and positively reduced poultry losses thru assisting in the prevention, as well as the spread and effects of many infectious diseases.

—remarkably efficient in treating certain poultry ailments such as "Roup" or as it is more commonly called the "Gaps."

Ozone assists in both preventing, as well as arresting the spread of many infectious poultry diseases. Among these are—respiratory afflictions—.

(With respect to animals).

—Ozone is a decided help in the treatment of respiratory diseases.

PAR. 7. By the use of the statements and claims hereinabove set forth and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that the use of the said devices in connection with poultry will reduce deaths among poultry, avert disease, and the effects thereof, prevent the spread of infection and infectious diseases, relieve respiratory ailments, cure "Roup," and will disinfect places where poultry is kept; and that in connection with animals it is of value in the treatment of respiratory diseases.

PAR. 8. The use of respondent's devices will not reduce deaths among poultry. It will not prevent diseases among poultry nor avert the effects thereof. It will not produce an ozone concentration in the atmosphere, under ordinary conditions of use, sufficient to have any significant effect upon the organisms of infectious diseases, and such a concentration would be dangerous or fatal to poultry. It will not benefit respiratory ailments of poultry, nor will it cure "Roup." It is of no value in the treatment of respiratory diseases in animals. It produces no therapeutic results beneficial to poultry or animals.

PAR. 9. In the course and conduct of its said business and for the purpose of inducing the purchase of the said devices, respondent has made and caused to be made by means of advertising folders and circulars sent through the United States mail to prospective purchasers in various States of the United States, and advertisements in newspapers and magazines of general circulation, representations and claims with respect to the efficacy of its said air-treating devices as deodorizers and the manner in which they accomplish this purpose. Among and typical of the claims and representations so made by respondent were the following:

Unlike strong disinfectants—which merely mask an objectionable odor with one more pleasant, Homozone actually destroys or greatly reduces by oxidation practically all common odors of organic and many of chemical origin.

Many prominent hospitals, sanitariums, Homes for the Aged and Infirm, Insane Asylums, etc., as well as Practicing Physicians, have found the Homozone to be a necessity, both for the elimination of common Hospital and Office Odors as well as in case of decaying flesh and bone, viz: Cancerous growths, Discharging Ulcers, Offensive Forms of Tuberculosis, Osteomyelitis, Peritonitis, Uremic Poisoning, Dysentery, certain types of Skin Eruptions, Post Mortem Examination, etc., Such obnoxious odors are quickly destroyed—,

The Homozone is also being used—for the destruction of strong smoking, cooking, toilet, washrooms and other odors where it has proven a complete success.

—does not merely mask any odor of organic origin, but actually destroys it through chemically oxidizing it into an entirely different compound, which in most cases is entirely harmless and odorless.

Purifies foul and Tobacco-laden air; destroys smoke and other odors like magic.

Ozone destroys the odors of cooking meats, fish, vegetables and the like as well as those of tobacco smoke, "dead" cigars, stale beer and natural body odors, etc.—

—the destruction and total elimination of odors.

PAR. 10. By the use of the statements and claims hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that its said devices will not merely mask but destroy and eliminate odors of many kinds by oxidation thereof.

PAR. 11. In installing its devices, it is the respondent's purpose to have them so adjusted as to give an output which will result in the amount of free ozone in the atmosphere at the time of adjustment being just below that at which its odor is perceptible. This odor is perceptible when the atmosphere contains approximately 1 part of ozone to 20,000,000 parts of air. However, changes from the conditions prevailing at the time of installation, such as decreased humidity, less exchange with outside air, less smoke, less odor, and many other changes may result in an increase in the ratio of ozone to air to a degree which will render it irritant to the respiratory organs. Air containing over one-half part of ozone to one million parts of air is irritant to the respiratory organs and at no time should this concentration be exceeded. Breathing near the devices when in operation should be avoided.

Respondent's advertisements do not reveal that the concentration of ozone should not be permitted to exceed one-half part of ozone per million parts of air, that breathing near the devices in operation should be avoided or that the inhalation of an excessive amount of ozone may result in an irritation to the respiratory organs.

PAR. 12. Some odors are of such a chemical composition that they are susceptible of oxidation by ozone, but such oxidation will be limited by the amount of ozone present. Oxidizable odors may be present in such concentration that they cannot be more than partially oxidized by the concentrations of ozone which respondent's devices are capable of producing, and the unoxidized remainder may be perceptible. Other odors are so chemically constituted as to be unoxidizable and will not be affected by ozone. Residual oxidizable odors remaining after partial oxidation by ozone and nonoxidizable odors are rendered less perceptible by reason of the fatigue of the sensory organs of smell, with a consequent reduction or blunting of the sensory capacity which is caused by air-ozone mixtures, and when the odor of ozone is perceptible there is, in addition, a masking effect on other odors.

PAR. 13. In the manner set forth in paragraph 9 hereof, respondent has made and caused to be made representations and claims with respect to its "Homozone" devices for the oxonization of water. Among and typical of the claims and representations so made by respondent were the following:

Now! Pure Spring-Like "Soft" Tasting Drinking Water.—Homozone deodorizes and purifies bad-tasting, evil smelling water instantly!

Now—Sparkling, Aerial, Palatable Drinking Water from your faucet.

Eliminate Objectionable Tastes and Odors.

Making water more pleasant and palatable to drink.

But few water supplies, unless chemically treated therefor, are entirely free from foreign odors and tastes.—The Public—demands—water that is both sparkling clear as well as free from all objectionable odors and taste, and which in our opinion, OZONE, and ozone alone is capable of producing.

Ozone has likewise been used for many years by large beverage manufacturers, to remove foreign odors and tastes from their usual water supply, as well as to make it bacteria free and sparkling.

Ozone has thus definitely proven itself to be a most efficient means for the sterilization of polluted water as well as the last word in removing foreign tastes therefrom—there is now available a small inexpensive water ozonizer—an exclusive HOMOZONE development.

PAR. 14. By the use of the statements and claims hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that the said devices will eliminate all offensive odors and tastes from water, sterilize it, purify it, and render it sparkling and free from bacteria.

PAR. 15. The said devices give concentrations of approximately 2.65 parts of ozone per million parts of water by weight. The bactericidal effect and the effect upon unpleasant tastes and odors of ozone in this concentration is limited, and any substantial improvement in sterility, purity, taste, smell or bacteria content will result from the use of these devices only in connection with waters but slightly polluted by bacteria or by oxidizable matter causing unpleasant taste or smell. The ozone generated by these devices has no effect upon matter suspended in water which is treated and will not make cloudy water sparkling or clear. The devices are not a notably effective means of sterilizing polluted water nor the most efficient means of removing unpleasant tastes therefrom.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the 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 stipulation provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts 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, Automatic Electrical Devices Co., its officers, representatives, agents and employees directly or through any cor-

porate or other device in connection with the offering for sale, sale or distribution of respondent's devices designated "Homozone" or any other devices 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 the use of respondent's Homozone devices, designed for the treatment of air, in connection with humans, constitutes a competent, adequate or effective treatment for sinus trouble, heart ailments, and diseases or ailments of the respiratory system, including asthma, bronchitis and hay fever; will avert headaches or colds; will lessen fatigue, destroy bacteria, or improve and promote the general health.

(b) That the use of said devices, designed for the treatment of air, in connection with poultry, will reduce deaths, prevent disease or its effects; will have any effect upon the organisms causing infectious diseases or will prevent the spread of infectious diseases; will be beneficial in the treatment of respiratory ailments; will cure roup or have any beneficial therapeutic value in the treatment of any disease or ailment in poultry.

(c) That the use of said devices, designed for the treatment of air, in connection with animals, will be beneficial in the treatment of respiratory diseases or will have any beneficial therapeutic value in the treatment of any disease or ailment in animals.

2. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to reveal that changes from the conditions prevailing at the time of installation may render the atmosphere in which respondent's devices for the treatment of air are operated, irritant to the respiratory organs; that the concentration of ozone in any case should not be allowed to exceed one half part of ozone to one million parts of air; that breathing near the devices should be avoided, and that the inhalation of excessive amounts of ozone may result in irritation of the respiratory organs; provided, however, that any such advertisement need contain only the statement "CAUTION: Use and Operate only as Directed," if and when the directions for use and operation are attached to the device and contain the revelations required by this paragraph.

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 devices, which advertisement contains any representation prohibited in paragraph 1 hereof; or which fails to contain the warning set forth in paragraph 2 unless the conditions of the proviso set forth therein are observed.

It is further ordered, That the respondent, Automatic Electrical Devices Co., its officers, representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of respondent's devices designated "Homozone," or any other devices of substantially similar character, 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:

(a) That the use of said Homozone devices, designed for the treatment of air, will destroy odors unless limited to such odors which, by reason of their composition or degree of concentration, may be oxidized by ozone, and as to these odors that the deodorizing effect is limited by the amount of ozone generated and available for oxidation.

(b) That said devices, designed for the treatment of air, have any effect upon the perceptibility of odors that cannot be oxidized in excess of a masking effect or the fatigue of the sensory organs caused by ozone.

(c) That the amount of ozone generated by said devices, designed for the treatment of water, will deodorize water or render it free from bacteria except in cases of slight pollution, or will render water palatable, sterile or free from objectionable odors, regardless of its condition; or will render cloudy water clear or sparkling.

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

IN THE MATTER OF
BOOTH FISHERIES CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 4883. Complaint, Dec. 31, 1942—Decision, June 29, 1945

Where a corporation which was engaged in competitive interstate sale and distribution of fresh and salt water fish and sea food products, dealt chiefly, however, in frozen fish, prices of which are relatively stable as compared with those of the fresh, and maintained packing plants in various sections of the United States including those at Boston, Mass., and Portland, Oreg., and sold its products through more than fifteen distributing branches throughout the United States and Canada to wholesalers, jobbers, chain stores, and independent retailers—

Discriminated in price between different purchasers by selling products of like grade and quality to some at lower prices than it sold to other customer competitors; including, among other discriminations, sales through its Sioux Falls, Iowa branch of its frozen fish products to two operators of 28, and 105, retail outlets, respectively, and to other special volume customers, at prices per pound substantially lower than granted to others competitively engaged with said favored customers in the resale of such products, and at prices which permitted the aforesaid favored retail outlets to advertise and sell said frozen fish at less than the cost paid it for fish of like grade and quality by independent competitors; and, lacking any consistent price structure or policy, discriminated similarly and frequently in sales to many other customers;

Effect of which discriminations in price might be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory price was engaged, and to injure, destroy, and prevent competition between those purchasers receiving the benefit of said discriminatory prices and those to whom they were denied:

Held, That such discriminations in price, under the circumstances set forth, constituted violations of subsection (a) of Sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. A. H. Forkner for the Commission.

Levinson, Becker & Peebles, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (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 against the said respondent, stating its charges as follows:

PARAGRAPH 1. Respondent, Booth Fisheries Corporation, is a corporation, organized and existing by virtue of the laws of the State of Delaware, with its principal office and place of business located at 309 West Jackson Boulevard, Chicago, Ill.

PAR. 2. Respondent is engaged in the sale and distribution of a variety of fish products including fresh, frozen, salt, smoked, ocean, lake and river fish, oysters and sea food. Respondent maintains packing plants in various sections of the United States where the different kinds of fish are available including salt water fish plants located at Boston, Mass. and Portland, Oreg. Respondent maintains more than fifteen distributing or sales branches throughout the United States and Canada. Respondent sells its fish products through its various distributing branches to wholesalers, jobbers, chain stores and independent retailers. That, while respondent sells many varieties of fish and sea food, the major volume of respondent's business is the sale of frozen fish products and the market prices of frozen fish products are relatively stable in comparison with fresh fish market prices. Said fish products are sold and distributed by respondent for use, consumption and resale within the various States of the United States, and in the same States and places as and in competition with various other sellers of fish products.

PAR. 3. In the course and conduct of its said business, respondent sells and distributes its fish products, in commerce, to purchasers thereof located in the various States of the United States, and causes said fish products to be shipped and transported across State lines from its various packing plants to the purchasers thereof who are located in the various States of the United States other than the States of origin of shipments. There is, and has been, at all times mentioned herein, a constant current of trade and commerce in said products, between respondent's plants of origin of said products and its customers located in the various other States of the United States.

PAR. 4. In the course and conduct of its business as hereinabove described, since June 19, 1936, respondent has been and is now discriminating in price between different purchasers of its fish products of like grade and quality by selling such products to some of its customers at lower prices than it sells to others of its customers, many of whom are competitively engaged, one with another, in the resale of such products within the United States.

Specifically, among such discriminations, the respondent has sold, through its Sioux Falls, Iowa branch, its frozen fish products to the Dakota Distributing Company which operates twenty-eight retail outlets known as K&K Stores, to Tolliver & Warfield Company, which operates 105 retail outlets known as Council Bluff Stores and to other of its special volume customers at a price per pound substantially lower than it has granted and allowed to other purchasers of such products, of like grade and quality, some of such other purchasers being engaged competitively with said favored customers in the resale of such products.

Illustrations of the foregoing discriminations in price are as follows:

1. That respondent during the months of July and August, 1938, sold to one Frederick Donaldson Corporation, an independent retailer, located at 300 East Third Street, Yankton, S. D., frozen bulk haddock at 18¢ per pound, frozen halibut at 18¢ per pound and frozen black cod at 15¢ per pound, and during the same period sold such frozen fish of like grade and quality to the Dakota Distributing Company operating a K&K store in Yankton, S. D., and in the same trading area at lower prices, which lower prices permitted the latter store to advertise and sell said frozen fish purchased of respondent at less than the cost of said frozen fish of like grade and quality purchased of respondent by said Frederick Donaldson corporation.

2. The respondent, during the month of December, 1937 sold to one Peder Larsen, an independent retailer of Centerville, S. D., frozen black cod at 15¢ per pound and during the same period sold frozen black cod of like grade and quality to Tolliver & Warfield Company operating a Council Bluff store in Centerville, S. D., and in the same trading area at a lower price, which lower price permitted the latter store to resell said frozen fish purchased of respondent at 14¢ per pound, or at less than the cost price of frozen black cod of like grade and quality purchased of respondent by said Peder Larsen.

3. That respondent, during the month of June, 1938, sold to the Piggly Wiggly Store at Sioux Falls, S. D., one ten-pound box of frozen perch at 12¢ per pound, being one of two items sold to said Piggly Wiggly Store by respondent during the entire month, and on August 1, 1938, respondent sold to Jessie S. Lewis, an independent grocer whose store is located in Sioux Falls, S. D., directly across the street from said Piggly Wiggly Store, one ten-pound box of frozen perch of like grade and quality at 16¢ per pound.

4. That respondent, during the years 1938 and 1939 sold to Retail Grocery Company, an independent retailer located at 201 North Main Street, Sioux Falls, S. D., frozen bulk haddock at 18¢ per pound and during the same period sold such frozen bulk haddock of like grade and quality to Economy Center Markets, Inc., a special volume retailer operating a retail store in Sioux Falls, S. D., in the same trading area, at 12-¼¢ per pound, which lower price permitted the latter store to advertise and sell said frozen bulk haddock purchased of respondent at less than the cost of said frozen fish of like grade and quality purchased of respondent by said Retail Grocery Company.

Respondent has no consistent price structure or policy and discriminations of a similar character to those above described have frequently occurred since June 19, 1936, in connection with respondent's sales to many other of respondent's customers.

PAR. 5. The effect of the aforesaid discriminations in price among respondent's customers may be, has been, and is substantially to lessen competition and tend to create a monopoly in said line of commerce and to injure, destroy and prevent competition between respondent and its competitors and among the customers of respondent.

PAR. 6. The foregoing alleged acts and practices of said respondent, as set forth herein, constitute violations of the provisions of Section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936 (U.S.C. Title 15, Sec. 13).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid act, the Federal Trade Commission, on December 31, 1942, issued and subsequently served its complaint upon the respondent, Booth Fisheries Corporation, a corporation, charging it with violating the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act. After the issuance of said com-

plaint and the filing of respondent's answer thereto, the Commission by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving 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, Booth Fisheries Corporation, is a corporation, organized and existing by virtue of the laws of the State of Delaware, with its principal office and place of business located at 309 West Jackson Boulevard, Chicago, Ill.

PAR. 2. Respondent, since June 16, 1936, has been engaged in the sale and distribution of a variety of fish products, including fresh, frozen, salt, smoked, ocean, lake and river fish, oysters, and sea food. Respondent maintains packing plants in various sections of the United States where the different kinds of fish are available, including salt water fish plants located at Boston, Massachusetts, and Portland, Oregon. Respondent maintains more than fifteen distributing or sales branches throughout the United States and Canada. Respondent sells its fish products through its various distributing branches to wholesalers, jobbers, chain stores, and independent retailers. While respondent sells many varieties of fish and sea food, the major volume of respondent's business is the sale of frozen fish products and the market prices of frozen fish products are relatively stable in comparison with fresh fish market prices. Said fish products are sold and distributed by respondent for use, consumption, and resale within the various States of the United States in competition with various other sellers of fish products.

PAR. 3. In the course and conduct of its said business, respondent sells and distributes its fish products in commerce to purchasers thereof located in the various States of the United States, and causes said fish products to be shipped and transported across State lines from its various packing plants to the purchasers thereof who are located in the various States of the United States other than the States of origin of shipments. There is, and has been at all times mentioned herein, a constant current of trade and commerce in said products between respondent's plants of origin of said products and its customers located in the various other States of the United States.

PAR. 4. In the course and conduct of its business as hereinabove described, since June 19, 1936, respondent has been, and is now, discriminating in price between different purchasers of its fish products of like grade and quality by selling such products to some of its customers at lower prices than it sells to other of its customers who are competitively engaged, each with the other, in the resale of such products within the United States.

Specifically, among such discriminations the respondent has sold, through its Sioux Falls, Iowa, branch, its frozen fish products to the Dakota Distributing Company, which operates twenty-eight retail outlets

known as K & K Stores; to Tolliver & Warfield Company, which operates 105 retail outlets known as Council Bluff Stores; and to other of its special volume customers at a price per pound substantially lower than it has granted and allowed to other purchasers of such products of like grade and quality, some of such other purchasers being engaged competitively with said favored customers in the resale of such products.

Illustrations of the foregoing discriminations in price are as follows:

1. That respondent, during the months of July and August, 1938, sold to one Frederick Donaldson Corporation, an independent retailer, located at 300 East Third Street, Yankton, S. D., frozen bulk haddock at 18¢ per pound, frozen halibut at 18¢ per pound, and frozen black cod at 15¢ per pound, and during the same period sold such frozen fish of like grade and quality to the Dakota Distributing Company operating a K & K Store in Yankton, S. D., and in the same trading area, at lower prices, which lower prices permitted the latter store to advertise and sell said frozen fish purchased of respondent at less than the cost of said frozen fish of like grade and quality purchased of respondent by said Frederick Donaldson Corporation.

2. The respondent, during the month of December, 1937, sold to one Peder Larsen, an independent retailer of Centerville, S. D., frozen black cod at 15¢ per pound and during the same period sold frozen black cod of like grade and quality to Tolliver & Warfield Company operating a Council Bluff store in Centerville, S. D., and in the same trading area, at a lower price, which lower price permitted the latter store to resell said frozen fish purchased of respondent at 14¢ per pound, or at less than the cost price of frozen black cod of like grade and quality purchased of respondent by said Peder Larsen.

3. That respondent, during the month of June, 1938, sold to the Piggly Wiggly Store at Sioux Falls, S. D., one ten-pound box of frozen perch at 12¢ per pound, being one of two items sold to said Piggly Wiggly Store by respondent during the entire month, and on August 1, 1938, respondent sold to Jessie S. Lewis, an independent grocer whose store is located in Sioux Falls, S. D., directly across the street from said Piggly Wiggly Store, one ten-pound box of frozen perch of like grade and quality at 16¢ per pound.

4. That respondent, during the years 1938 and 1939, sold to Retail Grocery Company, an independent retailer located at 201 North Main Street, Sioux Falls, S. D., frozen bulk haddock at 18¢ per pound, and during the same period sold such frozen bulk haddock of like grade and quality to Economy Center Markets, Inc., a special volume retailer operating a retail store in Sioux Falls, S. D., in the same trading area, at 12½¢ per pound, which lower price permitted the latter store to advertise and sell said frozen bulk haddock purchased of respondent at less than the cost of said frozen fish of like grade and quality purchased of respondent by said Retail Grocery Company.

Respondent has no consistent price structure or policy, and discriminations of a similar character to those above described have frequently occurred since June 19, 1936, in connection with respondent's sales to many other of respondent's customers.

PAR. 5. The Commission finds that the effect of the discriminations in price described herein may be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory price is engaged and to injure, destroy, and prevent competi-

tion between those purchasers receiving the benefit of said discriminatory prices and those to whom they are denied.

CONCLUSION

The discriminations in price by the respondent, as herein found, constitute violations of subsection (a) of Section 2 of an act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (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 and the substitute answer of the respondent, in which answer respondent admits all the material allegations of said complaint and in which it 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 respondent has violated the provisions of subsection (a) of Section 2 of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by Act approved June 19, 1936 (Robinson-Patman Act).

It is ordered, That the respondent, Booth Fisheries Corporation, a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device in connection with the sale of its fish products in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such fish products of like grade and quality as among purchasers when the differences in price are not justified by differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such fish products are sold or delivered and when the differences in price are not made in response to changing conditions affecting the market for, or the marketability of, the fish products concerned, such as, but not limited to, actual or imminent deterioration of perishable fish products.

By selling such fish products to some customers at prices different from the prices charged other customers who in fact compete in the sale and distribution of such fish products when the effect of such differences in price may be substantially to lessen competition or to injure, destroy, or prevent competition among such customers.

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

IN THE MATTER OF
ALLIED PAPER MILLS 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 3760. Complaint, Apr. 13, 1939—Decision, June 30, 1945

While an individual manufacturer can no doubt more conveniently quote prices by means of a base price and some system of price differentials to translate the base price into a price for any of the many possible variations of the products sold, such fact does not warrant the various book paper manufacturing concerns and their associates in uniting upon a common set of such differentials to be used, and used, by all, regardless of their application to the particular circumstances of each manufacturer, and under which, as provided by the association through the adoption of a common base and price differentials or "trade customs" for addition thereto or subtraction therefrom, coupled with geographical delivered price zones, uniform prices were automatically reached for the many variations in grade, color, quality, finish, size, packing, etc. of the product concerned.

Where an association of book paper manufacturers; its executive committee, which, following its organization in 1933 under the National Industrial Recovery Act, constituted the executive authority of the Book Paper Division of the Paper Industry for the administration of its subordinate Code; 14 individuals, who were its officers or Committee members; and 45 corporate association members or former members—comprising about one-half of all the domestic manufacturers of book paper and representing approximately 80 percent of the book paper capacity of the whole industry—engaged in the manufacture and, except as below set forth, competitive interstate sale and distribution of book paper, which, with its many types, sizes, weights, colors, grades, and special characteristics for particular uses, they made and sold to users and to merchants for resale, through negotiated contracts and through spot transactions, and under the practice prevalent for a long period of years, of quoting the many variations above indicated, in terms of price differentials from some designated standard unit, which, at the time of the N.R.A. or National Recovery Administration varied in different sections and as among different manufacturers, along with their application:

Following the period of said N.R.A., during which a committee of the association prepared a standard schedule of price differentials for coated, uncoated, and offset papers which, adopted by the association and published, provided a basic selling price on a given paper subject to arbitrary differentials or so-called "Trade Customs" for all variations from the standards established; and thereby made simple and exact the filing of prices with said code authority—

- (a) Continued said differentials or "Trade Customs" adopted and published in 1933, until their revision and consolidation in 1936 into one pamphlet, which followed the association's adoption and recommendation of a revised set of "trade customs" including substantial additions and changes;
- (b) Continued, after the dissolution of N.R.A., a geographic zoning system adopted in 1933 by the association as a part of its recommendations to N.R.A. for inclusion in the Code of the Book Paper Division, which, in lieu of the manufacturers' theretofore varying practice, required the filing of prices upon a delivered basis, and under which zone system or plan the Zone I price made the base price, with successive price differentials added for each of three other zones, and under which, while purchasers were allowed to take delivery in any quantities by any means of transporta-

tion they desired, it was on the basis of the applicable zone price with a freight allowance at the carload rate; whereby—notwithstanding various departures in individual cases—the price of all for a carload quantity delivered to any purchaser, wherever located with respect to the different mills, would be identical;

- (c) Through cooperation and understanding, maintained identical quantity differentials under which the price per hundred-weight of any given grade of paper varied with the quantity purchased; maintained another type of quantity differential which concerned differences between spot and contract prices and the quantities thereunder, with various allied provisions; and maintained uniform price differentials between the so-called standard grades of both coated and uncoated paper; making the continuation of some of the lower grades, and grading generally, subjects of consideration by the association, both directly and through committees;
- (d) Continued, though on a gradually diminishing scale— following a pledge of member cooperation in the closing days of N.R.A. under which they were required to file their prices with the Code Authority a specified number of days in advance of the effective date and to adhere to them until different prices were filed,—to file announcements of price changes with the association, and did not limit the filing of prices to past transactions, but included instances of both current and future prices, which, under the practice and procedure indicated, once a base price was determined, were automatically fixed for any of the thousands of combinations resulting from the various factors mentioned;
- (e) Made regular use, as respects many of the members, of a standard form of sales contract approved by the association, which set forth, among other things, that prices and deliveries thereunder were “based upon and subject to the trade customs of the Book Paper Manufacturers Association, or any other trade customs applicable to the grade or grades of paper specified in this contract”; and that “The basic selling price shall be for paper packed for domestic use in ordinary wooden cases with customary markers,” followed by a schedule of price differentials for quantities and manner of packing or shipment, and with other provisions relating to the ultimate price; and made use thereof, with variations, as respects other members;
- (f) Through discussions of prices at association meetings, reconciling differences in views, arrived at a common course of action with regard to such matters as price cutting, price changes, price practices, and disparities between contract and spot business; with the result that, despite the variety of their products and the resulting great number of different prices, they succeeded in maintaining price uniformity to a remarkable degree;
- (g) Continued the practice under N.R.A., with respect to bidding for business with the U. S. Government Printing Office, regular purchaser of substantial quantities of book paper, during which period only identical bids, priced on the basis of the published list price after the deduction of the usual cash discount of 3 percent, were received and the contracts were allocated among the identical bidders upon the basis of their relative sales to the Printing Office in previous years; and, following complaints from mills which bid but received no contract, changed their method so as to determine by lot which mills were awarded contracts, until said Office adopted the practice of purchasing paper in the spot market when only tied bids were received; manifested concerted unwillingness to supply the paper involved, when a given manufacturer's representative violated instructions and bid under the prices authorized; and made known their interest in and dissatisfaction with said nonidentical bids which were low;

Capacity, tendency and effect of which combination and the acts and practices performed in connection therewith, as above set out, were—

To restrain and suppress competition in the interstate sale of book papers, and to de-

- prive both private and governmental purchasers of the benefits of competition in price among them;
- To define, establish, and maintain uniform base prices for book papers, and uniform geographical zones within each of which delivered prices were uniform to purchasers, wherever located within a zone, and to fix and determine uniform price differentials for book papers as between such zones;
 - To establish and maintain uniform quantity brackets and uniform price differentials for book paper as between such quantity brackets; and uniform price relationships between spot and contract purchases;
 - To establish and maintain—and from time to time to expand or readjust—through the guise of “Trade Customs,” uniform and arbitrary price differentials for each of the many variations of book papers from specified predetermined bases, and thus determine the differentials from a base price in any particular transactions;
 - To provide means for, and to further, the exchange of future and current price information among themselves; and to prepare and promote the use of a uniform contract of sale with provisions for furthering the maintenance of price uniformity;
 - To bring about collective consideration and discussion of base prices for book papers as a means of arriving at understandings and a common course of action with respect to such prices; and
 - To bring about cooperation otherwise among themselves to establish and maintain price uniformity in the sale of book paper, and to prevent, hinder, and restrain the operation of competitive forces which tend to disturb the uniformity of prices established and maintained through the aforesaid means:
- Held*, That the aforesaid acts and practices of the association, individuals, and corporations concerned, under the circumstances set forth, constituted unfair methods of competition in commerce.

As regards opinion testimony by an expert economist, in connection with a pricing system of book paper manufacturers and their association—under which, through the adoption of a common base price together with various “trade customs” or differentials, whereby, taken in conjunction with a delivered price zone system, uniform prices for the many variations in grade, color, weight, size, method of sale and shipment were reached—which (a) went, in part, to the proposition that uniformity in price by different sellers of a standard commodity in a given market may be the result either of perfect competition or of collusion, and furnishes no basis for an inference that such uniformity is due to one as against the other of these conditions, and in which (b) comparisons were made between the behavior of prices for book paper in relation to the prices of certain other commodities and to certain business indices, (c) an opinion was expressed upon what these said comparisons indicated to the witness; and which (d) was also directed toward countervailing any inference of collusion among those concerned—the book paper manufacturers and their association—from the single fact of price uniformity among sellers in a given market; and in which (e), upon the question of uniformity of price as between different markets in the same zone, the witness testified that he had not studied the zoning system and was not prepared to testify with respect to it: the Commission examined and considered said opinion testimony, but in the circumstances present in the case, including the existence of facts which affected the hypothesis upon which certain of the testimony was based, as well as the existence of different and conflicting facts shown by the record generally, viewed it as entirely failing to support any contention that the price behavior of book paper was due to operation of competitive forces without the intervention of said manufacturers and their association.

Before *Mr. Charles F. Diggs*, *Mr. John J. Keenan* and *Mr. John L. Hornor*, trial examiners.

Mr. Reuben J. Martin for the Commission.

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., and *Wise, Corlett & Canfield*, of New York City, for respondents, with whom also appeared—

Mr. Charles Kirkpatrick, of Holyoke, Mass., for American Writing Paper Co.;

Wardwell, Ranney & Allen, of Boston, Mass., for Champion-International Co.;

Smith, Schnacke & Compton, of Dayton, Ohio, for Dill & Collins, Inc., The Mead Corp., Wheelwright Papers, Inc. and R. I. Worrell;

Norris, Lex, Hart & Eldredge, of Philadelphia, Pa., for W. C. Hamilton & Sons, Inc.;

Gunnison, Fish, Gifford & Chapin, of Erie, Pa., for Hammermill Paper Co.;

Witherspoon, Witherspoon & Kelley, of Spokane, Wash., for Inland Empire Paper Co.;

Shaman, Winer & Shulman, of Dayton, Ohio, for Jay Leach, Receiver for Miami Valley Coated Paper Co.;

Mr. Joseph A. Gerardi, of New York City, for Newton Falls Paper Co.;

Dunnington, Bartholow & Miller, of New York City, for New York & Pennsylvania Co. and C. A. Clough;

Littlefield & Marshall, of New York City, for Oxford Miami Paper Co.;

Mr. Robert C. Murchie, of Concord, N. H., for Parker-Young Co.;

Chickering & Gregory, of San Francisco, Calif., for Schmidt Lithograph Co.;

E. H. & W. B. Turner, of Dayton, Ohio, for Sorg Paper Co.;

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., and *Denny, Valentine & Davenport*, of Richmond, Va., for Overton D. Dennis and Howard S. Donald, trustees for Standard Paper Manufacturing Co.;

Castle & Fitch, of Rochester, N. Y., and *Mr. Philip S. Ehrlick*, of San Francisco, Calif., for Stecher-Troung Litho Corp.;

Burroughs & Brown, of New York City, for West Virginia Pulp & Paper Co. and J. R. Miller;

Dawes, Abbott & Littlefield, of New York City, for C. A. Gordon;

Davis, Polk, Wardwell, Gardiner & Reed, of New York City, for F. H. Savage.

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 Allied Paper Mills, American Writing Paper Company, Appleton Coated Paper Company, The D. M. Bare Paper Company, The Beckett Paper Company, Bergstrom Paper Company, Martin Cantine Company, The Champion Paper and Fibre Company, Champion-International Company, The Chillicothe Paper Company, Columbian Paper Company, Consolidated Water Power & Paper Company, Dill & Collins, Inc., Everett Pulp & Paper Company, Fitchburg Paper Company, French Paper Company, P. H. Glatfelter Company, W. C. Hamilton & Sons, Inc., Hammermill Paper Company, Inland Empire Paper Company, International Paper Company, The Jessup & Moore Paper Company, Kimberly-Clark Corporation, McLaurin-Jones Company, The Mead Corporation, Miamisburg Paper Company, Miami Val-

ley Coated Paper Company, The Michigan Paper Company, Mohawk Paper Mills, Inc., Newton Falls Paper Company, New York & Pennsylvania Company, The Northwest Paper Company, Oxford Miami Paper Company, Oxford Paper Company, Parker-Young Company, Rex Paper Company, Schmidt Lithograph Company, Sorg Paper Company, Standard Paper Manufacturing Company, Stecher-Troung Litho Corp., S. D. Warren Company, Watab Paper Company, West Virginia Pulp & Paper Company, Watervliet Paper Company, Wheelwright Papers, Inc., independently, and as members of Book Paper Manufacturers Association, Book Paper Manufacturers Association and P. H. Glatfelder, C. L. Barnum, and R. S. Berry, individually, and as officers of said Book Paper Manufacturers Association, and C. A. Clough, D. R. Curtenius, G. K. Ferguson, P. H. Glatfelder, C. A. Gordon, W. H. Kenety, J. R. Miller, F. H. Savage, J. S. Sensenbrenner, R. D. Smith, L. G. Thomson, and R. I. Worrell, individually, and as members of the Executive Committee of Book Paper Manufacturers Association, 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, Allied Paper Mills, is a corporation, organized and existing under the laws of the State of Michigan, with its principal office and place of business located in Kalamazoo, within said State.

Respondent, American Writing Paper Company, is a corporation, organized and existing under the laws of the State of Delaware, with its principal office and place of business located in the city of Holyoke, in the State of Massachusetts.

Respondent, Appleton Coated Paper Company, is a corporation, organized and existing under the laws of the State of Wisconsin, with its principal office and place of business located at Appleton, within said State.

Respondent, The D. M. Bare Paper 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 Roaring Spring, within said State.

Respondent, The Beckett Paper Company, is a corporation, organized and existing under the laws of the State of Ohio, with its principal office and place of business located at Hamilton, within said State.

Respondent, Bergstrom Paper Company, is a corporation, organized and existing under the laws of the State of Wisconsin, with its principal office and place of business located at Necnah, within said State.

Respondent, Martin Cantine 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 at Saugerties, within said State.

Respondent, The Champion Paper and Fibre 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 Hamilton, within said State.

Respondent, Champion-International Company, is a corporation, organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located in Lawrence, within said State.

Respondent, The Chillicothe Paper 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 Chillicothe, within said State,

Respondent, Columbian Paper Company, is a corporation, organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Buena Vista, within said State.

Respondent, Consolidated Water Power & Paper Company, is a corporation, organized and existing under the laws of the State of Wisconsin, with its principal office and place of business located at 135 South LaSalle Street, in the city of Chicago, within the State of Illinois.

Respondent, Dill & Collins, Inc., is a corporation, organized and existing under the laws of the State of Ohio, with its principal office and place of business located in Chillicothe, within said State.

Respondent, Everett Pulp & Paper Company, is a corporation, organized and existing under the laws of the State of Washington, with its principal office and place of business located at Everett, within said State.

Respondent, Fitchburg Paper Company, is a corporation, organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located at Fitchburg, within said State.

Respondent, French Paper Company, is a corporation, organized and existing under the laws of the State of Michigan, with its principal office and place of business located at Niles, within said State.

Respondent, P. H. Glatfelter Company, is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business located at Spring Grove, within said State.

Respondent, W. C. Hamilton & Sons, 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 Miquon, within said State.

Respondent, Hammermill Paper 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 Erie, within said State.

Respondent, Inland Empire Paper Company, is a corporation, organized and existing under the laws of the State of Washington, with its principal office and place of business located at Millwood, in said State.

Respondent, International Paper 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 at 220 East 42d Street, in the city of New York, within said State.

Respondent, The Jessup & Moore Paper Company, is a corporation, organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located in the Commercial Building in the city of Philadelphia, within the State of Pennsylvania.

Respondent, Kimberly-Clark Corporation, is a corporation, organized and existing under the laws of the State of Wisconsin, with its principal office and place of business located at Neenah, within said State.

Respondent, McLaurin-Jones Company, is a corporation, organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located in Brookfield, within said State.

Respondent, The Mead Corporation, is a corporation, organized and existing under the laws of the State of Ohio, with its principal office and place of business located in Chillicothe, within said State.

Respondent, Miamisburg Paper 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 Miamisburg, within said State.

Respondent, Miami Valley Coated Paper 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 Franklin, within said State.

Respondent, The Michigan Paper Company, is a corporation, organized and existing under the laws of the State of Michigan, with its principal office and place of business located at Plainwell, within said State.

Respondent, Mohawk Paper Mills, 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 Cohoes, within said State.

Respondent, Newton Falls Paper 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 at Newton Falls, within said State.

Respondent, New York & Pennsylvania 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 230 Park Avenue, in the city of New York, within the State of New York.

Respondent, The Northwest Paper Company, is a corporation, organized and existing under the laws of the State of Minnesota, with its principal office and place of business located at Cloquet, within said State.

Respondent, Oxford Miami Paper Company, is a corporation, organized and existing under the laws of the State of Ohio, with its principal office and place of business located at 230 Park Avenue, in the city of New York, within the State of New York.

Respondent, Oxford Paper Company, is a corporation, organized and existing under the laws of the State of Ohio, with its principal office and place of business located at 230 Park Avenue, in the city of New York, within the State of New York.

Respondent, Parker-Young Company, is a corporation, organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located at 131 State Street, in the city of Boston, within said State.

Respondent, Rex Paper Company, is a corporation, organized and existing under the laws of the State of Michigan, with its principal office and place of business located at Kalamazoo, within said State.

Respondent, Schmidt Lithograph Company, is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 461 Second Street, in the city of San Francisco, within said State.

Respondent, Sorg Paper Company, is a corporation, organized and existing under the laws of the State of Ohio, with its principal office and place of business located at Middletown, within said State.

Respondent, Standard Paper Manufacturing Company, is a corporation, organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Richmond, within said State.

Respondent, Stecher-Troung Litho Corp., 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 Rochester, within said State.

Respondent, S. D. Warren Company, is a corporation, organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located at 89 Broad Street, in the city of Boston, within said State.

Respondent, Watab Paper Company, is a corporation, organized and existing under the laws of the State of Minnesota, with its principal office and place of business located at Sartell, within said State.

Respondent, West Virginia Pulp & Paper 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 230 Park Avenue, in the city of New York, within the State of New York.

Respondent, Watervliet Paper Company, is a corporation, organized and existing under the laws of the State of Michigan, with its principal office and place of business located at Watervliet, within said State.

Respondent, Wheelwright Papers, 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 Chillicothe, within said State.

All of the respondents described in this paragraph are engaged in the manufacture, sale and distribution of book, coated and similar papers, and are members of respondent, Book Paper Manufacturers Association. Said respondents are, for convenience, hereinafter referred to as "respondent members."

PAR. 2. Respondent, Book Paper Manufacturers Association, is a voluntary unincorporated trade association composed of manufacturers of book, coated and similar papers, located throughout the several States of the United States, and has as its principal members the respondents hereinbefore named in paragraph 1, which said respondents produce approximately 86% of the total volume of book, coated and similar paper produced in the United States. Said respondent has since its organization maintained and now maintains its office and principal place of business at 122 East 42d Street, in the city of New York, within the State of New York, and for convenience is hereinafter referred to as "respondent association."

PAR. 3. The officers of said respondent association who, in their individual capacities and as officers of said respondent association, are made respondents herein are P. H. Glatfelter, chairman and treasurer, Spring Grove, Pa.; C. L. Barnum, acting managing director, 122 East 42d Street, New York, N. Y.; and R. S. Berry, secretary and assistant treasurer, 122 East 42d Street, New York, N. Y.

PAR. 4. The members of the Executive Committee of said respondent Book Paper Manufacturers Association who, in their individual capacities and as members of the Executive Committee of said respondent association, made respondents herein are: C. A. Clough, representing New York & Pennsylvania Company, 230 Park Avenue, New York, N. Y.; D. R. Curtenius, representing Allied Paper Mills, Kalamazoo, Mich.; G. K. Ferguson, representing Watervliet Paper Company, Watervliet, Mich.; P. H. Glatfelter, representing P. H. Glatfelter Company, Spring Grove, Pa.; C. A. Gordon representing Oxford Paper Company, 230 Park Avenue, New York, N. Y.; W. H. Kenety, representing The Northwest Paper Company, Cloquet, Minn.; J. R. Miller, representing West Virginia Pulp & Paper Company, 230 Park Avenue, New York, N. Y.; F. H. Savage, representing International Paper Company, 220 East 42d Street, New York, N. Y.; J. S. Sensenbrenner, representing Kimberly-Clark Corporation, Neenah, Wis.; R. D. Smith, representing S. D. Warren Company, 89 Broad Street, Boston, Mass.; L. G. Thomson, representing Champion Paper and Fibre Company, Hamilton, Ohio; and R. I. Worrell, representing The Mead Corporation, Chillicothe, Ohio. Said respondents, together with the officers of said respondent association herein set out in paragraph 3, are hereinafter referred to for convenience as "individual respondents."

PAR. 5. All of said respondent members hereinbefore set out in paragraph 1, have been for more than two years last past and are now, engaged

in the manufacture and distribution of book, coated and similar papers which the said respective respondent members sell to their respective customers located in the various States of the United States and in the District of Columbia, causing said products when sold to be transported from the State of the location of their respective mills to the purchasers thereof located at various points in the several States of the United States other than the State of the origin of such shipments and in the District of Columbia. Except for the acts and practices engaged in by said respondent members as hereinafter set forth, said respondent members would be in free, open and active competition with each other in the sale and distribution of their respective products in commerce between and among the several States of the United States. There has been and now is a course of interstate trade and commerce in said products between said respondent members and dealers in said products located throughout the several States of the United States and in the District of Columbia. At all times mentioned herein said respondent members have been in competition with other corporations, partnerships and individuals likewise engaged in the manufacture and sale of book, coated and similar papers in interstate commerce.

PAR. 6. Said respondent members, acting in cooperation with each other and through and in cooperation with said respondent association and said individual respondents, for more than two years last past, and particularly since June 16, 1933, have entered into an understanding, agreement, combination or conspiracy among themselves and with and through said respondent association and said individual respondents to restrict, restrain and suppress competition in the sale and distribution of book, coated and similar papers to customers located throughout the several States of the United States and in the District of Columbia, as aforesaid, and to the United States Government by agreeing to fix and maintain uniform prices, terms and discounts at which said book, coated and similar papers are to be sold and by agreeing on bids to be submitted to the United States Government for its paper requirements, and to cooperate with each other in the enforcement and maintenance of said fixed prices, terms and discounts by exchanging information through said respondent association as to the prices, terms and discounts at which said respondent members have sold and are offering to sell said book, coated and similar papers to customers and prospective customers, and are offering to sell such book, coated and similar papers to the United States Government.

PAR. 7. Pursuant to said understanding, agreement, combination or conspiracy, and in furtherance thereof, the said respondents have done and performed, and still do and perform, the following acts and things:

1. Certain of said respondent members in June of 1933 organized said respondent association, Book Paper Manufacturers Association, which said association, since its organization, has acted as a clearing house for the exchange of information submitted to it by said respondent members, including reports as to the sales of book, coated and similar papers, together with prices, discounts and terms at which said book, coated and similar papers are sold or offered to be sold.

2. Regular meetings of the members of said respondent association have been and are held from time to time at convenient locations within the United States, and at said meetings said respondent members have discussed and do discuss trade and competitive conditions in said industry and have agreed upon and established, and do agree upon and establish,

trade policies to be followed and prices to be charged by said respondent members in the interstate sale and distribution of their said book, coated and similar papers.

3. Said respondent members have adopted and maintained identical zoning systems by means of which the United States is divided into four zones, and have established and maintained, and do now establish and maintain, by agreement with each other, fixed uniform delivered prices for book, coated and similar papers in Zone 1, which said prices are designated as "Base Prices" and are increased by 20¢ in Zone 2, 40¢ in Zone 3 and 60¢ in Zone 4, so that the price of book, coated and similar papers is the same to all purchasers located in each respective zone regardless of the location in the particular zone of the purchaser, and regardless of the location of the particular respondent member making said sale to said purchaser.

4. Said respondent association has formulated and established uniform finishing differentials and said respondent members have adopted and maintained and do now maintain, said uniform finishing differentials without regard to the actual cost of said finishing operations to said respective respondent members.

5. Said respondent association has promulgated and compiled so-called trade customs and practices in the form of rules and regulations dealing with the allocation and classification of grades, grading, quotations and sales, special provisions for certain grades, seconds, job lots, discontinued lines, and other so-called trade customs, including a pricing guide containing a map dividing the United States into the zones aforesaid and establishing price differentials to be charged in each zone, so-called unfair methods of competition, and forms and methods of reporting statistics and forms and methods for price filing, and said respondent members have generally adopted and used, and now use, said rules and regulations in the conduct of their said respective businesses, and in carrying out and performing the acts and things hereinabove alleged.

PAR. 8. The individual respondents hereinbefore named in paragraphs 3 and 4 are now and have been officers and members of the Executive Committee of said respondent association and, as such officers and members of the Executive Committee, have had and now have full and complete charge of the activities of said respondent association, conducting the meetings of said members of said respondent association, collecting said statistical information from the members of said respondent association, and compiling and disseminating the same to the said members of respondent association and formulating the trade policies of said respondent members; all in pursuance and furtherance of the objects and aims of said respondent association as hereinbefore set forth in paragraph 7.

PAR. 9. The result of the acts and practices of the said respondent members in the said respondent association and said individual respondents, as hereinbefore set out in paragraphs 6, 7 and 8, has been and now is to substantially lessen, restrict, restrain and suppress price competition in the interstate sale of book, coated and similar papers throughout the several States of the United States and in the District of Columbia, and empowers the said respondents to control the market and enhance the prices of said book, coated and similar papers above the price which would prevail under normal, natural and open competition between said respondent members; to increase the cost of paper used by the United States Government to a price above that prevailing in the open market; and also

to tend to create a monopoly in said respondent members in the manufacture and sale of book, coated and similar papers in interstate commerce.

PAR. 10. The acts and practices of the respondents as herein alleged, are all to the prejudice of the public, have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of book, coated and similar papers in commerce within the intent and meaning of the Federal Trade Commission Act; and have placed in respondents the power to control prices; have increased the prices of book, coated and similar papers paid by the purchasers thereof, and consequently the prices paid by the public; have created in the respondents a monopoly in the sale of book, coated and similar papers in such commerce, and unreasonably restrained such commerce in book, coated and similar papers and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 13, 1939, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of the said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of and in opposition to the allegations of the 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, answers, testimony and other evidence, report by the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (a) Respondent, Allied Paper Mills, is a corporation, organized and existing under the laws of the State of Michigan, with its principal office and place of business at Kalamazoo, Mich. It is engaged in the manufacture, sale, and distribution of coated and uncoated book paper, and is a member of respondent Book Paper Manufacturers Association (hereinafter frequently referred to as the association).

(b) Respondent, American Writing Paper Corporation (the concern referred to in the complaint as American Writing Paper Company) is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business at Holyoke, Massachusetts. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and is a member of respondent association.

(c) Respondent, The Appleton Coated Paper Company, (the concern referred to in the complaint as Appleton Coated Paper Company), is a

corporation, organized and existing under the laws of the State of Wisconsin, with its principal office and place of business at Appleton, Wis. It is engaged in the manufacture, sale, and distribution of coated book paper, and is a member of respondent association.

(d) Respondent, The D. M. Bare Paper Company, is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business at Roaring Spring, Pa. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and is a member of respondent association.

(e) Respondent, The Beckett Paper Company, is a corporation, organized and existing under the laws of the State of Ohio, with its principal office and place of business at Hamilton, Ohio. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and is a member of respondent association.

(f) Respondent, Bergstrom Paper Company, is a corporation, organized and existing under the laws of the State of Wisconsin, with its principal office and place of business at Neenah, Wis. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and is a member of respondent association.

(g) Respondent, The Martin Cantine Company, (the concern referred to in the complaint as Martin Cantine Company), is a corporation, organized and existing under the laws of the State of New York, with its principal office and place of business at Saugerties, N. Y. It is engaged in the manufacture, sale, and distribution of coated book paper, and is a member of respondent association.

(h) Respondent, The Champion Paper and Fibre Company, is a corporation, organized and existing under the laws of the State of Ohio, with its principal office and place of business at Hamilton, Ohio. It is engaged in the manufacture, sale, and distribution of coated and uncoated book paper, and is a member of respondent association.

(i) Respondent, Champion-International Company, is a corporation, organized and existing under the laws of the State of Massachusetts, with its principal office and place of business at Lawrence, Mass. It is engaged in the manufacture, sale, and distribution of coated and uncoated book paper, and is a member of respondent association.

(j) Respondent, The Chillicothe Paper Company, is a corporation, organized and existing under the laws of the State of Ohio, with its principal office and place of business at Chillicothe, Ohio. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and is a member of respondent association.

(k) Respondent, Columbian Paper Company, is a corporation, organized and existing under the laws of the State of Virginia, with its principal office and place of business at Buena Vista, Va. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and is a member of respondent association.

(l) Respondent, Consolidated Water Power & Paper Company, is a corporation, organized and existing under the laws of the State of Wisconsin, with its principal office and place of business at Wisconsin Rapids, Wis. It is engaged in the manufacture, sale, and distribution of coated and uncoated book paper, and is a member of respondent association.

(m) Respondent, Dill and Collins, Incorporated, a wholly owned subsidiary of respondent, The Mead Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal

office and place of business at Philadelphia, Pa. It is engaged in the manufacture, sale, and distribution of coated and uncoated book paper, and is a member of respondent association.

(n) Respondent, Everett Pulp and Paper Company, is a corporation, organized and existing under the laws of the State of Washington, with its principal office and place of business at Everett, Wash. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and is a member of respondent association.

(o) Respondent, Fitchburg Paper Company, is a corporation, organized and existing under the laws of the State of Massachusetts, with its principal office and place of business at Fitchburg, Mass. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and is a member of respondent association.

(p) Respondent, French Paper Company, is a corporation, organized and existing under the laws of the State of Michigan, with its principal office and place of business at Niles, Mich. It is engaged in the manufacture, sale, and distribution of uncoated book paper and was, during a substantial portion of the period covered by the complaint herein and until its resignation in February 1938, a member of respondent association.

(q) Respondent, P. H. Glatfelter Company, is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business at Spring Grove, Pa. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and is a member of respondent association.

(r) Respondent, W. C. Hamilton & Sons, (the respondent referred to in the complaint as W. C. Hamilton & Sons, Inc.), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business at Miquon, Pa. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and is a member of respondent association.

(s) Respondent, Hammermill Paper Company, is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business at Erie, Pa. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and is a member of respondent association.

(t) Respondent, Inland Empire Paper Company, is a corporation, organized and existing under the laws of the State of Washington, with its principal office and place of business at Millwood, Wash. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and is a member of respondent association.

(u) Respondent, International Paper Company, is a corporation, organized and existing under the laws of the State of New York, with its principal office and place of business at New York, N. Y. It is engaged in the manufacture, sale, and distribution of coated and uncoated book paper, and is a member of respondent association.

(v) Respondent, The Jessup & Moore Paper Company, is a corporation, organized and existing under the laws of the State of Maryland, with its principal office and place of business at Philadelphia, Pa. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and is a member of respondent association.

(w) Respondent, Kimberly-Clark Corporation, is a corporation, organized and existing under the laws of the State of Delaware, with its principal office and place of business at Neenah, Wis. It is engaged in the manu-

facture, sale, and distribution of uncoated book paper, and is a member of respondent association.

(x) Respondent, McLaurin-Jones Company, is a corporation, organized and existing under the laws of the State of Massachusetts, with its principal office and place of business at Brookfield, Mass. It is engaged in the manufacture, sale, and distribution of coated book paper, and is a member of respondent association.

(y) Respondent, The Mead Corporation, is a corporation, organized and existing under the laws of the State of Ohio, with its principal office and place of business at Chillicothe, Ohio. It is engaged directly and through its subsidiaries, respondents, Dill and Collins, Incorporated, and Wheelwright Papers, Inc., in the manufacture, sale, and distribution of coated and uncoated book paper, and is a member of respondent association.

(z) Respondent, Miamisburg Paper Company, was a corporation, organized under the laws of the State of Ohio, and had its principal office and place of business at Miamisburg, Ohio. It was engaged in the manufacture, sale, and distribution of book and other paper, and until its dissolution in 1940 was a member of respondent association.

(a-1) Respondent, Miami Valley Coated Paper Company, is a corporation, organized and existing under the laws of the State of Ohio, with its principal office and place of business at Franklin, Ohio. It is engaged in the manufacture, sale, and distribution of coated book paper, and was, until placed in receivership in September 1936, a member of respondent association.

(b-1) Respondent, The Michigan Paper Company of Plainwell, (the respondent referred to in the complaint herein as The Michigan Paper Company), is a corporation, organized and existing under the laws of the State of Michigan, with its principal office and place of business at Plainwell, Mich. It is engaged in the manufacture, sale, and distribution of coated and uncoated book paper, and is a member of respondent association.

(c-1) Respondent, Mohawk Paper Mills, Inc., is a corporation, organized and existing under the laws of the State of New York, with its principal office and place of business at Waterford, N. Y. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and was for several years preceding its resignation in March 1938 a member of respondent association.

(d-1) Respondent, Newton Falls Paper Company, is a corporation, organized and existing under the laws of the State of New York, with its principal office and place of business at Newton Falls, N. Y. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and is a member of respondent association.

(e-1) Respondent, New York and Pennsylvania Company, Incorporated, (the respondent referred to in the complaint as New York and Pennsylvania Company), is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business at New York, N. Y. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and is a member of respondent association.

(f-1) Respondent, The Northwest Paper Company, is a corporation, organized and existing under the laws of the State of Minnesota, with its principal office and place of business at Cloquet, Minn. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and is a member of respondent association.

(g-1) Respondent, Oxford Miami Paper Company, is a corporation, organized and existing under the laws of the State of Ohio, with its principal office and place of business at New York, N. Y. It is engaged in the manufacture of uncoated book paper and in the sale and distribution of coated and uncoated book paper. It is under common management with respondent, Oxford Paper Company, and is a member of respondent association.

(h-1) Respondent, Oxford Paper Company, is a corporation, organized and existing under the laws of the State of Maine, with its principal office and place of business at New York, N. Y. It is engaged in the manufacture of coated book paper and in the sale and distribution of coated and uncoated book paper. It is under common management with respondent, Oxford Miami Paper Company, and is a member of respondent association.

(i-1) Respondent, The Parker-Young Company, (the respondent referred to in the complaint as Parker-Young Company), is a corporation, organized and existing under the laws of the State of Maine, with its principal office and place of business at Lincoln, N. H. It is engaged in the manufacture, sale, and distribution of papers encompassed in the activities of respondent association, of which it is a member.

(j-1) Respondent, Rex Paper Company, is a corporation, organized and existing under the laws of the State of Michigan, with its principal office and place of business at Kalamazoo, Mich. It is engaged in the manufacture, sale, and distribution of coated and uncoated book paper, and is a member of respondent association.

(k-1) Respondent, Schmidt Lithograph Company, is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business at San Francisco, Calif. In connection with its business as a lithographer, it is engaged in the manufacture, sale, and distribution of coated book paper. Approximately half of its production of such paper is sold to others and the remainder is used in the conduct of its lithographic business. It is a member of respondent association.

(l-1) Respondent, The Sorg Paper Company, (the respondent referred to in the complaint as Sorg Paper Company), is a corporation, organized and existing under the laws of the State of Ohio, with its principal office and place of business at Middletown, Ohio. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and is a member of respondent association.

(m-1) Respondent, Standard Paper Manufacturing Company, is a corporation, organized and existing under the laws of the State of Virginia, with its principal office and place of business at Richmond, Va. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and is a member of respondent association. This company filed its petition pursuant to Section 77(b) of the Bankruptcy Act and the trustees designated by the court also answered the complaint herein consenting to being made parties to this proceeding without further notice.

(n-1) Respondent, Stecher-Traung Lithograph Corporation, (the respondent referred to in the complaint as Stecher-Troung Litho Corp.), is a corporation, organized and existing under the laws of the State of New York, with its principal office and place of business at Rochester, N. Y. As an incident to the conduct of its business as a lithographer, it produces coated paper for its own use. With the exception of the sale of seconds

unsuited to its own use and trifling accommodation sales, it is not engaged in the sale and distribution of book paper for commercial purposes. Until its resignation in January 1939, it was a member of respondent association.

(o-1) Respondent, S. D. Warren Company, is a corporation, organized and existing under the laws of the State of Massachusetts, with its principal office and place of business at Boston, Mass. It is engaged in the manufacture, sale, and distribution of coated and uncoated book paper, and is a member of respondent association.

(p-1) Respondent, Watab Paper Company, is a corporation, organized and existing under the laws of the State of Delaware, with its principal office and place of business at Sartell, Minn. It is engaged in the manufacture, sale, and distribution of uncoated book paper, and was, until its resignation in March 1936, a member of respondent association.

(q-1) Respondent, West Virginia Pulp and Paper Company, is a corporation, organized and existing under the laws of the State of Delaware, with its principal office and place of business at Wilmington, Del. It is engaged in the manufacture, sale, and distribution of coated and uncoated book paper, and is a member of respondent association.

(r-1) Respondent, Watervliet Paper Company, is a corporation, organized and existing under the laws of the State of Michigan, with its principal office and place of business at Watervliet, Mich. It is engaged in the manufacture, sale, and distribution of coated and uncoated book paper, and was, until its resignation in May 1938, a member of respondent association. (This membership was subsequently reinstated.)

(s-1) Respondent, Wheelwright Papers, Inc., is a corporation, organized and existing under the laws of the State of Delaware, with its principal office and place of business at New York, N. Y. It is a subsidiary of respondent The Mead Corporation and is engaged in the sale and distribution of uncoated book paper produced by respondent, Dill and Collins, Incorporated, another subsidiary of respondent, The Mead Corporation. It was, until its resignation in March 1934, a member of respondent association.

(t-1) Respondent, Book Paper Manufacturers Association, is a voluntary unincorporated association of manufacturers of book paper, with its offices in New York, N. Y. It was organized in June 1933, and took part in the formulation of a Code for the Paper Industry and of a subordinate Code for the Book Paper Division under the National Industrial Recovery Act. During the NRA Code period, the executive committee of the association, in substance, constituted the executive authority of the Book Paper Division for the administration of the subordinate Code for that division. The present membership of the association consists of approximately one half of all the domestic manufacturers of book paper, and this membership represents approximately 80 percent of the book paper capacity of the whole industry. The association has a constitution and by-laws, a president, treasurer, managing director, and secretary. Its executive committee is composed of 12 members elected by the membership, and in general this committee supervises and directs the activities of the association. There are a number of other committees of the association, but they all report to the executive committee.

(u-1) Respondent, P. H. Glatfelter, an individual, is president of respondent, P. H. Glatfelter Company, and is chairman, treasurer, and a member of the executive committee of respondent association.

(v-1) Respondent, C. L. Barnum, an individual, is secretary and assistant treasurer of respondent association and was acting managing director thereof from September 1937 to October 1938.

(w-1) Respondent, R. S. Berry, was for a number of years and until August 1938, secretary of respondent association, but he is not now connected with said association.

(x-1) Respondent, Clarence A. Clough, an individual, is president of respondent, The New York and Pennsylvania Company, and a member of the executive committee of respondent association.

(y-1) Respondent, Dwight R. Curtenius, an individual, is president of respondent, Allied Paper Mills, and a member of the executive committee of respondent association.

(z-1) Respondent, G. K. Ferguson, an individual, is president of respondent, Watervliet Paper Company, and was a member of the executive committee of respondent association until some time in 1938, but not at the time the complaint herein was issued.

(a-2) Respondent, Charles A. Gordon, an individual, is executive vice president of respondents, Oxford Paper Company and Oxford Miami Paper Company, and a member of the executive committee of respondent association.

(b-2) Respondent, W. H. Kenety, an individual, a former member of the executive committee of respondent association, is now managing director of said association.

(c-2) Respondent, John R. Miller, an individual, is vice president of respondent, West Virginia Pulp & Paper Company, and a member of the executive committee of respondent association.

(d-2) Respondent, F. Henry Savage, sales manager of the Book and Bond Division of respondent, International Paper Company, is a member of the executive committee of respondent association.

(e-2) Respondent, John S. Sensenbrenner, an individual, is vice president of respondent, Kimberly-Clark Corporation, and a member of the executive committee of respondent association.

(f-2) Respondent, Roger D. Smith, an individual, is president of respondent, S. D. Warren Company, and a member of the executive committee of respondent association.

(g-2) Respondent, L. G. Thomson, an individual, associated with respondent, The Champion Paper and Fibre Company, is a member of the executive committee of respondent association.

(h-2) Respondent, R. I. Worrell, an individual, is president of respondent, Wheelwright Papers, Incorporated, vice president of respondent, Dill and Collins, Incorporated, and director of respondent, The Mead Corporation, and is a member of the executive committee of respondent association.

PAR. 2. The respondents named in subparagraphs (a) to (s-1), inclusive, of paragraph 1 (hereinafter sometimes referred to collectively as corporate respondents) are engaged in the manufacture, sale, and distribution of book and allied papers, and in the course of said business each competes, except as hereinafter stated, with other corporations, partnerships, and individuals similarly engaged. Pursuant to sales made, each such corporate respondent regularly transports book and allied grades of paper, or causes the transportation thereof, from the State in which it is manufactured to purchasers thereof at locations outside the State in which such paper is manufactured; and, in general, said corporate respondents maintain, and have maintained, a constant course of trade in commerce in book and allied papers among and between the several States of the United States and in the District of Columbia. The respondents named in sub-

paragraphs (t-1) to (h-2), inclusive, of paragraph 1 are not individually engaged in the production, sale, or distribution of book and allied papers but have participated in, aided, assisted, and cooperated with the other respondents in planning, doing, and performing the acts and practices hereinafter set forth.

PAR. 3. (a) Under NRA, the paper industry was separated into divisions, each of which had a subordinate Code. The kinds, types, and classifications of paper assigned to the jurisdiction of each division were settled at that time, and the association has retained jurisdiction with respect to the papers originally allocated to the Book Paper Division under the Code. For the purpose of this proceeding, book paper is treated as including all types of paper thus coming within the jurisdiction of the association. In a broad sense, book paper is any paper which contains not more than 25 percent ground wood and which is customarily used for printing purposes. The more important classifications are uncoated book paper and coated book paper, ordinarily used in books, magazines, and pamphlets; offset paper, designed for use in the offset printing process; envelope paper; and tablet paper. There are a number of less important classifications, such as adding machine paper, calendar stock, decalcomania paper, menu paper, and poster paper. Coated book paper is made by coating one or both sides of uncoated paper with a mixture of clay, or casein and clay, or casein and starch, to provide a smooth, glossy finish. Super-calendar paper is ordinary machine-finished uncoated paper which is put through a series of rolls under heavy pressure for the purpose of further smoothing its surface.

(b) Book papers are made in many types, sizes, weights, and colors, and with many different special characteristics for particular uses. There is a rough classification of uncoated grades designed as A, B, C, D, and E, and a similar classification of coated grades into Nos. 1, 2, 3, 4, and 5. Paper of any designated grade produced by one manufacturer is not necessarily identical with that classified in the same grade but produced by another manufacturer. All papers classified in one grade compete primarily with one another and are considered equivalent by respondents for pricing purposes. However, there is also competition between adjoining grades because it is frequently possible to substitute one for another. Book paper is sold in rolls, or the rolls may be sheeted and packed in cases, or packed on a platform known as a skid, or bundled in hard-fold or soft-fold bundles, and occasionally may be packed in ream packages.

(c) Book paper is sold by respondents directly to users and to merchants for resale to users. Approximately 55 percent of the production of the industry is sold through negotiated contracts, and 45 percent in spot transactions. The majority of spot sales are made to merchants and merchants also participate in negotiating some contracts. The contracts of sale usually contain a provision permitting a price change at the beginning of each calendar quarter. Paper merchants customarily buy and handle the papers of more than one manufacturer, stocking papers in accordance with the needs of their trade. Some producers of book paper sell almost exclusively directly to users, some sell almost exclusively to paper merchants, and others have varying divisions of their business between the two extremes. Some book paper manufacturers produce both coated and uncoated paper, some produce only one of these types, some produce only a few grades and others many grades, some who produce only coated paper buy their supplies of uncoated paper from others, some concentrate

their business largely on offset papers or envelope and tablet papers, and many producers have varying kinds and types of specialized papers which are not closely related to any of the so-called standard grades.

PAR. 4. (a) The fact that a manufacturer of book paper may offer a number of different kinds and types of book paper and that each one may be in different colors, in different weights, in rolls or in sheets of many different sizes, the sheets may be untrimmed or trimmed one, two, three, or four sides, may be packed in many different ways, and may be sold in widely differing quantities would result in a long and complicated price list if a price were quoted separately for each possible combination on each of the papers offered by the manufacturer. For a very long period of years these variations from some designated standard unit have been quoted in terms of price differentials from the standard unit. At the time of NRA, these differentials and the practices affecting their application varied in different sections and as among book paper manufacturers. A committee of the association, by discussion and agreement, arrived at a consensus of opinion and prepared a standard schedule of price differentials for coated, uncoated, and offset papers. These were adopted by the association and those relating to uncoated and coated paper published effective September 22, 1933, and those concerning offset paper effective December 1, 1933, under a designation "Trade Customs." Using uncoated book paper as an example, a standard unit was established as a base and the amount to be added to the price or subtracted from it for certain of the many possible variations is calculated in relation to the standard unit, and as to certain other variations is expressed in terms of one hundred pounds of paper. Provision was made for a basic selling price being quoted on paper of a certain size, of a specified weight per standard unit, and packaged in a certain way. Similar provisions were made for coated and offset papers. By quoting a "basic selling price" and adding thereto a provision that this price is subject to the "Trade Customs," prices for all variations from the standard established were determined by applying the differentials thus provided.

(b) In May 1936, the association adopted, published, and recommended a revised set of "Trade Customs" prepared by one of its committees. This publication (Com. Ex. 47) is a revision and consolidation of the previous publications of September and December 1933 into one pamphlet, with substantial additions. Respondents contend that these actions do not constitute the establishment or the fixing of any price differentials and are merely codifications of previously existing customs in the trade. It is clear, however, that the first publication involved discussion, reconciliation of existing variations and differences, and agreement among members upon a standard set of "Trade Customs." A comparison of the 1936 publication (which provides many of the price differentials in current use by respondents) with the 1933 publications shows substantial differences between them. These changes include details of application, some changes in actual price differentials, some entirely new price differentials, the addition of working formulas, and some entirely new provisions, including price differentials for papers not specifically covered in the previous publications. Such matters were a frequent subject of consideration by the committees of the association and by the association itself. For example, the minutes of the executive committee of November 23, 1936, show:

After discussion, the Executive Committee referred to the Trade Customs Committee for clarification the question relative to the application of light weight differentials, whether before or after the addition of some differentials (Com. Ex. 90).

Another example is the following from the minutes of the association for October 15, 1936:

The recommendation of the Executive Committee was unanimously approved that Mr. George Olmsted, Sr., be appointed as this Association's representative on the special A.P.P.A. Trade Customs Committee engaged in preparing a uniform form of trade customs for use throughout the entire industry. It was brought out that this authorization carried with it the definite understanding that no action by that committee was to be binding on this association and that any changes considered necessary would be reported back to the association for its consideration and action (Com. Ex. 89).

(c) Under the NRA Code for the Book Paper Division, all members of the industry were required to file their prices with the Code Authority, which was in substance the executive committee of the association. The filing was made simple and exact by naming prices subject to the price differentials contained in the "Trade Customs." After the NRA period, respondents continued to use the differentials adopted in 1933 until they were superseded by the new publication issued by the association in 1936, and this is now in general use by respondents. In examining these practices, the Commission has given consideration to the respondents' claims of convenience and necessity as excusing their establishment and use of a common set of price differentials as prepared and published by the association. An individual manufacturer can no doubt more conveniently quote prices by means of a base price and some system of price differentials to translate the base price into a price for any of the many possible variations of the products sold. The Commission, however, does not consider that this warrants the several respondents in uniting upon a common set of such differentials to be used, and used, by all, regardless of their application to the particular circumstances of each manufacturer.

(d) It was generally admitted by respondents that the price differentials provided in their "Trade Customs" do not accurately represent the costs of any individual manufacturer. So far as individual manufacturers are concerned, the various differentials are arbitrary figures used for determining all prices except the base price. Prior to the issuance of complaint in this matter the association had under way a cost study of the finishing differentials contained in the current issue of its "Trade Customs." The results of this study show extremely wide differences in costs as between different manufacturers upon each of the price differentials. The committee of the association having this in charge reconciled these differences by arriving at what is more or less an average of the varying costs as reported by association members. These figures were different from the figures in the current "Trade Customs," and the committee recommended the adoption of the new figures in place of the old ones, but upon advice that this matter involved legal and business difficulties, the committee proposal was tabled. It is noted that at the time this proposed revision of finishing differentials was laid aside, the association was aware that informal investigation of its activities was being made by this Commission.

PAR. 5. (a) Before 1933, there was no uniform practice among book paper manufacturers with respect to whether their products were sold upon a delivered price, upon an f.o.b. mill price, upon zone prices, or with partial or full freight allowance. As a matter of fact, all of these methods were in use, and in the case of zone prices the geographical areas used were not uniform and neither were the price differentials between zones. In 1933, the association adopted, as a part of its recommendations to NRA

for inclusion in the Code for the Book Paper Division, a zoning system originated by the Champion Paper and Fibre Company. This adoption necessarily involved discussion of and agreement upon the territorial areas to be included in each zone and the price differentials to be made applicable in each, and copies of the zone plan as adopted were furnished to the individual manufacturers by the association. The NRA Code for the Book Paper Division required the filing of prices upon a delivered basis and the zoning system adopted provided a common and uniform basis for doing this.

(b) The zoning system thus established provided four ones: The States of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Arkansas, Louisiana, Mississippi, Alabama, Florida, Georgia, and South Carolina, constituted Zone 2; all States north and east of the belt of States constituting Zone 2 were designated as Zone 1; and all States west of that belt were designated as Zone 4, except that the States of Wyoming, Colorado, and Texas were placed in Zone 3. Zone price differentials adopted for use as a part of this zoning system provided that the price for Zone 1 would constitute the base price; the price for Zone 2 would be the base price plus 20 cents per hundredweight; the price in Zone 3 would be the base price plus 40 cents per hundredweight; and the price in Zone 4 would be the base price plus 60 cents per hundredweight.

(c) Under this system, sales were made on the basis of the zone price applicable at the point of delivery with carload freight allowed, constituting in fact a delivered price. Under this system, purchasers were allowed to take delivery in any quantities by any means of transportation they desired, but on the basis of the applicable zone price with a freight allowance at the carload rate.

(d) No change was made in this system upon the dissolution of NRA. Respondents have continued to use it in the same way in which it was used under NRA and it is now in general use by them. The obvious result of the use of this system is that when respondents' base prices for paper are identical, the price of all respondents for a carload quantity delivered to any purchaser, wherever located with respect to the different mills, will be identical. The degree to which the individual corporate respondents have occasion to use the various zone price differentials depends upon their respective locations and the area in which sales are made. Some of the corporate respondents sell only in one zone or almost entirely within one zone, others in two or three or all zones, and a few limit their sales within an area which can be reached without exceeding a predetermined maximum freight charge. None of these variations conflicts with the system and merely represents the degree to which it is used. There are, of course, some instances in individual transactions where a respondent, for reasons peculiar to the transaction, may waive a zone differential in the price. One respondent has made a minor variation in the geographical divisions between two zones, and another respondent whose products occupy a unique position has made some geographical changes. However, regardless of these various departures, the system is, in fact, in general use. In his testimony, an officer of one of the corporate respondents explained its continued use as being by mutual consent because it is a convenient method of handling the freight situation. The system was in fact continued by mutual understanding and consent.

PAR. 6. (a) It is customary in the book paper industry to maintain quantity differentials under which the price per hundredweight of any

given grade of paper varies with the quantity purchased. In their printed price lists respondents usually quote in five brackets; namely, (1) one-case quantity; (2) four-case quantity, assorted of regular sizes and weights of one grade; (3) 5,000 pounds of one item; (4) 10,000 pounds of one item; and (5) 36,000 pounds of one item. A few of the respondents quote in their price lists one or two quantity brackets in addition to those stated, but they are supplemental to the ones stated and do not in any way conflict with them. The various respondents have used, and use, identical price differentials as between the various quantity brackets mentioned. Of these brackets, the highest price quoted is for the one-case quantity. The price in the four-case bracket is 25 cents per hundredweight less than the price in the one-case bracket; the price in the 5,000-pound bracket is 25 cents per hundredweight less than in the four-case bracket; the price in the 10,000-pound bracket is 15 cents per hundredweight less than in the 5,000-pound bracket; and the price in the 36,000-pound bracket is 10 cents per hundredweight less than in the 10,000-pound bracket. Another type of price differential in the nature of a quantity differential concerns differences between spot and contract prices and the quantities thereunder, with various allied provisions. For example, a unanimous recommendation of the executive committee which was approved at a general meeting of the association on November 22, 1935, includes the following:

In order to eliminate the confusion and inequality caused by the 10¢ differential in both cost and suggested resale prices between spot orders and contract orders on B, C, D and E Grades of Book papers, as well as to maintain the Trade Customs differential of 25¢ the hundred pounds for Hardsized papers over Book-sized papers throughout the cost and suggested resale schedules, we recommend that the adjustments be made in the cost schedule as shown in brackets in the example below:

[Here appears a tabulation showing the changes recommended.]

For Zones 2, 3 and 4 the regular zone differentials still apply.

No contracts in Class 5 to be taken for less than 100 tons.

* * * * *

That the differential of 25¢ per cwt. for Varnishable Coated Label over Regular Coated Label be strictly adhered to, effective January 1, 1936.

That the basis for pricing 50 Ton and 100 Ton spot orders remain as heretofore, i. e. merchant carload cost plus 5%. That the differential accorded spot orders for large tonnage be reduced by making the suggested resale price for 250 Ton spot orders at the merchant carload cost plus \$2.00 per Ton and for 1000 Ton spot orders at the merchant carload cost. Provisions as to minimum quantities and deliveries remain as heretofore.

* * * * *

There shall be no contracts of any nature below 100 Tons per year quantity.

Contracts of 100 Tons and over shall be priced as follows:

[Here appears a detailed statement concerning quantities and price relationships]

That Duplex Varnishing Super Label be considered directly competitive with and be priced on the basis of regular Coated one side Litho paper, except that the minimum basis weight without extra charge for such duplex varnishing super label shall be 50 lbs. (Com. Ex. 98-B, C, D).

Detailed illustrations of the action taken concerning changes thus approved and recommended appear in Commission Exhibits 95 and 96.

(b) The minutes of a meeting of the executive committee of the association at the Waldorf Astoria Hotel in New York City on January 23, 1936, contain this item;

REVIEW OF PREVIOUSLY RECOMMENDED QUANTITY DIFFERENTIALS

Mr. Savage presented a report to the Executive Committee. After considerable discussion the matter was tabled until the next meeting (Com. Ex. 90).

The minutes of a meeting of the executive committee at the Drake Hotel in Chicago on January 31, 1936, contain only one item, as follows:

REVIEW OF PREVIOUSLY RECOMMENDED QUANTITY DIFFERENTIALS

Mr. Savage presented a report to the Executive Committee, which after consideration was referred to the Special General Meeting, January 31, 1936 (Com. Ex. 90).

The minutes of a special general meeting of the association at the Drake Hotel in Chicago on January 31, 1936, contain only one item, as follows:

REVIEW OF PREVIOUSLY RECOMMENDED QUANTITY DIFFERENTIALS

Recommendation of the Executive Committee with respect to previously recommended quantity differentials was presented and voluntarily accepted by individual members represented (Com. Ex. 89).

It is probable that the action of January 31, 1936, related to or was connected with the action taken in the preceding November, but the indefiniteness of the minutes and the lack of other showing in the record make it impracticable to determine what changes were made or what supplemental action was taken. The minutes of a meeting of the executive committee on November 13, 1936, show the following:

QUANTITY DIFFERENTIALS

There was discussion without action being taken with reference to quantity differentials for book paper (Com. Ex. 90).

The record does not show when the precise quantity differentials appearing in respondents' price lists as stated in (a) above were established. Two of these brackets, those for the four-case quantity and for the carlot quantity, with a difference of 50 cents per hundredweight between them (equivalent to the sum of the 25-cent, 15-cent, and 10-cent per hundredweight intervening differentials), appear incidentally in Commission Exhibit 95, described above. The other differentials appearing in Commission Exhibit 95 are related to and dependent upon the spot differentials appearing in the price lists. From these actions and other related facts in the record and from the identity of the quantity differentials actually used by respondents in their price lists, the Commission infers and concludes that they were established in the same manner; that is, as a result of cooperation and understanding among respondents.

(c) There are also uniform price differentials between the so called standard grades of both coated paper and uncoated paper. In uncoated paper, Grade B is 45 cents per hundredweight less than Grade A; Grade C is 25 cents per hundredweight less than Grade B; Grade D is 25 cents per hundredweight less than Grade C; and Grade E is 25 cents per hundredweight less than Grade D. In the case of coated papers, Grade 2 is \$1.35 per hundredweight less than Grade 1; Grade 3 is 95 cents per hundredweight less than Grade 2; Grade 4 is 45 cents per hundredweight less than Grade 3; and Grade 5 is 50 cents per hundredweight less than Grade 4. During the years 1935-39, there were several minor changes in the price

differentials between grades. The continuation of some of the lower grades, and grading generally, were subjects which received consideration by the association from time to time, both directly and through its committee on grading and committee on manufacturing. The vagueness of the minutes and lack of other evidence result in no specific showing having been made as to the exact origin of these differentials in price between grades, or how the changes in them were made. It is apparent, however, that they are in common use and that the changes, when made, were general. The quotations from Commission Exhibit 98-B, C, and D in subparagraph (a) above, because of the references to price differentials as between types of paper, strongly suggest that the price differentials as between grades are the result of cooperative action by respondents.

PAR. 7. (a) The numerous papers referred to in this proceeding as book papers are individual and diverse products and the record indicates that even within any of the so-called standard grades the products of the various manufacturers differ in some of their characteristics. Nevertheless, through the application of various standard price differentials characterized by respondents as "Trade Customs," the use of the zoning system, and the various standard quantity and grade price differentials, the question of price uniformity, in an industry where thousands of different prices necessarily result from combinations of the various factors heretofore mentioned, is reduced to the single element of base price. Once a base price is determined, the application of the factors mentioned automatically determined the price to be paid by the purchaser for any of the various sizes, weights, finishes, colors, trim, packing, quantities, etc., in which paper may be ordered, through fixing the sum to be added to or taken from the base price for all such variations. In considering respondents' cooperative activities with respect to base prices, certain general facts must be taken into account. There is no one concern which produces more than approximately 10 percent of the total industry output of book papers. There is no recognized price leader or leaders in the industry. In point of volume, West Virginia Pulp and Paper Company, the Oxford group, The Mead Corporation, The Champion Paper and Fibre Company, and Kimberly-Clark Corporation are probably the largest producers. Except for specialty products, few of the respondents admit to ever having initiated a price change on book paper, and practically all of them insist that they follow the prices initiated by others when those prices appear to be reasonably established but could rarely, if ever, recall whom they did follow in specific instances. As to the so-called standard grades of coated and uncoated book papers, respondents' price lists show identical base prices. During much of the period covered by the complaint in this proceeding, informal investigations of respondents' activities were from time to time being made by this Commission. Respondents were aware of and discussed these matters, as shown by frequent references to them in the minutes of the association meetings. A typical instance of this is the following extract from the minutes of a meeting of June 18, 1936:

Additional report of this investigation, previously considered at the General Meeting May 6, was made. It was the opinion of counsel from the information presently available that the investigation of the particular complaint had not produced substantiating facts and, while the Federal Trade Commission had not yet reviewed the findings of the investigator, it would seem that the investigation should be concluded without further action (Com. Ex. 89).

The minutes of respondent association were carefully edited. They were first prepared by the secretary and then revised by the managing director, and in all cases were revised by counsel for the association before submission to and approval by the association. With the exception of legislative and governmental matters, the minutes are usually vague and it is apparent from comparison with facts otherwise shown in the record that they do not set forth all matters considered or action taken by the association.

(b) In the closing days of NRA the question of "association cooperation" was considered, and the minutes of a general meeting of May 7 and 8, 1935, read in part:

Several members having prior to the meeting expressed their feeling that there was great need for cooperation on the part of all members at this time; and with a view towards bringing about such closer cooperation through establishing a policy of more open discussion and criticism with respect to the operation of the Association, the following questions were asked of all members present:

1. Regardless of continuation of NRA, do you think the Book Paper Association should be continued?
2. Do you think your business has benefited through cooperation with the Book Paper Manufacturers Association?
3. Regardless of certain recommendations which may be detrimental to an individual mill's interest, do you think that full cooperation therewith would be best for the industry as a whole?
4. Have you any suggestions for a better method of handling matters by Executive and other committees, as well as criticism of past methods?
5. Will you pledge your continued cooperation?

All companies represented pledged their cooperation in response to question No. 5. Members were advised that all suggestions and criticism would be considered and kept in mind by the Executive Committee (Com. Ex. 88).

After the demise of NRA, many of the respondents continued to file announcements of price changes with the association, which disseminated the prices filed by one member to other members. This activity was in a gradually diminishing scale. The number of such filings by association members for the last half of 1935 was 157; for 1936, 82; for 1937, 76; for 1938, 3; and for the first half of 1939, 3. The association furnished its members with forms which were used in filing prices, and these forms carry the following statement:

Price is for Zone 1, F.O.B. mill, carload rate of freight allowed.

We adopt as our selling policy, and the foregoing grades and prices are subject to, specifications, trade practices, terms and conditions of sale, differentials, discounts, extra charges, etc., as shown in:

(a) the annexed statement which is hereby published by us; or

(b) all conditions of the current recommended Trade Practices of the Book Paper Manufacturers Association and all differentials and extra charges provided in Book Paper Trade Customs apply except as modified by us and shown on the back hereof.

The Secretary of the Book Paper Manufacturers Association is hereby authorized and requested to publish the foregoing and to make this schedule available to anyone interested (Com. Ex. 45).

The corporate respondents frequently announced any base price change to the trade by telephone or telegram, and this notice was followed in a few days, or as soon thereafter as practicable, by mailing the new printed

price list to the trade. Numbers of respondents regularly sent their new price lists to their competitors, and such lists were widely distributed in the trade. The fact that competitors' price lists were available to respondents through trade sources apparently did not diminish the value of cooperative filing and dissemination of price announcements through the association. On August 23, 1937, the managing director of the association, in writing its chairman, stated in part:

The price schedules now issued by the Association are fewer in number than during the code period. This is an activity that most of our members consider a very important one (Com. Ex. 99).

Under NRA respondents were required to file their prices with the Code Authority a specified number of days in advance of the effective date and were obliged to adhere to prices so filed until different prices were filed. The price filing carried on through the association after NRA was not limited to past transactions but included as well instances of both current and future prices.

(c) Through the cooperation of its members and some nonmember book paper manufacturers, the association prepared and distributed monthly and weekly reports of a statistical nature to members of the industry. One of the monthly reports furnished the following information separately for coated and uncoated book papers, with the latter subdivided into some additional groups: The number of companies reporting; tonnage produced; shipments made in tonnage and in dollar value; inventory at the end of the month; orders received and unfilled orders on hand at the end of the month, with the percentage of standard capacity of the reporting mills of production, shipments, and orders received. Another monthly report gave a four months' comparison for two years of the following: Average number of mills; standard capacity; inventory at beginning of month or period; production; shipments; net sales; inventory at end of month or period; orders received; orders unshipped at end of month or period; and operating ratios of production, shipments, and orders received. Weekly reports were furnished showing separately for coated and uncoated papers the orders received in the week for which the report was made in terms of percentage of standard capacity, with the number of companies reporting. Similar figures were furnished for the immediately preceding three weeks and for the year to date, with comparable figures for the same periods in the previous year. Another weekly report covering production of uncoated book paper for like periods showed the number of companies reporting, the standard capacity of companies reporting, the production of companies reporting, the percentage of operating rate, and the percentage of change in operating rate as between the current and preceding year (Com. Exs. 56-62). These statistical reports dealt in aggregate figures and did not reveal the figures of any individual company to other companies.

(d) The association prepared and approved a standard form of contract for use in the sale of book paper. This form of contract, among its various provisions, contains one permitting change of the price at the beginning of each calendar quarter, provided notice thereof is given not less than 15 days in advance of the new calendar quarter. It also provides:

Prices and deliveries hereunder are based upon and subject to the trade customs of the Book Paper Manufacturers Association, or any other trade customs applicable to the grade or grades of paper specified in this contract.

The basic selling price shall be for paper packed for domestic use in ordinary wooden cases with customary markers. If packed on non-returnable skids of 3,000 lbs. or over, net per skid, deduct 15¢ per 100 lbs. If on skids of less than 3,000 lbs., net per skid, no deduction. If shipped in rolls weighing 500 lbs. or heavier, deduct 50¢ per 100 lbs. If in rolls weighing 250 lbs. up to 500 lbs., deduct 25¢ per 100 lbs. If in rolls weighing less than 250 lbs., no deduction (Com. Ex. 50).

This form also contains other provisions affecting or directly relating to the ultimate price. This standard contract form was, and is, regularly used by many members of the association and, in addition, some others use it with minor variations. A few members use no written contract, or merely exchange letters, or use an individual form or individually prepared contract.

(e) The association was quite active and held meetings at frequent intervals, usually alternating between New York and Chicago. These meetings ordinarily covered two days, the first day being devoted largely to the presentation of matters to the executive committee for consideration by it, and the second to a general meeting of the membership. Ten meetings were had in 1936, eleven in 1937, and eleven in 1938. These meetings were consistently well attended, as shown by the following figures for the first two meetings in each of the years mentioned:

<i>Date of Meeting</i>	<i>Number of Companies Represented</i>	<i>Number of Individuals Present</i>
January 31, 1936	31	48
February 20, 1936	35	61
January 13, 1937	30	51
February 24, 1937	35	52
January 7, 1938	28	44
February 24, 1938	37	66
January 20, 1939	25	74
March 15, 1939	23	27

Association officials and employees prepared various charts and data which were not distributed to members but which were exhibited and used in the course of association meetings. These included charts showing price trends of raw materials, labor costs and other elements in the cost of producing book paper, and the price trends in book paper as compared with various other commodities. They were analyzed by a designated representative who discussed the charts and data for the benefit of members, in addition to such discussion as the members themselves engaged in. It is apparent from the testimony of witnesses who attended association meetings that the prices of book paper were regularly discussed in such meetings, but they insisted that the discussions were limited to the prices of book papers in relation to costs of manufacture, the statistical position of the industry, and the relation of book paper prices to those for other commodities. It is plain, however, that these discussions of price before and by association members afforded a means for reconciling differences in views, ascertaining the consensus of opinion among members, and arriving at a common course of action. In fact, the record shows that in at least a few instances price changes were announced by members at association meetings.

(f) In the fall of 1937 there was a slackening in the demand for and a softening of prices of book papers. There was a meeting of the executive

committee and a general meeting of the association at Hot Springs on October 6-8, 1937. At about the time of this meeting rumors became current in the trade of a price cut by Kalamazoo Paper Company (not a member of the association) which was said to amount to various sums up to \$23 per ton. Price changes in the industry are ordinarily made in terms of \$5 per ton, or occasionally \$10 per ton. This rumored price cut by Kalamazoo created a furor among the association members at Hot Springs and was widely discussed by members at that meeting. Many members were making urgent efforts by telephone and otherwise to ascertain exactly what action had been taken by Kalamazoo. Contrary to the usual custom of holding meetings about a month apart, another meeting of the association was held in Chicago on October 14, 1937. Between the date of this meeting and that of the Hot Springs meeting, association members generally had ascertained the nature of the cut in price put into effect by the Kalamazoo Paper Company, and apparently the confusion which had existed resulted from the fact that at the time it made this price cut Kalamazoo abandoned selling upon a delivered-price basis and instituted f.o.b. mill prices. The actual result of this approximated a reduction of \$7 per ton in New York on 5,000-pound lots, and a reduction in Chicago of \$12 per ton. The corresponding figures for carload lots were \$2 and \$7, respectively. The rumors in the trade concerning the action taken by Kalamazoo were a matter of concern to paper merchants because of the effect this reduction, if followed by other manufacturers, would have upon their inventories of paper. Within a few days after the Chicago meeting, various members of the association issued price lists making no reduction in price in a single-case and four-case quantity brackets, which brackets account for a large proportion of sales by paper merchants, but making a reduction of \$5 per ton in the quantity brackets above the four-case bracket. During the period when announcements of price changes were being made by other manufacturers, the Kalamazoo Paper Company abandoned the f.o.b. mill basis of selling and issued a price list returning to the delivered-price system in use by other manufacturers, as well as to the prices then in effect by others, with the reduction limited to the quantity brackets above the four-case quantity. The Chicago meeting of October 14, 1937, was followed by another meeting in New York on November 5, 1937, and still another in Chicago on November 18, 1937.

(g) Apparently the difficulties which led to the price cut first announced by Kalamazoo Paper Company were related to and perhaps due to price disparities which developed between contract and spot business, and this involved directly the interests of the paper merchants as well as the respondent manufacturers. The following extracts from certain exhibits introduced into the record show quite clearly that the discussions at association meetings were not confined to generalities, but in fact led to understandings and agreements upon specific matters. On June 7, 1937, the Chicago office of the Northwest Paper Company wrote the assistant general sales manager of that company on the subject of "pricing practice on book paper contracts for third calendar quarter of 1937" in part as follows:

Referring to 'phone conversation, we don't quite understand why we are going to have to be different from other mills such as Oxford, Warren, West Virginia and Champion, where they are advancing their price \$5.00 per ton for uncoated Book over the first quarter price and \$7.00 per ton on the Label.

Earl Bowen of S. D. Warren, who had a report of the meeting in New York, tells me that our representatives were there and the plans were discussed as to what some of the mills were going to do, and we have outlined above what it is (Com. Ex. 132).

The record shows that there was a meeting of the association at the Waldorf Astoria Hotel on May 26, 1937, and that two representatives of the Northwest Paper Company were present. A large paper merchant, the Graham Paper Company, with branches in many cities, on August 19, 1937, wrote respondent Michigan Paper Company that one of its customers was interested in placing a year's contract for paper, stating the quantities and specifications, and:

Send price information to us St. Louis and since our customer won't likely place their contract until early October, there is no particular hurry about your quotation (Com. Ex. 192).

On August 21, 1937, the Michigan Paper Company replied, but without giving any price information, and stated:

There is to be a meeting of the Book Paper Group next week and after this meeting we will have information as to what, if any, price changes have been made (Com. Ex. 193).

The record shows that there was a meeting of the association at the Waldorf Astoria Hotel in New York City on August 27, 1937. On September 30, 1937, the Chicago office of the Northwest Paper Company wrote to its home office concerning price cutting in Chicago and stated in part:

This outburst was prompted by a list that came out from the Swigert Paper Company closing out a lot of items, a good many of which the merchants are sure that Swigert does not have on hand such as 90,000 lbs. of 25×38—70# Enamel.

In talking with Mr. Hillyer, of the Whitaker Paper Company, yesterday, he stated that this sniping has been going on for some time and that the merchants are tired of it and are going to put a stop to it by meeting the situation with the expectation that the mills will step in and have these ridiculous prices corrected (Com. Ex. 140).

On October 13, 1937, there was an exchange of messages by teletype between the New York and home offices of the Northwest Paper Company. The New York office stated:

THERE ARE SEVERAL GOOD SIZED BOOK ORDERS COMING UP HERE IN THE CITY HAS ANY ADJUSTMENTS BEEN MADE IN PRICE OF B AND C GRADES IT IS NECESSARY TO GET IN ON THE GROUND FLOOR AND WANT TO HAVE PROPER PRICES BEFORE QUOTING.

To which the home office replied:

DONT KNOW WHAT PRICE ON BOOK PAPER WILL BE UNTIL END OF THIS WEEK SOME MILLS HAVE ANNOUNCED REDUCTIONS UP AS HIGH AS 23.00 PER TON DO NOT BELIEVE THIS WILL FOLLOW THRU WHOLE PAPER INDUSTRY (Com. Ex. 143).

On October 11, 1937, the Graham Paper Company wrote respondent Michigan Paper Company:

Within the past week rumors have come to us there has been a general decline in Book Papers of quality such as you furnished to our stock.

As far as we can learn Kalamazoo Paper Company have been responsible and understand they took arbitrary action on quite a lot of tonnage in Detroit, which has given rise to rumors there has been a general break in prices.

Understand the manufacturers had a meeting in Hot Springs last week and considerable pressure was exerted to maintain the present market prices, and would appreciate if you would investigate and give us complete information relative to today's market (Com. Ex. 204).

This exhibit bears the penciled notation "DLS phoned in detail on 10/12/37." Graham Paper Company on October-12, 1937, wrote the Michigan Paper Company for the attention of Mr. Dwight L. Stocker (the person referred to in the penciled notation as DLS):

We appreciate you telephoning us this morning relative to the price situation that was created by Kalamazoo Paper Company and which we are hopeful will not stick, as we feel it would be a mistake to reduce prices, particularly at this time.

* * * * *

We are hopeful that at the manufacturers meeting in Chicago Thursday of this week this situation will be corrected, because we fear if allowed to stand it may result in a break down of prices on all qualities (Com. Ex. 194).

On October 13, 1937, Graham Paper Company again wrote the Michigan Paper Company:

Just as quick as you or Mr. Stocker develops what action is taken in Chicago by the manufacturers relative to prices on book papers, will you please communicate with us immediately, so that we can get word to our branches and salesmen at least by the time our competitors have it from their mill sources? (Com. Ex. 195.)

On the day after the association meeting in Chicago of October 14, 1937, the Michigan Paper Company wrote to the Graham Paper Company:

We wish to confirm telephone conversation of today in which we advised that effective today there would not be any change in the one and four case brackets from our price list on both Coated and Plain Papers, but on both Coated and Uncoated Papers 5,000 lbs. brackets and up, including 18 tons, the price would be \$5.00 per ton less. On No. 5 Coated the price is \$10.00 per ton under the price for No. 4 Coated.

Other grades of paper have not been decided upon but just as soon as we have this information the same will be forwarded to you promptly (Com. Ex. 196).

On October 19, 1937, Graham Paper Company asked Michigan Paper Company for a price quotation on paper for one of its customers, to which Michigan Paper Company replied on October 20, 1937:

We are in receipt of your letter of the 19th and herewith confirm telephone conversation, this with reference to 510,000 lbs. 44½×63 basis 70#, long grain, CIS Litho.

As advised, we are not in a position to make our CIS in the No. 5 quality but would be pleased indeed to have this order based on the No. 4 quality.

As you know, there has been some confusion about contract prices and we believe this will be settled at the meetings in New York this week. However, feel that we are justified in quoting you a price of \$7.10 on skids, you to add 5% to this price for your mark-up, but the price you have suggested of \$7.50 less 4% commission is agreeable to us and you may proceed on this basis (Com. Ex. 198).

The record shows there was a meeting of the executive committee of the association at the Waldorf Astoria Hotel in New York on October 21, 1937,

and that Mr. D. L. Stocker of the Michigan Paper Company was in attendance. On November 16, 1937, Graham Paper Company wrote the Michigan Paper Company concerning the price to be made on contract with one of its customers, stating in part:

On such contract have understood the selling price was the merchant's carload cost, and subject to terms of 2% 30 days and merchant was allowed 5% selling commission.

Have inquired about this several places, but no one seems to know exactly what price does govern today on a 250 ton contract.

Is it true that on such contract for Hard Bound Book Publishing and on Music and Litho contracts prices are now less than govern on a Magazine Publisher's contract? (Com. Ex. 201.)

On November 17, 1937, the Michigan Paper Company, in replying to this inquiry, referred to a telephone conversation concerning it, and stated:

As long as you advised us over the telephone that this matter could be held open until Friday or Saturday of this week, we will hold up the inquiry until that time for as advised you, Mr. Servaas is attending the Book Paper Meetings in Chicago this week and he may have some further information regarding contracts by Friday or Saturday at which time we will immediately get in touch with you (Com. Ex. 202).

The record shows there was a meeting of the association at the Drake Hotel in Chicago on November 18, 1937, which was attended by D. L. Stocker and P. S. Servaas of the Michigan Paper Company. Under date of November 20, 1937, the Michigan Paper Company advised the Graham Paper Company in part:

Confirming telephone conversation of today with reference to the Eden Publishing Company proposition, as we do not have any publishing contracts and as the publication prices are not a matter of record, we will have to admit frankly we are not really familiar with this set up. As you know the commercial 250 ton contract, as of today and the first three months of 1938 the merchants cost is regular carload cost to which 5% is added for resale prices.

We have authorized you on this Eden Publishing Company proposition to meet the situation as you find it.

With reference to the hard bound book publishing and Music and Litho contracts to be perfectly frank with you this seems to be more or less up in the air and we have no definite information on this as we have no such contracts. As you appreciate we are strictly a merchants mill and our efforts are in a line to work with the merchants eliminating some of the unreasonable practices which have been in effect and using our efforts to eliminate some of the differentials on so-called questionable contracts.

We are pleased to advise that at a meeting held this week, and you, no doubt, have this information, that the so-called No. 5 contract is entirely eliminated starting the first of the year which should be of considerable help to the merchants (Com. Ex. 203-A).

Under date of December 4, 1937, the Chicago office of the Northwest Paper Company wrote the assistant general sales manager of that Company on the subject of "Contracts for 1938," in part:

According to the wishes of merchants in this market, they want, and understand, that class 5 contracts are to be eliminated, and they are expecting to operate on that basis in 1938. However, they are wondering if the Book meetings of this week will change the idea in any way. If not, practically all the contracts we have, with the exception of those for lithographers, will go on the spot price basis (Com. Ex. 166).

The record shows there was a meeting of the association held December 9, 1937. On December 14, 1937, Allied Paper Mills wrote James F. Walsh Paper Corporation, stating in part:

This has reference to the contracts you have with us which have been used as a blanket contract for printers' requirements.

We are unable to renew these for the year 1938 as we understand that no contracts of this nature will be filled by any mill (Com. Ex. 726).

(h) The record shows that despite the variety of their products and the great number of different prices resulting from the many product differences already mentioned, respondents, through the means heretofore stated, have succeeded in maintaining price uniformity to a remarkable degree. As a part of a statistical study made by respondents, invoices covering spot sales of book paper to merchants during the week ending April 3, 1937, and the week ending July 16, 1938, were tabulated and analyzed in various ways. This part of the study included several thousand separate invoices, and a correlation of these sales with price lists shows that for the 1937 period 85.62 percent of the sales were in agreement with the price list, and these sales in agreement with the list represented 72.40 percent of the tonnage and 75.63 percent of the dollar value. For the 1938 period, 86.14 percent of the sales were in agreement with the price list and these sales represented 77.64 percent of the tonnage and 79.56 percent of the dollar value. In each of the periods, a few sales were made above price list, but the more substantial number of those sales which were not in accord with the price list were below it. Though stated with apparent precision, the figures given are necessarily approximations because of the possibility of occasional errors in a statistical study of this size and complexity.

PAR. 8. (a) The United States Government Printing Office is a regular purchaser of substantial quantities of book paper. Its usual method is to solicit sealed bids for its estimated requirements of each kind and type of paper for a six months' period and to make awards pursuant to the bids received. Some of the respondent paper mills bid directly on these proposals, some bid only through one or more paper merchants or other representatives, and some of respondents bid directly and through one or more paper merchants or representatives on the same items. In bidding through paper merchants or other representatives, respondents follow the practice of authorizing the merchant or representative to bid specified prices upon designated items in the proposals. If the merchant or representative is successful in securing a contract, the paper necessary to fill it is supplied by the respondent who authorized the bid and an agreed percentage of the price paid by the Printing Office is received by the merchant or representative as a commission for his services. During the NRA period, only identical bids were received and they were priced on the basis of the published list price after the deduction of the usual cash discount of 3 percent, and the contracts for supplying the requirements of the Printing Office were allocated among the identical bidders upon the basis of the relative quantities each had sold to the Printing Office in previous years. After NRA, respondents continued to make identical bids upon the same price basis as used during NRA; namely, list price less 3 percent, and the awards for two or three six months' terms were made and the business allocated among various mills upon the basis used during NRA. This caused complaints from mills which bid but received no contracts, and resulted in

a change in the method of making awards. The method substituted was to eliminate duplicate representation of one mill through drawing by lot to determine which bid representing a given mill would have a further chance to secure the business, and then making a selection by lot from among the single bids for each mill, and the contracts were awarded pursuant to such chance selection. Identical bids persisted, however, until the adoption of the practice of making no awards of contracts for Government Printing Office business in any case of tied bids. When only tied bids were received on any item, the paper needed was purchased in the spot market.

(b) It is interesting to note that under date of May 8, 1936, respondent, West Virginia Pulp and Paper Company, filed with the association its prices

* * * to apply for the Government Printing Office * * * as outlined in Government Printing Office proposal requesting bids to be opened May 18, 1936.

The prices stated shall apply on all orders placed prior to December 31, 1936 (Com. Ex. 762-B).

The various prices for the different items were filed on the usual price filing form bearing the notation:

The Secretary of the Book Paper Manufacturers Association is hereby authorized and requested to publish the foregoing and to make this schedule available to any one interested (Com. Ex. 762-B to G).

Similarly, On May 11, 1936, The Chillicothe Paper Company filed with the association its prices on certain items in the proposals for opening on May 18th, stating:

These are the prices to the Government regardless of whether they are sold direct or through a paper merchant (Com. Ex. 626-A, B, C).

This filing carried the usual request for making the prices filed available to others. It is also interesting to note the reaction to instances of non-identical bids that were low. For example, on February 26, 1937, respondent, West Virginia Pulp and Paper Company, wrote to R. P. Andrews Paper Company, who had submitted bids on its behalf to the Government Printing Office:

I have not heard from you relative to the Government Printing Office order for 42,600 pounds of Super Book upon which we quoted on February 13th, \$5.70. You told me by 'phone that all quotations were at \$5.70, but that Reese & Reese had noted on their quotation that if taken on skids, the price would be 15¢ lower.

I am very anxious to know what mill is to make this paper. As the inquiry specified very plainly that the paper was to be packed on skids, it is rather difficult to understand how anyone could have made the "error" as evidently Reese & Reese did. The price quoted was certainly low in the present market, and as all the mills are pretty well filled with business, as a matter of fact are experiencing great difficulty in making shipments, I would like to know the name of the mill that is to make this paper, and also the time promised for shipment (Com. Ex. 683).

On June 23, 1937, R. P. Andrews Paper Company wrote West Virginia Pulp and Paper Company, giving the results of the opening of the bids on 75 tons of book paper, five bidders having named a price of \$6.14, three a price of \$6.39, and one a price of \$6.12½ (Com. Ex. 768). In replying under date of June 24, 1937, West Virginia Pulp and Paper Company stated in part:

* * * If you can give me any information as to what mill will make the paper, it will be appreciated. This light weight Machine Finish paper is not particularly desirable and as far as we are concerned, we are not peeved that we did not get the order, but we don't like the chiseling of a house of the character of Marquette (Com. Ex. 769).

This was followed by another inquiry by West Virginia Pulp and Paper Company under date of July 7, 1937, stating:

Have you ever been able to get any information as to who is to make the paper for Marquette Paper Company, who chiseled on the order for 75 tons of Machine Finish, putting in a price of \$6.125. I am very anxious to know who is to supply this paper and wonder if you can get me the information in confidence (Com. Ex. 770).

(c) In November 1937, respondent, Allied Paper Mills, authorized James F. Walsh Paper Corporation to submit bids on certain lots of paper in the proposals of the Government Printing Office for the first six months of 1938, and stated in the letter of authorization:

The above prices are to be quoted to the government. Unless this is complied with, we will not accept the orders if you are successful in getting them (Com. Ex. 369).

In submitting bids, the James F. Walsh Paper Corporation, on the basis of giving up a part of its commission, bid about 1 percent under the prices authorized by Allied Paper Mills. The result was that on Lot 3 for 400,000 pounds of book paper, eleven concerns bid \$6.24 per hundredweight and Walsh bid \$6.18; and Lot 5 for 400,000 pounds of book paper, thirteen concerns bid \$6.24 per hundredweight and Walsh bid \$6.18; on Lot 6 for 350,000 pounds of book paper, thirteen concerns bid \$5.86 per hundredweight and Walsh bid \$5.80; on Lot 7 for 600,000 pounds of book paper, thirteen concerns bid \$5.86 per hundredweight and Walsh bid \$5.80; on Lot 8 for 600,000 pounds of book paper, thirteen concerns bid \$5.86 per hundredweight and Walsh bid \$5.80; on Lot 10 for 250,000 pounds of book paper, thirteen concerns bid \$5.85 per hundredweight and Walsh bid \$5.79; on Lot 16 for 200,000 pounds of offset paper, one concern bid \$6.38 per hundredweight, nine concerns bid \$6.30 per hundredweight, one concern bid \$6.28 per hundredweight, and Walsh bid \$6.24; on Lot 36 for 100,000 pounds of book paper, eight concerns bid \$9.70 per hundredweight and Walsh bid \$9.60. Thus on every item on which Walsh bid for Allied Paper Mills he was the low bidder. In due course, James F. Walsh Paper Corporation received awards and was informed by Allied Paper Mills that they would not fill the orders. The small reductions made by Walsh would have come out of his commission, and therefore the net return to Allied Paper Mills would be the same as if he had bid the price authorized. The record shows, independently of his own testimony, that after the refusal by Allied Paper Mills, James F. Walsh began seeking to place the orders with other of respondent manufacturers who produced suitable papers to fill the awards received. Walsh testified that in some instances he was told by mills that they were not interested, in some cases that they would not fill the order because he cut the price. Though these latter statements were denied by the parties to whom they were attributed by Walsh, the fact is that Walsh was unable to place the orders with any other mill. Several statements were made by Allied Paper Mills as to the reason they would not accept the order. One such statement was that it is not fair to other dealers to let one violate instructions and profit by it. However, it is clear from the record that, at least as to some of the lots on which

Walsh bid, no other concern bid on behalf of Allied Paper Mills, and there is no affirmative showing that any dealers other than Walsh bid for Allied Paper Mills on any of the lots. Walsh was at the Waldorf Astoria Hotel in New York at the time a meeting of the association was held in December 1937 and talked to some members of the association before and after the meeting, though he was not present at the meeting of the association. He testified that he learned from members who attended the meeting that his cutting the price on the Government Printing Office bids was a subject before the meeting of the association. This is denied by several members who were present. On December 28, 1937, the New York office of Allied Paper Mills teletyped its home office that respondent C. L. Barnum, an official of the association, had just phoned and advised

THAT WALSH HAS NOTIFIED THE GOVERNMENT THAT HE COULD NOT SUPPLY THE PAPER THAT HE BID ON AND THE GOVERNMENT PRINTING OFFICE HAS ARE RE ADVERTISING THE BIDS (Com. Ex. 370).

Walsh had a friendly relationship with F. H. Savage, a divisional sales manager of International Paper Company, and appealed to him to intercede with Dwight Curtenius of Allied Paper Mills. He wired Mr. Savage at the Blackstone Hotel, Chicago, Illinois, on January 4, 1938, as follows:

RECEIVED WIRE TODAY AS FOLLOWS UNLESS SATISFACTORY REPLY TO OUR LETTER DATED DECEMBER SIX IS RECEIVED BY JANUARY SIX OR PERFORMANCE CONTRACT PROPERLY EXECUTED AND RETURNED BY THAT DATE THE COMMITTEE WILL DECLARE YOUR BID BOND IN DEFAULT AND ACTION TAKEN ACCORDINGLY A COPY OF THIS TELEGRAM IS BEING FORWARDED YOUR BONDS-MAN THE AMERICAN EMPLOYERS INSURANCE COMPANY SIGNED WALTER LAMBETH CHAIRMAN JOINT COMMITTEE ON PRINTING STOP COULD YOU POSSIBLY INTERCEDE DWIGHT CURTENIUS FOR ME GOVERNMENT IS FORFEITING MY BOND DECISION MUST BE MADE TOMORROW SO SIGNED CONTRACTS WILL BE IN WASHINGTON ON JANUARY SIX STOP BELIEVE DWIGHT CURTENIUS IS AT THE BOOK MEETING ANYTHING YOU CAN DO WILL BE DEEPLY APPRECIATED AND MAY I HEAR FROM YOU TOMORROW MORNING (Resp. Ex. 20-A, B).

Mr. Savage testified that he had heard rumors that the refusal by Allied Paper Mills to furnish paper to fill the bids made by Walsh was due to objections by Arthur Birmingham of Birmingham & Prosser, large paper merchants in Chicago; that he and Charles A. Gordon, vice president of Oxford Paper Company, called on Birmingham and, among other things, took up the matter of whether he objected to Allied Paper Mills handling the orders for Walsh; that there was no objection by Birmingham; and that he subsequently told Mr. Curtenius of the result of the conversation he had had with Birmingham but did not recall what reply Mr. Curtenius made. This evidence concerning Birmingham & Prosser was put in by respondents, apparently to explain the refusal of Allied Paper Mills to fill the orders for Walsh. There had been a disagreement between Walsh and Birmingham & Prosser which had resulted in Walsh leaving their employ some time previously. Birmingham & Prosser was not a bidder for the business on which Walsh received the award, and it is not clear how it could be of any legitimate interest to Birmingham & Prosser whether Allied

Paper Mills did or did not fill the orders on which Walsh bid. Presumably, if there had been any occasion for objection on this score, it would have been considered by Allied Paper Mills before they authorized Walsh in November 1937 to bid on their paper. The Director of Purchases of the Government Printing Office testified that various contractors, paper mills, and merchants with whom he did business informed him it was going to be very difficult for Walsh to get the paper to fulfill the awards made to him. Allied Paper Mills raised questions as to Walsh's credit. This was evidently an afterthought, for his credit was not questioned at the time he was authorized to bid. Finally, Allied Paper Mills did furnish paper to fulfill those portions of the Walsh contracts for which paper had not been secured from other sources by the Government Printing Office to take care of its necessities when it appeared Walsh would be unable to deliver, and payments were made to Walsh in care of Allied Paper Mills, which held Walsh's power of attorney. The long record of identical bidding by respondents on Government Printing Office proposals, and the reaction of respondents to nonidentical bids that were low, together with the other facts shown, make it evident that respondents had understandings and agreements concerning the prices to that purchaser.

PAR. 9. The respondents introduced opinion testimony by an expert economist. In part, this testimony went to the proposition that uniformity in price by different sellers of a standard commodity in a given market may be the result of perfect competition or of collusion and furnishes no basis for an inference that such uniformity is due to one as against the other of these conditions. This witness also made comparisons between the behavior of prices for book paper in relation to the prices of certain other commodities and in relation to certain business indices and gave his opinion upon what these comparisons indicated to him. This testimony was also directed toward countervailing any inference of collusion among the respondents being drawn from the single fact of price uniformity among sellers in a given market. Upon the question of uniformity of price as between different markets in the same zone, the witness testified that he had not studied the zoning system and was not prepared to testify with respect to it. The Commission has examined and considered this opinion testimony. In the circumstances present in this case, including the existence of facts which affect the hypothesis upon which certain of the testimony is based as well as the existence of different and conflicting facts shown by the record generally, the Commission views the opinion testimony as entirely failing to support any contention that the price behavior of book paper has been due to operation of competitive forces without the intervention of respondents.

PAR. 10. From its consideration of the entire record, the Commission concludes, and therefore finds, that the capacity, tendency, and effect of the combination maintained in the manner aforesaid and the acts and practices performed by respondents thereunder and in connection therewith, as set out herein, has been, and is, to hinder, lessen, restrain, and suppress competition in the sale of book papers among and between the several States of the United States and in the District of Columbia; to deprive both private and governmental purchasers of book papers of the benefits of competition in price among respondents; to define, establish, and maintain uniform base prices for book papers; to define, establish, and maintain uniform geographical zones within each of which delivered prices to purchasers, wherever located within any such zone, are uniform, and to fix and

determine uniform price differentials for book papers as between such zones; to establish and maintain uniform quantity brackets and uniform price differentials for book paper as between such quantity brackets; to establish and maintain uniform price relationships between spot and contract purchases of book paper; to establish and maintain, and from time to time modify, expand, or readjust through the guise of "Trade Customs," uniform and arbitrary price differentials for each of the many variations in color, weight, size, finish, trim, packing, and type of book papers from specified predetermined bases, and thus determine the additions to be made to or subtractions from a base price in any particular transaction; to provide and maintain means for and to further the exchange of future and current price information among themselves; to prepare and promote the use of a uniform contract of sale with provisions therein for supporting and furthering the maintenance of price uniformity; to bring about collective consideration and discussion of base prices for book papers as a means of arriving at understandings and a common course of action with respect to such prices; and to otherwise cooperate among themselves to establish and maintain price uniformity in the sale of book paper, and to prevent, hinder, and restrain the operation of competitive forces which tend to disturb the uniformity of prices established and maintained through the aforesaid means.

CONCLUSION

The aforesaid acts and practices of respondents, under the circumstances and conditions set forth herein, 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 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 examiner and exceptions thereof, 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, Book Paper Manufacturers Association, an unincorporated association, its officers, agents, representatives, and employees; respondents, P. H. Glatfelter and C. L. Barnum, individually and as officers of said association; respondents, C. A. Clough, D. R. Curtenius, G. K. Ferguson, C. A. Gordon, W. H. Kenety, J. R. Miller, F. H. Savage, J. S. Sensenbrenner, R. D. Smith, L. G. Thomson, and R. I. Worrell, individually and as members of the executive committee of said association, their respective representatives, agents, and employees; and the corporate respondents, Allied Paper Mills, American Writing Paper Corporation, The Appleton Coated Paper Company, The D. M. Bare Paper Company, The Beckett Paper Company, Bergstrom Paper Company, The Martin Cantine Company, The Champion Paper and Fibre Company, Champion-International Company, The Chillicothe Paper Company, Columbian Pa-

per Company, Consolidated Water Power & Paper Company, Dill and Collins, Incorporated, Everett Pulp and Paper Company, Fitchburg Paper Company, French Paper Company, P. H. Glatfelter Company, W. C. Hamilton & Sons, Hammermill Paper Company, Inland Empire Paper Company, International Paper Company, The Jessup & Moore Paper Company, Kimberly-Clark Corporation, McLaurin-Jones Company, The Mead Corporation, The Michigan Paper Company of Plainwell, Mohawk Paper Mills, Inc., Newton Falls Paper Company, New York and Pennsylvania Company, Incorporated, The Northwest Paper Company, Oxford Miami Paper Company, Oxford Paper Company, The Parker-Young Company, Rex Paper Company, Schmidt Lithograph Company, The Sorg Paper Company, Standard Paper Manufacturing Company, S. D. Warren Company, Watab Paper Company, West Virginia Pulp and Paper Company, Watervliet Paper Company, and Wheelwright Papers, Inc., independently and as members of said association, their respective officers, agents, representatives, and employees, in or in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of book paper (which term includes all papers within the jurisdiction of the Book Paper Manufacturers Association at the time of this proceeding), 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. Fixing, establishing, or maintaining uniform prices, discounts, terms, or conditions of sale for any kind or grade of book paper, or in any manner fixing or establishing any prices, discounts, terms, or conditions of sale for book paper.

2. Exchanging or relaying, directly or through the Book Paper Manufacturers Association or any other agency or clearing house, price lists or other information as to current prices, discounts, terms, or conditions of sale for book paper, for the purpose or with the effect of restraining price competition in the sale and distribution of book paper; or exchanging or relaying, directly or through the Book Paper Manufacturers Association or any other agency or clearing house, information as to future prices, discounts, terms, or conditions of sale quoted or to be quoted for book paper.

3. Using in the quotation and sale of book papers the differentials in price for variations in color, weight, size, finish, trim, packing, type, or quantity of such paper heretofore fixed, as found in this proceeding; or fixing, establishing, or maintaining any differentials in price for any variations in color, weight, size, finish, trim, packing, type, or quantity of book paper.

4. Using in the quotation and sale of book paper the geographical zones, or the price differentials between such zones heretofore fixed for pricing purposes, as found in this proceeding; or fixing, establishing, or maintaining any geographical areas for pricing purposes, or any differentials in price between any such areas for use in quoting and selling book papers.

5. Preparing, distributing, or using any uniform or standard form of contract in the sale of book paper, which contract contains provisions in aid or support of any of the things prohibited in other paragraphs of this order.

It is further ordered, For the reasons appearing in the findings as to the facts in this proceeding, that the complaint herein be, and the same hereby

Order

40 F. T. C.

is, dismissed as to respondent, Miamisburg Paper Company; and that this proceeding be, and the same hereby is, closed as to respondent, Stecher-Traung Lithograph Corporation, respondent, Miami Valley Coated Paper Company, and respondent, R. S. Berry, without prejudice to the right of the Commission to institute further proceedings should facts so warrant.

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.

ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

AMERICAN DRUG CORP. Complaint, April 24, 1934. Original order, November 21, 1934. 19 F. T. C. 436. (Docket 2170.) Order vacating and setting aside, etc., January 17, 1945.

Charge: Advertising falsely or misleadingly as to qualities, properties or results of product; in connection with the manufacture and sale of a medicinal preparation designated "Sinasiptec."

Order vacating and setting aside order to cease and desist and dismissing complaint without prejudice, follows:

Whereas, Richard P. Whiteley, Assistant Chief Counsel of the Commission, by motion filed November 27, 1944, moved that the order to cease and desist, issued in this proceeding on November 21, 1934, be set aside and that the complaint herein be dismissed without prejudice to the right of the Commission to institute further proceedings in the matter; and

Whereas, on November 29, 1944, the Commission issued its order to show cause and thereafter caused the same to be served upon respondent, together with a copy of said motion, and fixed a time and place for hearing; and

Whereas, on January 1, 1945, respondent filed its return to said order to show cause, and thereafter, on January 4, 1945, oral argument was heard in support of and in opposition to said motion; and

Whereas, the Commission having considered the matter and being now fully advised in the premises:

It is ordered, That the order to cease and desist issued in this proceeding on November 21, 1934, be, and the same hereby is, vacated and set aside, and the complaint in said proceeding be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings.

Before *Mr. E. M. Averill*, trial examiner.

Mr. John W. Hildrop for the Commission.

Fordyce, White, Mayne & Williams and *Polk, Fahey & Switzer*, of St. Louis, Mo., for respondent.

B-1 BEVERAGE CO. Complaint, October 5, 1944. Order, January 23, 1945. (Docket 5230.)

Charge: Using misleading corporate and trade or brand name, and advertising falsely or misleadingly and misbranding or mislabeling as to qualities, properties or results and composition; in connection with the manufacture and sale of materials for bottling plants and beverages made therefrom, sold to the public in the form of a lemon-lime soft drink and lemon-lime soda and designated and referred to as "B-1."

Order closing case without prejudice, follows:

This matter coming on for consideration by the Commission, and it appearing that the respondent has submitted a satisfactory stipulation as to the facts and agreement to cease and desist from the unfair methods, acts and practices charged in the complaint, in accordance with respondent's motion for permission to enter into such stipulation and agreement and the Commission's order of January 12, 1945; 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.

Mr. John York for the Commission.

Green, Henry & Evans, of St. Louis, Mo., for respondent.

THE OSKAMP NOLTING Co. Complaint, November 28, 1941. Order, January 25, 1945. (Docket 4648.)

Charge: Advertising falsely or misleadingly as to retailer being wholesalers and wholesale distributors and as to "list" and "catalog" prices; in connection with the sale of jewelry, silverware, luggage, giftware, and other merchandise of like character.

Order dismissing complaint without prejudice, follows:

This matter coming on for consideration by the Commission upon the motion of the respondent for dismissal of the complaint issued herein, 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 Jewelry and Giftware Industry on December 23, 1943, and has furnished satisfactory evidence of such intention in the form of its latest catalog, and the Commission having duly considered said motion and the record herein, and being fully advised in the premises.

It is ordered, That the complaint herein issued on November 28, 1941, be, and the same hereby is, dismissed, without prejudice to the right of the Commission to institute further proceedings in the matter.

Mr. W. M. King for the Commission.

Cravath, Swaine & Moore, of Washington, D. C., for respondent.

DEUTSCH & MARKS, INC. Complaint, November 25, 1941. Order, February 10, 1945. (Docket 4644.)

Charge: Advertising falsely or misleadingly as to dealer being "manufacturers' distributors" and "wholesale jewelers" and as to "list" and "catalog" prices; in connection with the sale of jewelry, silver-ware, luggage, giftware and other merchandise of like character.

Order dismissing complaint without prejudice, follows:

This matter coming on for consideration by the Commission upon the motion of respondent for dismissal of the complaint issued herein, 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 Jewelry and Giftware Industry on December 23, 1943, and has furnished satisfactory evidence of such intention, and the Commission having duly considered said motion, and the record herein, and being fully advised in the premises.

It is ordered, That the complaint herein issued on November 25, 1941, be, and the same hereby is, dismissed, without prejudice to the right of the Commission to institute further proceedings in the matter.

Mr. W. M. King for the Commission.

Smith, Ristig & Smith, of Washington, D. C., for respondent.

MAX L. KIZELSTEIN AND LEON SHERMAN TRADING AS KAY-SHERMAN LUGGAGE Co. Complaint, July 16, 1943. Order, February 17, 1945. (Docket 5008.)

Charge: Advertising falsely or misleadingly as to retailers being wholesalers and misbranding or mislabeling as to pretended retail prices; in connection with the sale of golf bags, hand bags, suitcases, brief cases, trunks and other articles of luggage.

Order closing case without prejudice, follows:

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 brief in support of the complaint, and the Commission having duly considered the same, and being now fully advised in the premises.

It is ordered, That the case growing out of the complaint 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. Clark Nichols* for the Commission.

Mr. Jesse Perlmutter, of New York City, for respondents.

WILLIAM REINHARD, CARL REINHARD AND ROBERT REINHARD TRADING AS ECONOMY MONUMENT CO., AND NELSON FRIIS. Complaint, February 9, 1945. Order, February 17, 1945. (Docket 5275.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results and comparative merits; in connection with the manufacture and sale of imitation granite monuments designated "Granidur."

Order closing case without prejudice, follows:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondents have entered into a stipulation as to the facts and an agreement to cease and desist from certain enumerated practices, which stipulation and agreement was, on February 12, 1945, approved by the Commission,¹ and the Commission having duly considered the matter, and being now fully advised in the premises.

It is ordered, That the case growing out of the complaint herein issued February 9, 1945, be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant to reopen the same and resume proceedings therein in accordance with its regular procedure.

Mr. B. G. Wilson for the Commission.

ROEBLING LUGGAGE CORP. Complaint, June 9, 1942. Order, March 1, 1945. (Docket 4771.)

Charge: Advertising falsely or misleadingly as to dealer being wholesaler and manufacturer and as to "list" or "catalog" prices, misbranding or mislabeling as to pretended retail prices, and misrepresenting directly or orally with respect thereto; in connection with the sale of trunks, luggage, leather goods, sporting goods, novelties and kindred articles.

Order dismissing complaint without prejudice, follows:

This matter coming on for consideration by the Commission upon the motion of respondent for dismissal of the complaint issued herein, 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 Jewelry and Giftware Industry on December 23, 1943, and has furnished satisfactory evidence of such intention, and the Commission having duly considered said motion, and the record herein, and being fully advised in the premises.

It is ordered, That the complaint herein issued on June 9, 1942, be, and the same hereby is, dismissed, without prejudice to the right of the Commission to institute further proceedings in the matter.

Mr. W. M. King for the Commission.

¹ See stipulation 3983 at p. 782 of this volume.

Fennelly, Lowenstein, Engelhart & Pitcher, of New York City, for respondent.

BISSELL CARPET SWEEPER Co. Complaint, November 14, 1941. Order, March 6, 1945. (Docket 4636.)

Charge: Discriminating in price by selling its carpet sweepers to different classes of customers¹ at varying discounts; in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, after further consideration of the competitive effect of respondent's quantity discount schedule of prices and respondent's justification therefor on the basis of different service costs for the different classes of purchasers paying the different prices, 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 is hereby closed without prejudice to the right of the Commission to reopen the same and resume trial thereof in accordance with its regular procedure.

Mr. Frank Hier for the Commission.

Mr. Isaac W. Digges, of New York City, for respondent.

CLUB RAZOR & BLADE MANUFACTURING CORP. Complaint, August 25, 1942. Order, March 24, 1945. (Docket 4820.)

Charge: Advertising falsely or misleadingly as to product being made in accordance with the specifications of, and tested, approved and recommended by physicians and surgeons, and misbranding or mislabeling as to prices by exaggerated fictitious price markings; in connection with the manufacture and sale of respondent's "Hospital Brand" safety razor blades.

Order dismissing complaint without prejudice, follows:

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 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 without prejudice to the right of the Commission to institute further proceedings should the facts so warrant.

Before *Mr. Clyde M. Hadley*, *Mr. Randolph Preston* and *Mr. John L. Hornor*, trial examiners.

Mr. B. G. Wilson for the Commission.

Mr. Samuel J. Ernstoff, of New York City, for respondent.

S. H. KRESS & CO., VITA-VAR CORP., BEAUTYKOTE CORP., C. J. ROBISON, T. H. GIBSON AND E. G. ROBISON. Complaint, July 20, 1944. Order, March 28, 1945. (Docket 5193.)

Charge: Misbranding or mislabeling as to quantity content; in connection with the manufacture and sale of "Dart" shellac.

¹ Including jobbers sold under minimum resale price agreements, where lawful under the Fair Trade Laws.

Order dismissing complaint without prejudice, follows:

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 complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should the facts so warrant.

Before *Mr. Randolph Preston*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. S. Michael Ress, of New York City, for respondents.

HENRY MILLINERY IMPORT CORP. Complaint, March 2, 1944. Order, April 2, 1945. (Docket 5134.)

Charge: Neglecting, unfairly or deceptively, to make material disclosure through stamping, marking, or labeling as to old and used material, and thereby furnishing means and instrumentalities of misrepresentation and deception; in connection with the sale of old and used ladies hats to manufacturers and dealers for manufacture into new appearing product.

Order closing case without prejudice, follows:

This matter coming on to be heard by the Commission upon the record and it appearing that the respondent Henry Millinery Import Corporation was legally dissolved on December 30, 1943, 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 to reopen the same and resume trial thereof in accordance with regular procedure.

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

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

Mr. W. Chester Bottome, of New York City, for respondent.

C. ERNEST INGHAM AND HAROLD LOUIS INGHAM TRADING AS INGHAM AND CO. Complaint, September 30, 1941. Order, April 5, 1945. (Docket 4603.)

Charge: Advertising falsely or misleadingly as to dealers being "Manufacturing Wholesalers", and as to prices being "list" or wholesale; in connection with the sale of luggage and other leather goods.

Order dismissing complaint without prejudice, follows:

This matter coming on for consideration by the Commission upon the motion of respondents for dismissal of the complaint issued herein, and it appearing to the Commission that the respondents have expressed their intention, in writing, to be bound by the Trade Practice Conference Rules promulgated for the Catalog Jewelry and Giftware Industry on December 23, 1943, and have furnished satisfactory evidence of such intention, and the Commission having duly considered said motion, and the record herein, and being fully advised in the premises.

It is ordered, That the complaint herein issued on September 30, 1941, be, and the same hereby is, dismissed, without prejudice to the right of the Commission to institute further proceedings in the matter.

Mr. W. M. King for the Commission.

Mr. Meyer Rubin, of Boston, Mass., for respondents.

STANLEY SIKOPARIJA AND SOPHIA STRBOYA SIKOPARIJA TRADING AS STANLEY'S DRUG STORE. Complaint, September 25, 1940. Order, May 1, 1945. (Docket 4323.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results of products; in connection with the sale of various medicinal preparations.

Order closing case without prejudice, follows:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter, and being 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 same and resume trial thereof in accordance with its regular procedure.

Before *Mr. Arthur F. Thomas* and *Mr. John W. Addison*, trial examiners.

Mr. William L. Pencke for the Commission.

LOGAN'S, INC., ALSO TRADING AS LOGAN-ROGERS. Complaint, January 22, 1943. Order, May 2, 1945. (Docket 4892.)

Charge: Removing and mutilating stamps, tags, labels or other means of identification affixed to ladies' coats, suits, dresses and other wearing apparel pursuant to the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and participating in so doing; in violation thereof and of the Federal Trade Commission Act.

Order dismissing complaint, follows:

This matter coming on to be heard by the Commission upon the record, and it appearing that the above-named corporation was dissolved during the year 1942, and that a new complaint was issued against the former officers and owners of said corporation covering the allegations charged in the complaint against said corporation and that an order to cease and desist against said individuals has since issued and reports of compliance with said order have been filed, 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.

Mr. DeWitt T. Puckett and *Mr. G. M. Martin* for the Commission.

Gardner & Moseson, of Elmira, N. Y., for respondent.

INSTITUTE OF MENTALPHYSICS AND EDWIN J. DINGLE. Complaint, September 23, 1938. Order, May 7, 1945. (Docket 3605.)

Charge: Advertising falsely or misleadingly as to business status, and qualities, properties or results, unique nature and history of product, and scientific or relevant facts; in connection with the sale of home study courses of instruction, relating to matters concerning health, success and well-being, under the trade name "Mentalphysics."

Order dismissing complaint without prejudice, follows:

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 complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings in the matter.¹

¹ It appears from the evidence that the representations challenged in the Commission's complaint relate to the teachings and doctrines of the Church of the Holy Trinity, located at Los Angeles, California. The respondents relied upon the defense that the subject matter falls within the principle announced by the Supreme Court in *U. S. v. Ballard*, 322 U. S. 882, and that consequently the representations are not within the Commission's jurisdiction.

Before *Mr. John J. Keenan, Mr. W. W. Sheppard* and *Mr. C. T. Sadler*, trial examiners.

Mr. John M. Russell for the Commission.

Rosen, Francis & Cleveland, of Chicago, Ill., for respondents.

JOHN M. O'LANE, B. M. O'LANE AND EDITH P. CORTELL DOING BUSINESS AS UNIVERSAL FINGERPRINT SYSTEMS, LTD. Complaint, July 28, 1942. Order, May 31, 1945. (Docket 4788.)

Charge: Advertising falsely or misleadingly as to business status and advantages, scientific or relevant facts, indorsements and opportunities; in connection with the sale of courses of study and instruction in fingerprinting and other subjects connected with crime detection.

Order dismissing complaint without prejudice, follows:

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission, answer 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 evidence, and briefs filed in support of the complaint and in opposition thereto; and the Commission having duly considered the matter and being now fully advised in the premises.

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 the facts so warrant.

Before *Mr. James A. Purcell* and *Mr. John A. Soule*, trial examiners.

Mr. William L. Pencke for the Commission.

Mr. Lewie Williams and *Mr. Frederick R. Burch*, of Seattle, Wash., for respondents.

ROOFER MANUFACTURERS ASS'N, INC., ET AL. Complaint, February 1, 1944. Order, June 16, 1945. (Docket 5124.)

Charge: Concertly grade marking, branding, passing and selling as "R. M. A. No. 2 Com.," or as No. 2 Common, grade marked and branded in accordance with the known and accepted American Lumber Standard rules, scant sawn "roofers," that is, boards and planks which when cut and dressed measure in thickness 24/32", 23/32" and less, or below the minimum dimensions, 25/32", provided for 1" common lumber by the American Lumber Standards, adopted and observed by the American Lumber Industry.

Dismissed, after answers and trial, by the following order:

This matter coming on to be heard by the Commission upon the motions of the respondents to dismiss the complaint herein, and the Commission having duly considered said motions and the record herein and being now fully advised in the premises.

It is ordered, That said motions be, and they hereby are, granted, and that the complaint herein be, and it hereby is, dismissed.

Before *Mr. Andrew B. Dwall*, trial examiner.

Mr. Reuben J. Martin for the Commission.

Swift, Pease, Davidson, Swinson & Chapman, of Columbus, Ga., for Roofer Manufacturers Ass'n, Inc., and various officers, directors and members of said association.

Levy, Fenster & McCloskey, of Newark, N. J., for Comfort Coal & Lumber Co., New York Sash & Door Co., Inc., Kramer Lumber & Supply Co., Dillistin Lumber Co., Tuttle Brothers, Inc., Ideal Lumber & Supply

Co. and New Jersey Lumbermen's Ass'n, Inc., and various officers, trustees and members of said association.

Mr. Frank Twitty, of Camilla, Ga., for Tyson Lumber Co.

Wheeler, Robinson & Thurmond, of Gainesville, Ga., for Mose Gordon Lumber Co.

Mr. Simon L. Fisch, of Newark, N. J., for Solondz Brothers, Inc.

Kelly, Hewitt & Harte, of New York City, for Knauth Halligan & McLellan, Inc., Brister & Koester Lumber Corp., Frost & Davis Lumber Co. and McLellan & Knoblock, Inc.

Mr. Myron Buller, of New York City, for H. J. Butler Bros., Inc.

Mr. Donald R. Meredith, of New York City, for D. R. Meredith Lumber Co., Inc.

BETHLEHEM STEEL CORP. ET AL. Complaint, January 26, 1923. Original closing order, May 5, 1939. 28 F. T. C. 1732. (Docket 962.) Order closing and dismissing case, June 19, 1945.

Charge: Entering into agreements to combine, consolidate, and unite numerous and extensive properties, businesses, and interests into a common enterprise, involving acquisition of assets, businesses, and capital stocks, and including physical properties and assets; with resulting substantial lessening, if not complete elimination of potential and actual competition theretofore existing, contrary to public policy expressed in section 7 of Clayton Act and in violation of section 5 of Federal Trade Commission Act, and with dangerous tendency unduly to hinder competition in iron and steel industry in northeastern section of United States, as in complaint specified, through union of respondents, as alleged in complaint, and in unreasonable restriction of competition amounting to restraint of trade; contrary to public policy expressed in sections 1 and 3 of Sherman Antitrust Act, and in violation, as aforesaid, of section 5, through control and dominant influence brought about through challenged combination.

Order closing and dismissing case, follows:

Whereas after complaint herein was issued challenging the acquisition of certain physical assets of respondents under Section 5 of the Federal Trade Commission Act, the Supreme Court of the United States decided in the case of *Eastman Kodak Company v. Federal Trade Commission*, 274 U. S. 619 (1927) that the Commission had no power under Section 5 of said Act to order the divestiture of physical assets, even if they had been acquired as part of a plan involving unfair methods of competition, and

Whereas on May 5, 1939, the Commission entered an order herein directing that the case be closed and the Commission being informed that said order was not served upon the parties and being now fully advised in the premises.

It is therefore now ordered, That the order of May 5, 1939 be reaffirmed and that the case growing out of the complaint herein be, and the same hereby is, closed and dismissed.

Mr. Edward L. Smith for the Commission.¹

Cravath, DeGersdorff, Swaine & Wood, of New York City, for Bethlehem Steel Corp., Bethlehem Steel Co., and Bethlehem Steel Bridge Corp.

Chadbourne, Babbitt & Wallace, of New York City, for Midvale Steel & Ordnance Co. and Cambria Steel Co.

¹ Mr. Baldwin B. Bane (with whom was also associated the late Mr. E. C. Alvord, both of Washington, D. C., neither recent members of the Commission staff) was in active charge of the presentation of the testimony and evidence in support of the complaint in this proceeding.

STIPULATIONS¹

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST²

2921.³ **Cosmetic Preparations—Nature of Manufacture, Qualities, Properties or Results, Competitive Products, Safety, Etc.**—The Commission directed that Stipulation 2921, entered into by the respondent named below, be amended by striking therefrom inhibition (c) that appeared thereon, so that the stipulation now reads as follows:

Physicians Formula Cosmetics, Inc., a California corporation, engaged in the sale and distribution of cosmetics 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.

Physicians Formula Cosmetics, Inc., in connection with the sale and distribution of its cosmetic preparations in interstate commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from:

(a) The use of the letters "Rx" or other letters, signs or symbols which cause or have or may have the capacity to cause the impression or belief that its cosmetic or toilet goods are in fact medicinal preparations or that each parcel is individually compounded in accordance with a specific prescription therefor.

(b) Stating that its advertising has been accepted by the Los Angeles County Medical Association when such advertising is not currently so accepted.

(c) Unqualifiedly representing that its preparations are "non-allergic," "safe" or "effective beauty aids" for the skin, or that they may be depended upon to prevent allergic irritations or maintain healthy skin.

(d) Stating that "cholesterin" or any other ingredient in its cosmetic preparations "restores" or "replaces" or has the capacity to restore or replace natural oils in the skin or that it effectively combats or prevents crowsfeet, wrinkles or dry skin by means of oils applied to the skin or in any other manner whatsoever.

(e) Representing that the ingredients in its products penetrate the skin

¹ For false and misleading advertising stipulations effected through the Commission's radio and periodical division, see p. 821 et seq.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely January 1, 1945, to June 30, 1945, inclusive. Digests of previous stipulations of this character accepted by the Commission may be found in vols. 10 to 39 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 Amended. See 31 F. T. C. 1671.

deeply or effectively; or that its "Cleansing Cream" removes "every particle" of make-up, grime and dirt from the skin or the pores thereof.

(f) Statements to the effect that cosmetic preparations containing mineral oil forms a film which seals in the dirt, causing blackheads, whitehead and enlarged pores; or other statements which constitute unwarranted disparagement of competitive products.

(g) Representing that "Physicians Formula Deodorant is an absolute necessity," or "unqualifiedly that Modern women's skins require stimulation."

(h) Representations which import or imply that its product designated "Facial Masque" or its product heretofore designated "Tissue Cream" can be depended or relied upon to clear up blackheads, whiteheads or enlarged pores, or keep the skin youthful or free from lines.

(i) Denominating, describing or referring to any cosmetic product as a "Tissue Cream," or otherwise by statement of inference representing that such preparation externally applied has of itself any beneficial effect upon the tissues or cell-structure of the skin.

(j) Statements such as "Mothers who are interested in the health of their adolescent daughters should insist that they use only Physicians Formula Cosmetics" or similar presentations having the capacity or tendency to convey the impression or belief that competitive cosmetic preparations contain ingredients injurious to the health or that only preparations offered for sale and sold by it may be safely used by adolescents. (June 4, 1945.)

3705.¹ **Furs or Fur Products—Nature.**—Morris Schwartz Fur Corporation, a New York corporation with its place of business at New York, N. Y., engaged in the sale and distribution of furs or peltries in interstate commerce, in competition with corporations, firms and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Morris Schwartz Fur Corporation, in connection with the sale and distribution of its furs or peltries or any fur products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. The use of the terms "Norm. Sealines," "Hudseal Sealine," "Sealines," "IHudseal" or any other fictitious animal designation or coined fur-connoting term as a designation for, as descriptive of or in connection with said products.

2. Using any animal or purported animal name or designation for fur which is not the true name of the animal producing the fur; Provided, that if the fur is so dyed as to simulate another fur, the fact that said fur is dyed shall be set forth as an integral part of its designation, and if the name of the animal whose fur is so simulated be given, such name shall be immediately followed by and compounded with the word "dyed" together with the true name of the animal producing the fur as the last word of the description—all words of the designation to be in like type and equally conspicuous.

3. Using the word "Persian," either alone or in connection or combination with any other word or words, to designate or describe furs or fur products made of peltries other than those of true or pure breed Persian lamb; or using the words "Crossbreed Persian," or terms of like import, to describe peltries of crossbred lambs having less than 50 percent pure Persian blood. (Apr. 19, 1945.)

¹ Supplemental. See also 37 F.T.C. 701.

3734.¹ **Monolithic Floor Surfacing—Qualities, Properties or Results.**—The Commission directed that Stipulation 3734, entered into by the respondent named below, be amended by striking therefrom inhibition (c) that appeared thereon and substituting the following, so that the stipulation now reads as follows:

H. H. Robertson Co., engaged in the manufacture of building products, including a monolithic floor surfacing designated "Robertson Hubbellite," and in the sale and distribution thereof in interstate commerce, in competition with corporations, firms and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

H. H. Robertson Co., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from representing directly or inferentially that "Robertson Hubbellite," or any product of similar composition:

(a) Is inherently sanigenic or provides self-sanitizing floor surfaces without regard to conditions of use; is continuously self-disinfecting, continuously disinfects the surface, or insures continuous regenerative sanitizing efficiency.

(b) Has the ability, under conditions of ordinary use, to destroy microorganisms generally; or otherwise, may be relied upon or depended upon to prevent the spread of disease.

(c) That the organism causing the condition known as athlete's foot cannot survive contact with said material; or otherwise, by statement or by inference, that it will kill said organism, or under usual conditions will prevent the spread of skin infections or of athlete's foot. (Feb. 15, 1945.)

3755.² **Jewelry—Composition, Value, Free, and Savings.**—The Commission directed that Stipulation 3755, entered into by the respondent named below, be amended by striking therefrom inhibitions (a) and (b) that appeared thereon and substituting the following, so that the stipulation now reads as follows:

Joseph Perel and William P. Lowenstein, copartners trading under the firm name of Perel & Lowenstein with places of business in the cities of Memphis and Jackson, State of Tennessee, engaged in the sale and distribution of jewelry and associated commodities in interstate commerce, in competition with firms, individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Joseph Perel and William P. Lowenstein, and each of them, agreed that, in connection with the offering for sale, sale and distribution of their merchandise in commerce as defined by the Federal Trade Commission Act, they will forthwith cease and desist from:

(a) The use, in any of their advertising, brands or labels, of the words "natural yellow gold," "yellow or rose gold," "gold" or similar terms as descriptive of or as designation for watch cases or other articles not made throughout of gold. If such article is substantially plated or filled with an alloy containing gold and the word "gold" be used in any description or branding of said plating or filling, then such word "gold" shall, whenever used, be immediately preceded by an appropriate quality mark or designation clearly indicating its karat fineness, and shall be immediately followed by the word "plated" or the word "filled," as the case may be—all in like lettering of equal size. Provided also, that if the covering of an article is

¹ Amended. See 37 F.T.C. 722.

² Amended. See 37 F.T.C. 736.

not of such substantial thickness as properly to be described as gold plate or gold filled, but the article is merely flashed or colored with gold, then in such case the word "gold," if used, shall be immediately followed in like lettering of equal size by the word "flashed" or the word "colored"—thus, "gold flashed" or "gold colored."

(b) Designating or referring to rings or other merchandise of less than, 24 Karat fineness as "solid gold," "solid natural gold" or "solid yellow or white gold"; or by any words or expressions of like implication, representing that such an article is composed throughout of 24 Karat gold. If the word "gold" be used in any advertising description or branding of an alloy containing gold, then in immediate connection therewith the karat fineness throughout of such alloy shall be indicated by a proper quality mark or designation—all in like lettering of equal size.

(c) Describing or referring to their premium dolls of the type advertised, as a "\$7.50 doll"; or by similar words or terms, representing that such dolls are equal in value or quality to those ordinarily sold in the retail trade for \$7.50 or have any worth in excess of their real market value; or in any other way, misrepresenting the value or quality of premium goods offered in connection with the sale of their merchandise.

(d) Use of the words "free," "gift" or terms of like import to describe merchandise when such merchandise is not given free or as a gratuity but the recipient is required, as a consideration, either to pay in whole or in part the price thereof, to purchase some other article or articles, or to render some service in order to obtain the same.

(e) Representing that purchasers of their diamonds always save 25% to 40%, save 25% and 40%, or make any savings which are in excess of the average savings heretofore consistently made by all such customers in the usual and normal course of their dealings with said firm; or that their customers make any such savings because said firm buys from diamond importers or make any savings whatsoever on secondhand diamonds which have in fact been reset and sold to them at the prices of new stones.

(f) By the use of such words as "up to," "as much as," or other words or terms of like import, representing that prospective customers can make savings of any percentage, proportion or ratio in excess of the average savings made by a substantial number of the firm's customers in the ordinary or usual course of business and under normal conditions and circumstances. (Apr. 19, 1945.)

3772.¹ Athletic Trainers' Supplies and First Aid Preparations—Success, Use or Standing, and Qualities, Properties or Results.—The Commission directed that Stipulation 3772, entered into by the respondent named below, be amended by striking therefrom inhibition (k) that appeared thereon so that the stipulation now reads as follows:

Cramer Chemical Co., engaged in the sale and distribution of athletic trainers' supplies and first aid preparations in interstate commerce, in competition with corporations, firms and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Cramer Chemical Co., in connection with the offering for sale, sale and distribution of its various preparations in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from representing directly or inferentially:

(a) That the product sold as Nitrotan is the best known or the most universally used germicide in the United States, gives complete sterilization in 90 seconds or affords complete sterilization at all, checks or stops bleeding

¹ Amended. See 37 F.T.C. 748.

other than the capillary bleeding from superficial skin lesions, seals nerve ends, treats lymphatics, dehydrates destroyed tissue, promotes growth of new tissue, draws the torn, jagged edges of a wound together, stops sore throat, serves as a quick or dependable preventative thereof or assists in the prevention of influenza; or that the use of such product may be relied upon to give quick and safe recovery from all such conditions or any of them.

(b) That Cramer's Athletic Stringent for Gargle would be effective in the checking or prevention of influenza, tonsilitis or like afflictions.

(c) That Cramer's Athletic Liniment has special penetrating powers, or by inference or suggestion that it penetrates into muscular or other tissues to any significant degree.

(d) That Cramer's Dextrose Tablets will produce quick energy in the sense of capacity for more intense physical exertion; will stimulate an athlete to greater performance; gives added zip to basketball players; enables athletes to win more games; may be relied upon to afford immediate relief from hay fever or asthma, or would have any value whatsoever in the prevention or treatment thereof.

(e) That Cramer's Athletic Hair Oil prevents or serves to prevent "shower bath baldness" or any other kind of baldness.

(f) That Iso-Pine, or any product of like composition, is a suitable or effective preparation for use in sterilizing surgical instruments.

(g) That Cramer's Athletic Effervescent Alkaline Powder, or any compound of like ingredients, relieves acid condition of the system; or by similar statement or implication, representing that it will have any significant influence on the acid-base balance of the body.

(h) That its Athletic Ointment is a "healing" ointment, promotes rapid healing, has any therapeutic effect on boils; or otherwise, that it performs any function in the healing process.

(i) That its Athletic Red Hot Ointment relieves deep-seated pain or constitutes a competent treatment for or affords adequate relief from sprains.

(j) That its Athletic Analgesic Balm, applied as indicated, relieves congestion.

(k) That its Athletic Inhalant, used in the nose, affords an adequate treatment or an effective relief of sinus trouble, is efficacious in the prevention of colds, forms a protective coating against bacteria; or that it could give more than temporary relief to nose and throat irritations of a minor nature.

(l) That its Cold Tablets assist or have any appreciable effect in the prevention of common colds.

(m) That Cramer's Athletic Alkaline Powder relieves nausea and stomach sickness without regard to the nature or cause thereof. Cramer Chemical Company also agrees to cease and desist from:

(n) The use of the word "Antiseptic" as part of the trade name, brand or designation of its product heretofore sold as Cramer's Athletic Antiseptic Powder, or indicating in any way that said preparation, or one of like composition, has antiseptic properties under such conditions of use. (June 13, 1945.)

3821.¹ Chicks—Government R.O.P., Contests, Quality, Unique, Comparative Merits, Etc.—The Commission directed that Stipulation 3821, entered into by the respondent named below, be amended by striking therefrom inhibitions (j) and (m) that appeared thereon and substituting the following, so that the stipulation now reads as follows:

¹ Amended. See 38 F.T.C. 775.

Dixie Poultry Farm & Hatchery is a Texas corporation, with principal place of business in Brenham, Texas; Heber H. Drumm, also of Brenham, Texas, 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 presentation 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 pedigreeing 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) Assertion that bacillary white diarrhea can be carried from infected to noninfected 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.

(k) 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. (Apr. 4, 1945.)

3958. Liquid Shampoo—Unique, Comparative Merits and Qualities, Properties or Results.—Dr. Krauter's Laboratories, Inc., a New Jersey corporation, with place of business at Newark, N. J., engaged in the manufacture of a liquid shampoo, by the brand name "Kroilon," 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.

Dr. Krauter's Laboratories, Inc., in connection with the sale and distribution of its shampoo "Kroilon" or other 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, agreed that it will forthwith cease and desist from representing directly or inferentially:

(a) That the preparation referred to as "Kroilon" is not just another shampoo; is not an ordinary soap shampoo, or is sensationally or substantially different from various other liquid shampoos on the market.

(b) That it works on the same principle as, or is otherwise comparable with, the action of a fine cleansing cream on the face.

(c) That it will not injure or irritate the most sensitive skin, or can be used by persons allergic to soap and soap lotions.

(d) That it cleanses the skin pores, or any part thereof below the external openings. (Jan. 4, 1945.)

3959. **Watch Straps—Composition, Nature and Prices.**—B. Jadow, Inc., a New York corporation, with place of business at New York, N. Y., engaged in the manufacture of watch straps 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.

B. Jadow, Inc., agreed that, in connection with the offering for sale, sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, it will forthwith cease and desist from:

(a) The use of the word "genuine" or other term or expression of like import, in any way as descriptive of split leather, or of an article composed in whole or in part of split leather;

(b) Labeling, branding or otherwise designating or describing an article as being made of a certain kind or type of leather when it is in fact composed in whole or in part of a different kind or type; or representing directly or by implication, as by brandings such as "Reptile," "Shark" or "Watermark Seal," that such product is from the hide or skin of a certain designated animal when in fact any part thereof is from a different animal or material. Where an article containing the specified leather is backed by split leather or different leather glued or laminated to the outer leather, the stamp, tag or label shall disclose that such leather is backed with split leather of a certain kind or other named leather, as the case may be.

(c) The use of fictitious price tags or labels indicating that its wrist watch straps sell or are intended to be sold for \$1.25, \$1.50, \$1.75 and \$2.00; or in any other way, directly or by implication, representing that its various types of straps or other articles of merchandise have regular values and customarily sell for sums in excess of the prices actually charged therefor. (Jan. 4, 1945.)

3960. **Dresses—Composition.**—Sam Rothbart, an individual trading as Juliette Frocks and whose principal place of business is at Chicago, Ill., engaged in the sale and distribution of rayon and rayon acetate dresses 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.

Sam Rothbart agreed that he will cease and desist forthwith from selling, offering for sale, distributing, advertising, describing, branding, labeling or otherwise representing merchandise, which is made from or contains rayon, without disclosure of the fact that such merchandise is rayon, in whole or in part as the case may be, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales promotional descriptions or representations thereof, however disseminated or published. (Jan. 4, 1945.)

3961. **Metal-Weld—Qualities, Properties or Results.**—R. M. Hollingshead Corporation, a New Jersey corporation with place of business at Camden, N. J., engaged in the sale and distribution of a product designated "Metal-Weld" 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.

R. M. Hollingshead Corporation, in connection with the sale and distribution in commerce, as defined by the Federal Trade Commission Act, of the product heretofore designated as "Metal-Weld" or any other product of substantially the same composition or possessing substantially the same properties, agreed that it will forthwith cease and desist from:

1. The use of the words "Metal-Weld" or the word "Weld" as a trade name or designation for said product or as descriptive thereof, and from the use of the word "weld" or other word or words of like meaning in any manner that connotes that said product will effect a weld, or fusion, of metal parts.

2. Representing, directly or inferentially—that said product welds cracked valve parts, cracked engine blocks, cracked and porous cylinder heads, aluminum alloys, cast iron, steel, or any other metal or metal parts; that it is a welding agent or that welding may be effected by the use thereof; or that it fuses with or becomes a part of adjoining metal.

3. Representing, directly or inferentially, that said product "permanently repairs" metal parts or that any repair effected through or by the use thereof is permanent or is of a degree of endurance comparable to that of a weld. (Jan. 4, 1945.)

3962. Pharmaceutical Products—Qualities, Properties or Results, Success and Composition.—Abel J. Kaskey, Jacob Kaskey, Pauline Kaskey and Richard Kaskey, copartners trading as Hance Bros. & White Co., with place of business at Philadelphia, Pa., engaged in the sale and distribution of pharmaceutical products, including calcium pantothenate tablets, also B complex tablets designated "Omni-B Plus" 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.

Abel J. Kaskey, Jacob Kaskey, Pauline Kaskey and Richard Kaskey, whether trading under their own names, as Hance Bros. & White Co., or under any other trade name or style, in connection with the sale and distribution of their pharmaceutical products in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means and in the manner above set forth, agreed that they and each of them will forthwith cease and desist from representing, directly or inferentially:

1. That calcium pantothenate is effective in restoring the original color to hair which has become gray or is effective in preventing hair from becoming gray.

2. That experiments or tests have demonstrated that the normal, or original, color of hair was restored to 22 out of 25 persons, or to any number of persons, as a result of taking calcium pantothenate.

3. That two "Omni-B Plus" tablets contain the daily adult pharmacopoeia dose of vitamin B-1 (Thiamin Chloride). (Jan. 4, 1945.)

3963. Furs or Fur Garments—Nature.—Charles Anzman and Samuel Anzman, copartners doing business under the firm name of Chas. Anzman & Son, with place of business at New York, N. Y., engaged in the manufacture of ladies' fur coats and in the sale and distribution in interstate commerce, in competition with firms, individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Charles Anzman and Samuel Anzman, 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 the use of the term "Civet Cat" or the word "Civet," or words or terms of like meaning, either alone or in connection or combination with any other word or words, to designate or describe furs or fur garments made of the peltries of the little spotted skunk or the little striped skunk, or of any peltries other than civet peltries. (Jan. 4, 1945.)

3964. Hosiery—Quality, Saving, Composition, Limited Offer, Refund, Manufacturer, Etc.—Spurgeon Pickering, sole trader, operating as The

Peabody Co., also as Mendenhall Manufacturing Co., with places of business located at various times in Mendenhall, Miss.; Miami, Fla., and Biloxi, Miss., engaged in the mail order sale and distribution of women's stockings 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.

Spurgeon Pickering, whether operating under his own name, as The Peabody Co., or by any other trade designation, 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) Describing or referring to merchandise of the types heretofore sold by him, or of like grade or quality, as America's finest or the finest full-fashioned hose; as some of America's finest stockings fashioned to fit snugly to your ankle; as exceptional, attractive, hard-to-find or fine quality hose; as lovely, simply beautiful, beautiful, serviceable, ankle-flattering or shimmering hose; as hosiery suitable for Christmas presents to women friends, hosiery which every friend would admire, or the kind of hosiery every woman loves.

(b) Representing any such offer of hosiery-mill throw-aways, or materials of like nature, as an astounding, revolutionary or remarkably low-priced hosiery offer, affording the buyer an opportunity to save real money; or that said merchandise consists of what are known to industry and the trade as "irregulars," "seconds" or "thirds"; and from designating as hosiery, any article so damaged or defective as to render the same incapable of repair for suitable use as hose.

(c) Representing that the merchandise sold by him is "selected stock" of attractive rayon, or includes any pure thread silk or nylon hose; or that there is or ever has been a "regular stock of Peabody hose."

(d) Indicating, as by statement "some of the hose may require mending," or by other connotation, that any of said stockings whatsoever are or may be fit for wear without mending.

(e) Inviting purchasers to specify weight, shades, colors and sizes, with implication that such specifications will be observed in preparing the shipment.

(f) Designating as "limited," either in time or supply, any offer which is repeatedly and regularly made over an extended period of time.

(g) By statement or inference, representing that an offer such as that above described is made possible only by war condition, manpower shortage or other economic plight; that normally said goods are mended by the manufacturers; or that, by home mending, the purchaser "saves the difference."

(h) Asserting that, by accepting the offer, the mail order buyer takes no chance at all, or that she will get her money back if not satisfied, so long as refunds to dissatisfied customers are not paid promptly and in full, without quibble, evasion, or compromise.

(i) Representing in any way, on trade stationery, by advertising or otherwise, that the commodity handled by him is "Fine Full-Fashioned Hosiery," or that he has sold fine hose, exclusively or at all, for years.

(j) Using the word "manufacturing," or term of like import, as a part of his trade name or as descriptive of his business; or in any other way, representing that the articles of commerce offered for sale and sold by him are made or manufactured in a plant or factory which he actually owns and operates or directly and absolutely controls. (Jan. 10, 1945.)

3965. **Brushes—Secondhand as New and Foreign as Domestic.**—Gibson-Thomsen Co., Inc., a New York corporation with its place of business at New York, N. Y., engaged in the sale and distribution of brushes 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.

Gibson-Thomsen Co., Inc., in connection with the sale and distribution of its brushes in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. Representing that brushes containing used and secondhand bristles are composed of new materials, by failure to stamp on the exposed surface of the handles thereof, in conspicuous and legible terms which cannot be removed or obliterated without mutilating such handles, a statement that the bristles are "secondhand" or "used."

2. That use of the phrase "Pure Bristle U.S.A." as descriptive of brushes the bristles of which are not of domestic origin; and the use of any other statement or representation which connotes that bristles of foreign origin are produced in the United States of America. (Jan. 15, 1945.)

3966. **Shoes—Qualities, Properties or Results.**—Stone-Tarlow Co., Inc., a Massachusetts corporation with its place of business at Brockton, Mass., engaged in the sale and distribution of shoes which it designates as "Elevators," 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.

Stone-Tarlow Co., Inc., 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 shoes designated "Elevators" or any other shoes of substantially the same construction, whether sold under such name or any other name or names, agreed that it will forthwith cease and desist from representing, directly or inferentially, that such shoes will improve posture, cause the wearer to feel better physically, or otherwise promote or benefit the physical well being or health of users thereof. (Jan. 15, 1945.)

3967. **Dresses—Corporation and Composition.**—Joseph M. Greenstein, Mildred Greenstein, Maurice J. Greenstein and Minnie Greenstein, co-partners trading as Greenstein Dress Corporation, with principal place of business at Chicago, Ill., engaged in the sale and distribution of wearing apparel, including ladies' dresses, in interstate commerce, in competition with other partnerships and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce, as set forth therein.

Joseph M. Greenstein, Mildred Greenstein, Maurice J. Greenstein and Minnie Greenstein agreed that they, and each of them, will cease and desist forthwith from the use of the word "Corporation" as part of the trade name under which they conduct business in commerce, as commerce is defined by the Federal Trade Commission Act. They, and each of them, agree, in connection with the offering for sale and sale of merchandise in commerce, to cease and desist from the use of the word "Corporation" or the abbreviation thereof "Corp." or of any other word or abbreviation of similar import or meaning, the effect of which tends or may tend to cause or convey the impression or belief that the business conducted by them or any of them is that of a corporate entity. They and each of them further agree to cease and desist from selling, offering for sale, distributing,

advertising, describing, branding, labeling, invoicing or otherwise representing merchandise, which is made from or contains rayon, without disclosure of the fact that such merchandise is rayon, in whole or in part as the case may be, made clearly and unequivocally in the invoicing and labeling and in all advertising matter, sales promotional descriptions or representations thereof, however disseminated or published. (Jan. 16, 1945.)

3969.¹ **Fur Garments—Manufacturer and Nature.**—Vogue Manufacturing Co., Inc., a New York corporation, with its principal place of business at New York, N. Y., engaged in the wholesale distribution of fur 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.

Vogue Manufacturing Co., Inc., in connection with its sale and distribution of fur garments or other merchandise in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

(a) Using the word "manufacturing," or term of like import, as a part of its corporate or trade name or as descriptive of its business; or from otherwise representing that the articles of commerce offered for sale and sold by it are made or manufactured in a plant or factory which it actually owns and operates or directly and absolutely controls.

(b) Using the term "Civet Cat" or the word "Civet," or words or terms of like meaning, either alone or in connection or combination with any other word or words, to designate or describe furs or fur garments made of the peltries of the little spotted skunk or the little striped skunk, or of any peltries other than civet peltries. (Jan. 16, 1945.)

3970. **Leray Para-Sphere Lamp Device—Qualities, Properties or Results, Government Sponsorship, Etc.**—Fostoria Pressed Steel Corporation, an Ohio corporation with principal place of business at Fostoria, Ohio, engaged in the manufacture of a lamp device known as the Fostoria Leray Para-Sphere which is so designed and constructed as to emit visible light and infra red radiation having wave lengths up to approximately 25,000 angstrom units, and in the sale and distribution of such devices in interstate commerce, in competition with other corporations and with individuals and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Fostoria Pressed Steel Corporation agreed that, in connection with the advertising, offering for sale or distribution of its Leray Para-Sphere lamp device in commerce, as commerce is defined by the Federal Trade Commission Act, it will cease and desist forthwith from representing, directly or inferentially,

1. That the effectiveness of said device, when used as an insecticide or bactericide, is attributable to any special quality or property, other than heat, of the infra red radiation emitted by the lamp.

2. That the said device would be of any practical effectiveness as means to kill, rid or destroy insects that infest clothing, other household insects, or insects that infest plants.

3. That the radiant energy or heat emitted by said device can be brought to bear without harm or annoyance upon man, animal or bird in such degree of intensity and continuity as will assure the destruction or

¹ Stipulation 3968 published in Volume 39 at p. 644.

elimination of pests, such as fleas, ticks, lice, crabs or any insect that is active or is protected by the hair of the animal, the feathers of the bird, or that is buried beneath the skin.

4. That the use of said device will kill or inhibit bacteria and thus be of value in the relief or as an aid in the treatment of Athlete's foot, lacerations or minor skin ailments, as an effective treatment for eczema in dogs, in the sterilization of toilet seats, wash bowls, brushes and combs.

5. That the United States Department of Agriculture sponsors or recommends the Leray Para-Sphere lamp device for the control of insects.

6. That the statements made in the advertising under the caption "Bad News for Cooties" accurately indicate the substance of a report made by Dr. G. F. McLeod of the University of California with respect to experiments conducted by him. (Jan. 23, 1945.)

3971. Files—Reconditioned as New.—Edwin E. Rothchild, an individual trading as Fulton Tool Co., with place of business at New York, N. Y., engaged in the sale and distribution of tools, including files, 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.

Edwin E. Rothchild, whether trading under such name, under the trade name of Fulton Tool Co., or under any other trade name or s'yle, in connection with the sale and distribution of his merchandise in commerce as defined by the Federal Trade Commission Act agreed that he will forthwith cease and desist from representing, directly or inferentially, that previously used or worn files are new files, by failure to stamp on such files, in conspicuous and legible terms which cannot be removed or obliterated without a grinding or buffing process, a statement that such files are "reconditioned" or "rebuilt"; and from representing in any other manner that such files are new. (Jan. 23, 1945.)

3972. Reducing Agent and Food Supplement—Qualities, Properties or Results.—Leon Lebow, an individual trading as L. N. LeBold & Co., with place of business at Rochester, N. Y., engaged in the sale and distribution of a preparation designated "Vee-mor," formerly designated as "Viteen," allegedly for use as a reducing agent and/or as a food supplement, 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.

Leon Lebow, whether trading under such name, under the trade name of L. N. LeBold & 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 "Vee-mor" or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under such name or any other name or names, agreed that he will forthwith cease and desist from representing, directly or inferentially:

1. That said preparation has any reducing action, or that any loss in weight resulting from or occasioned by following the directions for the use thereof is other than naturally results from a restricted or reduced food intake.

2. That said preparation corrects the basic cause of fat or of excess weight, or that its use causes the body to use up or consume its deposits or accumulations of fat.

3. That reduction in weight can be effected without dieting, that is, without drastically reducing the food intake.

4. That by using such preparation in connection with a reducing diet, hunger will be prevented; or, when so used, that it is effective in preventing hunger or the pangs of hunger.

5. That the use of said preparation in connection with a reducing diet will make such diet simple, easy, pleasant or effortless.

6. That said preparation will tone up the walls of the stomach, overcome the weakening effect of a reducing diet, or cause any reduction in weight to be permanent.

7. That overweight generally is caused by an improper and unbalanced food intake and/or vitamin and mineral deficiencies, or that the usual cause of obesity is other than the result of overeating, that is, excessive consumption of calorie-rich foods.

8. That the use of said preparation in connection with a reducing diet eliminates confusing diets or obviates the necessity of calculating the caloric intake.

9. That a reducing diet can be depended upon to result in a definite loss of weight, such as a specified number of pounds in any given period of time. (Jan. 24, 1945.)

3973. Mattresses—Composition, Qualities, Properties or Results, Custom Built and Nature of Manufacture.—The Englander Co., Inc., a Delaware corporation, with its principal place of business at Chicago, Ill., engaged in the sale and distribution of mattresses 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.

The Englander Co., Inc., in connection with the sale and distribution of its said mattresses in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. Representing that mattresses not actually constructed with or containing springs are of spring construction; and from the use of the word "spring" or term or expression of like meaning in any manner which connotes that such mattresses contain springs or are of the so-called inner-spring construction.

2. Representing, directly or inferentially, that its said mattresses will not bulge or sag.

3. The use of the term "custom built" or other term or expression of like import as descriptive of or in connection with mattresses not in fact made to order as specified by the individual purchaser thereof.

4. Representing that said mattresses are "scientifically constructed" or "scientifically built"; or otherwise representing that scientific principles are involved in the construction thereof. (Jan. 24, 1945.)

3975¹. Hosiery—Composition.—Washington's Haberdashery, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with place of business at Washington, D. C., engaged in the business of operating two retail stores in said city, one of which said stores trades under the name of Marilyn Bootefy and the other under its corporate name, selling various articles of merchandise, including ladies' hosiery, in competition with other corporations and with individuals, partnerships and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Washington's Haberdashery, Inc., agreed that, in connection with the

¹ Stipulation 3974 published in Volume 39 at p 644.

advertisement, offering for sale, sale and distribution of its merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, it will cease and desist forthwith from:

1. The use of the word "Chiffon" as descriptive of merchandise which is not made from fabric composed of fibers of silk, and from the use of the word "Chiffon," or of any other silk connoting word, term, phrase or representation, in referring to such merchandise, so as to import or imply or the effect of which tends or may tend to cause or convey the impression or belief, contrary to fact, that such merchandise is silk.

2. Representing that merchandise, which is made from manufactured textile fiber or yarn produced chemically from cellulose or with a cellulose base, is not rayon, or is something other than rayon, or failing to clearly and unequivocally disclose that such merchandise is composed of rayon, in whole or in part as the case may be, not only in the invoicing and labeling but in all advertising, sales promotional descriptions or representations thereof, however disseminated or published. (Feb. 5, 1945.)

3976. Cosmetic Preparations—Domestic as Foreign.—Irene Blake Cosmetics, Inc., a New York corporation with place of business at New York, N. Y., engaged in the sale and distribution of cosmetic preparations in interstate commerce, in competition with corporations, firms and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Irene Blake Cosmetics, Inc., in connection with the sale and distribution of its cosmetic preparations in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means and in the manner above set forth, agreed that it will forthwith cease and desist from representing, through the use of the word or term "Chinese," through the use of Chinese words or characters or simulations thereof, picturizations indicative of Chinese origin or wrappings typically Chinese in character, or in any other manner, that products which are made or compounded in the United States of America, are made or compounded in China or in any other foreign country; *Provided, however*, that if any of the ingredients of such products are produced in a foreign country, the country of origin thereof may be stated when immediately accompanied in equally conspicuous type by a statement that such products are made or compounded in the United States of America. (Feb. 5, 1945.)

3977. Music Books—Publisher, Studio, History, Guarantee, Free, Special Offer, Etc.—Dave M. Suttle, Leslie R. Gage and Richard P. Hohman, copartners operating under the firm name of Dave Minor Co., with place of business at Chicago, Ill., engaged in the sale and distribution of a two-book combination consisting of a set of piano lessons entitled "Music is Fun for Everyone—the Ear Way" and a collection of songs entitled "Dave Minor's Famous Play by Ear Song Book," in interstate commerce, in competition with firms, individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Dave M. Suttle, Leslie R. Gage and Richard P. Hohman, whether trading under their own names, as Dave Minor Co., or by any other designation, agreed that, in connection with the sale and distribution of their books in commerce as defined by the Federal Trade Commission Act, they and each of them will forthwith cease and desist from:

(a) Designating or describing their business as that of a "publishing company"; or by like terms or expressions, representing that they engage in the publication of books, music or other printed matter.

(b) Using the word "studio" in connection with their place of business, or in any manner importing or implying that they maintain a place devoted to the teaching or production of music or other fine art.

(c) Representing that Dave Minor is "on the air from coast to coast"; or by other presentation, that their radio continuities broadcast from local stations are programs rendered through a national radio hook-up.

(d) Representing that Dave Minor, or any person so denominated, has been teaching the piano for 25 years or has had thousands of students; or that the method of playing referred to as the "Dave Minor Way" is a new, startling and most unusual discovery, or has revolutionized piano playing by ear.

(e) Representing directly or inferentially that any particular results or achievements are guaranteed by the adoption of such method of playing; or by the use of the words "guarantee," "guaranteed" or others of like meaning, that a commodity is guaranteed unless, whenever used, clear and equivocal disclosure be made in direct connection therewith of exactly what is offered by way of security, as, for example, refund of purchase price.

(f) Using the words "free," "gift" or terms of like import to describe an article when such article is not given free or as a gratuity but the recipient is required, as a consideration, either to pay in whole or in part the price thereof, to purchase some other article, or to render some service in order to obtain the same.

(g) Representing by statement or implication that the usual and customary price and terms for which their books have been sold constitute a special introductory offer, or a special offer, to the readers of a designated magazine or to anyone else. (Feb. 5, 1945.)

3978. Glass Containers—Guaranteed.—Brockway Glass Co., Inc., a New York corporation with place of business at Brockway, Pa., engaged in the manufacture of glass containers, including nursery bottles and caps, 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.

Brockway Glass Co., Inc., agreed that, in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, it will forthwith cease and desist from:

(a) Representing, by means of guarantee agreements or otherwise, that any of its products is guaranteed "forever" or for any greater extent of time than that during which, by reasonable estimate, it will be capable of complying with the provisions contained in such agreements.

(b) Representing, by the use of the word "Guaranteed" or other word or words of like meaning in its advertising material or otherwise, that a product is guaranteed unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith of exactly what is offered by way of security as, for example, replacement or refund. (Feb. 5, 1945.)

3979. Women's Hats—Used or Second-Hand as New.—20th Century Hat Co., Inc., an Illinois corporation with principal place of business at Chicago, Ill., engaged in the manufacture of women's hats from felt and other materials, in interstate commerce, in competition with corporations and with individuals and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

20th Century Hat Co., Inc., agreed that, in connection with the offering for sale, sale or distribution of its hats in commerce, as commerce is defined

by the Federal Trade Commission Act, 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 hats 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, then such statement may be stamped upon the exposed surface of such bands: Provided, further That said stampings are of such nature that they cannot be removed or obliterated without mutilating the band, and the band itself cannot be removed without rendering the hat un-serviceable.

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 agreed that no provision in this stipulation shall be construed as relieving the aforesaid corporation in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939, and the authorized rules and regulations thereunder. (Feb. 6, 1945.)

3980. **Electric Light Bulbs—Qualities, Properties or Results, Competitive Products, Comparative Merits, Professional Indorsement, Etc.**—Save Electric Corporation, an Ohio corporation with place of business at Toledo, Ohio, engaged in the sale and distribution of electric light bulbs designated "Verd-A-Ray" 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.

Save Electric Corporation, in connection with the sale and distribution in commerce, as defined by the Federal Trade Commission Act, of its light bulbs heretofore designated "Verd-A-Ray," whether sold under such name or any other name or names, agreed that it will forthwith cease and desist from:

1. Representing, directly or inferentially, that such light bulbs conserve vitamin A in the eye.

2. The use of any statement that tends or may tend to convey the belief or impression that such bulbs by reason of their color or otherwise prevent the bleaching of visual purple in the retina of the eye.

3. Representing that the use of said bulbs will be effective in cutting off "harmful red rays."

4. The use of any statement or representation that tends or may tend to convey the belief or impression that the use of conventional electric light bulbs, properly installed, will cause permanent and serious bodily ailments or permanent impairment of the vision.

5. The use of any representation that imports or implies that the use of said bulbs in lieu of conventional inside frosted bulbs of equal wattage used in well designed luminaries will result in reduction of eye and/or body fatigue.

6. Representing, directly or inferentially, that "Verd-A-Ray" bulbs can be depended upon to prevent eye strain and/or resultant fatigue.

7. The use of the statement or slogan "Doctors Say Verd-A-Ray" or the symbol "Rx" as a designation for or as descriptive of said bulbs, and from the use of any statement or representation that tends or may tend to convey the belief or impression that doctors, generally, or the medical profession recommend the use of "Verd-A-Ray" bulbs.

8. The use of any statement that tends or may tend to convey the belief or impression that such bulbs are a startling discovery or that their use will effect a significant improvement in many visual tasks not obtained through the use of properly installed conventional bulbs.

9. Representing that such bulbs, when compared with the conventional inside frosted bulbs of equal wattage, properly installed, make "seeing easier" or provide better illumination for people generally or improve perception of detail.

10. Representing that such bulbs provide a "new color mixture of light."

11. The use of any statement or representation that tends or may tend to convey the belief or impression that such bulbs due to the color thereof or the color of the light emanating therefrom, cause any reduction in glare.

12. The use of any comparative illustrations or depictions which have been shadowed, shaded or touched up as to present an erroneous comparison.

13. Representing that the substitution of such bulbs for the conventional bulbs has resulted in a "reduction in headaches 69.13%—reduction in minor injuries 54%— . . . 367 man hours saved"; or otherwise from representing that beneficial effects resulting from the use of such bulbs when in fact such effects result from improvement in overall illumination due to factors other than the use of such bulbs.

14. The use of the statement "over-exposure of your eyes to harmful rays of ordinary light causes serious permanent injury . . . your sight is priceless use Verd-A-Ray" and from the use of any statement that tends or may tend to cause the belief that by the use of such bulbs in lieu of conventional bulbs, properly installed, injury to sight will be obviated.

15. The use of any representation that tends or may tend to convey the belief or impression that the light produced by said bulbs, by reason of the color thereof, is more favorable to workers than is the light of conventional bulbs.

16. Representing, directly or by implication that the average eye sensitivity curve proves that yellow-green light is more beneficial and/or less irritating than is other light; that the eye sensitivity curve is generally recognized as "ideal"; that the eye sensitivity curve cuts off abruptly; or that the rays to which the eye is relatively insensitive are irritating or harmful.

17. Representing, directly or by implication, that the light produced by said bulbs more closely resembles daylight than does other artificial light.

18. Using any statement or representation that imports or implies that said bulbs may be used with "absolute freedom from eye strain" or will obviate eye strain.

19. Representing that by the use of said bulbs greater color fidelity is obtained than results from the use of conventional incandescent light bulbs. (Feb. 8, 1945.)

3981. **Meat Curing and Seasoning Compounds—Laboratory.**—Meat Industries Laboratory, Inc., a New York corporation with place of business at New York, N. Y., engaged in the mixing and blending of meat curing and seasoning compounds, 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.

Meat Industries Laboratory, Inc., agreed that, in connection with the

sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, it will forthwith cease and desist from the use in its corporate or trade name or in any other manner as applied to its business, of the word "Laboratory" or of any similar term, title or designation which may import or imply that it owns and operates a laboratory equipped for the compounding and testing of products and for research in connection therewith. (Feb. 8, 1945.)

3982. Vitamin Products—Competitive Products, Laboratory, Scientific or Relevant Facts, and Qualities, Properties or Results.—Cupples Co., a Missouri corporation with place of business at St. Louis, Mo., operating under its own name and also by the trade designation Kent Laboratories, engaged in the sale and distribution of sundry manufactured products, including a vitamin compound designated "Kent Vitamins A B₁ D," 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.

Cupples Co., whether trading under its own name, as Kent Laboratories, or by any other designation, in connection with its sale and distribution of vitamin 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, agreed that it will forthwith cease and desist from representing directly or inferentially:

(a) That its Kent Vitamins are of exactly the same, or the same, quality—inferred vitamin potency—as competitive brands selling up to five times the price charged therefor; or in any other way, representing that a capsule containing the minimum daily requirements of vitamins A, B₁ and D has the same attributes or properties as capsules with more vitamin units or more types of vitamins.

(b) By connotation or otherwise, that the vitamin products which it sells are made in its own laboratories; that said Kent Laboratories are the nation's leading vitamin laboratories; or that such plant is even equipped for the production of vitamin compounds.

(c) That everyone's diet, either in food point rationing days or in normal times, should be supplemented with vitamins A, B₁ and D; that physical and mental fatigue, poor appetite, jittery nerves, recurrent indigestion, itchy eyelids, colds, sinus troubles or more serious ailments indicate a lack of vitamins which the Kent capsules will adequately supply; or that such afflictions are generally or even frequently caused by vitamin deficiency.

(d) That the maintenance of the vitamin A blood level will of itself assure normal tone of body tissues such as those of the skin, nose, lungs, throat, digestive system or tooth enamel; or that the taking of Kent Vitamins may be depended upon to maintain the normal tone of such body structures.

(e) That depression, nervousness, inability to sleep soundly, excitability, lack of pep, tired draggy feeling, loss of energy, neurotic symptoms and interruption of growth in children are due to a vitamin B₁ insufficiency for which the Kent capsules would be an effective remedy; or by statement or implication, that for a normally fed person to enjoy perfect health, a daily supplementation of vitamin B₁ is needed.

(f) That the consumption of Kent vitamins can build up one's energy or reserve his strength; or that it can be depended upon to keep one feeling fit and at his best.

(g) That A is "the eyesight vitamin"; or by any similar presentation, that the administration of vitamin A will have favorable effect upon the

visual defects commonly experienced, or will improve vision generally. (Feb. 12, 1945.)

3983. Monuments and Memorials—Composition, Qualities, Properties or Results and Value.—William Reinhard, Carl Reinhard and Robert Reinhard, copartners with principal place of business at Chicago, Ill., engaged in the business of fabricating monuments or memorials composed of granite chips or fragments bonded together with cement; said copartners and one Nelson Friis were cooperatively associated in the sale and distribution of said products under the trade name Economy Monument Co. in interstate commerce. Nelson Friis discontinued his association with the business the latter part of 1942, and since then said business was continued by the aforesaid copartners under the trade name Economy Monument Co., and at all times as indicated herein, the said copartners and the said individual were engaged in competition with other partnerships, individuals, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

William Reinhard, Carl Reinhard and Robert Reinhard, copartners, and Nelson Friis, an individual, agreed that they and each of them, whether trading under the name Economy Monument Co. or under any other name, in connection with the advertisement, offering for sale, sale or distribution of their Granidur Monuments or memorials in commerce, as commerce is defined by the Federal Trade Commission Act, will cease and desist forthwith from:

1. The use of the words "manufactured granite," "genuine Granidur" or "solid Granidur" to designate or as descriptive of such commodities that are not composed of natural granite rock.

2. Describing or referring to said commodities as "genuine" or "solid" Granidur, or as "granite" or "manufactured granite," or as having "rough hewn sides and base" or as having been "executed by skilled craftsmen in a time tested material," or in any other way directly or inferentially representing that said commodities are composed of or actually carved from natural granite rock.

3. The use of statements or terms such as "enduring," "lasting," "will last through the years in any climate, affected by neither time nor weather," "perpetual beauty," "brilliant, permanent polished finish," "retaining its high polish and original appearance, regardless of climatic conditions," or any similar expression having the capacity or tendency to confuse, mislead or deceive purchasers with respect to the durability of said commodities or their capacity to withstand the elements.

4. Representing, as by use of the statement "comparable to the more costly monuments," or any other statement of similar implication, that the said commodities are of a quality or value and/or possess lasting properties in excess of what is actually a fact. (Feb. 12, 1945.)

3984. Carbon Paper—History.—Old Town Ribbon & Carbon Co., Inc., a New York corporation with its place of business at New York, N. Y., engaged in the sale and distribution of office supplies, including a product known as black spirit carbon paper, 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.

Old Town Ribbon & Carbon Co., Inc., in connection with the sale and distribution of black spirit carbon paper in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from representing directly or inferentially that it was the "first in the

field" to manufacture or sell the product known as black spirit carbon. (Feb. 15, 1945.)

3985. Poultry Disease Articles or Circulars—Qualities, Properties or Results.—Alice K. Rothrock, trading also as "Kay," an individual with place of business at Lyndon, Kans., engaged in the sale and distribution of mimeographed articles or circulars containing recipes or instructions for the treatment of certain poultry diseases and for the care 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.

Alice K. Rothrock, whether trading under her own name, under the trade name "Kay," or under any other trade name or style, in connection with the sale and distribution of her aforesaid mimeographed articles or circulars in commerce as defined by the Federal Trade Commission Act, agreed that she will forthwith cease and desist from representing, directly or inferentially:

1. That a preparation compounded in accordance with the formula or recipe for the treatment of coccidiosis, as set forth in said articles or circulars, constitutes an effective remedy or treatment for said disease or is a preventative thereof.

2. That a preparation compounded in accordance with the formula or recipe for the treatment of limber-neck, as set forth in the articles or circulars, constitutes an effective remedy for such condition, or is of any value as a treatment therefor.

3. That a preparation compounded in accordance with the formula or recipe for feather picking, as set forth in said articles or circulars, can be relied upon to prevent chickens from pecking or eating each other or picking the feathers of other chickens.

4. That a preparation compounded in accordance with the formula or recipe for poultry diarrhea, as set forth in said articles or circulars, can be relied upon to correct any of the diarrheas of chickens. (Feb. 19, 1945.)

3986. Glazed Pottery Cooking Utensils—Safety and Indorsements or Approval.—Daison Manufacturing Corporation, a Pennsylvania corporation with principal place of business at Philadelphia, Pa., and Wayman Cole and Nell Cole Graves, copartners trading as J. B. Cole's Pottery Co., with place of business near Steeds, N. C., engaged in the sale and distribution of glazed pottery, including glazed pottery cooking utensils, 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.

Daison Manufacturing Corporation and Wayman Cole and Nell Cole Graves, whether trading under such names, under the trade name J. B. Cole's Pottery 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 aforesaid glazed pottery cooking utensils, or of any other utensils, the glaze of which is of substantially the same composition, for use in connection with the preparation of food or which are so designed as to indicate that they are for such use, agreed that they and each of them will forthwith cease and desist from:

1. Advertising, branding, labeling, invoicing, selling or offering for sale such utensils unless there be glued or otherwise securely affixed thereto labels bearing an unequivocal statement in clear and legible type to the

effect that the use thereof as cooking vessels or in connection with food is potentially dangerous, due to the lead or other deleterious ingredients of the glaze thereof, and furthermore unless all advertisements, brands, labels, invoices or sales promotional literature pertaining thereto also contain statements to such effect.

2. Representing by statements such as "Some of the best French and Swiss chefs recommend the following procedure for initial seasoning of this cooking ware. . ."; that any recommendation has been made by French or Swiss chefs with reference to such products. (Feb. 19, 1945.)

3987. Chicks—Farms, U.S.R.O.P. and Tested.—James M. Brennan, an individual trading as Spry Farms with place of business at St. Louis, Mo., 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 M. Brennan, whether trading under such name or under any trade name or style, 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:

1. The use of the word "Farms" as part of the trade name under which he sells said chicks, and from the use of said word or other word or words of like meaning in any manner which connotes that he actually owns and operates or directly and absolutely controls a farm whereon are produced chicks offered for sale under such representation.

2. The terms or statements "U. S. approved" or "ROP sired" as designations for or as descriptive of said chicks; and the use of any statements or representations which connote that said chicks, or any chicks purchased by him for resale, are U. S. R. O. P. chicks, that such chicks are properly identified as having been sired by U. S. R. O. P. males, or that he participates in the National Poultry Improvement Plan.

3. The use of the phrase "U. S. . . . double blood tested" as a designation for or as descriptive of said chicks; and from the use of the words "double blood tested" or other word or words connoting that chicks have been blood tested when, in fact, they have not been tested as represented. (Feb. 19, 1945.)

3988. Hair Remover and Facial Cream—Composition, Safety, Qualities, Properties or Results and Testimonials.—Samuel J. Wegman, a sole trader operating as Four Star Products Co., with place of business at Hollywood, Calif., engaged in the sale and distribution of sundry items of merchandise, including a depilatory designated "Adieu Hair Remover" and a facial preparation designated "Adieu Foundation and Blemish Cream," 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.

Samuel J. Wegman, whether trading under his own name, as Four Star Products Co., or by any other designation, in connection with the sale and distribution of his commodities in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from representing, directly or inferentially:

(a) That the product sold by him as Adieu Hair Remover is an all-vegetable preparation, is made of all-vegetable or pure vegetable ingredients, or is painless, nonirritating, or absolutely harmless; that by its use one can "rid" herself of unwanted hair; that it makes or gives the user a clean, clear, smooth, velvety or lovely skin, or otherwise, that it improves the skin in any way whatsoever.

(b) That the product sold by him as Adieu Foundation and Blemish Cream makes a radiant, soft, fresh or glamorous complexion; is a new discovery which gives the user a glorious, new, youthfully fresh and lovely complexion or the glowing radiance of youth; makes the skin appear more natural; causes even the driest of skins to remain soft and delicate; creates smooth, velvety, clear skin-texture; causes blemishes to fade away, or sallowness, wrinkles, crow's-feet, crevices or pits to be gone as though they had never been; and from otherwise attributing to such cosmetic preparation, beautifying properties which it does not in fact possess.

Samuel J. Wegman also agrees not to publish any testimonials containing statements not in accord with the terms of the foregoing agreement. (Feb. 23, 1945.)

3989. Shampoo Product—Composition.—Murray L. Keller, an individual trading as Aime Co., with principal place of business at New York, N. Y., engaged for some time past in compounding and bottling a line of hair preparations, including a certain shampoo product, and in the sale of said preparations to purchasers, as department stores and drug stores, 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.

Murray L. Keller, in connection with the offering for sale, sale or distribution of his shampoo product in commerce, as commerce is defined by the Federal Trade Commission Act, or by the advertisement thereof by the means or in the manner set forth, or in any other way, agreed that he will cease and desist forthwith from designating or referring to said shampoo product as "waterless," or otherwise representing by statement or inference that said product contains no water. (Feb. 27, 1945.)

3990. Deodorant and Dandruff Preparation—Free.—Waft Products Distributors, Inc., an Illinois corporation with place of business at Springfield, Ill., engaged in the sale and distribution of a personal deodorant designated "Waft" and a dandruff preparation designated "Sebrone," 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.

Waft Products Distributors, 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 words "free," "gift" or terms of like import to describe merchandise, when such merchandise is not given free or as a gratuity but the recipient is required, as a consideration, either to pay in whole or in part the price thereof, to purchase some other article, or to render some service in order to obtain the same. (Feb. 27, 1945.)

3991. Jewelry—Nature and Composition.—Busch's Jewelry Co., Inc., and Busch's Kredit Jewelry Co., Inc., New York corporations with their place of business at New York, N. Y., subsidiaries of another corporation, William J. Kappell Co., of Pittsburgh, Pa., engaged in conducting a number of retail jewelry stores in the greater New York area, collaborate in their merchandising policy, use the same advertisements for all their outlets under the common designation "Buschs," 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.

Busch's Jewelry Co., Inc., and Busch's Kredit Jewelry Co., Inc., in con-

nection 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:

(a) Listing, designating or otherwise representing as "birthstone rings" any rings with settings which are not those of genuine birthstones, that is to say, the natural precious stones recognized and accepted by the trade and the public as birthstones.

(b) Using the words "emerald," "ruby," "sapphire," "golden sapphire," "amethyst," "zircon," "rose zircon" or "garnet" as descriptive of insets which are not in fact the natural precious stones names; and from the use of such names or that of any other gem stone in a manner which may cause the belief or impression that an artificial product is such genuine stone.

(c) Filling any orders with merchandise of quality inferior to that represented in the advertising; or substituting other goods for those advertised and represented to be sold, without the knowledge and consent of customers. (Feb. 27, 1945.)

3992. "X-Pandoseal"—Qualities, Properties or Results.—X-Pando Corporation, a New York corporation with its place of business at New York, N. Y., engaged in the sale and distribution of products for use on masonry construction and on textiles, including a product designated as "X-Pandoseal," 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.

X-Pando Corporation, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of its product designated "X-Pandoseal," or any other product composed of substantially the same ingredients or possessing substantially the same properties, whether sold under such name or any other name or names, agreed that it will forthwith cease and desist from:

1. The use of the words "waterproof" or "waterproofing" or other word or words of like meaning as designations for, as descriptive of, or with reference to said product; Provided, however, that if such product actually is an efficacious waterproofer under certain conditions, then in that case such words or expressions, whenever used, shall be immediately accompanied in equally conspicuous type by words or statements definitely and truthfully disclosing the particular condition under which the product is effective as a waterproofing agent.

2. Representing that said product can be depended upon to eliminate efflorescence on stucco, brick or stone under all conditions of use; Provided, however, that if such product actually is effective in preventing efflorescence under certain conditions, then in that case any representation to such effect, whenever used, shall be immediately accompanied in equally conspicuous type by words or statements definitely and truthfully disclosing the particular conditions under which it is effective for the purpose indicated.

3. The use of any representation which tends or may tend to convey the belief or impression that the application of "X-Pandoseal Formula 'C'" or a like product to canvas, tarpaulins or other textile products is effective in rendering the same impervious to mildew.

4. The use of any representation which tends or may tend to convey the belief or impression that any water repellent qualities of said product are permanent. (Mar. 5, 1945.)

3993. **Hay Fever Device and Preparation—Qualities, Properties or Results, History, Endorsements and Testimonials.**—W. Rolla Wilson, an individual, trading as Wilson Hay Fever Disk Co., with place of business at Minneapolis, Minn., engaged in the sale and distribution of filter devices for use in the nostrils and a medicinal preparation for use therein, which he designates as "Wilson Hay Fever Disks" and "Wilson Inhalant," 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.

W. Rolla Wilson, whether trading under his own name, under the trade name Wilson Hay Fever Disk 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 his "Wilson Hay Fever Disks" and/or "Wilson Inhalant," or any other device or preparation of substantially the same construction or composition, whether sold under such names or any other name or names, agreed that he will forthwith cease and desist from representing, directly or inferentially:

1. That such devices and/or the medication as used therewith gives or affords relief from hay fever or the discomforts thereof.

2. That said devices constitute a means for removing pollen and/or dust from respired air to a degree that will relieve hay fever or the manifestations thereof; or that they will bring about a normal condition in the nose or other parts of the respiratory tract inflamed as the result of sensitivity to pollen.

3. That said devices constitute an effective treatment for sinusitis or asthma, or relieve such conditions.

4. That said devices will provide adequate protection for factory workers, farmers or soldiers, against dust or other irritating particles.

5. That he originated the theory that hay fever would be relieved by excluding pollen or dust from the nasal passages.

6. That the use of said devices has been endorsed by hay fever associations or medical magazines.

It is also agreed by the said W. Rolla Wilson that he will not publish any testimonials containing statements or assertions contrary to the terms of the foregoing agreement. (Mar. 5, 1945.)

3994. **Plastic Rubber Putty—Manufacturer and Composition.**—J. V. Yocum, an individual doing business as Zapo Manufacturing Co., with place of business at Chicago, Ill., engaged in the sale and distribution of a product designated Plastic Rubber Putty 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.

J. V. Yocum agreed that, in connection with the conduct of his business involving the sale of his product in commerce, as commerce is defined by the Federal Trade Commission Act, he will cease and desist from the use of the word "Manufacturing" as part of his trade name, and from the use of the word "Manufacturing" or of any other word or term of similar meaning or connotation, the effect of which tends or may tend to cause or convey the impression or belief that he makes or compounds the product offered for sale and sold by him, or that he actually owns and operates or directly and absolutely controls the plant or factory in which said product is made or compounded. He also agrees to cease and desist from the use of

the word "Rubber" as part of the trade designation for his said product, and from the use of the word "rubber," or of any simulation thereof, 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, contrary to fact, that the said product is composed of or contains rubber. (Mar. 5, 1945.)

3995. Bathtubs—Composition, Qualities, Properties or Results and Manufacturer.—Leon Bloch and Myrtle Bloch, copartners operating under the firm name of Bloch Brass Co., with place of business at Cleveland, Ohio, engaged in the sale and distribution of plumbing and bathroom fixtures, including cement bathtubs designated "Pearlon Tubs," 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.

Leon Bloch and Myrtle Bloch, whether operating in their own names, as Bloch Brass Co., or by any other trade designation, 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 representing directly or inferentially:

(a) That tubs of the type sold as Pearlon are made with Haydite or other specified material without clear indication, in direct connection with any such representation, that said tubs are actually of concrete construction.

(b) That either the finish on said tubs or the beauty thereof is permanent.

(c) That the tubs or other products offered for sale by said corporation are produced in "our plants"; or otherwise, in any manner representing that it is the manufacturer of such articles or that it owns, operates or directly and absolutely controls plants for the manufacture thereof, in Cleveland, Philadelphia, New Orleans, Kansas City, Salt Lake City, or elsewhere. (Mar. 5, 1945.)

3996. Hair and Scalp Preparations—Qualities, Properties or Results, Success, Use or Standing, History, Endorsements, Etc.—The Warner Trust, designation of a Massachusetts business trust with place of business at Boston, Mass., of which John W. Blakeney, Jr., and John E. Warner are trustees and operators, with branch office at Pittsburgh, Pa.; John E. Warner operates as a sole trader in Boston, Mass.; The Warner System, Inc., a Massachusetts corporation with principal place of business at same address in Boston, Mass., with branch office in Hartford, Conn.; Theodore F. Walker, sole surviving member of a copartnership heretofore operating in Chicago, Ill., under the firm name of John E. Warner Associates and John E. Warner & Associates, Inc., of California, a California corporation with principal place of business at Los Angeles, Calif. Said trust owns certain medicinal formulae used in the treatment of hair and scalp disorders, the trade name and the goodwill of John E. Warner and Associates; licenses such other parties on a royalty basis, to use its name, methods and preparations; prepares all the advertising copy placed by said associated concerns in promoting the sale of their services and medications; and itself operates the Pittsburgh office. Such preparations are shipped to the various Warner offices and some of said medications are shipped in interstate commerce in competition with corporations, common law trusts, 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.

John W. Blakeney, Jr., and John E. Warner, whether operating as

trustees of the Warner Trust, or in their personal capacities or by any other trade name or style; by the Warner System, Inc., by Theodore F. Walker, whether operating as John E. Warner Associates, in his individual name or by any other trade designation; and by John E. Warner & Associates, Inc., of California, in connection with the sale and distribution of their commodities in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means or in the manner above set forth, agreed that they and each of them will forthwith cease and desist from representing directly or inferentially:

(a) That baldness can be prevented by the Warner method, or that the preparations used by John E. Warner and his associates afford an adequate remedy for baldness or have any effective therapeutic value in the treatment of baldness; that Warner and Associates have made rapid strides; or any progress, in the prevention of baldness; that they can correct and eliminate the cause of baldness; that, according to statistics or otherwise, 85 percent of all baldness, or any baldness, can be prevented by Warner treatment if taken in time; or that 85 percent, or other overstated proportion, of all baldness is due to local scalp conditions amenable to treatment.

(b) By statement or connotation, that dandruff, dry or itching scalp, excessive falling hair, or excessively oily or dry hair are the signs of approaching baldness which Warner and Associates may prevent or successfully treat.

(c) That the Warner method, by progressive steps of medication and treatment or otherwise, can prevent the loss of hair, promote the growth of hair, assure the keeping or saving of hair, correct scalp disorders, normalize the scalp, or rid one's head of dandruff; that such method is an advanced, scientific form of treatment, or superior and more effective because of constant research and study or otherwise; that it has successfully saved and improved the hair of thousands of men; or that by means thereof, one can be sure of saving his hair while he still has hair to save.

(d) That John E. Warner is the nation's leading scalp specialist, is recognized as the foremost hair and scalp specialist of today, or that he or his associates are either hair specialists or scalp specialists; or in any similar way, representing themselves to be skilled experts in the pathology, diagnosis and scientific treatment of scalp or hair conditions.

(e) By statement or implication, that John E. Warner was the first person to make a serious study of the hair; that prior thereto, leading dermatologists had almost ignored the hair; that before his study nothing had been done in the line of research dealing with the causes and conditions beneath the surface responsible for loss of hair; or that John E. Warner probably knows more about hair than anybody in the world today.

Said parties respondent also agree to cease and desist from:

(f) Offering the Warner treatments or medications for the regrowth of hair lost through alopecia areata, or in any other way representing that such method would be beneficial or have any therapeutic effect whatsoever in cases of alopecia areata.

(g) Representing, by depictions of scientific apparatus and research equipment, by statement, or by implication, that John E. Warner or his associates have, through diligent study and scientific experimentation, developed improved medications or treatments essentially different from those in common use for the cleaning, oiling and perfuming of the hair and scalp, the irritating of the scalp, temporary relief from itching scalp, and the removal of loose scales of dandruff.

(h) Representing that among those who "consult" and "take treatment" from John E. Warner or his associates are leaders in all lines of en-

deavor or many headliners in the entertainment field; featuring of music, radio, stage and screen celebrities as endorsers of the Warner method purportedly because it saved their hair, kept their hair healthy, beat impending baldness, and did away with worry about losing their hair—who were not, in fact, actually solicitous about their hair but have merely lent their names and pictures for publicity purposes; or ascribing to them statements such as “To many of us, consultation with John E. Warner is almost a duty,” “Treatment by John E. Warner is generally considered by most musicians as the best in the world,” “Musicians know that Warner treatment prevents baldness.” (Mar. 7, 1945.)

3997. Wood Fiber Insulating Product—Qualities, Properties or Results.—Kimberly-Clark Corporation, a Delaware corporation with executive office and principal place of business at Neenah, Wis., and mills in Wisconsin and New York, engaged in the sale and distribution of paper and related products including a wood fiber insulating product designated as “Kimsul,” in interstate commerce in competition with corporations, firms and individuals likewise engaged, entered into the following agreement to cease and desist from alleged unfair methods of competition in commerce as set forth therein.

Kimberly-Clark Corporation, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of its product designated “Kimsul,” or any other product of substantially the same composition and possessing substantially the same qualities 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 when exposed to flame under the conditions which normally exist where insulating material is used, said product merely chars or that when flame is removed any glowing and charring ceases, or otherwise, that it is noncombustible or will not burn under such conditions. (Mar. 7, 1945.)

3998. Home Study Lessons—Employment, Opportunities, Refunds, Etc.—Brayton Flying Service, Inc., a Missouri corporation, located near Lambert Field, St. Louis, Mo., engaged in the maintenance and operation of a residence school, including aircraft maintenance and construction, the training of aircraft mechanics and instruction in primary and advanced flight training, and offering and selling a course in home study lessons that were designed to furnish certain elementary instructions preliminary at the residence school, in interstate commerce in competition with other corporations and with individuals and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Brayton Flying Service, Inc., agreed that, in connection with the offering for sale and sale in commerce, as commerce is defined by the Federal Trade Commission Act, of home study lessons as a supplement to training at its resident school, it will cease and desist from representing, either directly or through its salesmen or in any other way, contrary to fact: that personnel, connected with the said corporation or the resident school conducted by it, is able to and will secure employment and/or living quarters of a designated type and location for or at the request of students if and when they undertake such resident school work; that a student who has enrolled for such resident school work would be enabled thereby to obtain deferment from the draft for military services; that the student, upon completion of the resident school work, would be fitted for or entitled to a commission in the Army Air Forces; or that refunds of money advanced as payment for the course would be made by the school authorities to students who are not satisfied with the set-up of the school. (Mar. 7, 1945.)

3999. **Army and Navy Goods—Specifications Conformance.**—A & N Trading Co., Inc., a Maryland corporation with principal place of business in the District of Columbia, engaged in the sale and distribution in commerce as defined by the Federal Trade Commission Act, within the District of Columbia, of merchandise including goods originally manufactured for the Armed forces of the United 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.

A & N Trading Co., Inc., in connection with the sale and distribution of its merchandise in commerce as defined by the Federal Trade Commission Act, agreed that it forthwith cease and desist from advertising, branding, labeling, invoicing, selling or offering for sale merchandise under any representation which imports or implies that such merchandise was manufactured for the Armed Forces of the United States or under Army or Navy specifications or otherwise that it is Army or Navy merchandise, unless the same in fact is regulation Army or Navy merchandise; *Provided, however,* that if merchandise actually has been manufactured under an Army or Navy contract but has been rejected by official inspectors or has been determined by the manufacturer as not complying with specifications, then in such case any representations importing or implying that the merchandise was manufactured under an Army or Navy contract, wherever they may appear, shall be immediately accompanied in equally conspicuous type by a definite statement to the effect that the same has been rejected after official inspection, is of inferior quality, or otherwise does not comply with Army and/or Navy specifications or requirements as the case may be. (Mar. 7, 1945.)

4000. **Concrete or Masonry Additive—Qualities, Properties or Results.**—The Sullivan Co., a Tennessee corporation with place of business at Memphis, Tenn., engaged in the sale and distribution of products for use as additives to or as applications on concrete or masonry or other construction, including products designated as "Gardex," "Konset," "Sealit," "Pozzuolanic" and "Ironized Waterproofing" 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.

The Sullivan Co., in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of its products designated as "Gardex," "Konset," "Sealit," "Pozzuolanic" and "Ironized Waterproofing," or any other products 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:

1. The use of the words "waterproof," "waterproofs," "waterproofing," "damproofing" or other words or words of like meaning as designations for, as descriptive of, or with reference to any of said products which is not effective as a waterproofing agent under all conditions of use; *Provided, however,* that if such product actually is an efficacious waterproofer under certain conditions, then in that case such words or expressions, whenever used, shall be immediately accompanied in equally conspicuous type by words or statements definitely and truthfully disclosing the particular condition under which the product is effective as a waterproofing agent.

2. Representing that any of said products can be depended upon to prevent efflorescence under all conditions of use; *Provided, however,* that if such product actually is effective in preventing efflorescence under cer-

tain conditions, then in that case any representation to such effect, whenever used, shall be immediately accompanied in equally conspicuous type by words or statements definitely and truthfully disclosing the particular conditions under which it is effective for the purpose indicated.

3. The use of any representation which tends or may tend to convey the belief or impression that any water repellent qualities of said products or any thereof are permanent. (Mar. 7, 1945.)

4001. **Vitamin, Mineral and Health-Food Products—Scientific or Relevant Facts, Qualities, Properties or Results and Safety.**—Modern Products, Inc., of America, a Delaware corporation with place of business at Milwaukee, Wis., engaged in the sale and distribution of vitamin, mineral and so-called health-food 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.

Modern Products, Inc., of America, in connection with the sale and distribution of its 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, agreed that it will forthwith cease and desist from representing directly or inferentially:

(a) That when nyctalopia, or night-blindness, occurs it is an indication of vitamin A depletion, unless in direct connection therewith it be clearly specified that such affliction is also caused by other conditions; by statement or connotation, that Ivita is an adequate treatment for night-blindness other than that caused by vitamin A deficiency; or that its intake will prevent or build resistance to colds, influenza or other infections.

(b) That pantothenic acid, calcium pantothenate, or any other factor of the Vitamin B Complex is an "anti-gray hair factor," or by other statement or implication, that an intake of such substance would have favorable effect on the grayness of hair, would restore the natural color of gray hair or bring a return of natural hair color—in from three to six months or in any other time; that such method has proven successful or given positive results in 88 percent or any other proportion of cases tested; or that the products Capatabs or B-Family Tablets would be of value to combat or alter the graying of hair in human beings.

(c) That Santay Tooth Powder exerts a hardening action on the gums, is most helpful in cases of soft and bleeding gums, is decidedly beneficial as an aid in maintaining a firm condition of the gums; or by statements of like import, that it would have any favorable effect on soft or bleeding gums.

(d) That the product denominated B-Family Tablets, or Vitamin B Complex Tablets, would be beneficially effective in cases of intestinal disorders; that said compound contains no synthetic vitamins; and from reference to clinical studies in any way which may import or imply that said product, as used, would be an adequate treatment for any type of intestinal disorder.

(e) That by far the vast majority of conditions of anemia are due to insufficient iron in the diet; that dietary or nutritional anemia is by far the most prevalent; that anemia is very frequently due to the form and quantity of iron in the diet—of adults; by implication or otherwise, that lack of pep, listlessness or pallor can usually be corrected by the administration of Adiron; that said preparation Adiron is especially helpful—or even beneficial—in the most prevalent cases of anemia, or is distinctly helpful, or of any value whatsoever, in cases of pernicious anemia; that it will endow the user with more strength or energy; or that 90 milligrams of iron, or other

exaggerated amounts thereof, are required each day to fill the blood cells with hemoglobin.

(f) That the Aydee Tablets, or the vitamins A and D therein, will help maintain the body reserves which resist colds, influenza or other infections; will build up stamina to resist said conditions; or by like presentations, that the adding of such vitamins to the diet of a normal person would serve to prevent any of these ailments.

Modern Products, Inc., of America also agrees to cease and desist from:

(g) Disseminating any advertisement or trade literature pertaining to its preparations which contain an irritant laxative, that fails clearly to reveal the potential danger thereof in the presence of nausea, vomiting, abdominal pain or other symptoms of appendicitis; *Provided, however*, that is the directions for the use of such preparation, whether they appear on the label, in the labeling, or in both label and labeling, contain an adequate warning of its potential danger to health as aforesaid, said advertisement need contain only the cautionary statement: CAUTION, USE ONLY AS DIRECTED. (Mar. 12, 1945.)

4002. **Furs or Fur Garments—Nature.**—Abe Steisel, an individual trader with place of business at New York, N. Y., engaged in the manufacture of fur garments 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.

Abe Steisel, in connection with his sale and distribution of furs or fur garments in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist, in his 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 peltries of South American spotted cats or of any animals or species other than the true leopard (*felis pardus*). (Mar. 12, 1945.)

4003. **Draperies or Drapery Fabrics—Manufacturer and Guarantee.**—Jacob Levine, an individual trading as J. Levine Co., and as Georgia Mfg. Co., with place of business at New York, N. Y., engaged as a jobber in the operation of a wholesale business involving the sale and distribution of draperies and drapery fabrics to purchasers, as drapery manufacturers and department stores, in interstate commerce in competition with other individuals and with corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition.

Jacob Levine agreed that he will cease and desist forthwith from the use of the letters or term "Mfg." as part of the trade name under which he offers for sale or sells his draperies or drapery fabrics in commerce, as commerce is defined by the Federal Trade Commission Act; and from the use of the said letters or term, or of any other abbreviation of the word "Manufacturing," or any other term or word of similar import or meaning, the effect of which tends or may tend to cause or convey the impression or belief that the said Jacob Levine actually owns and operates or directly and absolutely controls the plant or factory wherein are woven or manufactured the fabrics which he offers for sale or sells. He also agrees to cease and desist from the use of the word "Guaranteed," or of any other word or words of similar meaning, in connection with the advertising, offering for sale or sale of his fabrics, unless, whenever used, clear and unequivocal disclosure is made in direct connection therewith of exactly what is offered by way of security; and from the use of any guaranty unless strict and complete performance be made therewith. (Mar. 13, 1945.)

4004. Upholstery and Drapery Materials—Composition and Manufacturer.—Consolidated Trimming Corporation, a New York corporation with place of business at New York, N. Y., engaged in the manufacture of upholstery and drapery materials and in the sale and distribution thereof, also of certain types of thread including one with the trade designation or brand "Silkso Twist" 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.

Consolidated Trimming Corporation agreed that, in connection with the sale and distribution of its commodities in commerce as defined by the Federal Trade Commission Act, it will forthwith cease and desist from:

(a) The use of the word "Silkso," or any word, term or representation of similar import, in any trade-mark indicative of silk, when the merchandise which bears such mark, or which is advertised, offered for sale, sold or distributed thereunder, is not in fact composed of silk; or the use of said trade-mark in any other manner, or under any other condition, which is misleading or deceptive.

(b) Representing in any way that it is the manufacturer of a product made in a plant or factory which it does not actually own and operate or directly and absolutely control. (Mar. 13, 1945.)

4005. Women's Sportswear—Composition.—Lido Sportswear, Inc., a New York corporation with place of business located in New York, N. Y., engaged in business as a manufacturer and distributor of women's sportswear in interstate commerce in competition with other corporations and with individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition.

Lido Sportswear, Inc., agreed that, in connection with the offering for sale or sale of its merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, it will cease and desist from the use of the word "linen," either alone or in connection with the word "shantung," or with any other word or words, as descriptive of merchandise which is not made of flax, and from the use of the said word or words in any other way, the effect of which tends or may tend to cause or convey the impression of belief, contrary to fact, that the fabric used in the manufacture of said merchandise is that product generally known as linen or flax. Said corporation also agrees to cease and desist from selling, offering for sale, distributing, advertising, describing, branding, labeling or otherwise representing its merchandise, that is made of rayon, as not being rayon, or as being something other than rayon, or without disclosure of the fact that such merchandise is made of rayon, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales promotional descriptions or representations thereof, however disseminated or published. (Mar. 14, 1945.)

4006. Furs and Fur Garments—Nature.—Joseph Wiener and Max Wiener, copartners, trading as Wiener & Wiener, with place of business at 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, individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition.

Joseph Wiener and Max Wiener, in connection with the sale and distribution of furs and fur garments in commerce as defined by the Federal Trade Commission Act, agreed that they and each of them will forthwith cease and desist from:

(a) The use of the terms "Hud Seal," "Sealine," "Beaverette," or any other fictitious animal designation or coined fur-connoting term as descriptive of or in connection with their fur products.

(b) Using any animal or purported animal name or designation for fur which is not the true name of the animal producing the fur; *Provided*, that if the fur is so dyed as to simulate another fur, the fact that said fur is dyed shall be set forth as an integral part of its designation, and if the name of the animal whose fur is so simulated be given, such name shall be immediately followed by and compounded with the word "dyed" together with the true name of the animal producing the fur as the last word of the description—all words of the designation to be in like type and equally conspicuous. (Mar. 14, 1945.)

4007. **Diaries, Advertising Novelties, Etc.—Composition.**—Knickerbocker Leather & Novelty Co., Inc., a New York corporation with its place of business at New York, N. Y., engaged in the manufacture of advertising novelties and specialties, including diaries, and in the sale of such commodities in interstate commerce in competition with other corporations and with individuals and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition.

Knickerbocker Leather & Novelty Co., Inc., agreed that, in connection with the advertisement, offering for sale, sale or distribution of its commodities in commerce, as commerce is defined by the Federal Trade Commission Act, it will cease and desist forthwith from representing through the use of the words "Genuine Leather" or the word "leather," or through the use of any other words or symbols of similar import and meaning, or in any manner whatever, that commodities sold by it and made from the inner split of leather are in fact made from the outer split or any part of the hide or skin other than the inner split thereof. (Mar. 19, 1945.)

4008. **Furs or Fur Garments—Nature.**—Abraham Katz and Philip Goldstein, copartners, trading as Katz & Goldstein, with place of business at 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, individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition.

Abraham Katz and Philip Goldstein, 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 from:

(a) The use of the terms "Sealine," "Hudseal," "Beaverette," or any other fictitious animal designation or coined fur-connoting term as descriptive of or in connection with their fur products.

(b) Using any animal or purported animal name or designation for fur which is not the true name of the animal producing the fur; *Provided*, that if the fur is so dyed as to simulate another fur, the fact that said fur is dyed shall be set forth as an integral part of its designation, and if the name of the animal whose fur is so simulated be given, such name shall be immediately followed by and compounded with the word "dyed" together with the true name of the animal producing the fur as the last word of the description—all words of the designation to be in like type and equally conspicuous. (Mar. 19, 1945.)

4009. **Furs or Fur Garments—Nature.**—J. Schaffer's Sons, Inc., a New York corporation with place of business at 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 agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

J. Schaffer's Sons, Inc., in connection with its sale and distribution of furs or fur garments in commerce as defined by the Federal Trade Commission Act agreed that it will forthwith cease and desist from:

(a) The use of the terms "Hudseal," "Sealine," or any other fictitious animal designation or coined fur-coining term as descriptive of or in connection with its fur products.

(b) Using any animal or purported animal name or designation for fur which is not the true name of the animal producing the fur; *Provided*, that if the fur is so dyed as to simulate another fur, the fact that said fur is dyed shall be set forth as an integral part of its designation, and if the name of the animal whose fur is so simulated be given, such name shall be immediately followed by and compounded with the word "dyed" together with the true name of the animal producing the fur as the last word of the description—all words of the designation to be in like type and equally conspicuous. (Mar. 20, 1945.)

4010. **Furs or Fur Garments—Nature.**—Charles Sadownick and Harry Richman, copartners trading as Sadownick & Richman, with place of business at New York, N. Y., are engaged in the manufacture of fur garments and in the sale and distribution thereof in interstate commerce in competition with firms, individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition.

Charles Sadownick and Harry Richman, whether operating in their own names as Sadownick & Richman or by 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 from using any animal or purported animal name or designation for fur which is not the true name of the animal producing the fur; *Provided*, that if the fur is so dyed as to simulate another fur, the fact that said fur is dyed shall be set forth as an integral part of its designation, and if the name of the animal whose fur is so simulated be given, such name shall be immediately followed by and compounded with the word "dyed" together with the true name of the animal producing the fur as the last word of the description—all words of the designation to be in like type and equally conspicuous. (Mar. 20, 1945.)

4011. **Furniture—Factory.**—Arthur West, Sidney West and Howard West, copartners trading under the firm name of Chester Furniture Factory, with place of business at Chester, Pa., engaged in the sale and distribution of furniture and household furnishings 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.

Arthur West, Sidney West and Howard West, whether operating under their own names or by any other trade designation in connection with the sale and distribution of 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 use of the words "furniture factory" or "factory" as a part of the trade designation for or as descriptive of the merchandising business conducted by them; or representing in any way that they manufacture the goods sold by them, that their place of business

is a factory showroom, that the prices charged are factory prices, that there are no middlemen between the manufacturer and the customer, or that their customers buy direct from the factory with distribution cost eliminated. (Mar. 20, 1945.)

4013.¹ **Photographs—"Free."**—Olan Mills, Mary Mills and T. H. Dry, copartners trading under the firm name of Olan Mills Portrait Studios, with principal place of business at Chattanooga, Tenn., their finishing plant in Springfield, Ohio, and branch offices in other States, engaged in the making of photographic portraits and in the sale and distribution thereof in interstate commerce in competition with firms, individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition.

Olan Mills, Mary Mills and T. H. Dry, individually, as copartners trading as Olan Mills Portrait Studios, or operating under any other name or style in connection with the offering for sale, sale and distribution of their photographs or other commodities in commerce as defined by the Federal Trade Commission Act, agreed that they and each of them will forthwith cease and desist from representing that any article of merchandise is "free," "absolutely free," a "free offer," "free of charge," or without cost to the recipient when such article is not a gratuity, and the prospective recipient is required as a consideration to purchase some other article or articles or render some service in order to obtain the same. (Mar. 26, 1945.)

4014. **Furs or Fur Garments—Nature.**—Morris Dentz and Louis Dentz, copartners trading as Dentz & Dentz, with place of business at New York, N. Y., engaged in the manufacture of fur garments and in the sale and distribution in interstate commerce in competition with firms, individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition.

Morris Dentz and Louis Dentz, 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 from:

(a) The use of the term "Sealine" or any other fictitious animal designation or coined fur-connoting term as descriptive of or in connection with their fur products.

(b) Using any animal or purported animal name or designation for fur which is not the true name of the animal producing the fur; *Provided*, that if the fur is so dyed as to simulate another fur, the fact that said fur is dyed shall be set forth as an integral part of its designation, and if the name of the animal whose fur is so simulated be given, such name shall be immediately followed by and compounded with the word "dyed" together with the true name of the animal producing the fur as the last word of the description—all words of the designation to be in like type and equally conspicuous. (Mar. 26, 1945.)

4015. **Wearing Apparel—Prices, Second-Hand as New and Composition.**—Samuel Schweiger and Harry Arkin, copartners, doing business under the firm names of Mammoth Mail Order House and Southerners' Bargain House, with principal place of business at New York, N. Y., engaged in the conduct of a business, generally under the name Mammoth Mail Order House, consisting of the sale by mail order of wearing apparel 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.

¹ Stipulation 4012 published in Volume 39 at p. 646.

Samuel Schweiger and Harry Arkin agreed that, in connection with the offering for sale, sale or distribution of their merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, they and each of them, whether trading as Mammoth Mail Order House or under any other trade name, will cease and desist forthwith from:

1. Offering merchandise for sale at a stated price that is below the price for which said merchandise will be sold, or when a deposit or consideration is required to be made in addition to the stated price before the offered merchandise is obtainable, but which requirement is not clearly and unequivocally indicated in connection with the sales offer of such merchandise.

2. The use of the word "nice" or "clean," or of any other word or words of similar import, as descriptive of merchandise, the condition of which is not properly so described; and from the use of the words "slightly used" or of any other word or words of like meaning, in any manner, the effect of which tends or may tend to cause or convey the impression or belief that the previous use or wear of such merchandise is slight or negligible when, in fact, the extent, degree or nature of such use or wear is such as to be improperly designated or referred to as "slightly."

3. Advertising, labeling, invoicing, selling or offering for sale any worn, second-hand or previously used article of clothing, unless there be securely attached to the exposed surface thereof, with sufficient permanency to remain thereon in a conspicuous, clear, distinct and plainly legible condition throughout the sale or resale, distribution and handling incident thereto, a tag or label bearing a statement, prominently displayed, that such article of clothing is second-hand or has been previously used or worn.

4. The use of any fiber designation in connection with the advertising, labeling, invoicing, sale or offering for sale of any of their merchandise, unless such designation truthfully discloses each constituent fiber thereof in the order of predominance by weight, beginning with the largest single constituent, and also unless tags or labels, bearing such correct and specific fiber content designation in conspicuous and legible terms, be securely attached or affixed to the exposed surface of the article of merchandise so offered for sale.

5. Advertising, labeling, invoicing, selling or offering for sale any used or second-hand hats, or hats composed in whole or in part of used or second-hand materials, unless the sweat bands of such hats be stamped on the inside surfaces thereof, in conspicuous and legible terms which cannot be removed or obliterated without mutilating the sweat bands, with a statement that such products are second-hand or used or are composed of second-hand or used materials; provided, that if sweat bands 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. (Mar. 30, 1945.)

4016. Women's Coats—Composition.—Franklin Simon & Co., a New York corporation with principal place of business at New York, N. Y., engaged in a business involving the operation of a retail department store wherein sales of merchandise, including women's coats, have been made both across the counter and 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.

Franklin Simon & Co. agreed that, in connection with the advertise-

ment, sale or distribution of fabric merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, it will cease and desist forthwith from using the words "camel hair" or the word "camel" as descriptive of a fabric that is not composed of camel hair; and from representing in any manner, directly or inferentially, that any fabric containing fibers other than camel hair is made wholly of camel hair; or, if said fabric is composed in part of camel hair, from representing in any way that the camel hair content of the fabric is in excess of what actually is a fact.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said Franklin Simon & 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. (Mar. 30, 1945.)

4017. Mascara Products—Safety and Qualities, Properties or Results.—Camille, Inc., a New Jersey corporation with offices and principal place of business at Bernardsville, N. J., engaged in the business of packaging cosmetics, including so-called Camille Cake Mascara and Camille Cream Mascara, and in the sale thereof to dealer-customers, as Five and Ten Cent Stores, in interstate commerce, in competition with other corporations and with individuals and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Camille, Inc., whether trading under said corporate name, or under any other name or style, agreed that in connection with the sale and distribution in commerce, as commerce is defined by the Federal Trade Commission Act, or the advertising by the means and in the manner above set forth, of its Mascara products, however disseminated, it will cease and desist forthwith from:

1. The use of the word "harmless," either alone or in connection with the word "absolutely," or with any other word or words, as descriptive of said products; and from the use of the said word in any way, the effects of which tends or may tend to cause or convey the belief or impression that the use of said products would not be harmful to persons who are sensitive to one or the other of the ingredients of which said products are composed.

2. The use of the word "tearproof" or the word "waterproof" as descriptive of said products, and from the use of either of said words or of any other word or words of similar import, which has or may have the tendency to create the belief, contrary to fact, that none of the ingredients of which said products are composed will run when wet.

3. The use of the word "stingproof" as descriptive of said product, or of the said word or any other word or words of like meaning or import that may cause the erroneous belief that irritation will not result if the products should get into the eye. (Mar. 30, 1945.)

4018. Culture Pearls—Source or Origin and "Guaranteed."—Jack J. Felsenfeld, an individual with place of business at New York, N. Y., engaged in the sale and distribution of culture pearls, including necklaces made therefrom, 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.

Jack J. Felsenfeld agreed that, in connection with the conduct of his business in commerce, as commerce is defined by the Federal Trade Commission Act, he will cease and desist forthwith from:

. Tagging, banding, labeling or advertising jewelry products composed in whole or in part of culture pearls or essential elements that are of

foreign origin or manufacture without clearly and unequivocally disclosing the name of the country of origin or manufacture of said culture pearls or essential elements.

2. The use of the term "Guaranteed" or of any other word or words of similar meaning, in connection with the advertisement, offering for sale or sale of products unless, whenever used, clear and unequivocal disclosure is made in connection therewith of exactly what is offered by way of security; and from the use of any guaranty unless strict and complete performance is made therewith. (Mar. 30, 1945.)

4019. **Drug Product—Qualities, Properties or Results and Safety.**—Olaf G. Shuler and Helen C. Shuler, copartners, cooperatively engaged with Carl H. Arbenz, of Glendale, Calif., and/or at Las Vegas, Nev., in the conduct of a business under the trade name "Nim-Pah Products Company" which involved the sale and distribution of a drug product called Nim-Pah in interstate commerce. In or about February, 1942, Carl H. Arbenz terminated his connection with the said business which was thereafter continued by the said copartners under the aforesaid trade name. The said copartners and Carl H. Arbenz, prior to 1942, and the said copartners, after said date, were in competition with other partnerships, corporations and individuals likewise engaged, and entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Olaf G. Shuler and Helen C. Shuler and Carl H. Arbenz, whether trading as Nim-Pah Products Company, or under any other name or style, agreed in connection with the sale and distribution in commerce, as commerce is defined by the Federal Trade Commission Act, or the advertising by the means and in the manner above set forth, of the product called Nim-Pah, whether sold under such name or any other name or names, they, and each of them, will cease and desist forthwith from:

1. The use of any statement or representation that tends or may tend to cause or convey the impression or belief that said product constitutes an adequate treatment for arthritis, rheumatism or kidney diseases, or that it will give symptomatic relief from the pain or any other manifestations of said diseases; that it will relieve the pain of inflamed, swollen and stiff joints; that it will overcome nervousness or insomnia; that it will purify or have any effect upon the blood and will have a cleansing effect upon the kidneys; that it will correct the cause of constipation or do more than to have a laxative and diuretic action and thereby temporarily relieve that condition.

2. Disseminating or causing to be disseminated any advertising pertaining to said product which fails clearly to reveal the potential danger from the use of the product in the presence of nausea, vomiting, abdominal pain, or other symptoms of appendicitis; that the use of said product by a person whose kidneys are injured or diseased may seriously interfere with their proper functioning; and that too prolonged administration thereof may injure kidneys that are normal; *Provided, however*, that if the directions for the use of said product, whether appearing on the label, in the labeling, or in both label and labeling, contain adequate and specific warnings of its potential danger to health as aforesaid, said advertising need contain only the cautionary statement: **CAUTION, USE ONLY AS DIRECTED.** (Mar. 30, 1945.)

4020. **Floor Wax—Comparative Merits and Qualities, Properties or Results.**—Twin City Shellac Co., Inc., a New York corporation with place of business at Brooklyn, N. Y., engaged in the sale and distribution of a product designated "Dan-Dee No Rubbing Floor Wax" in interstate com-

merce, 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.

Twin City Shellac Co., Inc., agreed that, in connection with the sale and distribution of its floor wax or other commodities in commerce as commerce is defined by the Federal Trade Commission Act, it will forthwith cease and desist from representing:

(a) That Dan-Dee floor wax or any product of similar composition lasts twice as long as ordinary wax; or by any other presentation, that it has enduring properties in excess of competitive products of standard quality.

(b) That Dan-Dee is a heavy duty wax, or otherwise is constituted so as to withstand strain, exposure or wear of an unusual nature; that traffic will not faze—that is, will not disturb or disarrange—it; or that its lustre or gloss improves with wear. (Mar. 30, 1945.)

4021. **Fur Garments—Nature.**—Milton Fettner and Henry Fettner, copartners operating under the firm name of American Trading Co., with place of business at Cincinnati, Ohio, engaged in the manufacture of fur garments and in the sale and distribution thereof in interstate commerce, in competition with firms, individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Milton Fettner and Henry Fettner, whether trading by their individual names, as American Trading Co., or under any other designation, in connection with the sale and distribution of certain of their fur coats in commerce as defined by the Federal Trade Commission Act, agreed that they and each of them will forthwith cease and desist from:

(a) The use of the terms "Hud Seal," "Sealine," "Beaverette," or any other fictitious animal designation or coined fur-connoting term as descriptive of or in connection with their fur products.

(b) Using any animal or purported animal name or designation for fur which is not the true name of the animal producing the fur; *Provided*, that if the fur is so dyed as to simulate another fur, the fact that said fur is dyed shall be set forth as an integral part of its designation, and if the name of the animal whose fur is so simulated be given, such name shall be immediately followed by and compounded with the word "dyed" together with the true name of the animal producing the fur as the last word of the description—all words of the designation to be in like type and equally conspicuous. (Mar. 30, 1945.)

4022. **Furs or Fur Garments—Nature.**—Morris Dunaier and Louis Weitman, copartners trading as W. & D. Fur Co., with place of business at 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, individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Morris Dunaier and Louis Weitman, whether operating in their own names, as W. & D. Fur Co., or by 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 from using any animal or purported animal name or designation for fur which is not the true name of the animal producing the fur; *Provided*, that if the fur is so dyed as to simulate another fur, the fact that said fur is dyed shall be set forth as an integral part of its designation, and if the name of the animal whose fur is so simulated be given, such name shall be immediately followed by and com-

pounded with the word "dyed" together with the true name of the animal producing the fur as the last word of the description—all words of the designation to be in like type and equally conspicuous. (Mar. 30, 1945.)

4023. **Furs or Fur Garments—Nature.**—Samuel Klein and Sol Weisman, copartners trading as Samuel Klein & Co., with place of business at 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, individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Samuel Klein and Sol Weisman, whether operating in their own names, as Samuel Klein & Co., or by 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 from:

(a) The use of the terms "Sealine," "Hud Seal," "Mendoza," or any other fictitious animal designation or coined fur-connoting term as descriptive of or in connection with their fur products.

(b) Using any animal or purported animal name or designation for fur which is not the true name of the animal producing the fur; *Provided*, that if the fur is so dyed as to simulate another fur, the fact that said fur is dyed shall be set forth as an integral part of its designation, and if the name of the animal whose fur is so simulated be given, such name shall be immediately followed by and compounded with the word "dyed" together with the true name of the animal producing the fur as the last word of the description—all words of the designation to be in like type and equally conspicuous. (Mar. 30, 1945.)

4024. **Umbrellas—Second-Hand as New and Composition.**—Menashe Brettschneider, an individual trading as Grand Umbrella Co. with principal place of business at New York, N. Y., engaged in the manufacture of umbrellas and in the sale and distribution thereof in interstate commerce, in competition with other individuals and with corporations and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Menashe Brettschneider, in connection with the conduct of his business in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that he, whether trading under the name of Grand Umbrella Co. or under any other name, will cease and desist forthwith 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 at an exposed and conspicuous place, with sufficient permanency to remain thereon in 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 selling, offering for sale, advertising, or otherwise representing any umbrella, or any part thereof, as being new, when such is not the fact.

2. Offering for sale or selling umbrellas, the covering material or product of which is made of or contains rayon without disclosure of the fact that such material or product is rayon, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales promotional descriptions or representations thereof however disseminated or published. (Apr. 2, 1945.)

4025. **Metal-Covered Books—Qualities, Properties or Results, Composition, Etc.**—Bibles for Victory, Inc., a New York corporation with place of business at New York, N. Y., and Isaac Steinbrook, also of New York City, manager of the business conducted by said corporation, engaged in the sale and distribution of metal-covered Bibles and Catholic missals 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.

Bibles for Victory, Inc., and Isaac Steinbrook, in connection with their sale and distribution of metal-covered books 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, directly or by implication, that the books thus offered for sale and sold are capable of stopping or deflecting bullets, shrapnel or bayonet thrusts, or otherwise afford physical protection to persons carrying such books; or using the trade designations "Victory Armored Bible," "Victory Armored New Testament" or "Victory Armored Catholic Prayer Book" for such metal-covered books, or expressions such as "life-saving feature," "armor for hearts," "armor his heart," "heart armor," "vital protection," "save his life," or terms or legends of like import as descriptive of or with reference to said books.

(b) Representing, by statement or connotation, that said books are approximately the size of the left breast pocket of a soldier's uniform, or that they fit over or protect the heart.

(c) Designating the metal covers of such books as "24 carat gold plated" or "gold plated," or otherwise representing that the same are coated with more than a gold flash or gold color.

(d) Supplying dealers with news items or other printed or written material representing, directly or by implication, that books such as those thus offered for sale are capable of affording physical protection to persons carrying them. (Apr. 2, 1945.)

4026. **Drug Product—Patented.**—National Drug Co., a Pennsylvania corporation, with principal place of business at Philadelphia, Pa., engaged in the manufacture of biologicals, bio-chemicals and pharmaceuticals, and of a drug product called "Allantomide," recommended as a treatment for wounds, scalds, burns, ulcers, abscesses, and the like, and causing said products, including the so-called "Allantomide," to be sold and thereafter shipped to drug trade and physicians in interstate commerce, in competition with other corporations and with individuals and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

National Drug Co. agreed that, in connection with the offering for sale, sale or distribution, in commerce as defined by the Federal Trade Commission Act, of its preparation called "Allantomide" or of any other preparation of similar composition under whatever trade name, or the advertising thereof by the means or in the manner set forth, it will cease and desist from representing, contrary to fact:

1. That the said preparation is the subject matter of a U. S. Patent or, through the use of the term "U. S. Patent No. 2,124,295" that the said preparation is the product for which the indicated U. S. Patent was issued.

2. That, by virtue of its ownership of U. S. Patent No. 2,124,295, the aforesaid corporation has the exclusive right to make, use and vend a sulfanilamide allantoin ointment. (Apr. 3, 1945.)

4027. Necklaces—Composition, Foreign as Domestic, Source or Origin, Etc.—J. A. Deknatel & Son, Inc., a New York corporation with principal place of business at Queens Village, Long Island, N. Y., engaged in the sale and distribution of jewelry and novelties, including necklaces composed of base beads finished to simulate pearls in appearance, in interstate commerce, in competition with individuals and with other corporations and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

J. A. Deknatel & Son, Inc., agreed that, in connection with the advertising, offering for sale, sale and distribution of necklaces composed of base beads finished to simulate pearls, in commerce as commerce is defined by the Federal Trade Commission Act, it will cease and desist forthwith from:

1. The use of the words "Deknatel Pearls" or the word "Pearl" as a trade designation for its commodities, and from the use of the word "Pearl" or "Pearls" 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 beads used in the making of said necklaces are pearls, the product of certain mollusks.

2. Representing, in any manner, that the beads of which said necklaces are composed are of domestic make or origin, when in fact said beads were made or manufactured in a country other than the United States.

3. Offering for sale or selling necklaces composed either in whole or in part of base beads or essential items that are of foreign origin or manufacture without clearly and unequivocally disclosing the name of the country of their origin or manufacture.

4. Using the term "Made in U.S.A.," or any other term of similar import or meaning, to designate, describe or refer to necklaces that are composed, either in whole or in part, of base beads or essential items that are made or manufactured in any country other than the United States of America. (Apr. 3, 1945.)

4028. Umbrellas—Used, Rebuilt or Second-Hand as New and Composition.—L. P. Henryson & Co., Inc., a New York corporation with place of business at New York, N. Y., engaged in the manufacture of umbrellas and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

L. P. Henryson & Co., Inc., in connection with the conduct of its business in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that it, whether trading under its own name, or under any other name, will cease and desist forthwith 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 at an exposed and conspicuous place, with sufficient permanency to remain thereon in 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 selling, offering for sale, advertising, or otherwise representing any umbrella, or any part thereof, as being new, when such is not the fact.

2. Offering for sale or selling umbrellas, the covering material or product of which is made of or contains rayon, without disclosure of the

fact that such material or product is rayon, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales promotional descriptions or representations thereof however disseminated or published. (Apr. 3, 1945.)

4029. **Umbrellas—Used, Rebuilt or Second-Hand as New and Composition.**—Mespo Umbrella Co., a New York corporation with place of business at New York, N. Y., engaged in the manufacture of umbrellas and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Mespo Umbrella Co., in connection with the conduct of its business in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that it will cease and desist forthwith 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 at an exposed and conspicuous place, with sufficient permanency to remain thereon in 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 selling, offering for sale, advertising, or otherwise representing any umbrella, or any part thereof, as being new, when such is not the fact.

2. Offering for sale or selling umbrellas, the covering material or product of which is made of or contains rayon, without disclosure of the fact that such material or product is rayon, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales promotional descriptions or representations thereof however disseminated or published. (Apr. 3, 1945.)

4030. **Furs or Fur Garments—Nature of Product.**—Max Glasner, Sam Sherlag and Benjamin Mester, copartners trading as Guild Craft Fur Co., with place of business at 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, individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Max Glasner, Sam Sherlag and Benjamin Mester, whether operating in their own names, as Guild Craft Fur Co., or by 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 from:

(a) The use of the terms "Hudseal," "Hud Seal," "Sealine," "Beaverette," "Mendoza Beaverette," "Muscatine Coney," "Beaverette Coney," or any other fictitious animal designation or coined fur-connoting term as descriptive of or in connection with their fur products.

(b) Using any animal or purported animal name or designation for fur which is not the true name of the animal producing the fur; *Provided*, that if the fur is so dyed as to simulate another fur, the fact that said fur is dyed shall be set forth as an integral part of its designation, and if the name of the animal whose fur is so simulated be given, such name shall be immediately followed by and compounded with the word "dyed" together with the true name of the animal producing the fur as the last word of the description—all words of the designation to be in like type and equally conspicuous. (Apr. 3, 1945.)

4031. **Jewelry—Source or Origin and Factory.**—Saul Weinreich and Rae C. Weinreich, copartners trading as Weinreich Brothers Co. with principal place of business at New York, N. Y., engaged in the sale and distribution of costume jewelry including necklaces composed of base beads finished to simulate pearls in appearance, in interstate commerce, in competition with other partnerships and with individuals and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Saul Weinreich and Rae C. Weinreich agreed that they, and each of them, whether trading under the firm name of Weinreich Brothers Co., or any other name, in connection with the conduct of business in commerce, as commerce is defined by the Federal Trade Commission Act, will cease and desist forthwith from:

1. Advertising, offering for sale, selling or distributing necklaces or other jewelry composed either in whole or in part of base beads or of essential parts that are of foreign origin or manufacture without clearly and unequivocally disclosing the name of the country of origin or manufacture of said beads or essential parts.

2. Stating that they have a factory at Union City, N. J., and from the use of the word "factory" or of any other word or term of similar import or meaning, the effect of which tends or may tend to cause or convey the belief, contrary to fact, that the said copartners actually own and operate or directly and absolutely control a factory or plant. (Apr. 5, 1945.)

4032. **Umbrellas—Used, Rebuilt or Second-Hand as New and Composition.**—Irving Hollander, an individual trading as F. Hollander & Son, with principal place of business at New York, N. Y., engaged in the manufacture of umbrellas and in the sale and distribution thereof in interstate commerce, in competition with other individuals and with corporations and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Irving Hollander, in connection with the conduct of his business in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that he, whether trading under the name of F. Hollander & Son, or under any other name, will cease and desist forthwith 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 at an exposed and conspicuous place, with sufficient permanency to remain thereon in 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 selling, offering for sale, advertising, or otherwise representing any umbrella, or any part thereof, as being new, when such is not the fact.

2. Offering for sale or selling umbrellas, the covering material or product of which is made of or contains rayon without disclosure of the fact that such material or product is rayon, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales promotional descriptions or representations thereof however disseminated or published. (Apr. 5, 1945.)

4033. **Furs or Fur Garments—Nature of Product.**—Morris Weitzman, Abe Weitzman, Louis Weitzman and Eddie Weitzman, copartners trading as M. Weitzman with place of business at New York, N. Y., engaged in the

sale and distribution of fur garments 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.

Morris Weitzman, Abe Weitzman, Louis Weitzman and Eddie Weitzman, in connection with the sale and distribution of furs or fur garments in commerce as commerce is defined by the Federal Trade Commission Act, agreed that they and each of them will forthwith cease and desist from:

1. The use of the word "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;

2. The use of the term "Sealine" or any other fictitious animal designation or coined fur-connoting term as descriptive of or in connection with their fur products;

3. Using any animal or purported animal name or designation for fur which is not the true name of the animal producing the fur; Provided, that if the fur is so dyed as to simulate another fur, the fact that said fur is dyed shall be set forth as an integral part of its designation, and if the name of the animal whose fur is so simulated be given, such name shall be immediately followed by and compounded with the word "dyed" together with the true name of the animal producing the fur as the last word of the description—all words of the designation to be in like type and equally conspicuous. (Apr. 6, 1945.)

4034. "Kol-Saver" Device—Economizing or Saving, Qualities, Properties or Results and Testimonials.—Richard A. Trow, Ingwald G. Olson, E. H. Mickelson, Edwin Johnson, William O. Lindahl and Robert C. Trow, copartners trading as Kol-Saver Sales Co., with place of business at Albert Lea, Minn., engaged in the sale and distribution of a device designated "Kol-Saver" which consists of a supplemental grate for use in coal burning furnaces, 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.

Richard A. Trow, Ingwald G. Olson, E. H. Mickelson, Edwin Johnson, William O. Lindahl and Robert C. Trow, whether operating under their own names or under or by any trade designation or style, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of the device heretofore designated "Kol-Saver," or any other device of similar construction, agreed that they, and each of them, will forthwith cease and desist from:

1. Representing, directly or inferentially, that said device or the use thereof, when compared with properly operated conventional grates:

(a) Effects a saving in fuel cost of twenty percent or any other percentage or amount;

(b) Burns cheaper coal;

(c) Provides better combustion or affords a hotter or quicker fire.

2. Representing that for a properly operated hand fired furnace, range or stove said device increases the heating efficiency.

3. The use of the term "Kol-Saver" or any term or words of like meaning as a designation for such device or as part of or in connection with the trade name under which it is offered for sale or sold.

4. Representing, as by statements such as "Burns all gases" or "Eliminates soot-smoke," or in any other manner, that anything in the way of

performance can be accomplished by the use of said device that could not be accomplished, with equal skill in firing and knowledge of combustion, by the use of conventional grates.

It is further agreed by the aforesaid Richard A. Trow, Ingwald G. Olson, E. H. Mickelson, Edwin Johnson, William O. Lindahl and Robert C. Trow, that they, and each of them, will not publish any testimonials containing statements or representations contrary to the terms of the foregoing agreement. (Apr. 6, 1945.)

4035. Furs or Fur Garments—Nature of Products and Manufacturers.—Harry Metzger, Inc., a New York corporation with place of business at New York, N. Y., engaged in the sale and distribution of fur garments in interstate commerce, in competition with corporations, firms and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Harry Metzger, Inc., in connection with its sale and distribution of furs or fur garments in commerce as commerce is defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

(a) The use of the terms "Sealine," "Super Sealine," "Beaverette," "Mendoza Beaverette," or any other fictitious animal designation or coined fur-connoting term as descriptive of or in connection with its fur products.

(b) Using any animal or purported animal name or designation for fur which is not the true name of the animal producing the fur; Provided, that if the fur is so dyed as to simulate another fur, the fact that said fur is dyed shall be set forth as an integral part of its designation, and if the name of the animal whose fur is so simulated be given, such name shall be immediately followed by and compounded with the word "dyed" together with the true name of the animal producing the fur as the last word of the description—all words of the designation to be in like type and equally conspicuous.

(c) Using 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*).

(d) Using the term "Civet Cat" or the word "Civet," or words or terms of like meaning, in any way to designate or describe furs or fur garments made of the peltries of the little spotted skunk or spilogale, or of any peltries other than civet peltries.

(e) Using the term "Manufacturing Furriers," or expressions of like import, as descriptive of its business; or otherwise representing that the articles of commerce offered for sale and sold by it are made or manufactured in a plant or factory which it actually owns and operates or directly and absolutely controls. (Apr. 6, 1945.)

4036. Umbrellas—Used, Rebuilt or Second-Hand as New and Composition.—Harry Fellerman and Rose Fellerman, copartners, trading as H. Fellerman & Bro., with principal place of business at New York, N. Y., engaged in the manufacture of umbrellas and in the sale and distribution thereof in interstate commerce, in competition with other partnerships and with individuals and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Harry Fellerman and Rose Fellerman, in connection with the conduct of their business in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that they, and each of them, whether trading

under the name of H. Fellerman & Bro., or under any other name, will cease and desist forthwith 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 at an exposed and conspicuous place, with sufficient permanency to remain thereon in 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 selling, offering for sale, advertising, or otherwise representing any umbrella, or any part thereof, as being new, when such is not the fact.

2. Offering for sale or selling umbrellas, the covering material or product of which is made of or contains rayon, without disclosure of the fact that such material or product is rayon, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales promotional descriptions or representations thereof however disseminated or published. (Apr. 9, 1945.)

4037. **Umbrellas—Used, Rebuilt or Second-Hand as New and Composition.**—Ewald Stein, Edgar E. Seldis and Ida Lubar, copartners trading as Lubar Umbrella Co., with principal place of business at New York, N. Y.; engaged in the business of selling and distributing umbrellas in interstate commerce, in competition with other partnerships and with individuals and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Ewald Stein, Edgar E. Seldis and Ida Lubar, in connection with the conduct of their business in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that they, and each of them, whether trading under the name of Lubar Umbrella Company, or under any other name, will cease and desist forthwith 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 at an exposed and conspicuous place; with sufficient permanency to remain thereon in 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 selling, offering for sale, advertising, or otherwise representing any umbrella, or any part thereof, as being new, when such is not the fact.

2. Offering for sale or selling umbrellas, the covering material or product of which is made of or contains rayon, without disclosure of the fact that such material or product is rayon, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales promotional descriptions or representations thereof however disseminated or published. (Apr. 9, 1945.)

4038. **Umbrellas—Used, Rebuilt or Second-Hand as New and Composition.**—Jacob Fellerman and Samuel Fellerman, copartners trading as Fellerman Brothers, with principal place of business at New York, N. Y., engaged in the manufacture of umbrellas and in the sale and distribution thereof in interstate commerce in competition with other partnerships and 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.

Jacob Fellerman and Samuel Fellerman, in connection with the conduct of their business in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that they, and each of them, whether trading under the name of Fellerman Brothers, or any other name, will cease and desist forthwith 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 at an exposed and conspicuous place, with sufficient permanency to remain thereon in 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 selling, offering for sale, advertising, or otherwise representing any umbrella, or any part thereof, as being new, when such is not the fact.

2. Offering for sale or selling umbrellas, the covering material or product of which is made of or contains rayon, without disclosure of the fact that such material or product is rayon, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales promotional descriptions or representations thereof however disseminated or published. (Apr. 11, 1945.)

4039. **Umbrellas—Used, Rebuilt or Second-Hand as New and Composition.**—Aaron Chudnoff, Wolf Israel, Belle Chudnoff and Lily Israel, copartners, trading as C & I Umbrella Manufacturing Co., with principal place of business at New York, N. Y., engaged in the manufacture of umbrellas and in the sale and distribution thereof in interstate commerce, in competition with other partnerships and with individuals and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Aaron Chudnoff, Wolf Israel, Belle Chudnoff and Lily Israel, in connection with the conduct of their business in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that they, and each of them, whether trading under the name C & I Umbrella Co., or under any other name, will cease and desist forthwith 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 at an exposed and conspicuous place, with sufficient permanency to remain thereon in 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 selling, offering for sale, advertising, or otherwise representing any umbrella, or any part thereof, as being new, when such is not the fact.

2. Offering for sale or selling umbrellas, the covering material or product of which is made of or contains rayon, without disclosure of the fact that such material or product is rayon, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales promotional descriptions or representations thereof however disseminated or published. (Apr. 11, 1945.)

4040. **Furs or Fur Garments—Nature of Product.**—Trachtenberg Furs, Inc., a New York corporation with principal place of business in New York, N. Y., engaged in the sale and distribution of fur garments in interstate commerce in competition with corporations, firms and individuals

likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Trachtenberg Furs, Inc., in connection with the sale and distribution of furs or fur products in commerce as commerce is defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from using the term "Civet Cat" or the word "Civet," or words or terms of like meaning, in any way to designate or describe furs or fur garments made of the peltries of the little spotted skunk, or spilogale, or of any peltries other than civet peltries. (Apr. 11, 1945.)

4041. Fur Scarfs and Neckpieces—Nature of Products.—Davis & Greenwald, Inc., a New York corporation with principal place of business at New York, N. Y., engaged in the manufacture of fur scarfs and neckpieces 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.

Davis & Greenwald, Inc., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

(a) The use of the terms "Rock Sable," "Mink Rock Sable," "Sable Rock Sable," "Mink Mountain Sable," or any other fictitious animal designation or coined fur-connoting term as descriptive of or in connection with their fur products.

(b) Using any animal or purported animal name or designation for fur which is not the true name of the animal producing the fur; *Provided*, that if the fur is so dyed as to simulate another fur, the fact that said fur is dyed shall be set forth as an integral part of its designation, and if the name of the animal whose fur is so simulated be given, such name shall be immediately followed by and compounded with the word "dyed" together with the true name of the animal producing the fur as the last word of the description—all words of the designation to be in like type and equally conspicuous. (Apr. 11, 1945.)

4042. Rings—Composition.—Bastian Brothers Co., a New York corporation with principal place of business at Rochester, N. Y., engaged in the manufacture of class and fraternity jewelry 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.

Bastian Brothers Co., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from stamping, branding, labeling or otherwise designating rings or other merchandise of less than 24 karat fineness as "gold"; or by any words or expressions of like implication, representing that such an article is composed throughout of 24 karat gold. If the word "gold" be used in any advertising description or branding of an alloy containing the element gold, then in immediate connection therewith the karat fineness throughout of such alloy shall be indicated by a proper quality mark or designation—all in like lettering of equal size. (Apr. 16, 1945.)

4043. Dental Floss—Composition and Qualities, Properties or Results.—Eagle Druggists Supply Co., Inc., a New York corporation with place of business at New York, N. Y., engaged as a jobber in the wholesale distribution of druggists' sundries 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.

Eagle Druggists Supply Co., Inc., in connection with the sale and distribution of its dental floss or other commodities in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

(a) The use of the word "silk," either alone, in conjunction with the word "synthetic," or otherwise in any manner which imports, implies or may cause the belief that its Protex-U or similar dental floss is composed of silk, contains silk or has the properties of silk; or representation that said Protex-U, or any other dental floss made of rayon, has "extra strength," or even adequate strength for the purpose intended.

(b) 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; or, 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. (Apr. 16, 1945.)

4044. **Umbrellas—Composition.**—Jesse N. Polan, Charles Katz and William L. Fox, copartners trading as Polan, Katz & Co., with principal place of business at Baltimore, Md., engaged in the manufacture of umbrellas, parasols and rainwear, and in the sale and distribution thereof 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.

Jesse N. Polan, Charles Katz and William L. Fox, agreed that, in connection with the conduct of their business in commerce, as commerce is defined by the Federal Trade Commission Act, they, and each of them, whether trading under the firm name "Polan, Katz & Company," or under any other name, will cease and desist forthwith from offering for sale or selling umbrellas, the covering material of which is made of or contains rayon, without disclosure of the fact that such material is rayon, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales promotional descriptions or representations thereof however disseminated or published. (Apr. 20, 1945.)

4045. **Medicinal Preparation—Qualities, Properties or Results, Comparative Merits, Safety, Laboratory, Etc.**—S-K Research Laboratories, Inc., an Arizona corporation with place of business at Phoenix, Ariz., engaged in the sale and distribution of a medicinal preparation designated "Adreno-Mist," 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-K Research Laboratories, Inc., in connection with its sale and distribution of Adreno-Mist or other commodities in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means or in the manner above set forth, agreed that it will forthwith cease and desist from representing, directly or inferentially:

(a) That Adreno-Mist or any similar product is a competent treatment or an adequate remedy for the relief of asthma; that by its use asthma will

be relieved in 60 seconds or any other length of time; or by any presentation, that it could afford more than a temporary relief from the paroxysms of asthma.

(b) That Dr. James B. Graeser or any other authority has reported excellent results with 94 percent, or any comparable proportion, of patients tested with the 1 percent epinephrine solution treatment by inhalation; or otherwise, that clinical results obtained have been uniformly or generally satisfactory.

(c) That inhalation of Adreno-Mist will give, or frequently gives, relief where a hypodermic injection has failed; that it will avoid, in most cases or at all, severe heart reaction or nervousness produced by the injection treatment; or otherwise, that it is any more effective or beneficial than said injection treatment.

(d) That regular daily inhalation of Adreno-Mist, or any inhalation thereof, helps to ward off future attacks of asthma or to any degree serves to prevent such attacks; that such treatment may be repeated as often as necessary, or as often as the user himself may determine; that even with continued use stronger solutions are not needed; or that said medication is "safe," or free from potential danger.

(e) That persons suffering from chronic bronchitis have found the Adreno-Mist treatment beneficial; or otherwise, that it is a suitable or appropriate remedy for bronchial irritation.

Said respondent further agrees to cease and desist from:

(f) The use of the words "Research Laboratories," "Laboratories" or any similar term as a part of its corporate or trade name, or in any way which may import or imply that it owns and operates a laboratory wherein it employs qualified scientists and maintains facilities for scientific research; unless and until such time as said respondent actually owns and operates a research laboratory; and from representing that Adreno-Mist is a "product" of said corporation, or that its customers buy direct from the manufacturer or save money by reason thereof; unless and until said product is actually purchased direct from said manufacturer thereof.

(g) Disseminating directions for use of a medicinal preparation containing epinephrine, in either the advertising, labels or labeling thereof, which is not specific in its limitation of the total amount of the medication to be taken at any one time or over a period of time; which is not strictly limited to the smallest amount that affords temporary relief; or which by statement or implication provides for such administration of the preparation as the patient may himself seem necessary or desirable.

(h) Disseminating any advertisement or trade literature pertaining to its medicinal preparations which contain epinephrine which fails clearly to reveal that frequent or continued use of said product may cause nervousness, restlessness or sleeplessness and bronchial irritation; and that individuals suffering from high blood pressure, heart disease, diabetes or thyroid trouble should not use such preparation except on competent advice; *Provided, however*, that if the directions for the use thereof, whether they appear on the label, in the labeling, or in both label and labeling, contain an adequate warning of its potential danger to health as aforesaid, said advertisement need contain only the cautionary statement: CAUTION, USE ONLY AS DIRECTED. (Apr. 23, 1945.)

4046. **Neckties—Domestic as Imported and "Wrinkleproof."**—Morris Bergman and Aaron Klapper, copartners, trading as Belle Neckwear Co. with principal place of business at New York, N. Y., engaged in the manufacture of neckwear and in the sale and distribution thereof in interstate commerce, in competition with firms, individuals and corporations likewise

engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Morris Bergman and Aaron Klapper, whether operating as Belle Neckwear Co., in their own names, or by any other trade designation, in connection with the sale and distribution of the product herein described or other neckwear 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, through the use of the words "Royal Scot" or other terms, symbols or picturizations indicative of Scottish origin, by statements such as "Just arrived from England—Royal Scott Neckwear . . . after months of effort they're here," or otherwise, that neckties or other articles actually made in the United States were manufactured in Scotland, England or other foreign country, or were, in finished form, imported into the United States; Provided, that if the country of origin of the component fabric thereof be named, it shall be immediately accompanied by a statement, equally conspicuous, that said article, as presented for sale, was manufactured in the United States.

(b) Representing that their said neckwear is "wrinkleproof"; or using such term, or expressions of like import, as descriptive of or with reference to any article not in fact so constructed or processed as to be steadfast against, or successful in resisting, any and all wrinkling whatsoever. (Apr. 23, 1945.)

4047. "Colorcrete"—Qualities, Properties or Results and "Waterproofing."—Colorcrete Industries, Inc., a Michigan corporation with place of business at Holland, Mich., engaged in the manufacture of a product designated "Colorcrete" for application to concrete and masonry, and machines to mix and spray the same, 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.

Colorcrete Industries, Inc., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

(a) Representing that Colorcrete, or any preparation of like composition, adds permanence to a home, will permanently enhance its value or usefulness, gives permanent masonry surfacing, permanently surfaces masonry buildings, or contains the ingredients necessary for permanence; and from the use of any other representation connoting or tending to convey the impression or belief that such product is permanent or everlasting, or affords permanent or everlasting protection or properties to walls or structures to which it is applied.

(b) The use of the words "Waterproofed," "waterproofing" or terms or expressions of like import as a designation for, as descriptive of or with reference to any product which is not effective as a waterproofing agent under all conditions of use; *Provided, however*, that if such product is an efficacious waterproofer under certain conditions, then in that case such descriptive words whenever used shall be immediately accompanied, in equally conspicuous type, by words or statement definitely and truthfully disclosing the particular conditions under which it may be effective for the purposes named or indicated. (Apr. 23, 1945.)

4048. Umbrellas Used, Rebuilt or Second-Hand as New and Composition.—Louis H. Cohen and Jacob Cohen, individuals, who were engaged as copartners in the conduct of an umbrella manufacturing business

under the firm name of "Louis H. Cohen"; George Umbrella Co., Inc., a New York corporation at New York, N. Y., organized in September, 1944, at which time it took over or succeeded to the business formerly operated by the aforesaid copartners under the name "Louis H. Cohen," whose president and vice president are, respectively Louis H. Cohen and Jacob Cohen. The business conducted first by the said copartners and then by the said corporation consisted of the manufacture of women's umbrellas and parasols and of the sale and distribution of said products in interstate commerce, in competition with other partnerships and 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.

Louis H. Cohen and Jacob Cohen, and George Umbrella Co., Inc., under whatever name they or it may trade, in connection with the conduct of business in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that they and each of them and it will cease and desist forthwith 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 at an exposed and conspicuous place, with sufficient permanency to remain thereon in 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 selling, offering for sale, advertising, or otherwise representing any umbrella, or any part thereof, as being new, when such is not the fact;

2. Offering for sale or selling umbrellas, the covering material or product of which is made of or contains rayon without disclosure of the fact that such material or product is rayon, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales promotional descriptions or representations thereof however disseminated or published. (Apr. 23, 1945.)

4049. Umbrellas—Used, Rebuilt or Second-Hand as New and Composition.—Mortimer Altshuler, an individual, trading as Sol Altshuler, whose principal place of business is at New York, N. Y., engaged in the manufacture of umbrellas and umbrella covers and in the shipment thereof in interstate commerce, in competition with other individuals and with corporations and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Mortimer Altshuler, in connection with the conduct of his business in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that he, whether trading under the name Sol Altshuler, or under any other name, will cease and desist forthwith from:

1. Offering for sale or selling any rebuilt or second-hand umbrella or umbrellas containing rebuilt or second-hand parts, unless there be securely attached to such umbrellas at 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 selling, offering for sale, advertising or otherwise representing any umbrella, or part thereof, as being new, when such is not the fact;

2. Offering for sale or selling umbrellas, the covering material of which is made of or contains rayon, without disclosure of the fact that such material is rayon, made clearly and unequivocally in the invoices and labeling, and in all advertising matter, sales promotional descriptions or representations thereof however disseminated or published. (Apr. 23, 1945.)

4050. **Umbrellas—Used, Rebuilt or Second-Hand as New and Composition.**—Max Dorf, Samuel Finkelstein, Nathan Biderman and Fred Bohrman, copartners trading as Liberty Umbrella Co. with principal place of business at New York, N. Y., engaged in the manufacture of umbrellas, primarily for use by women, and in the sale and distribution thereof 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.

Max Dorf, Samuel Finkelstein, Nathan Biderman and Fred Bohrman, in connection with the conduct of their business in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that they, and each of them, whether trading under the firm name "Liberty Umbrella Company" or under any other name, will cease and desist forthwith from:

1. Offering for sale or selling any rebuilt or second-hand umbrella or umbrellas containing rebuilt or second-hand parts, unless there be securely attached to such umbrellas at 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 selling, offering for sale, advertising or otherwise representing any umbrella, or part thereof, as being new when such is not the fact;

2. Offering for sale or selling umbrellas, the covering material of which is made of or contains rayon, without disclosure of the fact that such material is rayon, made clearly and unequivocally in the invoices and labeling, and in all advertising matter, sales promotional descriptions or representations thereof however disseminated or published. (Apr. 23, 1945.)

4051. **Concrete or Masonry Additive—"Waterproofing," "Frost-proof," Qualities, Properties or Results, Comparative Merits, Etc.**—The Metalcrete Corporation, an Ohio corporation with place of business at Cleveland, Ohio, engaged in the sale and distribution of various commodities including products for use as additives to or as applications on concrete or masonry construction designated as "Metalcrete Metallic Waterproofing," "Metalcrete Metallic Hardener," "Liquid Metalcrete" and "Integral Liquid Metalcrete" and a roofing compound designated as "Graphilatum Liquid Roof Cement," 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.

Metalcrete Corporation, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of the products designated "Metalcrete Metallic Waterproofing," "Metalcrete Metallic Hardener," "Liquid Metalcrete," "Integral Liquid Metalcrete" and "Graphilatum Liquid Roof Cement," or any other products of substantially the same composition or possessing substantially the same properties, agreed that it will forthwith cease and desist from:

1. The use of the words "waterproof," "waterproofing" or other word

or words of like meaning as designations for, as descriptive of, or with reference to any of said products which is not effective as a waterproofing agent under all conditions of use; *Provided, however*, that if such product actually is an efficacious waterproofer under certain conditions, then in that case such words or expressions, whenever used, shall be immediately accompanied in equally conspicuous type by words or statements definitely and truthfully disclosing the particular condition under which the product is effective as a waterproofing agent.

2. The use of the words "prevents freezing" or other words or expressions of like meaning as descriptive of or with reference to a product which, when used as an additive to concrete, cannot be depended upon to protect such concrete from freezing or render same frostproof under any and all ranges of temperature and conditions of use; *Provided, however*, that if such product actually is effective in preventing freezing under certain conditions, then in that case such words or expressions, whenever used, shall be immediately accompanied in equally conspicuous type by words or statements definitely and truthfully disclosing the particular condition under which such product will be effective in rendering concrete immune to freezing.

3. The use of any statement or representation which tends or may tend to convey the belief or impression that said products or any thereof are permanent, or that any water repellent or other qualities of said products are permanent.

4. Representing that "Metalcrete Metallic Hardener" or a like product is wearproof or dustproof; that it is the only product of its kind that is scientifically made; or that it will form a perfect chemical union with concrete.

5. The use of any statement, depiction or other representation which connotes that "Liquid Metalcrete" or a like product transposes the aggregates in concrete into a homogeneous solid, re-forms concrete, forms a new chemical combination, re-crystallizes concrete into a fine grained or dense nonporous mineral substance, or causes concrete to be as hard as flint or to wear like steel.

6. Representing that the use of "Liquid Metalcrete" or a like product will cause concrete floors to be dustless, acidproof, oilproof or dampproof; or immune to dust, flake, crack, or chipping.

7. The use of the term "Metalcrete" or other term or word connoting metal as a designation for the product heretofore designated as "Integral Liquid Metalcrete," and from the use of such word or words in any manner that tends or may tend to convey the belief or impression that said product consists of or is made with metal.

8. Representing, directly or inferentially, that the use of the product heretofore designated as "Integral Liquid Metalcrete" or a like product results in stronger concrete after the curing thereof, or causes cement floors to be dustproof, wearproof or waterproof.

9. Representing that "Graphilatum Liquid Roof Cement" or a like product is "equivalent to TEN coats of any kind of roof paint" or any coats thereof not definitely established by proof.

10. Representing, directly or inferentially, that "Graphilatum Liquid Roof Cement" or a like product retains its elasticity permanently, that it cannot crack or chip off, or that a new roof coated therewith will last as long as the building regardless of the type or character of such roofing or building.

11. Representing generally that "Graphilatum Liquid Roof Cement" or a like product has supplanted paint for protective purposes or gives

greater durability; and if representation be made as to any such properties or qualities it shall, whenever made, be definitely limited to the specific conditions under which such product has supplanted paint or provided greater durability. (Apr. 23, 1945.)

4052. **Stationery—Contents, “Engraved” and “Embossed.”**—Fred V. Lehman and Phillip M. Couturier, copartners, trading under the firm name of Pacific Fine Arts, with principal place of business at Los Angeles, Calif., engaged in the sale and distribution of stationery designed for use by members of the military services, 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.

Fred V. Lehman and Phillip M. Couturier agreed that, in connection with the advertising, offering for sale, sale and distribution of their correspondence packs in commerce, as commerce is defined by the Federal Trade Commission Act, they and each of them, whether trading as Pacific Fine Arts, or under any other name, will cease and desist forthwith from:

1. Representing in any manner, contrary to fact, that the said correspondence pack contains 24 letterheads, or that the said pack contains any designated number of letterheads in excess of its actual letterhead content.

2. The use of the word “engraved” or the word “embossed” as descriptive of printed lettering which is neither engraved nor embossed, and from the use of the said words, or either thereof, in any way, the effect of which conveys or tends or may tend to cause the impression or belief, contrary to fact, that the said lettering is the result of a process of engraving or embossing, as such terms are generally recognized and understood to mean in the trade and by the purchasing public.

3. The use of the word “engraved,” or of any other word of similar connotation, as descriptive of the insignia appearing on the stationery which, in fact, is not engraved. (Apr. 23, 1945.)

4053. **Women’s Slips and Nightgowns—Composition.**—David Korn & Co., Inc., a New York corporation with its place of business at New York, N. Y., engaged in the sale and distribution of merchandise, including women’s rayon slips and nightgowns 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.

David Korn & Co., 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 that its garments are fagoted or sewn with nylon thread when in fact they are sewn with other than nylon thread; and from the use of any statement or representation or of the word “nylon” in any manner that tends or may tend to convey the belief or impression that garments are made of nylon when, in fact, they are made of material or fibers other than nylon.

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. (Apr. 25, 1945.)

4054. Umbrellas—Composition.—Frankford Umbrella Manufacturing Co., Inc., a corporation with principal place of business at Philadelphia, Pa., engaged in the manufacture of umbrellas and umbrella coverings and in the shipment 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.

Frankford Umbrella Manufacturing Co., Inc., agreed that, in connection with the conduct of its business in commerce, as commerce is defined by the Federal Trade Commission Act, it will cease and desist forthwith from offering for sale or selling umbrellas, the covering material of which is made of or contains rayon, without disclosing that such material is rayon, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales promotional descriptions or representations thereof however disseminated or published. (Apr. 26, 1945.)

4055. Furniture—Fictitious Prices.—Case-Littell Co., a Washington corporation with place of business at Seattle, Wash., engaged in the sale and distribution of furniture 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.

Case-Littell Co., in connection with the offering for sale, sale and distribution of its furniture or other merchandise in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from representing as the customary or regular prices or values of furniture items or other merchandise, amounts which are, in fact, fictitious and in excess of those at which such articles are regularly and customarily offered for sale in the normal and usual course of business; or representing by statement or implication that a purchaser at the price offered saves the difference between said sales price and such purported regular price. (Apr. 26, 1945.)

4056. Spark Plug Cable Sets—Corporation, Manufacturer, Used, Second-Hand, Etc. as New and "Guaranteed."—George Rogers, Jr., an individual, with place of business in San Antonio, Tex., engaged under the trade name "Pluggers, Inc.," in the sale and distribution of spark plug cable sets in interstate commerce, in competition with other individuals and with corporations and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

George Rogers, Jr., agreed that, in connection with the advertisement, offering for sale, sale and distribution of his spark plug cable sets in commerce, as commerce is defined by the Federal Trade Commission Act, he will cease and desist forthwith from:

1. The use of the letters "Inc." as part of or in connection with the trade name under which he conducts his business, and from the use of the said letters or the representation of himself as "President," or any other purported corporate officer, the effect of which conveys or tends to convey the impression or belief that the business conducted by him is that of a corporate entity.

2. Representing that the products offered for sale and sold by him under the name "Pluggers, Inc.," or any other name, are manufactured by him, or that he either actually owns and operates or directly and absolutely

controls the plant or factory in which said products are made or manufactured.

3. Representing that said products, which are made either in whole or in part of used, second-hand, discarded or salvaged material, are new or are made from new material by failure to clearly and unequivocally disclose that they are composed of used, second-hand, discarded or salvaged material, as the case may be, in some conspicuous place on an exposed surface of the carton or container in which said products are packed, in the invoicing and labeling of said products, and in all advertising matter, sales promotional descriptions or representations thereof however disseminated or published.

4. The use of the word "Guaranteed," or of any other word or words of similar meaning, unless, whenever used, clear and unequivocal disclosure is made in connection therewith of exactly what is offered by way of security; and from the use of any guarantee unless strict and complete performance is made therewith. (Apr. 26, 1945.)

4057. **Textile Fabrics—Composition.**—Sidney Blumenthal & Co., Inc., a New York corporation with principal place of business at New York, N. Y., 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.

Sidney Blumenthal & Co., Inc., 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 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 1, 1945.)

4058. **Hair Waving Preparations—Safety and Qualities, Properties or Results.**—Turbanwav, Inc., a Delaware corporation with its principal place of business at New York, N. Y., engaged in the sale and distribution in interstate commerce of two preparations, one a so-called Miracurl Expansion (Forming) Lotion and the other Miracurl Contraction (Fixing) Solution, together with various other supplies and accessories, used in connection with what is referred to as the Turbanwav Method of Permanent Hair Waving. The said corporation has caused and now causes its said preparations and products, when sold, to be shipped from its place of business in New York or, by drop-shipment from the place of their manufacture at Newark, N. J., to purchasers thereof—jobbers selling to licensed beauticians and others—located in various States and within the District of Columbia. It has been, at all times herein referred to, and now is engaged in competition with other corporations and with individuals, firms and other concerns likewise engaged, and has entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Turbanwav, Inc., agreed that, 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 aforesaid Miracurl Expansion (Forming) Lotion and Miracurl Contraction

(Fixing) Solution for use in connection with its so-called Turbanway Method of Permanent Hair Waving, or of any other preparations composed of substantially the same ingredients or possessing substantially the same properties, whether sold under the same or any other name or names, it will cease and desist forthwith from:

1. Stating or representing that no harmful chemical is contained in the aforesaid preparations used in the so-called Turbanway Method.

2. Stating or representing that the use of said Method will improve the condition of hair to which it is applied, or will cause the production of waves having all the characteristics and qualities of waves resulting from or produced by natural growth. (May 1, 1945.)

4059. **Processing Fabrics—"Rainproof."**—Geltman Sparging Co., an Ohio corporation with its place of business at Cleveland, Ohio, engaged in the processing of fabrics for manufacturing and merchandising concerns which sell and distribute such processed materials in interstate commerce, and in the furtherance of such processing business, it disseminates in commerce labels to be attached to articles made from the materials so processed; 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.

Geltman Sparging Co., in connection with the sale and distribution of Durotized or similarly treated fabrics in commerce as defined by the Federal Trade Commission Act, or the promotion thereof in the manner above set forth, agreed that it will forthwith cease and desist from representing, or from furnishing others with the means to represent, that such materials are "rainproof" or otherwise have been rendered effectively waterproof. (May 1, 1945.)

4060. **Soaps—Composition.**—Superior Soap Corp., a New York corporation, with place of business at New York, N. Y., engaged in the sale and distribution of granulated and liquid soaps in interstate commerce, in competition with corporations, firms and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Superior Soap Corp., in connection with the sale and distribution of its soaps in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. Representing in any manner that a soap which does not contain olive oil to the exclusion of all other oils is an olive oil soap.

2. Using the brand name "Annabelle Olive Castile Shampoo Granules" or other brand name or names of similar import or meaning containing the word "Olive" or any equivalent term, or any fictitious term or word simulating or connoting the word "Olive" to describe, designate or in any way refer to soap the oil content of which is not wholly olive oil. Nothing contained herein shall prevent the use of a brand name containing the word "olive," or other word or term of similar import or meaning, to describe or designate a soap containing olive oil combined with other oil or oils, if it be clearly, conspicuously and truthfully designated that such soap is not made wholly of olive oil, provided that olive oil is present in said soap in sufficient amount to substantially effect its detergent or other qualities. (May 8, 1945.)

4061. **Beauty Shop Supplies—Qualities, Properties or Results, Scientific or Relevant Facts, Composition, Free, Etc.**—American Beauty Products Co., an Illinois corporation with place of business at Chicago, Ill., engaged in the sale and distribution of beauty shop supplies, including certain vitamin preparations, in interstate commerce, in competition with

corporations, firms and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

American Beauty Products Co., in connection with the sale and distribution of its commodities in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means or in the manner above set forth, agreed that it will forthwith cease and desist from representing, directly or inferentially:

(a) That the preparation referred to as "American's Anti-Gray Hair Vitamins" and as "American's Anti-Gray Hair and Nail Vitamins," or any ingredient thereof, can restore the natural color of the hair, enable one to get rid of gray hair, lose or say goodbye to gray hair, improve the texture of the skin or the elasticity of the fingernails or improve the complexion.

(b) That gray hair is usually or frequently the sign of vitamin deficiency or that the vitamin method of restoring the original or natural color of hair has proven successful or satisfactory in 88 percent of the cases tested or in any other percentage or proportion of such cases.

(c) That calcium pantothenate is "the anti-gray hair" vitamin or an "anti-gray hair vitamin factor" or, by other statement or implication, that an intake thereof would have a favorable effect on the grayness or dullness of hair, on brittle nails or on "off-color" complexion; and from the use of the words "anti-gray hair" or terms of like connotation as purporting an efficacious property of any product thus offered for sale, or any component thereof.

(d) That the preparation referred to as "American's Vitamin B₁" combats fatigue, aids digestion, is a source of added energy or pep; or by expressions such as "for nerves" or otherwise, representing that said preparation is a competent treatment or an adequate remedy for nervous diseases or ailments.

(e) That the preparation referred to as "American's Vitamins A and D" protects the entire respiratory tract, the lungs, the nose, the throat, the sinus, the eyes, or any thereof; or by expressions such as "for eyes and teeth" or otherwise, representing that such preparation is of any value for treatment of diseases of the eyes and the teeth.

(f) That the preparation referred to as "American's Vitamin B Complex" is an effective treatment for the complexion or for promotion or maintenance of general good health.

(g) That the preparation referred to as "Min-E-Vita," or any ingredient thereof, is competent to endow the user with beauty, charm or vitality, or is an effective treatment or an adequate remedy to bring about renewed vigor, alertness of mind, general health improvement, the staving off of early body degeneration, or the preservation of sharpness of mind.

(h) That the preparation offered for sale and sold as "Vitamins & Minerals" or "V & M" contains 18 minerals or any number thereof in excess of the true content; gives more than the daily requirements of minerals, or any ratio thereof in excess of their true proportions; endows the user with more or added vitality, added energy or energy for long hours; relieves strains trying on the temper and disposition; keeps the nerves from jangling; is first for beauty, radiant health and vigor; bolsters health; keeps resistance to disease high; combats fatigue or mid-day droop; enables one to retain youthful beauty or the healthy glow of a small child; provides as a supplement all the necessary food elements to bring about such favorable conditions; or otherwise, that it would be efficacious in producing any such results.

(i) That by the use of its Vitamins & Minerals, or any preparation of like composition, one can keep fit, beautiful or up to par, at all times or at all; can avoid or correct facial age lines, a general appearance of aging, crippled or dried fingernails, loss of hair, poor posture, poor complexion or loss of weight; or by statement or connotation, that by means thereof one can effectively treat peptic ulcer, neuritis, arthritis, heart disease, tooth and gum infections, can prevent low-grade infections, or can control cancer, pernicious anemia or digestive disturbances.

(j) That vitamins are of little value without minerals; that lacking minerals, vitamins are useless; that many of our foods, fruits, vegetables and grains no longer contain enough of essential minerals no matter how much may be eaten; or that reports show 99 percent, or any other exaggerated or unauthentic proportion, of our people are deficient in minerals.

(k) That many common ailments can be traced back to vitamin and mineral deficiencies; that symptoms such as lowered resistance to colds, hay fever, asthma, pimples, acne, eczema, hyperacidity, arthritis, painful menstruation, peptic ulcer, heart disease, tooth and gum infections, low-grade infections, cancer and pernicious anemia are in any sense an indication of vitamin deficiency; or that they can be relieved or corrected by the administration of any vitamin preparation.

(l) That symptoms such as general depression, tiredness, listlessness, nervousness and lack of vitality usually are indicative of some vitamin deficiency; or that any of the preparations hereinabove named would be of value in correcting or relieving the diseased conditions so manifested.

(m) That any of the following symptoms, diseases or conditions result from vitamin deficiency:

Vitamin A.

Sinusitis, other respiratory disorders, kidney inflammation, colds, general degeneration and inflammation of mucus membranes, corneal ulcer, tear duct infection, weak lifeless hair, failure of blood regeneration, pernicious anemia, kidney stones, improper muscular function, abscessed ear, inflammation and swelling of tongue, lack of growth of thyroid, enlarged thyroid, edema, ulcerative colitis, sexual degeneration; or that vitamin A improves vision, maintains health, stimulates secretions which lubricate respiratory tract, aids in reproduction and lactation, prevents and cures eye disease;

Vitamin B Complex.

Paralysis, peptic ulcers, bone marrow degeneration, pernicious anemia, decreased reproduction power; or that vitamin B complex improves complexion, brittle fingernails and hair quality, regulates nervous system, cures and prevents cataracts;

Vitamin C.

Degeneration of the reproductive organs, low blood pressure, bone abscess, cataract of eyes, anemia, damage to heart and general muscular system, injury to sex organs, reduced secretion of thyroid, rapid respiration, rapid heart action, peptic and duodenal ulcers, miscarriage and bone abscess;

Vitamin D.

Enlarged joints, lowers acidity of the intestinal tract, lowers resistance against tuberculosis; or that vitamin D cures arthritis;

Niacin.

Prevents certain skin disorders;

Wheat Germ Oil.

Anti-sterility, reproduction vitamin factor; or is considered a contributing factor in preventing sterility and miscarriage.

(n) That the product Vitamins & Minerals would be adequate to correct any of the following symptoms, diseases or conditions, even in the comparatively rare cases where they might result from vitamin deficiency:

Vitamin B Complex.

Loss of weight, heart palpitation and enlargement, nervousness, poor appetite, beriberi, digestive disturbances, muscular soreness, dry, scaly skin, intestinal and colonic disturbances, labored breathing, peripheral neuritis, irritability, listlessness, constipation, diarrhea, convulsions; or that said Vitamins & Minerals stimulates appetite, aids in digestion or cures beriberi;

Vitamin C.

Defective calcification of both bones and teeth, weakening of supporting cartilage and consequent displacement of bones, loss of weight, brittle bones with tendency to fracture;

Niacin.

Skin eruptions, sore mouth and tongue, digestive disturbances, nervous depression, pellagra.

(o) That Vitamins & Minerals or any preparation of like composition would be an adequate or effective treatment for joint pains other than those specifically due to scurvy.

American Beauty Products Co. also agrees to cease and desist from:

(p) Representing that any article of merchandise is "free" or without cost to the recipient when such article is not a gratuity, and the prospective recipient is required as a consideration to purchase some other article or articles or render some service in order to obtain the same. (May 8, 1945.)

4062. Furs or Fur Garments—Nature of Product.—Kaufman Fur Co., Inc., an Illinois corporation with place of business at Chicago, Ill., engaged in the sale and distribution of fur garments in interstate commerce, in competition with corporations, firms and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Kaufman Fur Co., Inc., in connection with the sale and distribution of furs or fur products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from using the term "Civet Cat" or the word "Civet," or words or terms of like meaning, in any way to designate or describe furs or fur garments made of the peltries of the little spotted skunk, or spilogale, or of any peltries other than civet peltries. (May 8, 1945.)

4063. Concrete and Masonry Additive—"Water Proof," Qualities, Properties or Results and Unique.—Adolphe F. Van Wolf and Theo Van Wolf, copartners, operating under the firm name of Kedmont Manufacturing & Waterproofing Co. with place of business at Chicago, Ill., engaged in the manufacture of various materials for the treatment of concrete and masonry, and in the sale and distribution thereof in interstate commerce, in competition with firms, individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Adolphe F. Van Wolf and Theo Van Wolf, whether trading as Kedmont Manufacturing & Waterproofing Co., in their individual names, or by any other designation, 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:

(a) The use of the words "water proof," "waterproofs," "waterproofing" or terms or expressions of like import as a designation for, as descriptive of or with reference to Preservatex, Preservatex EE or EEB, Durotex,

Terrazzotex or any other product which is not effective as a waterproofing agent under all conditions of use; Provided, however, that if such product is an efficacious waterproofer under certain conditions, then in that case such descriptive words whenever used shall be immediately accompanied, in equally conspicuous type, by words or statement definitely and truthfully disclosing the particular conditions under which it may be effective for the purposes named or indicated.

(b) Representing that Preservatex insures floors permanently, that Durotex permanently increases the tensile and compressive strength of concrete, that Terrazzotex provides a permanent floor treatment; and from the use of any other representation connoting or tending to convey the impression or belief that any such product is permanent or everlasting, or affords permanent or everlasting protection or properties to walls, floors or structures to which it is applied.

(c) Representing that Preservatex is wear proof or dust proof; makes concrete as hard as granite; makes concrete tanks nonabsorbent to liquids; transforms soft, crumbling, dusting floors into new hard dustproof ones; or by statement or implication, that it fills in the ingredients left out of an impoverished concrete mixture.

(d) Representing that Durotex prevents freezing, is an adequate anti-freeze compound, is unique in the development of concrete; or that all concrete work needs Durotex.

(e) Representing that Terrazzotex makes a floor impervious to or impenetrable by liquids or stains, without regard to their nature or composition; that it creates a nonslippery finish on floors unless it be clearly indicated that wet floors are thereby made more slippery; or that it prevents pitting other than that caused by cleansing preparations. (May 8, 1945.)

4064. Chicks—"U.S.R.O.P." and Guarantee.—Thomas E. Sullivan, sole trader, operating as Dr. Sullivan's Springfield Chick Hatchery, with place of business at Springfield, Minn., engaged in the sale and distribution of poultry 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.

Thomas E. Sullivan, whether trading as Dr. Sullivan's Springfield Chick Hatchery or by any other name or style, agreed that in connection with the offering for sale, sale and distribution of his chicks in commerce as defined by the Federal Trade Commission Act, he will forthwith cease and desist from:

(a) The use, in his advertising, trade literature or otherwise, of statements, terms or expressions such as "R.O.P. sired," "R.O.P. males sire our chicks," "R.O.P. quality-bred chicks," "Dr. Sullivan's R.O.P. quality chicks," "Pure bred Hanson and Ghostley R.O.P. strain," "Pure R.O.P. breeding in both sires and dams," "This grade of R.O.P. White Leghorns," or terminology of like import that conveys or may tend to convey the impression or belief that such chicks are R.O.P. or that they are sired by U.S.R.O.P. Males.

(b) Representing, as by statement "Here's What R.O.P. Breeding Means to You," by reference to U. S. supervision or other details of the National Poultry Improvement Plan, by designation of his production method as an R.O.P. improvement breeding program, by other subtle use of the Plan's terminology, or in any way, that he participates in said Plan, or that chicks offered for sale and sold by him are produced in U. S. Approved hatcheries.

(c) Representing, directly or by implication, that his chicks are one step above, or that they rate even as high as, U. S. Certified chicks,

(d) Representing that his chicks are "R.O.P. quality-bred," of "pure R.O.P. breeding," "pure bred R.O.P. strain," from "R.O.P. stock," from "R.O.P. Breeding Stock"; that he buys thousands of "R.O.P. breeders" every year; or otherwise, that the sires and dams of such chicks are duly certified or recognized U.S.R.O.P. breeders.

(e) Designating any representation or agreement as a "14-Day Guarantee," a guarantee, guaranty or warranty, which involves a service charge or calls for the payment of additional money by the purchasers of said chicks. (May 9, 1945.)

4065. Clothing Products—Composition.—Henry I. Lebowitz, Mortimer C. Lebowitz, Esther Lebowitz, Martin Lebowitz and Leonard Lesley, copartners, trading as Morton's with their principal place of business at Washington, D. C., engaged in the operation of a retail business involving the sale of clothing, including wool sweaters, in the District of Columbia, 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.

Henry I. Lebowitz, Mortimer C. Lebowitz, Esther Lebowitz, Martin Lebowitz and Leonard Lesley agreed that, in connection with the advertisement, offering for sale, sale and distribution of clothing products in commerce, as commerce is defined by the Federal Trade Commission Act, they, and each of them, will cease and desist from 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 that is not composed wholly of wool of Shetland sheep raised on the Shetland Islands or the contiguous mainland of Scotland. If, however, a product is composed in substantial part of wool of Shetland sheep 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. (May 17, 1945.)

4066. Hair and Scalp Preparations—Qualities, Properties or Results, Scientific or Relevant Facts, Unique Nature or Situation, Etc.—George C. Dates and Mildred Temple Dates, copartners, trading as George C. Dates & Associates, with place of business at Philadelphia, Pa., engaged in the sale and distribution of various cosmetic and/or drug preparations for use as applications to the hair and scalp, including a kit or assortment of vials of cosmetic or drug preparations, and bottles of cosmetic or drug preparations designated as "Sebol," "Shampoo DX-2," "Hydrosul" and "Dioxynol," 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.

George C. Dates and Mildred Temple Dates, whether trading under their own names, under the trade name of George C. Dates & Associates, or under any other trade name or style, in connection with the sale and distribution of their said cosmetic and/or drug preparations in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means or in the manner above set forth, agreed that they and each of them, either individually or as copartners, will forthwith cease and desist from representing, directly or inferentially:

1. That they can prevent baldness; that their said preparation affords an adequate remedy for baldness or have any therapeutic value in the

treatment thereof; that they can correct or eliminate the cause or causes of baldness; or that 85 percent of all baldness, or other excessive proportion thereof, is due to scalp conditions or disorders which can be corrected or checked if properly treated in time.

2. That they can prevent the loss of hair, promote the growth of hair, or assure the keeping or saving of the hair.

3. By statement or connotation, that dandruff or dry or itching scalp are signs of approaching baldness; or that they can correct scalp disorders or completely free the scalp of dandruff.

4. That George C. Dates is the "foremost scalp specialist" or "Pennsylvania's leading scalp specialist" or that he or operatives of "George C. Dates & Associates" are properly termed as scalp specialists, that is to say, experts highly skilled in the pathology, diagnosis and scientific treatment of morbid conditions affecting the scalp.

5. That operatives of "George C. Dates & Associates" are qualified by training and experience adequately to diagnose morbid conditions of the hair and scalp or to prevent or render appropriate treatment for such conditions; or that they are licensed to treat dandruff, scalp itch, falling hair or morbid conditions of the scalp or hair.

6. By statement or connotation that advancing years or old age does not cause hair loss or baldness.

7. By depictions of scientific apparatus and research equipment or by statement or implication, that George C. Dates or operatives of "George C. Dates & Associates" have, through diligent study and scientific experiments, developed approved medications or treatments essentially different from those in common use for the cleaning, oiling, and perfuming of the hair and scalp, for the temporary relief of itching scalp, and for the removal of loose scales of dandruff; or that, for practical purposes, any effect resulting from the use of their said preparations or any thereof exceeds that of cleaning, oiling or perfuming the hair or scalp, slightly irritating the scalp, temporarily relieving itching scalp, or removing loose scales of dandruff.

It is further agreed by the said George C. Dates, whether trading under his own name, under the trade name George C. Dates & Associates, or under any other trade name or style, in connection with advertising, sale or distribution of said preparations as aforesaid, that he will forthwith cease and desist from representing that an examination of a sample of hair and an analysis of a questionnaire prepared by a prospective customer will yield information on which he or his associates or anyone could determine the condition of the hair or scalp or enable anyone to offer adequate treatment for the prevention of baldness or the regrowth of hair. (May 21, 1945.)

4067. **Barber Tools—Manufacturer, "Hand-Forged" and "Hand-Made."**—Carl Monkhouse, an individual, trading as Ace Cutlery Co., whose place of business is at Ellicottville, N. Y., engaged for more than one year last past in the business of selling certain barber tools under the trade designation "C-Mon," such sales having been made by him direct to various army camps in different States and also to Peter J. Michels, Inc., a New York corporation located at Brooklyn, N. Y., which, in turn, has sold said products in interstate commerce, and the said Carl Monkhouse and Peter J. Michels, Inc., have been 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.

Carl Monkhouse, an individual, whether trading as Ace Cutlery Co. or

under any other name, and by Peter J. Michels, Inc., a corporation, agreed that in connection with the offering for sale, sale and distribution of the so-called C-Mon barber tools in commerce, as commerce is defined by the Federal Trade Commission Act, he and it will cease and desist forthwith from:

1. Representing, as by the use of the word "manufacturers," "maker," or the words "manufactured by" in advertising or printed matter used by him or it, that he or it makes or manufactures the razors, strops or hones offered for sale and sold under the trade name "C-Mon"; and from the use of the said quoted words, or of any other word or words of similar connotation, either alone or in connection 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, contrary to fact, that the said individual or the said corporation actually owns and operates or directly and absolutely controls the plant or factory in which said products are made or manufactured.

2. The use of the words "hand-forged" as descriptive of products which are not forged by hand or which are forged by mechanical means, and from the use of the term "hand-made" to represent, designate or refer to products which are not in fact made by hand. (May 21, 1945.)

4068. **Umbrellas—Used, Rebuilt or Second-Hand as New and Composition.**—Nathan Kupfer, an individual, trading as Coast to Coast Umbrella Co., with principal place of business at New York, N. Y., engaged in the manufacture of umbrellas, primarily for use by women, in interstate commerce, in competition with other individuals and with 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 Kupfer, in connection with the conduct of his business in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that he, whether trading under the name Coast to Coast Umbrella Co., or under any other name, will cease and desist forthwith from:

1. Offering for sale or selling any rebuilt or second-hand umbrella or umbrellas containing rebuilt or second-hand parts, unless there be securely attached to such umbrellas at 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 selling, offering for sale, advertising or otherwise representing any umbrella, or part thereof, as being new, when such is not the fact.

2. Offering for sale or selling umbrellas, the covering material of which is made of or contains rayon, without disclosure of the fact that such material is rayon, made clearly and unequivocally in the invoices and labeling, and in all advertising matter, sales promotional descriptions or representations thereof however disseminated or published. (May 21, 1945.)

4069. **Rings and Watches—Composition.**—National Manufacture & Stores Corp., a Delaware corporation, with its general offices at Atlanta, Ga., and operating a chain of retail furniture stores in a number of the southern States, including a department store, under the name Lawrence Furniture Co., at Memphis Tenn., engaged in the sale and distribution of merchandise, including items such as rings and watches, 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.

National Manufacture & Stores Corp., in connection with the offering for sale, 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, labeling or otherwise designating rings, watches or other articles of less than 24 karat fineness as "solid gold"; or by any words or expressions of like implication, representing that such an article is composed throughout of 24 karat gold. If the word "gold" be used in any advertising description or branding of an alloy containing the element gold, then in immediate connection therewith the karat fineness throughout of such alloy shall be indicated by a proper quality mark or designation—all in like lettering of equal size. (May 21, 1945.)

4070. **Chicks—"U.S.R.O.P." and Guarantee.**—Herman G. Hayes, sole trader, operating as Hayes' Hi-Grade Hatchery, with place of business at Twin Falls, Idaho, engaged in the sale and distribution of poultry 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.

Herman G. Hayes, whether trading under his own name, under the trade name of Hayes' Hi-Grade Hatchery, or under any other trade name or style, 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:

1. The use, in his advertising, trade literature or otherwise, of statements, terms or expressions as "R.O.P. Sired," "U.S.R.O.P. Sired," "Production-Bred R.O.P. Sired Chicks," or terminology of like import that conveys or tends to convey the impression or belief that such chicks are sired by U.S.R.O.P. Males.

2. The use of the words or phrases "U. S. Approved," "U. S. Approved Flock," "U. S. Approved Hatchery," "U.S.R.O.P. Supervising agents" or other term or expression of like meaning, in any manner that tends or may tend to convey the belief or impression that he participates in the National Poultry Improvement Plan, or that chicks offered for sale or sold by him are produced in U. S. Approved hatcheries.

3. Representing that the breeding flocks producing the chicks offered for sale and sold by him have been blood tested, when in fact all of such flocks and each fowl therein have not been actually blood tested by a person or persons properly qualified to conduct such test.

4. Designating any representation or agreement as a "Two Weeks Livability Guarantee," a guarantee, a guaranty or warranty, which involves a service charge or calls for the payment of additional money by the purchasers of said chicks. (May 21, 1945.)

4071. **Perfumes—Source or Origin and Composition.**—Ione Scott, is an individual, trading as Aloha Novelty Co., and Ben J. Saeta, an individual, trading as Courtesy Sales Co. Each of said individuals conducts business at her or his separate address at Los Angeles, Calif. The said Ione Scott, for more than one year last past, has purchased perfumes from a local source or sources and, after bottling, labeling and packaging the same, has sold practically all of said perfumes to the said Ben J. Saeta who, in cooperation with the said Ione Scott, has advertised said perfumes in commerce, as commerce is defined by the Federal Trade Commission Act, and thereafter sold and shipped said products in interstate commerce. The said individuals have been in competition with other individuals and with corporations and other concerns likewise engaged, and have entered

into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Ione Scott and Ben J. Saeta, whether trading as Aloha Novelty Co. or Courtesy Sales Co., or under any other name, agreed that they and each of them, in connection with the sale and distribution of the aforesaid perfumes, will cease and desist from disseminating or causing to be disseminated (a) by United States mails, or in commerce by other means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce of said perfumes, or (b) by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce of said perfumes, printed or advertising matter of whatever kind or description, wherein it is represented, contrary to fact, as by the use of the word "Hawaii" or the words "Isles of Golden Dreams" that the said perfumes are made or compounded in the Hawaiian Islands. Each of the said individuals also agrees to cease and desist from the use in the advertising, or on the labeling of said perfumes, or otherwise, of the word "Pikake" or the words "Heavenly Flowers of Hawaii," or any other words of similar import, the effect of which tends or may tend to convey or cause the erroneous belief that said perfumes are made or compounded in said islands or that they have been made or compounded from essences of indicated Hawaiian flowers. Each of the said individuals further agrees to cease and desist from the use of the word "Pikake," or other Hawaiian flower name, as descriptive of the odor of a perfume which is not made or compounded from the essences of such flower; *provided, however*, if the odor of said perfume simulates that of an indicated flower, and the name thereof is used to describe such simulated odor, then in that case, said flower name shall be prominently accompanied by some other word or words printed in type equally as conspicuous as that in which the used flower name is printed so as to indicate clearly that said perfume is not made or compounded from the essences of the named flower or that the odor of such perfume is other than genuine, that is to say, is not that derived or resulting from the use of the essences of the named flower. (May 21, 1945.)

4072. Quilt Pieces—Quantity, Qualities, Properties or Results, Free and Guarantee—Robert E. Knight, an individual, trading as The Remnant Shop, with principal place of business at Sesser, Ill., engaged in conducting a mail order business involving the sale of quilt pieces processed by him from remnants purchased from textile mills and junk dealers, 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.

Robert E. Knight, in connection with the advertisement, offered for sale and sale of his packages of quilt pieces in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that he, whether trading as The Remnant Shop or under any other name, will cease and desist forthwith from stating or representing:

1. That the package offered for sale and sold by him contains "26 Yds." of materials or any other designated yardage, when in fact such package contains less than the yardage claimed.

2. That the quilt pieces contained in the package are colorfast to either light or laundering, when in fact, they are not.

3. That articles supplied in the package of quilt pieces are "Free," when such articles are customarily included as part of the package and their cost is included in the price of the complete package.

4. That the merchandise is sold on a "Money-Back Guarantee" unless all the terms and conditions under which refund will be made to the customer are clearly and unequivocally disclosed. (May 28, 1945.)

4073. **Ammonia—Qualities, Properties or Results.**—Helwig & Leitch, Inc., a Maryland corporation with principal place of business at Baltimore, Md., engaged, among other business activities, in the production of a household ammonia and in the sale thereof, under the brand name "Majestic Ammonia" or "Majestic Ammonia No. 32," in interstate commerce, in competition with other corporations and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Helwig & Leitch, Inc., agreed that, in connection with the sale and distribution of its so-called Majestic Ammonia in commerce, as commerce is defined by the Federal Trade Commission Act, it will cease and desist forthwith from the use of the statement "This Ammonia is Extra Strength. Use Smaller Quantity Than Usual" to represent or in referring to said preparation; and from the use of the said statement, or of any other statement of similar implication, the effect of which tends or may tend to cause or convey the belief or impression, contrary to fact, that the potency or effectiveness of said preparation is greater than that of competitive household ammonias, or that the strength of said preparation is such that the same result may be accomplished by the use of less of said preparation than would be required if competitive ammonias were used. (May 28, 1945.)

4074. **Ointment—Qualities, Properties or Results.**—Dermatological Products Corporation, a New Jersey corporation, with principal place of business at Hoboken, N. J., and Samuel Thomas, Maurice C. Thomas and Philip C. Thomas who are and for some time past have been associated with the aforesaid corporation in the manufacture of pharmaceutical products, including a medicated salve designated "Dr. Thomas' Ointment," and in the advertisement and sale thereof in commerce, as commerce is defined by the Federal Trade Commission Act, under the adopted trade name "Glenn Products Company." The said corporation and the said individuals have been engaged at all times herein referred to in competition with other corporations and with individuals and other concerns likewise engaged, and have entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Dermatological Products Corporation and Samuel Thomas, Maurice C. Thomas and Philip C. Thomas agreed that in the dissemination of advertising, by the means and in the manner above set out, of the product designated "Dr. Thomas' Ointment," or any other product of substantially the same properties, whether sold under said name or any other name, they and each of them will cease and desist forthwith from representing, directly or inferentially, that the said product would be effective as a treatment or as a palliative either for "old leg sores" or for "leg sores" which are the result of chronic conditions as, for example, diabetic ulcers and varicose ulcers. (May 28, 1945.)

4075. **Fur Garments—Nature, Quality, Prices, Earnings or Profits, Guarantee, Etc.**—Samuel Rose, manager of a business owned by Sally Rose, conducted at New York, N. Y., by the trade designation Rose Fur Co., engaged in the mail order sale and distribution of fur garments 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.

Samuel Rose and Sally Rose, whether trading as Rose Fur Co., in their own names, or by any other designation, in connection with their offering for sale, sale and distribution of fur garments or other merchandise in commerce as defined by the Federal Trade Commission Act; agreed that they and each of them will forthwith cease and desist from:

(a) The use of the terms "black northern seal," "black baronet seal," "black pieced seal," "French seal," "French beaver," "black marten," "golden sable," "brown Australian," "minktone," "sabletone," "squirrellette," "muskamink," "minkolet," or any other fictitious animal designation or coined fur-connoting term as descriptive of or in connection with their fur products.

(b) Using any animal or purported animal name or designation for fur which is not the true name of the animal producing the fur; Provided, that if the fur is so dyed as to simulate another fur, the fact that said fur is dyed shall be set forth as an integral part of its designation, and if the name of the animal whose fur is so simulated be given, such name shall be immediately followed by and compounded with the word "dyed" together with the true name of the animal producing the fur as the last word of the description—all words of the designation to be in like type and equally conspicuous.

(c) The use of the word "genuine" to describe a fur which has been processed or dyed to imitate the fur of an animal known by another name in commerce and in zoology.

(d) Assertion that all their furs, as advertised in the manner above set forth, are exactly as represented, or that each one is called by its true name.

(e) Designating as "prime" any pelts which are not in point of fact first in excellence and of highest quality.

(f) Representing that they offer the lowest prices with the highest quality, or the best values money can buy; that the prices as quoted are the lowest wholesale prices ever offered or tremendous low wholesale prices, for the type of product sold by them; that the same schedule given to both dealers and individuals is a "wholesale price list"; that they are "direct wholesalers," or by other implication, that direct sales to consumers are made at real wholesale prices; or that said prices mean the "greatest savings ever offered" or even any significant savings.

(g) Representing, as by statement "on each sale you can easily earn 75 to 100% profit," or in any other manner, that distributors of their said merchandise generally make or can make profits in excess of the average net profit shown by them in the ordinary course of business and under normal conditions; that the customers of such retailers make an enormous guaranteed saving, or any saving, by reason of the prices quoted; or that said prices bring genuine fur coats to women who cannot afford to pay retail store prices.

(h) Representing that savings are "guaranteed" to purchasers of their products; and from the use of such word or term of like import, with reference to their dealings or their merchandise unless, whenever used, clear and unequivocal disclosure be made in connection therewith of exactly what is offered by way of security.

(i) Representing that their place of business is the recognized headquarters for fur coats or is the fashion style headquarters; that their concern is the leading seller of the 1945 or any other fur season, or that it is one of the largest of its kind in the United States; that said concern owns the building in which it is located or that the same is a "fur building"; by pictorial delineation or otherwise, that it occupies the whole thereof or, by superimposition of nonexistent signs on pictures of such building, that it is in truth so marked or denoted. (June 1, 1945.)

4076. Automobile Crank Case Oil Additive—Qualities, Properties or Results.—The Casite Corporation, a Michigan corporation with place of business at Hastings, Mich., engaged in the sale and distribution of a preparation for use as an additive to automobile crank case oil and designated as "Casite," 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.

The Casite Corporation, in connection with the sale and distribution in commerce as commerce is defined by the Federal Trade Commission Act, of the preparation designated "Casite" or any other preparation of substantially the same composition or possessing substantially the same qualities, 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 by the use of said preparation an automobile will start as readily in the winter as in the summer or as easily in cold weather as in warm weather; that said preparation prevents oil from acting as a brake on the motor in winter weather; or otherwise that at winter temperatures, the viscosity of oil to which the preparation has been added as directed is comparable to that of oil of like grade at summer temperatures to which the preparation has not been added. (June 5, 1945.)

4077. Counting and Filling Machine—Success, Use or Standing and Manufacturer.—Selig Kenneth Joseph, a sole trader, operating as Multi-Packer Distributing Co., with place of business at Glendale, Calif. Multi-Packer Manufacturing Corporation is a California corporation with its place of business at Glendale, Calif. Selig Kenneth Joseph is or has been the president and secretary thereof. Said individual and corporation are or have been engaged in the sale and distribution of a counting and filling machine designated "Multi-Packer" in interstate commerce, in competition with individuals, corporations and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Selig Kenneth Joseph and Multi-Packer Manufacturing Corporation, in connection with the sale and distribution of their commodities 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 said Multi-Packer has been tested by long and successful use, unless and until such be the case after a sufficient time shall have elapsed to warrant such representation.

(b) Representing that many of the leading pharmaceutical firms in America are Multi-Packer purchasers, or any thereof which have not actually bought said device under the trade designation Multi-Packer; and from listing any firms as Multi-Packer customers contrary to fact.

(c) Use of the word "Manufacturing" or the term "Mfg." as a part of their corporate or trade name or as descriptive of their business, until such time as they may own and operate or directly and absolutely control the plant or factory in which are made any and all articles thus offered for sale and sold. (June 8, 1945.)

4078. "Lan-O-Kleen" Soap—Qualities, Properties or Results and Comparative Merits.—West Disinfecting Co., a New York corporation, with place of business at New York, N. Y., engaged in the sale and distribution of an industrial soap designated as "Lan-O-Kleen" 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.

West Disinfecting Co., 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 heretofore designated "Lan-O-Kleen" or any other preparation composed of substantially the same ingredients or possessing substantially the same properties, agreed that it will forthwith cease and desist from:

1. The use of any representation that tends or may tend to convey the belief or impression that said preparation will prevent dermatitis or cause hands to be healthy.

2. Representing, directly or inferentially, that the lanolin content of such preparation is absorbed by the skin, that it will replenish the natural oiliness of the skin, or that it leaves the hands naturally moist.

3. The use of any representation to the effect that the use of such preparation as a cleansing agent leaves an oil film on the skin or that the lanolin content thereof remains on the skin.

4. The use of any representation that tends to convey the belief or impression that said preparation relieves stiffness of the hands or that its use effects an increase in manual dexterity and work output.

5. The use of the word "lanolin" or any word, term, pictorial or other representation connoting lanolin, in any manner that tends or may tend to convey the belief or impression that the inclusion of lanolin in such preparation adds to the detergent or cleansing properties thereof or is of therapeutic value.

6. Representing, directly or inferentially, that the lanolin content of said preparation acts as a buffer to soap alkali.

7. Representing, by statements such as "away-and-beyond the common concept of an industrial hand cleaner" that such preparation differs materially from all industrial soaps offered for sale and sold in competition therewith. (June 8, 1945.)

4079. Flavoring Preparations—Composition and Tested, Approved or Endorsed.—One-Two-Three Co., Inc., a New York corporation with place of business at New York, N. Y., engaged in the sale and distribution of flavoring preparations designated as "1-2-3 MIXER" 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.

One-Two-Three Co., Inc., in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, or the advertising by the means and in the manner above set forth, of the preparations designated as "1-2-3 MIXER" or any other preparation of substantially the same composition or possessing substantially the same properties whether sold under such name or any other name or names, agreed that it will forthwith cease and desist from:

1. Representing, directly or inferentially, that said preparations are made or consist of the oil and/or juice of lemons, limes and oranges or any other fruits. If and when such preparations are composed in substantial part of fruit oils or juices and the name or names of the fruit or fruits are used to indicate such juice or oil content, then in that case such name or names, whenever used, shall be immediately accompanied in equally conspicuous type by a word or words clearly indicating that the preparations are composed in part of an ingredient or ingredients other than the natural oil and/or juice of the fruit or fruits designated.

2. The use of any statement or representation that tends or may tend to convey the belief or impression that said preparations contain no artificial preservative.

3. Representing that certain of such preparations are especially prepared for use in waters of different degrees of hardness and to suit the chloride content thereof.

4. The use of any certificate, statement or representation which connotes that said preparations have met the requirements of a qualified testing bureau or other generally recognized authority for standards of quality, purity of ingredients or methods of production, or have been approved or endorsed by such a bureau or authority. (June 14, 1945.)

4080. Billiard Tables and Bowling Equipment—Comparative Merits and Tests.—Brunswick-Balke-Collender Co., a Delaware corporation with principal place of business located at Chicago, Ill., engaged in the manufacture of billiard tables, flooring for use in the laying of bowling alleys, bowling balls, ten-pins, duckpins, and related products, in interstate commerce, in competition with other corporations and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Brunswick-Balke-Collender Co. agreed that, in connection with the offering for sale, sale and distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, it will cease and desist forthwith from the use in its advertising or printed matter disseminated in interstate commerce, or in any other way, of statements or representations, the effect of which conveys or tends or may tend to cause the impression or belief, contrary to fact, than any claim of superiority allegedly possessed by its products, or any thereof, is based on or supported by an authoritative test that has been made substantially coincident with the time of dissemination of said advertising or printed matter. Said corporation also agrees to cease and desist from the use in its advertising or printed matter, or otherwise, of a test, or any excerpt therefrom, that tends or may tend to cause or convey the impression or belief, contrary to fact, that said test involved a comparison of alleged qualities of any one of its products with the field of competitive products. (June 14, 1945.)

4081. Weather "Forecaster" and "Good Luck Leaf"—Free Goods and Introductory Offer.—Earl J. Kahn, an individual, trading as The Weatherman, with place of business at Chicago, Ill., engaged in the sale and distribution of a weather "forecaster" and of a combination offer of such weather "forecaster" and a tree leaf which is designated as a "Good Luck Leaf," 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.

Earl J. Kahn, whether trading under his own name, as The Weatherman 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 aforesaid weather "forecaster" or the said weather "forecaster" and the "GOOD LUCK LEAF," agreed that he will forthwith cease and desist from:

1. The use of the word "free" to describe or refer to goods, when such goods are not a gratuity, and the prospective recipient is required, as a consideration, to purchase some other article or articles or render some service in order to obtain the same.

2. Representing, directly or inferentially, that an offer is an "introductory advertising offer" or an introductory offer when, in fact, it is a regular offer. (June 14, 1945.)

4082. Umbrellas—Composition.—Abraham M. Warren, an individual, trading as A. M. Warren & Co., with place of business at Chicago, Ill., en-

gaged 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, whether trading under his own name, as A. M. Warren & Co. or under any other trade name or style, in connection with the sale and distribution of umbrellas in commerce as defined by the Federal Trade Commission Act, agreed that he 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. (June 14, 1945.)

4083. Books—Nature and Identity.—Edward Sayle, an individual, trading as Arrow Publishers with place of business at New York, N. Y., engaged in the sale and distribution of books in interstate commerce, in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Edward Sayle, whether trading under his own name, under the trade name Arrow Publishers, or under any other trade name or style, in connection with the sale and distribution of his books in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from:

1. Selling or offering for sale any abridged copy of a book or publication, unless the word "Abridged" appears on the front cover and on the title page of the book, in immediate connection with the title and in clear, conspicuous type. If the book has an additional wrapper or cover bearing the title thereof, then the front page of such wrapper shall in like manner bear the conspicuously displayed word "Abridged."

2. Representing, as by statements such as "A Complete \$2 Mystery Novel," or in any other manner or by any other means that an abridged book is complete as originally published.

3. Using or substituting a new title for or in place of the original title of a reprinted story unless, whenever used, whether on the cover of the publication, on the title page, at the beginning of the text of the story or elsewhere, such substitute title be immediately accompanied in equally conspicuous type by the title under which such story originally was published. (June 15, 1945.)

4084. Books or Publications—Filling Orders Wrongfully.—William Heim, Charles Mandell and John D. Daveler, associated together in a business enterprise, trading under the assumed name Progressive Sales Co., with place of business at Philadelphia, Pa., and with branch offices in other cities, engaged in the sale and distribution of books in combination with subscription to sundry magazines and periodicals of interstate circulation 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.

William Heim, Charles Mandell and John D. Daveler, whether operat-

ing in their own names, as Progressive Sales Co., or by any other trade designation or style, in connection with their sales of publications in commerce as defined by the Federal Trade Commission Act, agreed that they and each of them will forthwith cease and desist, in the performance of their contracts, from substituting or delivering other books or publications for those specified or called for therein. (June 15, 1945.)

4085. Sheets and Pillowcases—Qualities, Properties or Results and Tests.—Lamport Co., Inc., a New York corporation with place of business at New York, N. Y., engaged in the sale and distribution of textile products, including sheets and pillowcases 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.

Lamport Co., Inc., in connection with the sale and distribution of its said merchandise in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from the use of any statement or representation that tends or may tend to convey the belief or impression that sheets and/or pillowcases will afford satisfactory wear or service for four years or any other period of time, or that the measurement of the life of such products in actual use can be determined by "tests" or in any other manner. (June 19, 1945.)

4086. Beer—Qualities, Properties or Results.—Brewing Industry Foundation, a New York corporation which was originally organized under the laws of the State of New York in October of 1936 as United Brewers Industrial Foundation, Inc., a nonprofit corporation, the change in its name having been effected in 1942, having its principal place of business at New York, N. Y., where it has been engaged as an alleged public relations agency for the brewing industry in the United States, in the business of disseminating advertising matter by various means and methods in commerce, as commerce is defined by the Federal Trade Commission Act, to promote the interests of its constituent members engaged in the sale and distribution of beer in interstate commerce, in competition with other corporations and with individuals and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Brewing Industry Foundation agreed that, in connection with the conduct of its business aforesaid, it will cease and desist from disseminating or causing the dissemination of or placing in the hands of its constituent members, or others, of printed matter or any advertising, of whatever kind or description, in which statements or representations are made which, by inference or otherwise, set forth or tend to cause or convey the impression or belief that beer is not a fattening product or that the consumption of beer will help unsnarl tangled nerves or will relieve the strain of modern living or will otherwise be of benefit in conditions which are the result of some definite disease or disorder of the nervous system. (June 19, 1945.)

4087. Cosmetics—Safe and Approval or Recommendation.—C. W. Beggs Sons & Co., an Illinois corporation with place of business at Chicago, Ill., also operated under the trade names Marcelle Cosmetics and Marcelle Hypo-Allergenic Cosmetics, engaged in the sale and distribution of a line of cosmetics under the trade or brand designation "Marcelle" 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.

C. W. Beggs Sons & Co., whether trading under its own name, as

Marcelle Cosmetics, Marcelle Hypo-Allergenic Cosmetics, or by any other designation or style, in connection with the sale and distribution of its commodities in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means or in the manner above set forth, agreed that it will forthwith cease and desist from representing:

(a) That the cosmetics which it offers for sale are safe for sensitive skins, in the sense that they would be safe under all conditions, including skins which may be allergic to some ingredient contained in such preparations.

(b) That thousands of doctors have prescribed Marcelle hypo-allergenic Cosmetics, or that any numbers in excess of the true total thereof have so approved or recommended the same. (June 25, 1945.)

4088. **Bread—Trophy or Prize and Contests.**—Kilpatrick's San Francisco Bakery, is a California corporation with place of business at San Francisco, Calif. Kilpatrick's Marvel Bakery is a California corporation with its place of business at Oakland, Calif. Said corporations now are or have been engaged in the sale and distribution of bread and as a means to accomplish the sale thereof have disseminated advertisements in interstate commerce, and are in competition with corporations, firms and individuals likewise engaged, and have entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Kilpatrick's San Francisco Bakery and Kilpatrick's Marvel Bakery, in connection with the sale and distribution of their bread, agreed that they and each of them will forthwith cease and desist from disseminating, by United States mails, the radio, or otherwise in commerce as defined by the Federal Trade Commission Act, for the purpose of inducing or which is likely to induce the purchase of such product, or by other means for the purpose of inducing or which is likely to induce the purchase thereof in commerce as aforesaid, any advertisement or sales promotional material which represents, directly or by implication:

1. That the "Freer Trophy" is awarded in a nationwide contest or a contest in which bakeries, generally, participate.

2. That the "Freer Trophy" or any other trophy or prize is awarded in an annual contest when, in fact, such trophy or prize is awarded in monthly contests or any contests other than annual contests. (June 25, 1945.)

4089. **Sales Promotional Material, Etc.—Trophy or Prize and Contests.**—The W. E. Long Co., an Illinois corporation with place of business at Chicago, Ill., engaged in the business of conducting an advertising agency and in the sale and distribution in commerce as defined by the Federal Trade Commission Act of sales promotional material or advertising copy for promoting the sale of bread for certain bakeries; causing such material to be sold 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.

The W. E. Long Co., in connection with promoting the sale of bread, agreed that it will forthwith cease and desist from disseminating or causing to be disseminated, by United States mails or otherwise in commerce as defined by the Federal Trade Commission Act, for the purpose of inducing or which is likely to induce the purchase of such product, or by other means for the purpose of inducing or which is likely to induce the purchase thereof in commerce as aforesaid:

1. Any advertisement or sales promotional material which represents,

directly or by implication, as by statements such as "THE HARRY M. FREER TROPHY Is sought by bakers from coast to coast" "JUDGED AMERICA'S FINEST" and "holds the coveted trophy annually awarded and eagerly sought by the Bakers of America," or in any other manner, that any trophy or prize awarded by it is awarded in a nationwide contest or a contest in which bakers, generally, participate.

2. Any advertisement or sales promotional material which represents directly or inferentially, that the "Freer Trophy" or any other trophy or prize is awarded in an annual contest when, in fact, such trophy or prize is awarded in monthly contests or any contests other than annual contests. (June 25, 1945.)

4090. **Floor Coverings—Composition.**—The Tile-Tex Co., an Illinois corporation with place of business at Chicago Heights, Ill., engaged in the manufacture of synthetic floor coverings, including a product designated "Tile-Tex," 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.

The Tile-Tex Co., in connection with the offering for sale, sale and distribution of its synthetic floor coverings or other products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from representing directly or indirectly, by the use of the words "Tile-Tex" or "Tile" that its products are tile unless, in immediate conjunction with such words "Tile-Tex" or "Tile" wherever used, in the same conspicuous type there appear a word or words designating the material or substance of which the products are made, such as asphalt tile, asbestos tile or asphalt-asbestos tile, as the case may be. (June 26, 1945.)

4099.¹ **Jewelry—Composition, Quality or Value, Success, Use or Standing, Guarantee and Free.**—Alpha-Craft, Inc., a New York corporation with its principal place of business at New York, N. Y. Louis G. Myers and Edgar L. Smith, of New York, N. Y., have been active in the promotion of said enterprise; and George Dumas and Roy Dumont now are or have been employed by or cooperate with said corporation and the said Louis G. Myers and Edgar L. Smith in the sale of merchandise. The principal place of business or permanent address of Roy Dumont is Plant City, Fla. It does not appear that the said George Dumas had a permanent address other than that of the said Alpha-Craft, Inc. The said corporation and Louis G. Myers, Edgar L. Smith, George Dumas and Roy Dumont have been engaged in the sale and distribution of jewelry in interstate commerce, causing such products, when sold, to be shipped from the place of business of the aforesaid Alpha-Craft, Inc., in the State of New York to purchasers in other States. At all times referred to herein, they have been in competition with corporations, firms and individuals likewise engaged, and have entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Alpha-Craft, Inc., and Louis G. Myers, Edgar L. Smith, George Dumas and Roy Dumont, in connection with the sale and distribution of said jewelry 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 words "Diamond Wing" or "Diamond" as a designa-

¹ Stipulation 4096 published in Volume 39. Stipulations 4091-4095, 4097 and 4098 to be published in ensuing volume.

tion for or as descriptive of rings which are not inset with diamonds; and from the use of any representation as, for example, the prominently displayed word "Diamond," in any manner that tends or may tend to convey the belief or impression that such rings are inset with diamonds or are diamond rings.

2. The use of the words "Replica Diamond Ring," "California Diamond Reproduction," or other word or words of like meaning as designations for, as descriptive of, or in connection with any ring inset or other product which is not in fact a true reproduction of the inset or gem named, that is, an article having the essential hardness, structure, properties and characteristics of the diamond or gem to which reference is made.

3. The use of the words "Yellow Gold," "Gold" or any similar term as a designation for, as descriptive of, or in connection with, any article not made throughout of 24 karat gold. If such article is substantially plated or filled with an alloy containing gold and the word "gold" be used in any description or branding of said plating or filling, then such word "gold" shall, whenever used, be immediately preceded by an appropriate quality mark or designation clearly indicating its karat fineness, and shall be immediately followed by the word "plated" or the word "filled," as the case may be—all in like lettering of equal size. Provided also, that if the covering of an article is not of such substantial thickness as properly to be described as gold plate or gold filled, but the article is merely flashed or colored with gold, then in such case the word "gold," if used, shall be immediately followed in like lettering of equal size by the word "flashed" or the word "colored"—thus, "gold flashed" or "gold colored."

4. Representing, by the use of the statement "subject them to acid, fire and water tests" or other statement of like meaning, that the aforesaid rings are of a quality or value in excess of the true quality or value thereof.

5. Representing that social leaders, millionaires or the "finest people" wear said jewelry.

6. Representing as a "Guarantee" any agreement or writing that is contingent upon a payment for replacement or service; or using the word "Guarantee" or other word or words of like meaning as a designation for any agreement or writing which involves a service charge or calls for the payment of additional money by the purchaser of such merchandise.

7. The use of the word "Free" or other term or expression of like meaning in connection with the engraving of a product when such engraving is not a gratuity but the prospective recipient is required as a consideration to purchase a bracelet or other article or render some service in order to obtain the same. (May 28, 1945.)

DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS¹

02101.² **Cosmetics, Drugs and Dream Book—Free.**—Lucky Heart Laboratories, Inc., a corporation, trading as Lucky Heart Co. and Erbru Medicine Co., 388-400 Mulberry St., Memphis 2, Tenn., vendor-advertiser, was engaged in selling various cosmetics and drugs and a "dream book," under the brand name of "Lucky Heart" products and agreed that the provision relating to the word "free" in Stipulation No. 02101 should be stricken and the following substituted:

Using the term "free," or any other term of similar import or meaning; to describe, designate or refer to any merchandise or article which is not a gift or gratuity and delivered to the recipient thereof without cost and unconditionally. (Jan. 25, 1945.)

02545.³ **Wearing Apparel—Free.**—Hook-Fast Specialties, Inc., a corporation, Post Office Box 1425, Providence, R. I., vendor-advertiser, was engaged in selling novelties designated Hook-Fast Products and agreed that the provision relating to the word "free" in Stipulation No. 02545 should be stricken and the following substituted:

Using the term "free" or any other term of similar import or meaning to designate, describe or refer to wearing apparel or other items of merchandise which are furnished as compensation for services rendered or for which the payment of money is required. (Jan. 8, 1945.)

03243.⁴ **Radios—Equipment, Qualities, Properties or Results, Prices, Etc.**—Midwest Radio Corporation, a corporation, 909-911 Broadway, Cincinnati, Ohio, vendor-advertiser, was engaged in selling radio receiving sets and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That any radio receiving set contains a designated number of tubes or is of a designated tube capacity, when one or more of the tubes referred to are tubes or other devices which do not perform the recognized and customary functions of radio receiving set tubes in the detection, amplification, and reception of radio signals.

(b) Disseminating advertisements or representations of purported bona fide trade-in allowances when the prices of the radio receiving sets it offers for sale have been inflated or marked up to offset the trade-in allowances.

(c) Representing as the customary or regular price of radio receiving sets any price which is fictitious or in excess of the price at which such sets have been regularly sold in the usual course of business.

The said Midwest Radio Corporation agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 4, 1945.)

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, 1945, to June 30, 1945, inclusive. For digests of previous stipulations, see vols. 14 to 39 of Commission's decisions.

² Amendment. For original stipulation, see 26 F.T.C. 1467.

³ Amendment. For original stipulation, see 30 F.T.C. 1592.

⁴ Supplemental.

03244. Poultry Medicinal Preparation—Qualities, Properties or Results.—D. F. Foster, an individual doing business as Foster's Drug Store, 129 North Cedar St., Pine Bluff, Ark., vendor-advertiser, was engaged in selling a drug preparation for poultry designated "Greatest of All' Tonic" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that said product:

(a) Will facilitate or contribute to the success of the enterprise of hatching and raising chickens.

(b) Will eliminate or "starve-out" mites, lice, fleas or other insects which attack poultry.

(c) Will have any effect upon the conditions known as limberneck, gapes, roup, worms, sorehead or white diarrhea.

(d) Will improve the condition of poultry after the initial dosage or maintain poultry in a healthy condition.

(e) Will have any effect upon poultry during the molting period or increase egg production.

(f) By use of the word "Tonic" as a part of the brand name of the said preparation, or otherwise, that the said preparation has any tonic properties.

The said D. F. Foster also further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 4, 1945.)

03245. Poultry Medicinal Preparation—Qualities, Properties or Results.—S. A. Rice, R. T. Renwald, and J. M. Rice, copartners trading as The Gland-O-Lac Co., Nineteenth and Leavenworth Sts., Omaha, Nebr., vendor-advertisers, engaged in selling a certain medicinal preparation for poultry designated "Micules"; and Leo B. Bozell and Morris E. Jacobs, copartners trading as Bozell & Jacobs, 510 Electric Building, Omaha 2, Nebr., advertising agents, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of The Gland-O-Lac Co. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That said product:

(a) Is effective in the removal of worms or in the treatment of worm infested fowls without specifying the types of worms against which said preparation is effective.

(b) Is effective against Tapeworms.

The said S. A. Rice, R. T. Renwald, J. M. Rice, Leo B. Bozell and Morris E. Jacobs, 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. (Jan. 8, 1945.)

03246. Drug Preparation—Qualities, Properties or Results.—Paul C. Deutch, Joseph H. Deutch, and S. L. Deutch, copartners trading as St. Paul Medicine Co., 1419 Broadway, Detroit 26, Mich., vendor-advertisers, were engaged in selling a drug preparation called "St. Paul's V.V.V." 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 acts as a general tonic or that it will build blood or that it will give one vim, vigor or vitality.

(b) That the said product will cleanse or purify the blood or system or that it will tone kidneys, bladder, bowels or the blood.

(c) That the said product will get at the cause of constipation or that it will cleanse the kidneys, stimulate the liver, regulate the bladder or keep acids and poisons eliminated.

(d) That the said product will relieve rheumatism, pains in the small part of the back, kidney complaints, gas, indigestion, body odors, pimples or nervousness.

(e) That the said product will retard the incidence of colds, and is a doctor's prescription.

The said Paul C. Deutch, Joseph H. Deutch and S. L. Deutch also agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 10, 1945.)

03247. Medicinal Preparation—Qualities, Properties or Results.—The M. E. Tracy Co., a corporation doing business under its corporate name and under the trade name The Everett Co., 805 Union Avenue, Memphis 1, Tenn., vendor-advertiser, was engaged in selling a medicinal preparation designated "Tra-Ton Tablets" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That such preparation is effective in the treatment of extreme tiredness, lack of normal energy or pep, nervousness, headache, dizziness, or digestive disturbances.

(b) That such preparation is effective in the treatment of any nutritional deficiency.

The said The M. E. Tracy Co. further agreed not to publish, disseminate or cause to be published or disseminated any testimonial containing any representation contrary to the foregoing agreement. (Jan. 15, 1945.)

03248.¹ Health Foods—Qualities, Properties or Results.—Battle Creek Dietetic Supply Co., a corporation, 10-14-16 Court St., Battle Creek, Mich., vendor-advertiser, was engaged in selling certain health foods designated "Health House Brand Carotene Capsules," "Health House Brand Psylocel," "Health House Brand Karaya Granules," "Health House Brand Lactose and Dextrin," "Health House Brand Yeast Vitamin Tablets," "Health House Brand Malt Syrup," "Health House Brand Vitamin and Mineral Compound," "Health House Brand Wheat Germ," "Health House Brand Laxcel," "Health House Brand American Agar," "Health House Brand ABD Vitamin Capsules," "Health House Brand Dicalcium Phosphate Wafers," "Health House Brand Vitamins and Minerals" and "Health House Brand Vegetable Mineral Broth" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That "Health House Brand Carotene Capsules" increase resistance to infections of tonsils, sinuses, throat or eyes.

(b) That "Health House Brand Psylocel" is soft or nonirritating, or exercises the bowel muscles.

(c) That "Health House Brand Karaya Granules" exercise the bowel muscles, or have a healing effect.

(d) That "Health House Brand Lactose and Dextrin" combats bowel troubles, colitis, intestinal toxemia or constipation, helps to change the intestinal flora, helps to drive out colon poisons, or promotes intestinal health.

(e) That "Health House Brand Yeast Vitamin Tablets" help clear up skin blemishes or correct bowel troubles.

(f) That Vitamin B₁ (G) is known as the anti-pellagra vitamin.

(g) That "Health House Brand Malt Syrup" is a health-building tonic, produces rich blood, or builds up resistance.

(h) That "Health House Brand Vitamin and Mineral Compound" increases pep, or builds up vital resistance.

¹ Supplemental.

(i) That "Health House Brand Wheat Germ" helps "nerves" promotes digestion, or protects the body against nervous disorders.

(j) That "Health House Brand Laxcel" encourages healing or assists in changing the intestinal flora.

(k) That "Health House Brand American Agar" exercises the bowel muscles.

(l) That "Health House Brand A B D G Vitamin Capsules" build or maintain health.

(m) That "Health House Brand Dicalcium Phosphate Wafers" enrich the diet in calcium and phosphorous or provide against the bones becoming soft or brittle.

(n) That "Health House Brand Vitamins and Minerals" give added vitality.

(o) That "Health House Brand Vegetable Mineral Broth" supplies body-building or cell-regenerating minerals.

(p) That "Health House Brand Vitamin Products" build up resistance.

(q) That Vitamin A is the anti-infective vitamin that protects the respiratory tract against infection or maintains or builds resistance to colds.

(r) That Vitamin C builds or maintains strong teeth or bones.

(s) That an optimum intake of Vitamins A, C, and D helps to prolong the onset of senility, maintains healthy teeth, or keeps the gums healthy.

The said Battle Creek Dietetic Supply Co. further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Feb. 5, 1945.)

03249. **Cow Medicinal Preparation—Qualities, Properties or Results.**—Nina Bloom and Ben Bloom, individuals, trading as N. B. Remedy Co., 412C East John St., Seattle 2, Wash., vendor-advertisers, were engaged in selling a drug preparation designated "N. B. Remedy" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. That said preparation is of value in the prevention, elimination, treatment or cure of mastitis.

2. That the quality or quantity of the cow's milk will increase after said preparation has been given for mastitis.

3. That the said preparation will be of value in the treatment or cure of cowpox.

It is further agreed by Nina Bloom and Ben Bloom, and each of them, that in the dissemination of advertising, by the means and in the manner above set out, they will forthwith cease and desist from the use of the word "Remedy," or any other word of similar import or meaning, as part of the trade name of their organization, or to designate, describe or in any way refer to such preparation as a remedy for mastitis and cowpox.

The said Nina Bloom and Ben Bloom, 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. (Feb. 5, 1945.)

03250. **Vitamin Preparation—Qualities, Properties or Results.**—Floyd M. Campbell, an individual trading as Campbell's Foods, 712 Locust, Des Moines, Iowa, vendor-advertiser, engaged in selling a vitamin preparation designated "Calcipan"; and E. M. Meneough, an individual trading as Meneough Advertising Agency, 720 Grand Ave., Des Moines, Iowa, advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Campbell's Foods, agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) Through the use of the phrase "anti-gray-hair vitamin" as descriptive of the

product, or in any other manner or by any other means or device, that the said product will prevent or end gray hair or restore the original natural color to the hair.

(b) That restoration of the natural color of a head of hair has been effected in 88% or any other definitely stated percentage of those to whom calcium pantothenate, the principal ingredient of the product, was administered in tests.

(c) That it has been established that 88% or any other definitely stated percentage of those administered calcium pantothenate, the principal ingredient of the product, have had the natural color of their hair restored.

(d) That the skin is revitalized through the administration of calcium pantothenate, the principal ingredient of the product.

(e) That the texture of the skin is improved, freckles appear less evident, sunburn is less severe and fingernails are less brittle from the administration of calcium pantothenate, the principal ingredient of the product.

(f) That the product restores the original natural color to the hair.

(g) That the product prevents gray hair.

(h) That the product makes one look or feel younger.

(i) That the product restores the youthful vitality to the skin.

The said Floyd M. Campbell and E. M. Meneough, and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 5, 1945.)

03251. Vitamin Preparation—Qualities, Properties or Results.—Battle Creek Dietetic Supply Co., a Michigan corporation, 16 Court St., Battle Creek, Mich., vendor-advertiser, was engaged in selling a vitamin preparation designated Capab and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) Through the use of the phrase "anti-gray-hair-factor" vitamin as descriptive of its product, or in any other manner or by any other means or device, that the said product will prevent or end gray hair or restore the original natural color to the hair.

(b) That restoration of the natural color of a head of hair has been effected in 88% or any other definitely stated percentage of those to whom calcium pantothenate, the principal ingredient of its product, was administered in tests.

(c) That it has been established that 88% or any other definitely stated percentage of those administered calcium pantothenate, the principal ingredient of its product, have had the natural color of their hair restored.

(d) That its product prevents or stops the hair from becoming gray.

(e) That its product restores the natural color to the hair.

The said Battle Creek Dietetic Supply Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 5, 1945.)

03252. Food Preparation—Composition and Qualities, Properties or Results.—Nicholas A. Ferri, Sr., an individual doing business as Soi Jus Co., One North Western Ave., Chicago, Ill., vendor-advertiser, was engaged in selling a food preparation designated "Golden Brand Soi Jus" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Golden Brand Soi Jus contains Vitamin D or a vitamin recognized as "Vitamin F," or that it contains a substance of benefit to the nerves, hair or skin.

(b) That Golden Brand Soi Jus is nonfattening or that it is incapable of increasing body weight.

(c) That brands of soya oil other than Golden Brand Soi Jus are produced through a process which destroys or removes any significant amount of the nutritional properties of soya oil.

The said Nicholas A. Ferri, Sr. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 5, 1945.)

03253. Drug Product—Qualities, Properties or Results, Indorsement or Approval and Safety—Gottlieb Bass, an individual doing business as Acquin Pharmacal Co., 8005 Alabama Ave., St. Louis, Mo., vendor-advertiser, engaged in selling a drug product called "Acquin"; and Clark F. Ross, an individual doing business as Ross Advertising Service, 1031 Big Bend Boulevard, St. Louis 17, Mo., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Acquin Pharmacal Co. 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 overcome fatigue.

(b) That the said product will cure headaches or will relieve congestion due to headaches or head colds.

(c) That the said product is prescribed by doctors for the relief of minor aches or pains.

and the vendor-advertiser agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That the said product is formulated from a doctor's prescription or that the said product is safe.

The said Gottlieb Bass and Clark F. Ross, and each of them, further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Feb. 8, 1945.)

03254. Vitamin Preparation—Qualities, Properties or Results.—Marshall Drug Co., Inc., a corporation, 213 West 34th St., New York, N. Y., vendor-advertiser, was engaged in selling a vitamin preparation designated Dr. Brown's Calcium Pantothenate and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) Through the use of the phrase "anti-gray hair vitamin" as descriptive of its product, or in any other manner or by any other means or device, that the said product will prevent or end gray hair or restore the original natural color to the hair.

(b) That restoration of the natural color of a head of hair has been effected in 88% or any other definitely stated percentage of those to whom calcium pantothenate, the principal ingredient of its product, was administered in tests.

(c) That it has been established that 88% or any other definitely stated percentage of those administered calcium pantothenate, the principal ingredient of its product, have had the natural color of their hair restored.

(d) That the strength or elasticity of the fingernails, or resistance to freckling or sunburning, is increased from the administration of calcium pantothenate, the principal ingredient of its product.

(e) That its product restores the natural color or lustre to the hair.

The said Marshall Drug Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 15, 1945.)

03255. Hair Dye Product—Safety.—Robert A. Bell and William W. Hudgins, trading as Beauty Utilities Co., 35 West 126th St., New York, N. Y., vendor-advertisers, were engaged in selling a coal tar hair dye product designated B. U. Hair Dye and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating

any advertisements which fail conspicuously to reveal therein the following:

"Caution: This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness,"

Provided, however, that such 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.

The said Robert A. Bell and William R. Hudgins, and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 16, 1945.)

03256. Disinfectant—Safety, Qualities, Properties or Results and Unique.—The Diversey Corp., a corporation, 53 West Jackson Boulevard, Chicago, Ill., vendor-advertiser, was engaged in selling a disinfectant designated "Diversol" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That Diversol is nonpoisonous.
- (b) By the use of such representations as "100% noncorrosive," or otherwise, that Diversol is absolutely or completely noncorrosive to articles to which it may be applied.
- (c) That Diversol is a sterilizing agent or that its use will prevent the spread of disease.
- (d) That Diversol will "kill germs" unless it be revealed in a manner as conspicuous as such representations that there are certain types of pathogenic bacteria it will not kill.
- (e) That Diversol will be of any value in the treatment of dandruff or in the treatment of skin diseases of domestic animals or pets.
- (f) That Diversol is the only preparation available on the market which possesses quick-acting disinfecting properties, which is capable of dissolving grease, or which is capable of functioning as an effective water softener.
- (g) That Diversol is the only "dry sodium hypochlorite."

The Diversey Corp. further agreed not to publish, disseminate, or cause to be published or disseminated any testimonial containing any representation contrary to the foregoing agreement. (Feb. 26, 1945.)

03257. Vitamin Preparation—Qualities, Properties or Results—S. L. Schwartz, trading as V-Quality Products, 831 South Wabash Ave., Chicago, Ill., was engaged in selling a vitamin preparation designated V-Quality Calcium Pantothenate and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) Through the use of the phrase "anti-gray-hair vitamin" as descriptive of his product, or in any other manner or by any other means or device, that the said product will prevent or end gray hair or restore the original natural color to the hair.
- (b) That restoration of the natural color of a head of hair has been effected in 88% or any other definitely stated percentage of those to whom calcium pantothenate, the principal ingredient of his product, was administered in tests.
- (c) That it has been established that 88% or any other definitely stated percentage of those administered calcium pantothenate, the principal ingredient of his product, have had the natural color of their hair restored.
- (d) That his product ends gray hair or restores the natural color to the hair

The said S. L. Schwartz further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 27, 1945.)

03258. Vitamin Preparation—Qualities, Properties or Results.—L. H. Mackenzie, trading as Pantothenic Products Co., 605 New Center Building, Detroit, Mich., was engaged in selling a vitamin preparation designated Chroma-Thenate and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) Through the use of the phrase "anti-gray-hair vitamin" as descriptive of his product, or in any other manner or by any other means or device, that the said product will prevent or end gray hair or restore the original natural color to the hair.

(b) That restoration of the natural color of a head of hair has been effected in 88% or any other definitely stated percentage of those to whom calcium pantothenate, the principal ingredient of his product, was administered in tests.

(c) That it has been established that 88% or any other definitely stated percentage of those administered calcium pantothenate, the principal ingredient of his product, have had the natural color of their hair restored.

(d) That it has been established that the health of the skin, the vitality and texture of the hair, or the strength and elasticity of the nails have been improved through the administration of calcium pantothenate, the principal ingredient of his product.

(e) That his product restores the natural color of the hair.

(f) That his product prevents the hair from becoming gray.

(g) That his product increases the vitality or improves the texture of the hair.

(h) That his product stops the hair from falling out.

(i) That his product improves the health of the skin.

(j) That his product increases the strength or elasticity of the nails.

(k) That his product decreases freckling.

(l) That his product increases resistance to sunburn.

The said L. H. MacKenzie further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 27, 1945.)

03259. Vitamin Product—Qualities, Properties or Results.—C. Franklin Leavitt, trading as C. Franklin Leavitt, M. D., 1167 Wilmette Ave., Wilmette, Ill. was engaged in selling a vitamin product designated Calcium Pantothenic and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) Through the use of the phrase "gray hair vitamin" as descriptive of his product, or in any other manner or by any other means or device, that the said product will prevent or end gray hair or restore the original natural color to the hair.

(b) That restoration of the natural color of a head of hair has been effected in 88% or any other definitely stated percentage of those to whom calcium pantothenate, the principal ingredient of his product, was administered in tests.

(c) That it has been established that 88% or any other definitely stated percentage of those administered calcium pantothenate, the principal ingredient of his product, have had the natural color of their hair restored.

(d) That his product restores the natural color to hair.

(e) That he is conducting experiments to determine the effect of calcium pantothenate on gray hair.

The said C. Franklin Leavitt further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 27, 1945.)

03260. **Medicinal Product—Qualities, Properties or Results and Safety.**—Frances Parker, Suite 206, 4441 North Racine Ave., Chicago, Ill., was engaged in selling a medicinal product designated Nurse Parker's New Formula Pills, Nurse Parker's Relief Compound Pills, and Nurse Parker's Compound and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That the said product will constitute a competent or effective treatment for delayed menstruation.

It is further agreed by Frances Parker that she 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. (Mar. 1, 1945.)

03261. **Men's Clothing—Composition and Savings.**—Furmbilt Stores, Inc., a corporation, 631 South Hill St., Los Angeles, Calif., vendor-advertiser, was engaged in selling men's clothing and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) By the use of the words camel, camel's hair, 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, wool or fleece of the camel, *provided, however*, that in case of a product composed in substantial part of the hair, wool or fleece of the camel, and in part of other fibers or materials, the words camel or camel's hair may be used as descriptive of the camel fiber 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.

(b) That respondent's products are offered for sale at savings of ten to fifteen dollars or any other savings in excess of the actual savings from the price charged by respondent's competitors for similar products made of the same or comparable ingredients.

The said Furmbilt Stores, Inc., also agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 5, 1945.)

03262. **Radio Receiving Sets—Equipment.**—Allied Radio Corporation, a corporation, 833 W. Jackson Boulevard, Chicago, Ill., vendor-advertiser, was engaged in selling radio receiving sets designated Knight Radios and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That any radio receiving set contains a designated number of tubes or is of a designated tube capacity, when one or more of the tubes referred to are tubes or other devices which do not perform the recognized and customary functions of radio receiving set tubes in the detection, amplification, and reception of radio signals.

The said Allied Radio Corporation agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 8, 1945.)

03263. **Radio Receiving Sets—Equipment.**—Nathan N. Wallack and M. D. Montague, copartners operating under the firm name of Star Radio Co., 409 11th St., N. W., Washington, D. C., advertiser-vendors, were engaged in selling radio receiving sets and agreed, in connection with

the dissemination of future advertising, to cease and desist from representing directly or by implication:

That any radio receiving set contains a designated number of tubes or is of a designated tube capacity, when one or more of the tubes referred to are tubes or other devices which do not perform the recognized and customary functions of radio receiving set tubes in the detection, amplification, and reception of radio signals.

The said Nathan N. Wallack and M. D. Montague, and each of them, agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 9, 1945.)

03264. Cosmetics and Medicinal Preparations—Qualities, Properties or Results and Safety.—Exelento Medicine Co., a corporation, Box 2201, Exelento Building, Atlanta 1, Ga., vendor-advertiser, was engaged in selling preparations designated Exelento Temporary Skin Whitener, Exelento Hair Pomade, Exelento Bleach Cream and Exelento Skin Ointment and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Exelento Hair Pomade will produce lustrous hair or improve the hair; or be of any benefit to the hair other than to straighten it temporarily and produce temporarily a smooth oily appearance.

(b) By the use of the word "whitener" in the brand name of the preparation Exelento Temporary Skin Whitener, or otherwise, that said preparation will whiten the skin, or that said preparation will give the skin a pale creamy complexion, or

(c) That Exelento Skin Ointment has a healing action.

The Exelento Medicine Co. further agreed to cease and desist from disseminating any advertisement which fails to reveal the material facts that Exelento Temporary Skin Whitener and Exelento Bleach Cream should not be applied upon 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 said preparations 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 or not the patient is allergic or sensitive to said preparations; *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 same effect.

Exelento Medicine Co. further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Mar. 9, 1945.)

03265. Medicinal Preparation—Safety and Qualities, Properties or Results.—Lanteen Medical Laboratories, Inc., a corporation, 900 North Franklin St., Chicago, Ill., advertiser-vendor, was engaged in selling a medicinal preparation designated Ex-Teen and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisement which fails to clearly reveal that such preparation should not be used in excess of the dosage recommended since such use may be harmful; *Provided, however*, that such advertisement need only contain the statement: "CAUTION: Use only as Directed," if and when the directions for use wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

It is further agreed by the said Lanteen Medical Laboratories, Inc., that it will forthwith cease and desist from representing directly or by implication:

(a) That the product will relieve or overcome distressing psychic or disposition phenomena accompanying menstruation such as gloominess or depression, self pity, nervousness and irascibility.

(b) That the said product will provide a stimulating effect.

The said Lanteen Medical Laboratories, Inc., also agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 9, 1945.)

03266. Medicinal Preparation—Qualities, Properties or Results and Earnings or Profit.—American Biochemical Corporation, a corporation, 815-A Hanna Building, Cleveland, Ohio, vendor-advertiser, was engaged in selling a medicinal preparation designated Paracelsus and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That said preparation is effective in the treatment of rheumatism, arthritis, neuritis, asthma, over-acidity, or ailments caused by the mineral deficiency.

(b) That said preparation will—build up or purify the blood; build up bones or teeth; nourish the brain; benefit the muscular tissues, heart or nerves; assist in the healthy functioning of the kidneys or liver; stimulate the circulation of the blood; cleanse the system; build resistance to disease; aid digestion; help eliminate toxic poisons from the system; or be effective in the treatment of flu, phlebitis, tired feet or swollen limbs.

(c) That said preparation will make up a deficiency in the diet of calcium, phosphorus, iron, sodium, potassium or chlorine; that it will provide an adequate supply of minerals; that it provides a complete adjunct to nature in the treatment of physical irregularities; that it contains all the mineral elements necessary to nutrition; or that it will restore the mineral content of the body.

(d) That said preparation is not a medicine.

(e) That prospective distributors, dealers or other representatives can make earnings or profits within any specified period of time which are in excess of the net average earnings or profits within like periods of time made by a substantial number of its active full-time distributors, dealers or other representatives in the ordinary and usual course of business and under normal conditions and circumstances.

The said American Biochemical Corporation further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 9, 1945.)

03267. Vitamin Preparation—Qualities, Properties or Results.—Henry Gottlieb, an individual trading as Vita-Man, 175 East Broadway, New York City, advertiser-vendor, was engaged in selling a vitamin preparation designated Vita-Hair Tablets and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) Through the use of the phrase "anti-gray-hair vitamin" as descriptive of his product, or in any other manner or by any other means or device, that the said product will prevent or end gray hair or restore the original natural color to the hair.

(b) That restoration of the natural color of a head of hair has been effected in 88% or any other definitely stated percentage of those to whom calcium pantothenate, the principal ingredient of his product, was administered in tests.

(c) That it has been established that 88% or any other definitely stated percentage of those administered calcium pantothenate, the principal ingredient of his product, have had the natural color of their hair restored.

(d) That it has been established that the skin is improved or the strength and elasticity of the nails increased through the administration of calcium pantothenate, the principal ingredient of his product.

(e) That his product restores the natural color of the hair, prevents the hair from becoming gray or revitalizes the hair.

- (f) That his product improves the skin.
- (g) That his product increases the strength or elasticity of the nails.
- (h) That his product rejuvenates the appearance.

The said Henry Gottlieb further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 12, 1945.)

03268. Radio Receiving Sets—Equipment.—Spiegel, Inc., a corporation, 1061 West 35th St., Chicago 9, Ill., advertiser-vendor, was engaged in selling radio receiving sets and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That any radio receiving set contains a designated number of tubes or is of a designated tube capacity, when one or more of the tubes referred to are tubes or other devices which do not perform the recognized and customary functions of radio receiving set tubes in the detection, amplification, and reception of radio signals.

The said Spiegel, Inc. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 15, 1945.)

03269. Medicinal Preparation—Qualities, Properties or Results and Safety.—Lawrence F. Heer, an individual doing business as Berosol Products, Rockaway Beach, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Mayr's and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That the product will prevent the absorption of toxic substances.
- (b) That it will relieve or correct indigestion.
- (c) That it will regulate the flow of bile and is a stomach remedy.

It is further agreed by Lawrence F. Heer 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, caution or warning to the same effect.

The said Lawrence F. Heer further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 15, 1945.)

03270. Vitamin Hair Restorer—Qualities, Properties or Results.—The Carley Co., a corporation, 160 East Illinois St., Chicago, Ill., vendor-advertiser, was engaged in selling a vitamin preparation designated Grayvita and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) Through the use of the phrase "anti-gray-hair vitamin" as descriptive of its product, or in any other manner or by any other means or device, that the said product will prevent or end gray hair or restore the original natural color to the hair.
- (b) That restoration of the natural color of a head of hair has been effected in 88% or any other definitely stated percentage of those to whom calcium pantothenate, the principal ingredient of its product, was administered in tests.
- (c) That it has been established that 88% or any other definitely stated percentage of those administered calcium pantothenate, the principal ingredient of its product, have had the natural color of their hair restored.
- (d) That its product banishes gray hair, restores the natural color or lustre to the hair.

- (e) That its product restores the vitality of the hair.
- (f) That its product restores natural waves to the hair.
- (g) That its product improves the complexion.
- (h) That its product increases the elasticity of the nails.
- (i) That its product prevents grayness.
- (j) That its product restores youthful vigor or appearance or makes one look younger.

The said The Carlay Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 16, 1945.)

03271. Anti-Gray Hair Vitamin—Qualities, Properties or Results.—U. S. A. Brands, Inc., a corporation, 675 Broadway, New York City, vendor-advertiser, was engaged in selling an anti-gray hair vitamin designated Cal-D-Pan and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication.

(a) Through the use of the phrase "anti-gray hair vitamin" as descriptive of its product, or by any other means or device, that the said product will end gray hair or restore the original natural color to the hair.

(b) That restoration of the natural color of a head of hair has been effected in 88% or any other definitely stated percentage of those to whom calcium pantothenate, the principal ingredient of its product, was administered in tests.

(c) That it has been established that 88% or any other definitely stated percentage of those administered calcium pantothenate, the principal ingredient of its product, have had the natural color of their hair restored.

The said U. S. A. Brands, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 20, 1945.)

03272. Rodenticide—Safety and Qualities, Properties or Results.—O. W. Dean, an individual doing business as Saf-Kil Co., Benton Harbor, Mich., vendor-advertiser, engaged in selling a rodenticide designated Saf-Kil Rat Poison; and United Advertising Companies, Inc., a corporation, 230 North Michigan Ave., Chicago, Ill., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of O. W. Dean agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That said product is safe or harmless to pets, other animals, or human beings.
- (b) That said product is an effective killing agent for mice.
- (c) That said product causes rats to die outside.

The said O. W. Dean and United Advertising Companies, Inc., and each of them, agreed not to publish or cause to be published any testimonials containing any representation contrary to the foregoing agreement. (Mar. 26, 1945.)

03273. Vitamin Preparation—Qualities, Properties or Results.—Modern Products, Inc., a corporation, 1423 North Twenty-fourth St., Milwaukee, Wisc., vendor-advertiser, engaged in selling an anti-gray hair vitamin preparation designated Capatabs; and The Cramer-Krasselt Co., a corporation, 733 N. Van Buren St., Milwaukee, Wisc., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Modern Products, Inc. agreed, in connection with the dissemination of future advertising, to cease and desist from representing, directly or by implication:

(a) Through the use of the phrase "anti-gray-hair" factor as descriptive of the product, or in any other manner or by any other means or device, that the said product will prevent or end gray hair or restore the original natural color to the hair.

(b) That restoration of the natural color of a head of hair has been effected in 88% or any other definitely stated percentage of those who whom calcium pantothenate, the principal ingredient of the product, was administered in tests.

(c) That it has been established that 88% or any other definitely stated percentage of those administered calcium pantothenate, the principal ingredient of the product, have had the natural color of their hair restored.

(d) That the product restores the natural color to the hair.

The said Modern Products, Inc., and The Cramer-Krasselt 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. (Mar. 26, 1945.)

03274. Nasal Filter—Qualities, Properties or Results.—The Cha-Gobe Co., a corporation, 66 Pearl St., Hartford, Conn., vendor-advertiser, engaged in selling a nasal filter designated Cha-Gobe Nasal Filter; and The Charles A. Weeks Co., Inc., a corporation 122 East 42d St., New York City, advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of The Cha-Gobe Co. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That said device will prevent hay fever or asthma caused by dust, pollen or other particles in the air, or that it is effective in such conditions in excess of affording partial protection of the nasal membrane.

The said The Cha-Gobe Co. and The Charles A. Weeks Co., 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. (Mar. 26, 1945.)

03275. Medicinal Preparations—Qualities, Properties or Results and Safety. Rose Beil and Norman N. Beil, individuals, trading as The K-B Medical Products, 969 Lakeview Road, Cleveland, Ohio, vendor-advertiser, were engaged in selling medicinal products designated "Periodic Capsules, Triple PPP" and "Dupree Pills." Also prior to September 30, 1942, and October 8, 1942, they were engaged in selling products designated R₁XX Periodic Capsules and R₁XXX Periodic Capsules and agreed, in connection with dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That such preparations will constitute a competent or effective treatment or a dependable relief in cases of delayed menstruation arising from poor nutrition, anemia, fright, colds, over-exposure, inadequate clothing, change of climate, nervous strain, or from other causes.

(b) Through use of the expressions "Period," "Periodic Capsules," "Period Pills," or other expression or term having substantially the same meaning, that such preparations will be of value in cases of delayed menstruation from any cause.

It is further agreed by Rose Beil and Norman N. Beil, and each of them, that in the dissemination of advertising, by the means and in the manner above set out, of such preparations as are hereinabove named, or any other preparation of substantially the same composition or possessing substantially the same properties, they 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 symp-

toms 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 Rose Beil and Norman N. Beil, 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. 29, 1945.)

03276. Hair Dye—Qualities, Properties or Results.—Kraupner & Kraupner, trading as Hay's Co., a corporation, 1375 Myrtle Ave., Brooklyn, N. Y., vendor-advertiser, engaged in selling a hair dye designated Hay's Hair Coloring, and Diener & Dorskind, Inc., a corporation, 147 West 42d St., New York, N. Y., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named product on behalf of Kraupner & Kraupner agreed, in connection with the dissemination of future advertising, to cease and desist from representing, directly or by implication:

- (a) That hair dyed with the product is natural looking.
- (b) That the product does not stain the scalp.

The said Kraupner & Kraupner, Inc., and Diener & Dorskind, 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. (Mar. 29, 1945.)

03277. Medicinal Preparation—Safety.—Ada Marcellus, doing business under the trade name of Marcellus Co., Box 144, Essex Station, Boston, Mass., vendor-advertiser, engaged in selling a medicinal preparation designated Top Lax and Reuben Barkow, an individual, 45 West 45th St., New York, N. Y., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Ada Marcellus agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisement which fails to reveal that said preparation 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.

The said Ada Marcellus and Reuben Barkow, 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. 29, 1945.)

03278. Radio Receiving Sets—Equipment.—The Sun Radio Service and Supply Corp., a corporation, 938 F Street, N. W., Washington, D. C., vendor-advertiser, was engaged in selling radio receiving sets and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That any radio receiving set contains a designated number of tubes or is of a designated tube capacity, when one or more of the tubes referred to are tubes or other devices which do not perform the recognized and customary functions of radio receiving set tubes in the detection, amplification, and reception of radio signals.

The Sun Radio Service and Supply Corp. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 3, 1945.)

03279. Photographic Enlargements—Free, Unordered Goods, Prices and Quality.—Fred Hammel, an individual doing business under the trade name New York Art Service, 200 West 72d St., New York, N. Y., vendor-advertiser, was engaged in selling photographic enlargements and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) Using the term "Free" or any other term of similar import and meaning to describe, designate or refer to any merchandise which is not a gift or gratuity and delivered to the recipient thereof without cost and unconditionally.

(b) Representing that a folder or other merchandise will be included in shipments of photographic enlargements unless folders or other merchandise are in fact included in all of such shipments.

(c) Wording advertising relating to the offering for sale of photographic enlargements or any other merchandise in any manner which will not enable a prospective purchaser to readily determine the quantity of such photographic enlargements or other merchandise which may be expected when responding to such advertising, or the cost thereof.

(d) Using any sales plan or merchandising method which involves the practice of sending unsolicited C.O.D. shipments of photographic enlargements or any other merchandise to prospective purchasers.

(e) Representing that photographic enlargements or any other merchandise will be sold for a price which is less than the price actually charged therefor.

(f) Using the term "Silk Finish" or any other term containing the word "silk" to in any way describe or refer to pictures which are not in fact printed on silk. (Apr. 5, 1945.)

03280. Wearing Apparel—Free.—Melville Meyers, Sidney Meyers and Georgette Meyers, copartners trading as The Melville Company, Cincinnati 3, Ohio, vendor-advertisers, were engaged in selling wearing apparel and agreed, in connection with the dissemination of future advertising, to cease and desist from using the word "free" or any other word or term of similar import or meaning, to designate, describe or refer to wearing apparel or other items of merchandise which are not furnished gratuitously and unconditionally or which are furnished as compensation for services rendered or for which the payment of money is required.

The said Melville Meyers, Sidney Meyers and Georgette Meyers, and each of them, agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 6, 1945.)

03281. Waterproofing Hydraulic Cement—Qualities, Properties or Results and Guaranteed.—American Fluresit Co., Inc., a corporation, 635 Rockdale Ave., Cincinnati 29, Ohio, vendor-advertiser, was engaged in selling a fast setting hydraulic cement designated fluresit Quick-Set Waterproofing and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication,

(a) That said product is a waterproof or a dampness preventive material or compound or that it renders walls or structures made of concrete, cement, brick or stone impervious to water or dampness, unless there be set forth, in connection with such representations, statements clearly indicating the conditions under which said product is effective.

(b) That any water repellent or damp resisting qualities contained in or imparted by said product are permanent or everlasting.

(c) That Fluresit Quick-Set Waterproofing stops seepage leaks through block and concrete basement walls regardless of water pressure.

(d) That Fluresit Quick-Set Waterproofing solves all waterproofing problems.

(e) That the results from the use of Fluresit Quick-Set Waterproofing are guaranteed without disclosing the terms of the guarantee.

The American Fluresit Co., Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 6, 1945.)

03282. Medicinal Preparation—Qualities, Properties or Results and Safety.—Hope, Inc., a corporation, 138 West 25th St., New York 1, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Hope Laxative and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That such preparation acts gently or that it does not cause griping.

The said Hope, Inc. further agreed not to publish or cause to be published any advertisement which fails to reveal that said preparation should not be used in the presence of abdominal pain, nausea, vomiting or other symptoms of appendicitis; *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 Hope, Inc. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 24, 1945.)

03283. Rodenticide—Qualities, Properties or Results.—Feed Supplies, Inc., a corporation, 741 North Milwaukee St., Milwaukee 2, Wisc., and Killer-Diller Corp., a corporation, 741 North Milwaukee St., Milwaukee 2, Wisc., vendor-advertisers, engaged in selling a mouse and rat exterminator designated Kil-Balm, and Arthur Towell Inc., a corporation, 505 Insurance Building, Madison, Wisc., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Feed Supplies, Inc., and Killer-Diller Corp. agreed, in connection with the dissemination of future advertising, to cease and desist from representing, directly or by implication, that said product:

(a) Will rid buildings or homes of rats or mice.

(b) Will cause rats or mice to crawl outside to die.

The said Feed Supplies, Inc., Killer-Diller Corp. and Arthur Towell 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. (May 8, 1945.)

03284. Welding Compound—Qualities, Properties or Results.—Herman I. Richman and Anna Richman, copartners doing business as Richman Chemical Products Co., 2526 W. Van Buren St., Chicago, Ill., vendor-advertisers, were engaged in selling a welding compound designated Royal Block Welding Compound and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

By use of the words "weld" or "welding" in connection with the trade name of the aforesaid product, or otherwise, that the aforesaid product will effect a weld or fusion of metal parts.

The said Herman I. Richman and Anna Richman, 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 8, 1945.)

03285. Medicinal Preparation—Qualities, Properties or Results and Scientific or Relevant Facts.—Edward T. Keenan, an individual doing business as Keenan Laboratories, Frostproof, Fla., vendor-advertiser, was engaged in selling a medicinal preparation designated Key-Mins 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 build blood, bone or tissue.
- (b) That it will relieve or cure restlessness or irritability.
- (c) That the product will increase strength, endurance, energy or vitality or that it will improve the general health or enable one to be healthy.
- (d) That it will lengthen life expectancy or shorten the period of convalescence.
- (e) That it will relieve, cure or prevent physical or mental fatigue.
- (f) That it will relieve or cure mineral deficiencies and mineral deficiency diseases and disorders; or that four out of five people in America are deficient in minerals.
- (g) That it will prevent all mineral deficiencies and mineral deficiency diseases and disorders.
- (h) That it will ward off or prevent disease or enable one to resist disease and disorders.
- (i) That it will relieve distress due to overindulgence in eating and drinking.
- (j) That it will relieve anemia and digestive and gall bladder disturbances.
- (k) That it will reduce susceptibility to infection or that it will relieve or prevent arthritis, hardening of the arteries, nervousness, despondency, insanity, convulsions, heart diseases, blood disorders, cancer, kidney stones, constipation, rickets, overweight, underweight, colds or catarrh.

The said Edward T. Keenan also agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 8, 1945.)

03286. Hair Dye—Safety.—Samuel D. Cates, an individual trading as Juel Co., 3724 North Clark St., Chicago, Ill., vendor-advertiser, was engaged in selling a hair dye designated “(New Color) Hair Dye,” “Juel Hair Dye” or “Jet Black Hair Dye” and agreed, in connection with the dissemination of future advertising, to cease and desist from: publishing or causing to be published any advertisement which fails to reveal that it is a hair dye and all hair dyes should be used with caution; that it should be kept out of the eyes, mouth, ears and skin eruptions; that if there is a skin eruption on the scalp it should not be used or reused; that it is for external use only; and that it should not be used on the eyebrows or eyelashes; *Provided, however*, that said advertisements need contain only the statement, “CAUTION: Use only as Directed,” if and when the directions for use, wherever they appear on the label, in the labeling or in both label and labeling, contain a caution or warning to the same effect.

The said Samuel D. Cates further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 15, 1945.)

03287. Anti-Gray Hair Vitamin—Qualities, Properties or Results.—Spiegel, Inc., a corporation, 1061 West 35th St., Chicago, 9, Ill., vendor-advertiser, was engaged in selling an anti-gray hair preparation designated Grayvita Tablets and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) Through the use of the phrase “anti-gray hair tablets,” as descriptive of its

product, or in any other manner or by any other means or device, that the said product will prevent or end gray hair or restore the natural color to the hair.

(b) That restoration of the natural color of a head of hair has been effected in 88% or any other definitely stated percentage of those to whom calcium pantothenate, the principal ingredient of its product, was administered in tests.

(c) That it has been established that 88% or any other definitely stated percentage of those administered calcium pantothenate, the principal ingredient of its product, have had the natural color of their hair restored.

(d) That its product restores the natural color to gray hair.

The said Spiegel, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 18, 1945.)

03288. Hair Dye and Tonic—Qualities, Properties or Results and Composition.—Joseph H. Tall, an individual doing business under the trade name The Gra-No-Mor Co., P. O. Box 196, Brookline, Mass., vendor-advertiser, was engaged in selling a hair dye designated Gra-No-Mor Hair Coloring and a hair tonic designated Tri-Pl-Oil Hair Tonic and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That just a few drops of "Gra-No-Mor" on the palm of the hand and patted on to the hair completes the process of restoring color to the hair.

(b) That "Gra-No-Mor"

1. Restores color to the hair;
2. Replaces hair color;
3. Imparts color and charm to the hair;
4. Abolishes gray hair worries;
5. Causes grayness to disappear like magic, or
6. Is exceedingly effective, quick-acting and satisfying.

(c) That "Tri-Pl-Oil Hair Tonic" is a tonic, or that it possesses tonic properties or produces tonic effects.

(d) That "Tri-Pl-Oil Hair Tonic"

1. Is scientifically prepared;
2. Contains essential oils necessary to the life and beauty of the hair and scalp;
3. Helps promote the growth of new hair;
4. Improves the health of the hair;
5. Gives new life and luster to the hair; or
6. Removes dandruff and dead hair.

The respondent further stipulated and agreed to cease and desist from the use of the word "Gra-No-Mor" or any other word or words, abbreviation or abbreviations or combination of words or parts of words, which might imply that the use of his product would put an end to gray hair or gray hair worries, either as a trade name or as the name or part of the name of his product.

The respondent further stipulated and agreed to cease and desist from the use of the word "tonic" as a part of the name of any product sold by him that does not possess tonic properties or produce tonic effect.

The said Joseph H. Tall further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 23, 1945.)

03289. Men's Clothing—Composition.—Hollywood Credit Clothing Co., Inc., a corporation, 703 Seventh St., N. W., Washington, D. C., vendor-advertiser, was engaged in selling men's clothing and agreed, in connection with the dissemination of future advertising, to cease and desist from the use of the words "camels," "camels hair" 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 camel, *provided, however*, that in case of a product composed in substantial part of the hair of the camel, and in part of other fibers and materials, the words camel, camels or camels hair may be used as descriptive of the camel 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, together with such other disclosure as may be required by provisions of law applicable to the respective fabric or article.

The said Hollywood Credit Clothing Co., Inc., also agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 23, 1945.)

03290. Radio Receiving Sets—Equipment.—Sears, Roebuck and Co., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling a radio receiving set designated "11-Tube Silvertone Console Radio" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That any radio receiving set contains a designated number of tubes or is of a designated tube capacity, when one or more of the tubes referred to are tubes or other devices which do not perform the recognized and customary functions of radio receiving set tubes in the detection, amplification, and reception of radio signals.

The said Sears, Roebuck and Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 25, 1945.)

03291. White Shoe Cleaner—Qualities, Properties or Results.—Everett & Barron Co., a corporation, Providence, R. I., vendor-advertiser, was engaged in selling a white shoe dressing designated Stazon White and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

By use of the words "really stays on," or otherwise, that the said preparation will not rub off of shoes to which it is applied.

The said Everett & Barron Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 26, 1945.)

03292. Cosmetics—Success, Use or Standing.—Revlon Products Corporation, a corporation, 745 Park Ave., New York, N. Y., vendor-advertiser, engaged in selling cosmetics designated Revlon Nail Enamel and Revlon Lipstick and Abbott Kimball Co., Inc., a corporation, 250 Park Ave., New York, N. Y., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named products on behalf of Revlon products Corporation agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating and from representing, directly or by implication:

That it has been established by interviews or surveys that any number or proportion of women wear or show a preference for Revlon Nail Enamel or Lipstick, or that Revlon Nail Enamel is used in more beauty salons than all other nail enamels combined, when such representations are not substantiated by statistics compiled from actual interviews or surveys conducted in such a manner as to reflect impartial findings of fact in that respect among a substantial majority of the cosmetic users referred to in the advertising.

It is hereby further agreed by Revlon Products Corporation and Abbott

Kimball Co., Inc., that in connection with the dissemination of advertising for Revlon Nail Enamel, by the means and in the manner above set out, they, and each of them, will forthwith cease and desist from designating or computing the use of any color of said enamel by one person, one time as more than one pretesting. (June 29, 1945.)

03293. Food Beverage—Qualities, Properties or Results and Free.—G. M. Bartlett and M. E. Bartlett, copartners doing business as W. H. Y. and Kevo Products Co., Ltd. and The Kevo Co., 2655 Terminal Annex, Los Angeles, Calif., were engaged in selling a food supplement beverage designated Kevo and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That said preparation provides the vitamins to minerals required daily by the human body or that said preparation is rich in vitamins, minerals or proteins.

(b) That said preparation is effective in relieving nervousness, fatigue, headache, irritability, run-down condition, seasickness or anemia.

(c) That said preparation is effective in relieving or preventing constipation other than that caused solely by insufficient bulk in the diet.

(d) That said preparation will be effective in preventing biliousness.

(e) That said preparation has a specific action in nourishing the nerves, provides "something" that most other foods have lost, or is a food required by brain workers.

(f) That said preparation will have a beneficial effect upon the vision, mental processes of the user or the complexion.

(g) That said preparation will be effective in keeping the user vigorous, will provide stamina or resistance for invalids or convalescents, or will prevent exhaustion from physical exertion.

(h) That said preparation takes the place of a meal or has the same nutritive value as a meal.

(i) That said preparation is not capable of increasing body weight, will provide a means of reducing body weight or that the dextrose contained in said preparation is nonfattening.

(j) That the Health Defense Dial furnished to purchasers of said preparation retails for 50¢.

It was further agreed that the vendor-advertisers will forthwith cease and desist from:

1. Representing that any article of merchandise regularly included in a combination offer with other merchandise is "free."

2. Using the term "free," or any other term of similar import and meaning, to describe, designate or refer to any merchandise or other article which is not a gift or gratuity and delivered to the recipient thereof without cost and unconditionally.

The said G. M. Bartlett and M. E. Bartlett, 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 29, 1945.)



INVESTIGATIONS AND RECOMMENDATIONS UNDER THE EXPORT TRADE ACT¹

IN THE MATTER OF

FLORIDA HARD ROCK PHOSPHATE EXPORT ASSOCIATION, ITS OFFICERS, EXECUTIVE COMMITTEE AND MEMBERS

CONDENSED REPORT OF INVESTIGATION, CONCLUSIONS AND RECOMMENDATIONS IN RE ALLEGED VIOLATIONS OF THE EXPORT TRADE ACT,
APPROVED APRIL 10, 1918

*Docket 202-2. Notice and Summons, July 14, 1944—Conclusions and
Recommendations, June 28, 1945*

¹The Commission's recommendations *In the Matter of Pacific Forest Industries*, Docket 202-1, dated January 27, 1940, which preceded the *Florida Hard Rock Phosphate Export Association*, read as follows:

RECOMMENDATIONS FOR THE READJUSTMENT OF THE BUSINESS OF PACIFIC FOREST INDUSTRIES, AN EXPORT TRADE ASSOCIATION

To: Pacific Forest Industries, a cooperative association organized under the laws of the State of Washington, with principal office and place of business at Tacoma, Washington, and its several members:

The Federal Trade Commission, having reason to believe that Pacific Forest Industries, an association engaged in export trade (as "association" and "export trade" are defined in the Act of Congress known as the Export Trade Act, approved April 10, 1918), and certain of its agreements and acts were in restraint of the export trade of domestic competitors of said association, summoned said association, its officers and agents to appear before it on the 12th day of September, 1939, as provided by section 5 of said Export Trade Act. Said association having duly appeared before the Commission pursuant to said summons, and a hearing and investigation into the alleged violations of law having been conducted by the Commission, and oral and written statements and arguments and briefs having been presented by said association, and the Commission having concluded upon such investigation that the antitrust laws have been violated by said association in that said association and certain agreements made and acts done by it have been and are in restraint of the export trade of its domestic competitors, to wit, other American exporters engaged in purchasing, transporting and selling Douglas Fir plywood in export trade.

Now, therefore, pursuant to the provisions of said Export Trade Act and by virtue of the authority conferred upon it by said Act, the Federal Trade Commission hereby makes to said Pacific Forest Industries and its several members the following recommendations for the readjustment of its business, in order that it may hereafter maintain its organization and management and conduct its business in accordance with law:

1. That Pacific Forest Industries shall not, by its by-laws, contracts with members or associate members, or otherwise, prohibit its members or associate members from selling plywood directly to American exporters.

2. Section XVI of the present by-laws of Pacific Forest Industries provides that "the several members agree to * * * turn over to the association, as and when received, all future orders for export; * * *. The members agree not to accept any future export orders, but to transmit and turn the same over to the association." Contracts between Pacific Forest Industries and associate member plywood mills provide that the

Where an association of three corporations organized under the Export Trade Act to engage in export trade as defined therein, which, through its officers and members, engaged in the sale for export and the exportation of hard rock phosphate produced from the mines of its members, under a procedure by which sales were made by its sales agents in Europe under the supervision of its European representative; all sales contracts were executed between buyers and the Association as principal, with the provision that any member might supply the cargo, the identity of the supplying member not being indicated and no member being permitted to sell direct, and sales being allocated among members according to a fixed quota; prices for their product being fixed, prior to December of 1933, by the association, and after that time, by agreement among the association, the Phosphate Export Association, and the French North African producers—

- (a) Entered into two international cartel agreements known as the Paris and Curacao agreements, which required that deductions for shipments of Florida hard rock phosphate from the United States by American non-members of the association be made from the quota of American shipments of hard rock phosphate to Europe; and into an intra-association agreement known as the Brussels agreement, which required the deduction of the tonnage of hard rock phosphate sold by each member in domestic trade in the United States from the European quota therein allotted to the seller;
- (b) Entered into an understanding with the two owners (member and former member and with common officers) of a strategically situated Florida terminal equipped with crushing, drying, loading and storage facilities for hard rock phosphate, which confined and restricted the use of the terminal solely to the members of the association; and undertook to enter into protective and forestalling arrangements with a common carrier railway with reference to hard rock phosphate shipments of non-members, the rates on such shipments, and the availability or use of terminal facilities to accommodate such shipments;
- (c) Failed to file such agreements in its annual reports, required under schedule E of the Act, calling for a description of the methods and plans under which the association's business was done, and its relationships with others;

associate member "will not sell or offer for sale directly or indirectly any plywood for export, except through said association." Said by-laws and contracts, and any other existing by-laws, contracts or agreements to the same effect, should be rescinded, or amended so as to permit members and associate members of said association to accept and fill orders for plywood for export received by them, respectively, from American exporters without reference to or approval by the association.

3. That Pacific Forest Industries shall not impose any penalties, forfeitures or charges upon sales of plywood by its members or associate members to American exporters, or fix or prescribe prices, terms or conditions of sales to or by American exporters of plywood produced by its members, or take any other action designed to prevent or restrict such sales.

4. That Pacific Forest Industries cease and desist from advertising in foreign countries that it is the sole export representative of the plywood mills in the United States Pacific Northwest, and from making any similar advertising claims to the effect that United States Douglas Fir plywood can be purchased in foreign countries only through Pacific Forest Industries or its agents.

The term "American exporter" is defined, for the purpose of these recommendations, as a citizen of the United States, a partnership in which the partner or partners owning the principal beneficial interest is or are citizens of the United States, or a corporation domiciled in the United States the majority of the stock of which is owned by citizens of the United States, desiring to purchase plywood for his, their, or its own account for resale in export trade.

Effects of which agreements and acts were in restraint of trade within the United States and in violation of law:

Recommended. pursuant to said act authorizing the Commission to make recommendations for the readjustment of the business of export trade associations whose agreements were in violation of law, that

- (1) The association withdraw from the so-called "Paris" and "Curacao" agreements requiring that deductions for shipments of Florida hard rock phosphate from the United States by American non-members of the association be made from the quota of American shipments to Europe, and that the association refrain from entering into like or similar covenants in the future:
- (2) The members rescind and cancel their intra-association Brussels agreement, requiring the deduction of the tonnage of hard rock phosphate sold by each member in domestic trade in the United States from the European quota therein allotted to the seller, and refrain from entering into like or similar agreements in the future;
- (3) That two certain members cancel their agreement requiring that the tonnage of hard rock phosphate sold by either in the domestic market of the United States be deducted from the quota of European shipments allotted to such members under the said Brussels agreement, and that they refrain in the future from entering into or effectuating any like or similar agreements:
- (4) That the association withdraw from and rescind any agreements with a member and a former member, the owners of Fernandina terminal at Fernandina, Fla., which confine or restrict in any way the use of the terminal, for the processing and shipment of hard rock phosphate, solely to the members of the association; and that the Association refrain in the future from entering into any negotiations, arrangements or understandings with any common carrier with reference to hard rock phosphate shipments by non-members, or the rates thereon, or the availability or use of terminal facilities to accommodate them and
- (5) That the association in the future seasonably file with the Commission all information required by the Export Trade Act to be filed annually, and furnish all information and documentary evidence requested or required by the Commission, pursuant to such Act, whether called by report forms, by questionnaires or communications, by personal visitation or otherwise.

Ordered. That the Association file within 30 days a report stating whether it has elected to comply with such recommendations, and if so, the manner in which it has so complied.

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

Mr. T. Harold Scott and *Mr. Frank Hier*, of Washington, D. C., for the Commission.

Mr. J. G. Körner and *Mr. Richard S. Doyle* of *Blair, Körner Doyle & Appel*, of Washington, D. C., for Florida Hard Rock Phosphate Export Association, its officers, executive committee, and members.

Mr. Edward C. Brennan, of Savannah, Ga., for the Dunnellon Phosphate Mining Co.

CONDENSED REPORT OF INVESTIGATION²

Pursuant to the provisions of an Act of Congress approved April 10, 1918, entitled "An Act to Promote Export Trade and for other purposes" (40 Stat. 516; U.S.C.A. Secs. 61-65) commonly known as the Webb-Pomerene Act, and by virtue of the authority conferred upon it by said act, the Federal Trade Commission did, on the 14th day of July, 1944, issue its Notice of Investigation and Summons to the Florida Hard Rock Phosphate Export Association (hereinafter called "Hardphos") its officers, executive committee and members, as named above, being an association organized under the said act for the purpose of engaging in export trade pursuant to the provisions thereof. The said notice and summons set forth that the Commission had reason to believe that the said named parties may have entered into agreements and done acts in restraint of trade within the United States, or in restraint of the export trade of domestic competitors of said parties, or which substantially lessened competition within the United States and otherwise restrained trade therein by means of the matters and things specified in the bill of particulars attached to the aforesaid notice and summons.

Pursuant to the order of the Federal Trade Commission, hearings for the reception of testimony and evidence in this investigation were held before a trial examiner duly appointed by the Commission, in Washington, D. C. on September 25, 26, and 27 and November 13 and 14, 1944. Thereafter, the investigation was closed by order of the trial examiner. Sworn testimony and documentary evidence were received in the record, the parties were requested and permitted to make such statements for the record and to submit such information to the Commission as they desired to offer. The proceedings were reduced to writing and the transcript of the record and exhibits were filed in the office of the Commission. And the Commission, having examined and analyzed the record, makes this its report on the facts.

REPORT ON THE FACTS

The Florida Hard Rock Phosphate Export Association, herein after sometimes referred to as "Hardphos" and "the association," is an unincorporated association organized March 19, 1919, under the Webb-Pomerene Act for the purpose of engaging in export trade as defined in said act. It has, through its officers and members, since its organization, engaged in the sale for export and exportation of hard rock phosphate produced from the mines of its members to

² The full report of investigation, which has been condensed, as set out above, through exclusion of matter not deemed essential for a statement of the questions at issue, is filed with the Commission and may be had on request.

cated in the State of Florida. Its principal office is at 1006 Savannah Bank & Trust Building, Savannah, Ga.

The association makes export sales of phosphate rock for the account of its members. These sales are made by the association's sales agents in Europe under the supervision of the European representative of the association, J. Buttgenbach & Co., which has an office at 22 Avenue Marnix, in Brussels, Belgium. All sales contracts are executed between buyers and the association as principal, but with the provision that any member of the association may supply the cargo. The identity of the supplying member is not indicated, all negotiations and shipping documents being handled under the name of the association. Each member has a fixed quota in each grade of phosphate rock which he produces. Sales are allocated among the members according to their quotas. Members are not permitted to sell direct. Prior to December of 1933, prices for phosphate rock exported were fixed by the association; after that time they have been fixed by agreement between the association and the Phosphate Export Association (PEA) which is a Webb-Pomerene association exporting pebble phosphate, and by the French North African producers. The association is financed by semi-annual assessments made of the members to cover expenses actually incurred during each preceding half year.

The officers of Hardphos are as follows:

1. Robert W. Groves, president, with offices in the Savannah Bank & Trust Building, Savannah, Ga. Groves is also president of Dunnellon Phosphate Mining Company, 1006 Savannah Bank & Trust Building, Savannah, Ga., which is a member of the association.

2. Maurice Van der Rest, vice president, 22 Avenue Marnix, Brussels, Belgium, who is also a member and managing director of the member firm of Société Anonyme La Floridienne, J. Buttgenbach & Co., and as such exercised active management of the foreign sales and business of Hardphos.

3. Henry N. Camp, vice president, Ocala, Fla. Also secretary and treasurer of C. & J. Camp, Inc., a member of Hardphos.

4. Julius M. Extrowich, secretary-treasurer, with offices at 1006 Savannah Bank & Trust Building, Savannah, Ga., who is also secretary of Dunnellon.

The executive committee of Hardphos consists of E. F. Fitch, Jacksonville, Fla., vice president of C & J Camp, Inc.; David B. Kibler, Jr., Lakeland, Fla., American manager for Société Anonyme La Floridienne, J. Buttgenbach & Co., and Robert W. Groves.

The members of Hardphos are as follows:

1. Dunnellon Phosphate Mining Company (hereinafter referred to as Dunnellon), which is a Delaware corporation with its prin-

incipal place of business at 1006 Savannah Bank & Trust Building, Savannah, Ga. Its mines are located at Hernando, Citrus County, Fla. It began producing and exporting Florida hard rock phosphate in 1932 and has been a member of Hardphos since that time.

2. Société Anonyme La Floridienne, J. Buttgenbach & Company (hereinafter referred to as Buttgenbach), is a corporation organized and existing under the laws of the Kingdom of Belgium, with its principal office located at 22 Avenue Marnix, Brussels, Belgium. It has an American office at 318 E. Main St., Lakeland, Fla., under the supervision of D. B. Kibler, Jr., general manager. Buttgenbach was a member of Hardphos prior to 1922, at which time it withdrew because, so it is said, it was criticized in Belgium as upholding prices and working hardships on Belgian buyers and consumers. It returned to membership in Hardphos in November, 1933, but apparently during the period of nonmembership cooperated with Hardphos. Buttgenbach mines hard rock phosphate in Citrus County, Fla. It has been represented at Hardphos meetings by H. Buttgenbach, Maurice Van der Rest and D. B. Kibler, Jr.

Prior to the First World War, and for a few years thereafter, Buttgenbach mined phosphate rock on properties owned by it in Tunisia, North Africa. These operations were discontinued in the twenties, the reason given being that the operations were unprofitable as compared to French miners who were given Government subsidies. In addition, the grade produced was low (66-68 percent) as compared to the hard rock produced by Buttgenbach in Florida.

Buttgenbach also buys in Europe basic slag from steel mills containing about 16 percent available phosphoric acid. Buttgenbach grinds this slag and sells it in Europe to farmers, dealers and others for fertilizer. In contrast, Florida hard rock phosphates are used in the production of superphosphates which contain 20 percent available phosphoric acid. Buttgenbach is a large company and some of its directors have substantial business interests in Europe and other parts of the world. It mines metals and other products in addition to phosphate rock in Bulgaria and the Belgian Congo and has numerous business contacts in Europe which aided it in promoting the sale of Florida hard rock phosphate.

3. C. & J. Camp, Inc. (hereinafter referred to as Camp), is a Florida corporation with its principal office and place of business at Ocala, Fla. It has an office in Room 1009, Bisbee Building, Jacksonville, Fla., under the management of E. J. Fitch, vice president.

Camp and its predecessor was a charter member of Hardphos and was an exporting member in 1923, 1924, and 1925 and has been such from November, 1933 to the present time. Camp sells hard rock phosphate in the domestic market, being the only present member of Hardphos to do so, except for one sale in 1939 by Buttgenbach.

There are two past members of Hardphos still in existence. These are:

1. Cummer Lime and Manufacturing Company, Jacksonville, Fla. (formerly Cummer Lumber Company), a Florida corporation which ceased mining operations and resigned its membership from Hardphos in 1925. During the time Cummer was a member of Hardphos it owned its terminal in Jacksonville, Fla., which was equipped with drying, storage, and loading facilities.

2. Mutual Mining Company (hereafter called Mutual), 1006 Savannah Bank & Trust Building, Savannah, Ga., a Florida corporation with its corporate office in Ocala, Fla. Mutual was a member of Hardphos from 1919 until 1933. It ceased its mining operations in 1931. Its only present asset is a one-half interest in the Fernandina Terminal Corporation, hereafter referred to.

One former member, Dunnellon Phosphate Company, now dissolved, was a member of Hardphos until 1926. It is to be distinguished from Dunnellon Phosphate Mining Co., a present member, as it had been dissolved prior to the formation of the latter. It owned the Port Inglis Terminal located at Inglis, Fla., but after the construction of the Fernandina Terminal it shipped through Fernandina.

FLORIDA HARD ROCK PHOSPHATE INDUSTRY

Florida hard rock phosphate deposits are the resultant formation of bones of prehistoric animals as they occur in the Alachua formation of the Pliocene Age. The hard rock phosphate represents a relatively small part of this formation which also contains pebbles, sand, clay, and soft phosphate.

Deposits occur in isolated pockets which may run from a few tons up to 350,000 tons in size. The deposits themselves are usually a jumble of small rocks and boulders ranging in size from less than 1 inch to masses weighing several tons. They are all mined by the open pit method, in spite of the fact that they occur under overburdens in some cases as thick as 85 feet, which must be removed before mining operations can take place.

Florida hard rock phosphates are valued commercially on the basis of the percentage of tricalcium phosphate of lime or, as it is known in the trade, bone phosphate of lime (BPL). Other types of phosphate rock are also valued in the same way. Phosphorus, which is chemically known as P_2O_5 , is derived from BPL. Phosphate rock must be distinguished for its percentage of content of iron and alumina, these two materials reducing the value because they tend to retard solubility. Florida hard rock phosphates are exceptionally low in iron and alumina content. In most foreign countries phosphate rock must conform to laws requiring water solubility

of a specified standard. Phosphate rock is valued by ocean shipping companies as ballast because of its weight and cleanliness.

Florida hard rock phosphates were discovered at Hale Springs, Fla., in 1888. Subsequently, the known area of deposits has been extended by prospecting to comprise the area from the southern part of Suwannee and Columbia counties to the northern part of Pasco County, a distance of about 110 miles. The width of the field ranges from 5 to 12 miles in the northern and southern portions to a maximum of 30 miles in the central part.

Since 1888 approximately 75 companies have operated at one time or another in the Florida hard rock phosphate field on approximately 500 locations. The greatest activity occurred between 1895 and the beginning of World War I, at which time practically all exports stopped for the duration. After the war, nine companies resumed mining and operated early in the Twenties. The number of these miners has gradually been reduced until at the present time only three companies are operating, being Dunnellon, Buttgenbach and Camp.

The Florida hard rock phosphate field covers more than one million acres, of which the three companies own a total of 34,595 acres. These three companies presently operating constitute the membership of Hardphos. The land owned by them contains a reserve according to geological estimates of 46,506,000 tons.

Territory in Florida in which hard rock phosphate deposits might be expected to be found has been extensively prospected both by members of Hardphos and others. From geological estimates it has been estimated that there is a reserve running into hundreds of millions of tons of Florida hard rock phosphates. Some of the land in this territory is owned by the Federal Government. The United States Geological Survey examined some of this public land in 1934 and 1935 and determined that the government should retain mineral rights to most of the tested areas.

Phosphate, owing to its occurrence in bone, the soft tissues of the body, in milk, etc., is very important in animal physiology. Certain elements are essential to plant life. Over 80 percent of the phosphate rock mined in the United States is used in the manufacture of fertilizer in this country and abroad. The bulk of it is made into superphosphate by a simple process of acidulating the rock with sulphuric acid.

In continental Europe, the British Isles and the Far East, where the soil has become impoverished through centuries of agricultural exploitation, an adequate supply of fertilizer becomes a paramount necessity. Large population per square mile requires intense cultivation of the soil. In Germany the German farmer, through the application of superphosphate and other fertilizers, raises substantially more per acre than is raised in the United States. Phosphate rock

is finding an increased outlet for use as mineral feed for livestock, where bonemeal is not available.

Phosphorus is used in the production of military smoke screens, shells and bombs. It is widely used for industrial purposes—for example, foundry facing, filler for asphalt mixtures, phosphorizing pig iron, construction work, filter beds, refractories, planting compound, etc. More and more, phosphorus is going into the production of chemicals for use in the manufacture and processing of foods for human consumption, for example, as leavening agents, bread improvers, conditioners for salt, soda, and sugar to prevent casing; for mineral fortification of foods; and for the manufacture of sugar, beverages, jellies, yeast, condensed milk, processed cheese and ice cream, and the manufacture of baking powder.

Phosphorus and its compounds are also used in the manufacture of matches, alloys, metal production, catalysts in organic reactions, detergents, water softener, textiles, pharmaceuticals, material for waterproofing wood and textiles, ceramics, flotation agents, plasticizers, fungicides, sulfa drugs, penicillin and atebirin.

Florida hard rock phosphate has in the past been almost exclusively an export product. A relatively small amount has been sold in the domestic market for specialized purposes and high grade phosphoric acid. As compared to the export market for phosphates generally, the domestic market has always been a low priced market. Phosphates have never been given tariff protection.

The principal export market for Florida hard rock phosphate has been northern and central Europe. The demand there has an historical basis. Many customers have special facilities for grinding and handling this type of rock. It is higher quality than that produced by most competitive sources, in that it has a higher BPL content and a lower iron and alumina content, and it is preferred over other phosphate rock for special purposes, and on occasion has brought a slight premium because of its physical characteristics.

Smaller amounts of Florida hard rock phosphate are sold in southern Europe, which is a comparatively low-priced territory. Insignificant amounts have been sold in the Far East which is also low-priced territory.

At the outbreak of hostilities in the fall of 1939, northern and central European markets were closed, and with the collapse of France, the supply of phosphate from Morocco, Algeria, and Tunisia was no longer available to the United Kingdom and South Africa, who turned to the United States for their supply.

Prior to World War I, the Florida hard rock field was the largest field producing for export. During this period, however, phosphate rock was discovered in other parts of the world, principally in Algeria, Tunisia, Egypt, and North Africa. The Florida dry land pebble phosphate field was also opened up during this period.

After the close of World War 1. the principal competitor for Florida hard rock was from Pebble. Algeria and Tunisia. In the domestic market, pebble was the principal competition although there was some competition from Tennessee pebble. Tennessee pebble phosphate is marketed principally in the midwestern agricultural fertilizer market, where it has an advantage in freight rate differentials over Florida of approximately \$3 or \$4 a ton. Tennessee pebble phosphate has been unable to compete with either Florida pebble or hard rock for export because of its distance from the seaboard.

The production of Moroccan phosphate began in 1920 and thereafter offered increasingly effective competition to Florida hard rock phosphate. In addition, phosphate rock began to be produced in Russia, the Island of Curacao, Dutch West Indies, in Ocean and Nauru Islands, British possessions in the Pacific, Makatea, which is a French possession, and other Pacific islands, and another British island in the Indian Ocean known as Christmas Island. Deposits have also been discovered in some of the mandated islands held by the Japanese. Relatively unimportant deposits have been found in many other countries.

Authoritative estimate has been made of the world reserves of phosphate rock and apatite as follows:

	Metric tons		Metric tons
Tunisia -----	1,500,000,000	Christmas Island -----	50,000,000
Algeria -----	1,016,500,000	Japan and mandated islands	28,984,000
Morocco -----	1,000,000,000	China -----	2,400,000
Egypt -----	179,000,000	Indo-China -----	55,000
Europe (excluding Russia) -	435,126,000	India -----	10,128,000
Russia -----	7,568,000,000	Netherlands Indies -----	1,000,000
Palestine -----	4,000,000	Other Foreign deposits ---	2,496,000
Canada -----	181,000		
Mexico -----	214,500,000	Total foreign deposits ---	12,877,615,000
Brazil -----	573,000,000	United States -----	13,503,514,000
Ocean and Nauru Islands...	282,245,000		
Makatea Island -----	10,000,000	Total World Reserves ---	26,381,129,000

In addition to phosphate rock, basic slag, a by-product of blast furnace operations, is also a source of phosphoric acid.

World consumption of phosphate rock in the last normal year, 1938, including Florida Hard Rock phosphate, has been given as follows:

Market	Metric tons	Market	Metric tons
Europe -----	6,438,897	North Africa -----	258,052
North America -----	2,677,057	South Africa -----	88,038
Australia and New Zealand ---	1,082,548	Other Countries -----	37,470
Japan -----	879,431		
		Total -----	11,461,483

As compared to competing phosphates Florida hard rock phosphate has the advantage of high BPL content and of low percentage content of iron and alumina, but in the domestic market has the disadvantage of higher production costs, and in the export market *

disadvantage of higher production costs and higher transportation expense.

The demand for phosphates in the domestic market comes principally from fertilizer manufacturers, using the lower grades of phosphate, and they are generally not willing to pay more for the higher grade rock product.

Over the years, export prices for both pebble and hard rock have been consistently higher than domestic prices, and the domestic price for pebble phosphate has generally been less than the prices for hard rock. The Office of Price Administration has fixed ceiling selling prices for hard rock phosphate considerably higher than for Florida land pebble phosphate. Generally speaking, Florida hard rock phosphate has been unable to compete, except for special uses, with Florida dry land pebble phosphates in the domestic market.

The French North African phosphate producers have had labor costs much less than the Florida hard rock producers. French North African phosphate rock deposits can be mined, dried and loaded much more economically than the Florida hard rock deposits. Before the war, there were excellent processing and loading facilities at Safi and Casablanca in Morocco, Bougie and Bona in Algeria, and Tunis, Sousse and Sfax in Tunisia. Transportation costs from North Africa to Europe are much less than from Florida to Europe. The freight differential in favor of the North African product has been approximately \$2 per ton to Mediterranean ports and \$1.50 per ton to Hamburg, Germany.

Next to agriculture, the mining of phosphate rock is the most important industry in French North Africa. It is also mined in Egypt. The French North African phosphate rock industry has had the benefit of Government protection and subsidization. The French Government has always taken a vital interest in the phosphate business in North Africa and has spent large sums of money for roads, railroads and other public works.

Competitive phosphate mined on the Island of Curacao, Dutch West Indies, is of a very high quality; most of it has been marketed in Europe.

THE PHOSPHATE CARTEL

PERIOD PRIOR TO JOINT PHOSPHATE EXPORT OPERATIONS WITH PHOSPHATE EXPORT ASSOCIATION (1919-1921)

From March, 1919, when Hardphos was formed, until April, 1921, when it united with PEA in joint selling, there was a strong demand in Europe for Florida hard rock phosphates. Competition had not been met from North African phosphates to an appreciable extent. That source of competition was just emerging. Pebble competition was substantial, but consumers in central Europe, especially in Ger-

many, had become accustomed to the quality and properties of Florida hard rock phosphate. Buttgenbach was appointed exclusive sales agent for Florida hard rock phosphate at Belgium and given a free hand in other European countries in accordance with a tentative agreement made in New York on August 11, 1920.

PERIOD OF JOINT OPERATIONS WITH PHOSPHATE EXPORT ASSOCIATION (1921-1923)

Pursuant to an arrangement between Hardphos and PEA, the two associations engaged in joint selling activities. However, this period was marked by a rapid drop in prices and in tonnage of hard rock phosphates. North African phosphates, particularly Moroccan were increasing production with an accompanying lowering of export prices. This joint selling arrangement between the two associations did not work out for Hardphos and was therefore terminated.

PERIOD BETWEEN JOINT OPERATIONS AND THE ESTABLISHMENT OF THE CARTEL (1924-1933)

This was a period in which foreign competition came to the fore with ever-increasing tempo, with resultant effects of low prices and small tonnage shipped from this country. Moroccan, Russian and Pacific operations got under way. Tunisian and Algerian production increased their production. The North African production was found to suit the needs of the principal consuming areas of northern and central Europe. Protection was given by the French Government to Morocco, Tunisia and Algeria in the form of investments in railway equipment, subsidies, etc. The North African producer had the added advantage of nearness to the market and strategic locations of shipping ports.

One of the Florida pebble phosphate producers, Coronet Phosphate Company, entered into a contract with a powerful German concern, Metallgesellschaft, A. G., hereinafter referred to as Metall, whereby Metall agreed to sell the Coronet production in Europe. Coronet, previously a member of PEA, resigned.

This incident upset the already declining European market for American phosphate, both pebble and hard rock, and as a result Pebble, Hardphos and Metall conducted negotiations more or less continuously up to and until the signing of international agreement hereinafter referred to, in the latter part of 1933.

INTERDEPENDENCE AND RELATIONSHIP BETWEEN INTERNATIONAL AGREEMENTS

The principal international agreement in the formation of the phosphate cartel is the "French Agreement." While Hardphos was

not a party to the French agreement, the two agreements to which it was a party, namely, the Hard Rock or Paris agreement and the Curacao agreement tie into and relate to the French agreement. Each of these agreements was for the phosphate rock market in Europe, and the Paris and the Curacao agreements were considered subsidiary to the French agreement.

The Brussels agreement, while related to the Paris agreement, was not an international agreement, but only an agreement among the members of Hardphos. Its provisions were collateral to and the length of its duration made dependent upon the Paris agreement.

THE FRENCH AGREEMENT

Hardphos was not a party to this agreement, but the Paris agreement to which Hardphos was a party directly related to the French agreement as to quota provisions. The parties to the French agreement were PEA and the North African Group. This agreement divided the European tonnage as between them as follows:

	<i>Percent</i>
PEA -----	16
North African Group -----	84

Provision was also made for fixing export prices by agreement, for the payment of indemnities, etc.

THE HARD ROCK OR PARIS AGREEMENT

As a result of the negotiations between Hardphos, PEA, and the North African Group during the fall of 1933, an agreement known to the trade as the Hard Rock or Paris agreement was arrived at on December 1, 1933, between Hardphos on the one hand and PEA and the North African Group on the other hand; the latter two being designated in the agreement as the "African-American Group." The purpose of the agreement was to supplement the French Agreement, and to harmonize the supply of phosphate of lime with the known existing requirements of the market for this product in Europe. Article I divides the European tonnage between the parties, and the parties stipulate that for the purposes of the agreement they represent all the producers and sellers in their respective fields.

THE CURACAO AGREEMENT

In March of 1934, only three months after the signing of the French and Paris agreements, the parties thereto were confronted with a situation which they felt must be met through an additional agreement. Phosphate from Curacao, an island in the Dutch West Indies, in the 77 79 percent quality was entering Europe in competition with the Cartel. As a result of this competition. negotiations

between PEA, the North African Group, Hardphos through its European representative, Paul Van der Rest of J. Buttgenbach & Company, acting with authority, and John and David Godden of John Godden & Company, owners of the phosphate deposits in Curacao, resulted in an agreement dated June 19, 1934, for the fixation of prices and division of tonnage in the European market. This is known as the Curacao agreement.

The parties to the agreement are: Mijnmaatschaapij Curacao, of Amsterdam, Holland, hereinafter referred to as Curacao on the one hand; and The North African Group, combined with PEA and Hardphos as the African-American Group on the other.

The Curacao agreement altered the percentage quotas in the French and Paris agreements, effecting a slight decrease in the percentage enjoyed by each of the members of the African-American Group, i.e., the North African Group, PEA and Hardphos. Article I contained a provision for deduction of nonmember business, as was the case in the Paris agreement. Likewise, the Curacao agreement stipulated that each of the parties represented all of the production in its respective field of the products which it exported.

THE BRUSSELS AGREEMENT

The three Florida hard rock phosphate miners, Buttgenbach, Camp and Dunnellon, were represented in Europe during the month of November, 1933, in conferences between Hardphos, PEA, and the North African producers looking toward an agreement between these parties. While there, they arrived at an agreement among themselves in Brussels, Belgium, on November 20, 1933. This agreement was in contemplation of the proposed agreement between Hardphos and the other parties.

Certain provisions of the Brussels agreement were: that all sales should be cleared through Hardphos; that any new business would be shared equally between the three miners; that any shipment to the domestic market or to countries other than Europe should be deducted from the shipper's quota, in order that equal annual total tonnages should be shipped by each miner, with certain exceptions; provision for the loan of hard rock by one miner to another in the event of an inability of one producer to fill his quota through conditions beyond his control.

CONTROL OF TERMINAL AND SHIPPING FACILITIES

The bill of particulars pointed to, as restrictive of domestic commerce, an alleged agreement between Seaboard Airline Railway Company and Fernandina Terminal Corporation, the latter owned and/or controlled by members and/or officers of Florida Hard Rock Phosphate Association, whereby the former discontinued operation of its

hard rock elevator, leaving the elevator and terminal facilities of the latter the only available export shipment outlet; and an agreement October 6, 1933 with Phosphate Export Association, whereby Florida Hard Rock Phosphate Export Association guaranteed against non-member hard rock shipments through such terminal facilities exclusively to handling the export of hard rock phosphates produced by members of the association.

Fernandina Terminal Corporation is a Delaware corporation, organized February, 1921 as the Florida Terminal Company, with name changed later to Fernandina Terminal Corporation. Its facilities are located in Fernandina, Fla., about 20 miles north of Jacksonville. It maintains its principal office at 1011 Bisbee Building, Jacksonville, Fla.

Although a private corporation, examination shows that the ownership and control of Fernandina Terminal Corporation is identical with control of Hardphos, that is to say, that the officers of Hardphos are also the officers of the terminal. In addition, one of the members of Hardphos, C. & J. Camp, Inc., owns 50 percent of the terminal and a past member, Mutual Mining Company, Savannah, Ga., owns the other 50 percent.

In dealing with the trade, Hardphos referred to the terminal as a part of its set-up.

In addition to export shipments, the terminal is used for coastwise shipments in the domestic trade. It is equipped with crushing, drying, loading, and storage facilities. Dry storage capacity, which originally was 30,000 tons, has been reduced to 25,000 tons.

Since it is commercially necessary to dry the phosphate rock before it can be shipped, the control of facilities for such handling is important.

From 1920 to 1925 there were at times as many as four terminals equipped with facilities for drying, storing, and loading Florida hard rock phosphates. In addition, there was one terminal at Fernandina, Fla., and three terminals at Tampa with loading facilities only.

FILING OF INFORMATION

It was stated in the bill of particulars that Hardphos had failed to describe fully the method and plan by which its business is done and to state its relations with other associations, corporations, and individuals.

The Federal Trade Commission has required each Webb Law association to file an annual report and this has been done by Hardphos. The secretary of Hardphos prepares this report.

Schedule D of the annual report calls for a statement of any changes made in the articles or certificates of incorporation, articles of association and by-laws during the preceding year. In this con

nection it appears that throughout the years there were several amendments to Hardphos Articles of Association which were not reported in these annual reports.

Schedule E of the annual report calls for a brief description of the methods and plan under which the business of the association is done and of its relationships with other associations, corporations and individuals. Examination of the annual reports shows that the Paris, Curacao, and Brussels agreements have never been filed with the Commission or described by the association in the annual reports under schedule E.

CONCLUSIONS

I. IN GENERAL

The cartel agreements, entered into in 1933, by Hardphos, PEA and the North African group, present the most important phase of this investigation. The evidence concerning them has been examined with a view to determining their purposes, operation and effect from the standpoint of American interests and American exporters, particularly Hardphos.

In 1932, hard rock phosphate shipments to Europe had dropped to less than one-third of those in 1925. Hardphos had but one member. North African tonnages for the same years had decreased only from about 4,000,000 tons to 3,000,000 tons. In 1932 Florida hard rock shipments were 44,240 tons or about 1.4 percent of the North African for that year. In this situation, representatives of the Florida producers went to Europe in 1933 after negotiations had been entered upon between PEA and the North African group. Conversations in Europe culminated in the French and Paris agreements.

The French and Paris agreements between the North African interests, PEA and Hardphos effected a cartel arrangement for phosphates, in the European market. By means of it, competition was eliminated, as among the three groups of producers in that market. A method of fixing prices was adopted and the percentages of the total amount sold in that market to be supplied by each group were agreed upon.

As far as Hardphos was concerned, this arrangement gave it about 1 percent more of the market than it had and brought about substantial increases in sales volume during the years 1934 to 1938 over those in the period from 1925 to 1933. It also stabilized the market at prices substantially above those which could be secured for any real volume of Florida hard rock in the United States. Whether these results could have been achieved without these agreements and in a market in which free and unrestricted competition was given full play may be said to be extremely doubtful. The

American producers were at a distinct disadvantage, competitively. North Africa had the benefit of cooperation and help from the French government; it had almost a predominant position in the market insofar as volume of sales was concerned; it had much lower costs of production, or at least of labor, and substantially lower transportation costs.

Under the facts as brought out in this investigation, it does not appear that there is any basis upon which it can be found that these agreements, or at least Hardphos' participation in them (excluding the nonmember deduction clause, hereafter considered), have, in their operation, effected an unreasonable restraint on the foreign commerce of the United States. It is true that they have stabilized the European market in phosphates, probably at a higher figure than would have been the case had all producers been striving for competitive advantage. But the French-North African group were already organized and there is no evidence that they contemplated at any time that they would compete with one another. It may be assumed, therefore, that had the cartel agreements not been made, the American producers would continue to have been faced with the competition of this combination, regardless of whether they operated individually or collectively as Webb Law associations. Their ability to successfully compete with the North African producers in the face of this collective competition from North Africa if that group elected to attempt to monopolize the market is problematical, but the European market for the American product could, conceivably, have been lost entirely.

II. RESTRAINTS ON COMPETING AMERICAN PRODUCERS

Hardphos stipulated in both the Paris and Curacao agreements that it represented all of the American producers of hard rock phosphate, and agreed that its quota in the European market was to be decreased by any tonnage exported to Europe by nonmember American producers or exporters.

It is obvious that Hardphos, by agreeing with PEA and the French and the Curacao producers on a maximum quota of American shipments of hard rock phosphates to Europe, in effect guaranteed to the other parties to the agreements that there would be no shipments of the American product to Europe above the allocated amount. It is equally obvious that if it developed that Hardphos was unable to control export shipments by nonmember American producers of hard rock, it would be deprived of its European market to the extent that nonmembers were able to market their product in that area.

This commitment by Hardphos provided a motive for and would naturally be expected to result in a policy of preventing, if possible, the exportation of hard rock by nonmember American producers

from this country to Europe. The record indicates that such was the policy followed by Hardphos after 1933 and that Hardphos was at all times highly sensitive to threats of new production and exportation by anyone seeking to enter the industry. While the evidence falls short of establishing that the policy and activities of Hardphos alone forestalled new production, it is a fact that here were, during this period, no nonmember American producers although deposits were available for new production. It is true that many factors may have contributed to this situation, and it may be significant that no application was made, during this time by an outside American producer for membership in Hardphos. However, the inference may be drawn from the record, and the same is drawn, that the lack of nonmember producer competition may have been due in part at least, to the policies and activities of Hardphos, particularly its control of terminal facilities, hereinafter considered. Certainly it cannot be denied that these policies and activities were designed to and tended to discourage new production and exportation.

The conclusion is that the commitment made by Hardphos in the Paris and Curacao agreements that it represented all American production for export, and that if any hard rock American phosphate was exported by nonmembers to Europe it would accept a deduction for such tonnage from its quota, had the capacity and tendency to forestall and restrain the exportation of this product by American producer competitors, potential, if not actual. It follows that potential production and the entry of new producers and exporters into the export trade may have been deterred, if not actually prevented. This effect is prohibited by law, and affords the basis for a recommendation that Hardphos rescind such covenants and refrain from entering into like or similar ones in the future.

III. CONTROL OF TERMINALS

The record indicates that since 1925 the only terminal available to hard rock phosphate shippers, with storing, crushing, drying and loading facilities, was the Fernandina Terminal at Fernandina, Fla. The evidence is practically undisputed that this terminal was controlled by Hardphos, the control being exercised by means of interlocking officials and by uninterrupted cooperation between the owners, Camp and Mutual and Hardphos. The facts as developed in the investigation lead to the inescapable conclusion that there was an understanding between these parties to the effect that Fernandina Terminal should be open to members of Hardphos for the processing and shipment of hard rock phosphate, and to no one else. While Fernandina was a private terminal and not a public utility, and there is no law requiring a private terminal to accept business from all comers, as in the case of a public utility, and while a different ques-

tion might be presented had Fernandina been owned outright by Hardphos, under the facts here, the understanding between Hardphos and Camp and Mutual, which must be inferred constitutes an agreement between Hardphos and the owners of the terminal whereby shipments of hard rock phosphate by competing American producers were forestalled. The entire arrangement including the abandonment of other terminals induced in part by Hardphos operated to deter the entry of any new shippers in export trade. That this was the objective of the plan is strongly indicated by the record, particularly as shown by the connection of the Seaboard Airline Railway with the development and effectuation of the arrangement, the policy of Camp and Mutual of restricting shipments to and through the terminal to Hardphos' members, and Hardphos reactions to threatened new export competition.

It is therefore to be recommended that Hardphos rescind and refrain in the future from entering into any understanding with Camp or Mutual whereby the latter are bound to restrict in any way the use of the Fernandina Terminal solely to the members of Hardphos for the processing and shipment of hard rock phosphate, and that Hardphos rescind and refrain from entering into, in the future, any negotiations, arrangements or understandings with the Seaboard Airline Railway, or any other public carrier with reference to hard rock phosphate shipments made or contemplated to be made by nonmember producers or shippers, or the rates quoted or to be quoted on such shipments, or the availability or use of terminal facilities to accommodate such shipments.

IV. RESTRICTION ON IMPORTS

The evidence in the record discloses that economic and other barriers are sufficient to preclude the importation of phosphate rock from North Africa, Russia or the islands of the Pacific. However, the record does show that some phosphates have been imported into this country from Curacao. A letter from the Curacao producers to Phosphate Export Association indicates that there was an understanding between PEA and Curacao that the production and shipment of Curacao phosphate was not to be increased and that there was no likelihood of shipments to the United States becoming important, Curacao giving the definite assurance that there would be no policy of "dumping" in this country. This letter naturally leads to the conclusion that imports from Curacao to the United States were definitely not overlooked in the negotiations leading up to the execution of the Curacao agreement, to which Hardphos was a party. However, the members of Hardphos deny categorically any knowledge of the above-mentioned letter from Curacao. On the basis of the record it must be said that the evidence is not substantiated.

to justify a conclusion that there was any definite agreement between Hardphos and Curacao to the effect that the importation of Curacao phosphate into the United States was to be restricted. There is evidence, on the other hand, that in 1939 at least 3,000 tons of hard rock phosphate from Curacao was, in fact, imported into the United States.

V. RESTRICTION ON DOMESTIC TRADE

The Brussels agreement, among the members of Hardphos, contained a provision to the effect that any shipment made by a member of Hardphos to the domestic market in the United States should be deducted from the shipper's European export quota, which was one-third of the quota allotted to Hardphos by the Paris agreement. The purpose of this provision is said to have been to equalize the total annual tonnages shipped by each member of Hardphos.

It is obvious that this provision not only intermingles operations in the domestic market with export trade, but that it also has a direct tendency to discourage sales in the United States. The fact which the record shows, that the export market was more attractive than the domestic market, would naturally lead each hard rock producer to supply the European quota before selling any hard rock in the United States.

The conclusion is therefore reached that this provision in the Brussels agreement requiring a deduction from the members' European quota of any hard rock sold in the United States has the tendency and capacity to restrain the trade of any member of Hardphos selling in this country, and that such trade in the United States may have been restrained thereby.

It is therefore to be recommended that Hardphos and its members rescind and cancel the provisions of the Brussels agreement requiring the deduction of tonnage sold in domestic trade from the European quota of the seller and refrain from entering into like or similar agreements in the future.

VI. RESTRICTION OF PRODUCTION

The evidence indicates that for economical and profitable production of hard rock phosphate an output of at least 50,000 tons per mine per annum is desirable for full-time production. The record discloses that Hardphos, before entering into the Paris agreement, attempted to get a quota of 150,000 tons for its three members. This effort was unsuccessful and the agreement was entered into on a basis which it was thought would amount to a quota of about 100,000 tons a year. Consistent with the thesis that each mine required 50,000-ton production a year, Camp and Buttgenbach entered into

a series of joint producing and marketing arrangements which contemplated that facilities equivalent to one mine only were to be operated. The evidence shows that Camp and Buttgenbach jointly operated one mine from March, 1934 to October, 1935; two mines from October, 1935 to March, 1936; three mines from March, 1936 to May, 1936; two mines from May, 1936 to March, 1937; one mine from March, 1937 to May 1938; no mine at all from May, 1938 to July, 1938; and one mine from July, 1938 to September, 1939. During all this period, except for shutdowns due to lack of orders, Dunnellon was operating a mine. It thus appears that for a part of the time since 1933 the members of Hardphos did operate more than two mines.

The joint agreement between Camp and Buttgenbach does not appear to have reduced the volume of export trade or to have effected any restraint on competitors in export trade. Both Camp and Buttgenbach were members of Hardphos and their joint agreement was in essence, from the standpoint of competition in export trade, the same as though both had engaged in production and agreed upon a quota for export of their respective outputs.

Camp was the only member of Hardphos to sell in the domestic market since 1933, with the exception of one sale in which Buttgenbach participated under their joint agreement. The history of Buttgenbach indicates that it was never interested in the domestic market, since its principal interests were in Europe. The domestic market for hard rock phosphates has never been developed to a substantial extent in this country apparently because of a lack of demand at prices high enough to overcome the competition of pebble phosphate with its lower costs of production. However, one of the clauses in the Camp/Buttgenbach joint agreement provided that the tonnage sold by either in the domestic market should be deducted from the export quota of the seller as set in the Brussels agreement. It is to be inferred that this provision was agreed to because of the Brussels agreement among all three members to the same effect. The record indicates that the Camp/Buttgenbach agreement was entered into with the knowledge of and, by inference, with the approval of Hardphos. Hardphos was interested in having this provision included in the Camp/Buttgenbach agreement so that the quotas set in the Brussels agreement would be preserved.

It is to be concluded that the deduction by either Camp or Buttgenbach of its domestic tonnage from its European quotas had the capacity and tendency to effect a restraint on the member selling in domestic trade and that it may have restrained such trade. Remedial corrective action is therefore indicated.

VII. PARTICIPATION IN DOMESTIC TRADE

Prior to 1926 the facilities at Fernandina were such that the hard rock of the Hardphos members was intermingled and orders for export and the domestic market were filled from the common stockpile. This situation was later changed by the installation of bins which made possible the continued segregation of each member's product.

There is evidence in the record which indicates that in 1924 and 1925, as a result of this pooling of the hard rock at the terminal, Camp, Mutual, and the first Dunnellon Phosphate Company, who then composed the membership of Hardphos, had an understanding that quotations on the product for domestic business should be made by the respective members at prices satisfactory to the others.

This arrangement was terminated at least by 1926 when Dunnellon resigned from Hardphos and Camp became inactive. Mutual was the sole member of Hardphos from 1926 to 1931. Dunnellon Phosphate Company dissolved. Camp at that time was a partnership which went out of business and was succeeded by the present corporation. Mutual discontinued the production of hard rock and exists now only because of its ownership of one-half of the capital stock of Fernandina Terminal.

While the arrangement which was in effect in 1924 and 1925 among the then members of Hardphos, being C. & J. Camp's partnership, the first Dunnellon Phosphate Company and Mutual, was in violation of law, it is considered that there is no adequate ground on which to base corrective action at this time, because of the fact that two of the offending members are no longer in existence and the third has not been engaged, since prior to 1933, in the production of hard rock phosphate, or been a member of Hardphos.

VIII. AMERICAN INTERMEDIARIES

The Brussels agreement provides that all sales of hard rock by members of Hardphos were to be cleared through the association. After the Brussels agreement, Buttgenbach in Brussels was made general supervisor of European sales with power to appoint exclusive agents in the various European countries. As a result, Hardphos had an exclusive selling agent in practically every European country. Hardphos maintains that brokerage houses in this country never had handled hard rock phosphate, and that they therefore lack the necessary experience and selling contacts to enable them to market any substantial quantity of this product in Europe.

The record shows that subsequent to 1933 inquiries were received from some five brokerage concerns concerning the possibility of representing Hardphos in export trade or of arranging sales with prospective foreign buyers. These firms, apparently in every case were seeking to act as brokers, as distinguished from buyers purchasing for

resale. A broker has always been considered, both in law and in business, as being an agent, either of the seller or of the buyer, or of both. In any case, he cannot be considered as being a domestic competitor of Hardphos or of its members. It is therefore concluded that Hardphos' policy with reference to the nonemployment of American brokers or of refusing to make sales through American brokers does not constitute an illegal restraint on domestic competitors of the association or of its members.

IX. NONFILING OF INFORMATION

The law requires an association to file annually any amendments to and changes in its articles of incorporation or contract of association. The Commission, in its annual report forms, has called upon all associations for this information. Hardphos admittedly has failed to furnish information concerning certain minor amendments which have been made in the past to its articles of association.

The Commission also each year has called upon the association for information concerning the methods and plan under which their respective businesses were done and their relationships with other associations, corporations, partnerships, and individuals. Information concerning the Paris, Curacao, and Brussels agreements was never filed with the Commission by Hardphos, although that information was obviously relevant to the plant under which Hardphos' business was done and to its relations with other associations corporations, and individuals.

It is therefore concluded that Hardphos has neglected to file with the Commission certain information called for by the statute and by the Commission acting thereunder, and that it should be made mandatory upon Hardphos to seasonably file in the future all information required either by the law, or by the Commission acting pursuant to the law.

RECOMMENDATIONS FOR THE READJUSTMENT OF THE BUSINESS OF FLORIDA HARD ROCK PHOSPHATE EXPORT ASSOCIATION

To: Florida Hard Rock Phosphate Export Association, an unincorporated export trade association, with its principal office and place of business at 1006 Savannah Bank and Trust Bldg., Savannah Georgia, and to its officers, executive committee and members:

The Federal Trade Commission having had reason to believe that Florida Hard Rock Phosphate Export Association an association engaged in export trade (as "association and "export trade" are defined in the Act of Congress known as the Export Trade Act. ap-

proved April 10, 1918), and certain of its agreements and acts were in restraint of trade within the United States or in restraint of export trade of domestic competitors of said association or that they substantially lessened competition within the United States and otherwise restrained trade therein, summoned said association, its officers and agents to appear before it on the 15th day of August, 1944, as provided by Section 5 of said Export Trade Act. Said association having duly appeared before the Commission pursuant to such summons, and a formal investigation into the alleged violations of law having been made, in the course of which testimony and evidence was taken and incorporated into the record, and the Commission having examined the record and made a report thereon, and concluded therefrom that certain agreements made and acts done by such association have been and are in violation of law.

Now, therefore, Pursuant to the provisions of said Export Trade Act and by virtue of the authority conferred upon it by said act, the Federal Trade Commission hereby makes to said Florida Hard Rock Phosphate Export Association and its officers, executive committee and members, the following recommendations for the readjustment of said Association's business:

1. That Florida Hard Rock Phosphate Export Association withdraw from and rescind its agreements with Phosphate Export Association and the North African Group (Office Cherifien des Phosphates of Rabat, Morocco, Comptoir des Phosphates D'Algerie et de Tunisie, of Tunis) and with Phosphate Export Association, the North African Group and Curacao (Mijnmaatschappij Curacao of Amsterdam) requiring that deductions for shipments of Florida hard rock phosphate from the United States made by American nonmembers of the Association be made from the quota of American shipments of hard rock phosphate to Europe stipulated for in said agreements, and that said Association refrain from entering into like or similar covenants in the future.

2. That Florida Hard Rock Phosphate Export Association withdraw from and rescind any and every agreement or understanding with C. & J. Camp, Inc., a corporation, and Mutual Mining Co., a corporation, the owners of Fernandina Terminal at Fernandina Fla., which confine or restrict in any way the use of said terminal for the processing and shipment of hard rock phosphates, solely to the members of said association. That said association refrain in the future from entering into any negotiations, arrangements or understandings with the Seaboard Airline Railway or any other common carrier with reference to hard rock phosphate shipments made or to be made by nonmember producers or shippers or the rates quoted or to be quoted on such shipments, or the availability or

3. That Dunnellon Phosphate Mining Company, Societe Anonyme La Floridienne, J. Buttgenbach & Co., and C. & J. Camp, Inc., the members of Florida Hard Rock Phosphate Export Association, rescind and cancel their intra-association agreement requiring the deduction of the tonnage of hard rock phosphate sold by each member in domestic trade in the United States from the European quota therein allotted to the seller, and to refrain in the future from entering into or effectuating any like or similar agreements or understandings.

4. That C. & J. Camp, Inc. and Societe Anonyme La Floridienne, J. Buttgenbach & Co., rescind and cancel their agreement requiring that the tonnage of hard rock phosphate sold by either of these members in the domestic market of the United States be deducted from the quota of European shipments allotted to such member under the agreement referred to in the preceding paragraph hereof, and that they refrain in the future from entering into or effectuating any like or similar agreements or understandings.

5. That Florida Hard Rock Phosphate Export Association, in the future, seasonably file with the Commission all information required by the Export Trade Act to be filed annually, and furnish all information and documentary evidence requested or required by the Commission, pursuant to said act, whether called for by report forms, by questionnaires or communications, by personal visitation or otherwise.

It is ordered by the Commission that Florida Hard Rock Phosphate Export Association file with the Commission within 30 days hereof a report stating whether it has elected to comply with the above recommendations, and if so, the manner in which it has so complied.

DECISIONS OF THE COURTS

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION¹

MARQUETTE CEMENT MFG. CO.

v.

FEDERAL TRADE COMMISSION²

No. 8371—F. T. C. Dock. 3167

(Circuit Court of Appeals, Seventh Circuit. Jan. 29, 1945)

APPELLATE PROCEDURE AND PROCEEDINGS—RECUSATION—BIAS, PREJUDICE AND PREJUDGMENT OF ISSUES—WHETHER MOTION TO RECUSE, BASED ON SEASONABLY TAKEN.

A motion, filed about 17 months after hearing before Federal Trade Commission on charge of violating antitrust laws, to recuse Commission on grounds of bias, prejudice, and prejudgment of issues, was too late for consideration, in absence of statement of sufficient reasons for delay in movant's attached affidavit.

APPELLATE PROCEDURE AND PROCEEDINGS—RECUSATION—BIAS, PREJUDICE AND PREJUDGMENT OF ISSUES—IF PERSONAL PREJUDICE OR BIAS NOT ALLEGED IN MOTION, OR SUPPORTING AFFIDAVIT.

Where neither motion to recuse Federal Trade Commission from determining issues presented by its complaint charging unfair competition by combination violating anti-trust laws, nor supporting affidavit as to Commission's prejudice or bias, alleged personal prejudice or bias, showing was insufficient to disqualify Commission on statutory grounds for disqualification of judge.

¹ During the period covered by this volume, it should be noted that the Supreme Court on May 21, 1945, in *U. S. Alkali Export Assn., et al. v. U. S.* (including *California Alkali Export Assn. v. U. S.*), 325 U. S. 196, held, among other things (affirming 58 F. Supp. 785) that—

Exercise of the powers conferred on the Commission by par. 5 of the Webb-Pomerene or Export Trade Act, namely (as stated in the syllabus) "to investigate activities of any export association which are believed to be in violation of the Sherman Act; if any export association is found, to make recommendations to such association for readjustment of its business; and upon failure of the association to comply, to refer its findings and recommendations to the Attorney General—is not a prerequisite to a suit by the United States against an export trade association to restrain violations of the Sherman Act";

"The . . . Act's grant of power to the Commission would curtail the authority of the United States to conduct antitrust suits only if it were deemed an implied *pro tanto* of sec. 4 of the Sherman Act. Repeals by implication are not favored"; and

"The principle that equity will not lend its aid to a plaintiff who has not first exhausted his administrative remedies is inapplicable, since the function of the Commission under sec. 5 of the Webb-Pomerene Act is to investigate recommend and report. The Commission, under that Act, can give no remedy; it can make no controlling finding of law or fact; and its recommendation need not be followed by any court or administrative or executive officer."

² Reported in 147 F. (2d) 589. For case before Commission, see 37 F.T.C. 87. Rehearing denied March 27, 1945.

JUDGES—STATUTORY DISQUALIFICATION—AFFIDAVIT OF PERSONAL BIAS, ETC.

The statute, providing for disqualification of judge on filing of affidavit of his personal bias or prejudice against affiant ten days before beginning of court term or showing of good cause for failure to file it within such time, and requiring that it be accompanied by certificate of counsel of record that affidavit and application for disqualification are made in good faith, must be literally observed to disqualify judge.

APPELLATE PROCEDURE AND PROCEEDINGS—RECUSATION—BIAS, PREJUDICE AND PREJUDGMENT OF ISSUES—COMMISSION CRITERIA.

On motion to recuse Federal Trade Commission from determining issues presented by complaint filed thereby on grounds of its prejudice, bias, and prejudgment of issues, court is not concerned with what Commission could or might do when faced with similar charge, but question is whether Commission is required by law to disqualify itself or whether moving party has legal right to effect such disqualification.

FEDERAL INFERIOR COURTS AND ADMINISTRATIVE AGENCIES—JURISDICTION—IN GENERAL.

The jurisdiction of inferior federal courts and administrative agencies created by Congress are confined to those bestowed [590] by Congress, whose power is not limited except by Constitution.

FEDERAL INFERIOR COURTS AND ADMINISTRATIVE AGENCIES—DISQUALIFICATION—RIGHT TO RECUSE.

The right to disqualify trier of facts, whether judge or administrative agency, is for Congress to determine and may be conferred or withheld as Congress deems advisable.

COURTS AND ADMINISTRATIVE AGENCIES—DISQUALIFICATION—BIAS, PREJUDICE AND PREJUDGMENT OF ISSUES—RULE OF NECESSITY.

Under rule of necessity, a court or administrative agency will not be disqualified to determine fact issues before it on ground of prejudice, bias, or prejudgment of issues, where there is no statutory provision for change of venue or no other court or agency has power to act in premises.

COURTS AND ADMINISTRATIVE AGENCIES—DISQUALIFICATION—BIAS, PREJUDICE AND PREJUDGMENT OF ISSUES—RULE OF NECESSITY—COMMISSION COMPLAINT CHARGING UNFAIR COMPETITION BY COMBINATION—WHETHER CONCURRENT JURISDICTION IN DEPARTMENT OF JUSTICE.

The Department of Justice does not have concurrent jurisdiction with Federal Trade Commission to protect public against unfair competition and price discrimination in violation of anti-trust acts, so that rule of necessity requires that Commission, as only tribunal clothed with such power, determine issues presented by its complaint charging unfair competition by combination violating such acts, though commission be otherwise disqualified.

COURTS AND ADMINISTRATIVE AGENCIES—DISQUALIFICATION—BIAS, PREJUDICE AND PREJUDGMENT OF ISSUES—CEASE AND DESIST ORDERS OF AGENCY—IF APPEAL PROVIDED FOR DUE PROCESS.

Where administrative agency's order does not become effective until opportunity has been afforded for review thereof, as in case of Federal Trade Commission's order to cease and desist from unfair competition by

combination violating federal anti-trust acts, order is not deprivation of "due process of law," even if agency is disqualified to determine issues because of prejudice.

APPELLATE PROCEDURE AND PROCEEDINGS—POWERS OF ADMINISTRATIVE AGENCY—
WHETHER ABRIDGMENT OF RIGHT TO FAIR AND IMPARTIAL HEARING THROUGH
MULTIPLE FUNCTIONS OF COMMISSION—COURT LIMITATIONS.

Court's province is not to emasculate or enlarge powers conferred on administrative agency, such as Federal Trade Commission, by Congress, on ground that its multiple functions as prosecutor, judge, and jury constitute abridgement of right to fair and impartial hearing, but any appeal for relief should be made to Congress.

(The syllabus, with substituted captions, is taken from 147 F. (2d) 589.)

On petitioner's motion to reconsider and set aside District Court's orders denying petitioner's application to adduce additional evidence in support of its motion to recuse the members of the Commission from passing on the issues in proceeding to review order of Commission, motion denied.

Mr. Edward A. Zimmerman. Mr. Harold W. Norman, and Mr. William R. Engelhardt, all of Chicago, Ill., and *Mr. Roscoe Pound* of Cambridge, Mass., for petitioner.

Mr. Walter B. Wooden, Asst. Chief Counsel, of Washington, D.C., for respondent.

Before MAJOR and KERNER, *Circuit Judges*, and BRIGGLE, *District Judge*.

MAJOR, *Circuit Judge*:

There are pending in this court numerous petitions to review a cease and desist order entered by the Federal Trade Commission on July 17, 1943. On July 31, 1944, this court entered two orders denying certain applications to adduce additional evidence, without prejudice to the right of renewal upon hearing on the merits. Included in such applications was that of the Marquette Cement Manufacturing Company (instant petitioner) to adduce additional evidence in support of its motion to recuse the members of the Commission from passing on the issues presented by the Commission's complaint.

On November 14, 1944, petitioner filed its motion requesting this court to reconsider and reverse its orders of July 31, 1944, insofar as they relate to petitioner's right to adduce additional evidence in support of its contention that the Commission was disqualified. We have also been urged to decide in advance of a hearing upon the merits petitioner's contention that the Commission was disqualified. Obviously, if petitioner's contention in this respect is sustained, it would follow that the Commission's cease and desist order would have to be vacated and set aside. We have concluded that it

would be appropriate to hear and decide in advance this issue thus raised. We have, therefore, heard oral argument on this issue and have been favored with extensive briefs pertaining thereto.

Petitioner and seventy-four other producers of Portland cement were charged, under § 5 of the Federal Trade Commission Act (15 U. S. C. A. § 45b), by a complaint filed July 2, 1937, with engaging in unfair competition by entering into a combination among themselves through an agreement to employ and the actual employment of "what is known as a multiple basing point system of pricing." The substance of the charge is that by the employment of this system such cement producers violated the anti-trust laws, particularly the Sherman and Clayton Acts. Such charges were denied, and upon the issue thus formed hearings were had which extended from December 1, 1937 to November 29, 1940, in which Marquette actively participated. On December 16, 1941, more than a year after the taking of testimony had been concluded, Marquette in its brief asserted for the first time that the Commission had prejudged the issues, and in support of such assertion set forth excerpts from certain publications of the Commission published both before and after the commencement of the proceedings. Not until May of 1942 and at the time of oral argument before the Commission did Marquette formally charge the Commission with being disqualified.

At that time, it filed what it termed a petition motion and supporting affidavit by Marquette's counsel "to recuse the Federal Trade Commission from passing upon the issues." There were also submitted, in support of Marquette's petition, twenty three exhibits, which in the main consisted of reports made by the Commission either to the Congress or to the President, as is authorized by § 6 of the Trade Commission Act. These reports covered a period from 1927 to 1941, and had to do largely with the Commission's theory as to the result produced by use of the basing point price system and variations of such system, such as the multiple basing point price system. They treated of the use of such price systems by industry generally, and particularly the steel industry. They also disclose that the Commission regarded the cement industry in the same category, as far as price fixing was concerned, as steel and other industries.

The Commission denied Marquette's motion to recuse and also denied leave to introduce Marquette's exhibits offered in support thereof. In making up the record, however, which has been certified to this court, the exhibits have been included and are before us. In view of this situation, we think there is no need of a formal ruling upon the Commission's refusal to admit such exhibits in evidence. Furthermore, we think that a detailed statement of their contents is unnecessary. The most that can be said of them is that the Commission from numerous investigations had formed an opinion that

the basing point price system, as well as the multiple system, was illegal. We think it is also fairly inferable that the Commission had formulated such an opinion concerning the cement industry. We may assume, and for the purpose of the question before us do assume, that such was the case.

The basis of the charge that the Commission was disqualified from hearing, trying and passing upon the issues involved was that it "is not a tribunal free from bias and prejudice," and that prior to the filing of the complaint and subsequent thereto it had expressed a "prejudgment of the issues in this cause and was prejudiced and biased against the Portland cement industry generally." and that such industry, and particularly Marquette, could not receive a fair and impartial hearing. Petitioner, in its brief filed in this court, elaborates upon its charge that the Commission was disqualified and states:

"By that we mean that by the rules of fair play, which men of honor have followed since the dawn of civilization, * * * it has consistently been held to be fundamental and indispensable that triers of the facts shall be unbiased and non-partisan."

The Commission, in support of its order refusing to disqualify itself, relies upon three propositions: (1) that petitioner's motion to disqualify, long after the hearings had been completed and after briefs had been submitted, was not made in apt time. (2) the facts on which petitioner [592] relies do not constitute disqualification; and (3) the law does not permit disqualification on the basis of the facts relied on by petitioner.

As hereinafter decided, we think the Commission could not be disqualified in the manner attempted, but assuming it could be, we are of the view that the attempt to disqualify was made too late. If we were disposed to rest our decision merely upon this basis, we would set forth the substance of the affidavit made by counsel for Marquette and attached to its petition to recuse the Commission, which is relied upon as showing the reason or excuse for the delay. Inasmuch, however, as we shall consider the merits of the charge, we think it is sufficient to observe that we have read counsel's affidavit and are not impressed with the reasons assigned for the tardiness in making the motion to recuse.

On the merits, we know of no case which has expressly passed upon the question as to whether an administrative agency created by Congress can be required to disqualify itself because of bias, prejudice or prejudgment. The cases with closest analogy are those concerned with the disqualification of a judge. In sharp contrast, however, is the fact that Congress in creating the Federal Trade Commission made no provision for the disqualification of its members, while it has made such provision for the disqualification of a judge. Also, it seems plain that if the statutory reasons for dis-

qualifying a judge be applied to the Federal Trade Commission, the showing in the instant case was insufficient for the reason that neither the motion nor affidavit contained an allegation that the prejudice or bias was "personal."

§ 21 of the Judicial Code (28 U. S. C. A. 25) provides for the disqualification of a judge upon the filing of an affidavit that such judge "has a personal bias or prejudice either against him (affiant) or in favor of an opposite party to the suit." It also provides that the affidavit shall state the reasons for the belief that such bias or prejudice exists, and that the affidavit must be filed ten days before the beginning of the term of court or good cause shown for failure to file within such time. It is also required that the affidavit be accompanied by a certificate of a counsel of record that such affidavit and application are made in good faith. That this section of the statute must be literally and strictly observed in order to disqualify a judge is not open to question. Cf. *Ex Parte American Steel Barrel Co.*, 230 U. S. 35, 43. It has been held that the bias or prejudice alleged must be "personal," and that a mere prejudgment of the case is not sufficient. *Henry v. Speer*, 201 Fed. 869, 872; *Price v. Johnston*, 125 F. (2d) 806, 812. That the affidavit of personal bias and prejudice shall not be filed unless accompanied by a "certificate of counsel." *Beland v. United States*, 117 F. (2d) 958, 960; *Mitchell v. United States*, 126 F. (2d) 550, 552. That the affidavit of disqualification must be filed in apt time. *Scott v. Beams*, 122 F. (2d) 777, 789; *Refior v. Lansing Drop Forge Co.*, 124 F. (2d) 440, 445. In *Fish v. East*, 114 F. (2d) 177, it was sought to disqualify a referee in bankruptcy, under § 21, for bias and prejudice. The court held the disqualification provision inapplicable to a referee, and in so doing stated (page 200):

"There appears to be no rules either of said district, or in the rules of civil procedure, or in the general orders, relating to the removal or disqualification of referees. A party aggrieved by an order of the referee may file a petition for review."

These cases construing § 21 have been cited for the purpose of showing the strict construction which courts have placed upon the right of a party litigant to disqualify a judge. In this connection, it is pertinent to observe that the cases are not concerned with what a judge might or should do when confronted with a charge of bias or prejudice but what he must do under the statutory provision, or, in other words, the precise steps which a litigant must take before he is entitled as a matter of right to disqualify. Likewise in the instant situation, from a strictly legal standpoint, we are not concerned, we have no right to be concerned, with what the Commission could or might do when faced with a similar charge. The query for decision is whether the Commission was required under the law to dis

qualify itself, or, conversely, whether Marquette had a legal right to effect such disqualification.

We find no basis in the law for an affirmative answer to this question. Congress is the creator of all inferior federal courts, as well as administrative agen[593]cies. The jurisdiction and authority of each is confined solely to that which Congress bestows. There are no limitations upon this congressional power other than the Constitution. Congress has conferred upon a litigant the right to challenge the qualification of a judge, provided such litigant complies with the statutory mandate. On the other hand no such right has been conferred upon a litigant before the Federal Trade Commission. In our view, the right to disqualify a trier of facts created by Congress, whether it be a judge or an administrative agency, is a matter for Congress. Such right may be conferred or withheld as Congress deems advisable.

The view which we have just stated finds support in *Tumey v. Ohio*, 273 U. S. 510. In that case, the law of the state of Ohio conferred upon village mayors the right to try those charged with certain misdemeanors. Their compensation was derived in part from fines collected in such cases. The court held that the judgment of a court, the judge of which has a direct, personal and substantial pecuniary interest in reaching a conclusion against him, deprives such defendant of due process of law in violation of the Fourteenth Amendment. The court, however, on page 523 stated:

"All questions of judicial qualification may not involve constitutional validity. Thus matters of kinship, personal bias, state policy remoteness of interest, would seem generally to be matters merely of legislative discretion."

Closely akin to the legislative discretion theory is one sometimes referred to as "the rule of necessity." This rule is applicable upon attempts to disqualify both courts and administrative agencies. In *Montana Power Co. v. Public Service Commission*, 12 F. Supp. 946, it was sought to disqualify a member of a state administrative agency because such member had prejudged the case prior to hearing. The court cites numerous cases to the effect that a member of an administrative agency is not subject to disqualification in the absence of a statutory provision conferring such right. The court applied "the rule of necessity" (page 949), quoting from R. C. L.:

"The true rule unquestionably is that wherever it becomes necessary for a judge to sit, even where he has an interest, if no provision is made for calling another in, or where no one else can take his place, it is his duty to hear and decide, however disagreeable it may be."

In *Brinkley v. Hassig*, 83 F. (2d) 351, the court also applied the rule to a state administrative agency, and in so doing stated (page 357):

"From the very necessity of the case has grown the rule that disqualification will not be permitted to destroy the only tribunal with power on the premises."

In the recent case of *Loughran v. Federal Trade Commission*, 143 F. (2d) 431 [38 F. T. C. 919], one of the points relied upon was that the Commissioners had disqualified themselves from sitting as an impartial, fact finding body. While the court appears to have disposed of the contention largely on the premise that the attack upon the Commission was not timely, it also pointed out (page 433):

"* * * 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." (Citing cases.)

In *United States v. Morgan*, 313 U. S. 409, it was sought to disqualify the Secretary of Agriculture on the ground that he had prejudged the issue for decision. After pointing out that none other than the Secretary had legal authority to make the order in controversy, the court stated (page 421):

"Plainly enough, when it was thus suggested that he create a situation in which no order could be made, the Secretary was offered no escape from his duty even had he preferred to consult the comforts of personal convenience."

In its endeavor to escape this "rule of necessity," Marquette contends that the Department of Justice has concurrent power or jurisdiction with the Trade Commission to enforce or secure the restraint of the Sherman and Clayton Acts. It is true that § 4 (15 U. S. C. A. § 4) of the former and § 15 (15 U. S. C. A. § 25) of the latter authorize district attorneys of the United States, under the direction of the Attorney General, to institute equitable proceedings to prevent and restrain violation of such Acts. It does not follow, however, that the Department of Justice or a court, when [594] such proceeding is instituted, has concurrent power or jurisdiction with the Federal Trade Commission. True, the issues may be similar, but the fact remains that the Federal Trade Commission is the only tribunal clothed with the power and charged with the responsibility of protecting the public against unfair methods of competition and price discrimination. It is also certain that proceedings instituted by it could not be removed to any other tribunal for hearing. If the Commission be disqualified, it undoubtedly follows that the complaint in the instant case would remain untried. Under these circumstances, as the authorities show, "the rule of necessity" requires that the Commission be permitted to hear the case.

As we understand, the contention is not advanced by Marquette that the failure of the Commission to disqualify itself constitutes a lack of due process. Nevertheless, it is pertinent to observe that the order of the Commission does not become effective until an oppor-

tunity has been afforded for review. Under such circumstances it has frequently been held that the order of an administrative agency is not a deprivation of due process. *Porter v. Investors Syndicate*, 286 U. S. 461; *United States v. Illinois Central R. Co.*, 291 U. S. 457. 463; *Nickey v. Mississippi*, 292 U. S. 393, 396; *Ohio Bell Telephone Co. v. Commission*, 301 U. S. 292, 303.

In conclusion, we are not unsympathetic to the criticism directed at the Commission by Marquette, a criticism much aimed at all administrative agencies, to the effect that their multiple functions as prosecutor, judge and jury constitute an abridgement of the cherished right to a fair and impartial hearing. On the other hand, as already pointed out, they are the creatures of Congress and it is not within the province of courts either to emasculate or enlarge the powers which it has conferred. Any appeal for relief should be made to Congress rather than to the courts.

For the reasons stated, it is our conclusion that the Commission acted within its authority in denying Marquette's motion to recuse its members from trying and deciding the issues involved. It follows that the orders entered by this court on July 31 1944, insofar as they pertain to such motion, were properly entered. The instant motion to vacate and set aside is, therefore, denied.

PREPARATORY TRAINING INSTITUTE

v.

FEDERAL TRADE COMMISSION¹

No. 8723—F. T. C. Dock. 4454

(Circuit Court of Appeals, Third Circuit. Feb. 15, 1945)

Ordered, on motion of Commission based on petitioner's failure to file and serve copies of its brief in the cause within the time fixed therefor by the rule of the court, and failure to proceed as therein set forth, that petition to review Commission's order in Docket 4454, June 29, 1944, 38 F.T.C. 712, requiring respondent, its officers, etc., in connection with offer, sale, etc. in commerce, of courses of study for Government civil service positions, cease and desist from misrepresenting the number of such positions available, examinations held therefor, positions open, respondent's ability to procure positions for its students, or Civil Service Commission connection, etc.; or using term "Registrar" to designate its representatives, or word "Institute" as part of its trade name, or misrepresenting opportunities for employment in Civil Service positions of its students, etc.; as in detail there set out.

Mr. William J. Connor, of Trenton, N. J., for petitioner.

Mr. W. T. Kelley, Chief Counsel, and *Mr. Joseph J. Smith, Jr.*, Asst. Chief Counsel, Federal Trade Commission, both of Washington, D. C., for Commission.

¹ Not reported in Federal Reporter.

ORDER DISMISSING PETITION FOR REVIEW

Before MARIS and GOODRICH, JJ.

Upon consideration of respondent's motion to dismiss petitioner's petition for review, and the consent of counsel for petitioner for the dismissal,

It is ordered that the petition for review in the above entitled cause be and the same is hereby dismissed.

PERLOFF ET AL. v. FEDERAL TRADE COMMISSION¹

No. 8466—F. T. C. Dock. 4822

(Circuit Court of Appeals, Third Circuit. Feb. 23, 1945)

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—BUSINESS STATUS—TRADE NAMES—"PACKING" AS APPLIED TO PRODUCTS NOT PACKED BY SELLER—WHETHER NEGATIVED BY ADDED WORD "DISTRIBUTORS".

Evidence supported Federal Trade Commission's finding that petitioner's use of its name "Atlantic Packing Company" was misleading as applied to items which petitioners did not pack, and that the use of the word "Distributors" on the line below the name, whether in the same or smaller type, did not negative the erroneous implication, and justified order directing petitioners to cease use of the word "Packing" in connection with such products.

METHODS, ACTS AND PRACTICES MISREPRESENTATION—MISBRANDING OR MISLABELING—BUSINESS STATUS TRADE NAMES—"PACKING", ETC., FOLLOWED BY "DISTRIBUTORS" AS APPLIED TO FOOD NOT PACKED BY SELLER—FOOD AND DRUG ACT PROVISIONS—WHETHER COMMISSION DECISION OF PRACTICE MISLEADING NATURE IN CONFLICT WITH.

Federal Trade Commission's decision that petitioners' use of its name "Atlantic Packing Company" followed by the word "Distributors" was misleading as to product not packed by petitioners was not in conflict with the Food and Drug Act requiring the person whose name appears on the label to reveal his connection therewith either as manufacturer or distributor or otherwise.

JURISDICTION OF COMMISSION—UNFAIR TRADING—WHETHER PUBLIC IN GENERAL, OR PARTICULAR CLASS OF COMPETITORS DIRECTLY AFFECTED.

The jurisdiction of the Federal Trade Commission in cases of unfair trading is recognized, regardless of whether it is the public in general, or a particular class of competitors, whose interest demands the suppression of the practice complained of.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—TRADE NAMES—"PACKING", ETC., FOLLOWED BY "DISTRIBUTORS" AS APPLIED TO PRODUCTS NOT PACKED BY SELLER IF NO TESTIMONY OF DECEPTION BY ACTUAL PURCHASER.

That no actual purchaser of products bearing the label "Atlantic Packing Company, Distributors", testified as to being deceived in the purchase

¹ Reported in 150 F (2d) 757. For case before Commission, see 37 F.T.C. 46.

of products not packed by such packing company was not material to power of Federal Trade Commission to order the use of such name discontinued, since it is enough that the name has both the capacity and the tendency to deceive.

(The syllabus, with substituted captions, is taken from 150 F. (2d) 757.)

On petition to review order of Commission, order affirmed.

Mr. Everett Sanders, of Washington, D. C. (*Mr. Edward F. Howrey*, *Mr. L. A. Gravelle*, and *Mr. Douglas Whitlock*, all of Washington, D. C., on the brief), for petitioners.

Mr. Donovan R. Divet, of Washington, D. C. (*Mr. W. T. Kelley*, Chief Counsel, Federal Trade Commission, and *Mr. Joseph J. Smith, Jr.*, Asst. Chief Counsel, both of Washington, D. C., on the brief), for respondent.

Before GOODRICH and McLAUGHLIN, *Circuit Judges*, and KIRKPATRICK, *District Judge*.

By McLAUGHLIN, *Circuit Judge*.

This matter concerns a petition to review and set aside a cease and desist order of the Federal Trade Commission which prohibits the petitioners from using any trade name containing the word "Packing" in connection with products not packed by them.

The petitioners are wholesale grocers, with their principal office in Philadelphia, Pa. and three branches in Chester, Wilkes-Barre and Shenandoah, all in Pa. They sell only to retailers and not to consumers direct. They have been engaged in the wholesale business of canned foods in commerce since 1922. Three to three and one-half percent of their business is interstate. They, themselves, pack and distribute certain dried food. They do not own or operate any canneries. Their practice on canned foods is to purchase such products from canners. Labels for the goods are furnished the canners by the petitioners and affixed to the containers for the goods by the canners. On some of those labels, petitioners use [758] the name "Atlantic Packing Company, Distributors."

The Commission found that name to be erroneous and misleading as applied to those items which the petitioners do not pack, as the word "Packing" in the name constitutes a representation that such items are packed by petitioners. It also found that there is a preference on the part of a substantial number of dealers for dealing with packers direct, rather than with concerns which do not pack their products but are merely distributors. Further, that the use of the name has the tendency and capacity to mislead and deceive a substantial number of dealers with respect to petitioners business status and the origin of petitioners products, and the tendency and capacity to cause such dealers to purchase petitioners' products as the result of the erroneous and mistaken belief so engendered. In conse-

juence thereof, that substantial trade has been diverted unfairly to the petitioners from their competitors, among whom are those who do not misrepresent their business status or the origin of their products. As a result, the Commission concluded that .

"The acts and practices of the respondents [petitioners here] as herein found are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act."

A total of ten witnesses testified at the Commission hearing. Three of these were connected with the petitioners. There were three consumer witnesses; all of them housewives. The other four were wholesale grocers. One of the consumers, Mrs. Freda Bruck, thought the label "Atlantic Packing Company" was "the company that packs and distributes." She would prefer to buy direct from packers if that could be done, because it is cheaper. The next housewife thought the label "would come direct from the packing house and that they [Atlantic] packed them and distributed them." She said "I should think that if they packed them that I might * * * [word does not appear in record] them reasonably. I don't know. Of course I have to go where I can get them cheaper. I try to go when I can get something reasonably." Both this witness and Mrs. Freda Bruck, on cross examination, said that they expected to pay retail prices in retail stores.

The first wholesaler witness on being shown one of the labels in question, thought at first, that "Atlantic" was the packer; then, seeing the word "Distributors," said that "Atlantic" was the distributor, not the packer. He thought the public would be deceived by the label. The second wholesaler, shown the label, stated he "would say that Atlantic was the distributor, not the packer." He did not think the public would understand the label. The third wholesaler, from the label, assumed that "Atlantic" was the packer, or packer and distributor. The last such witness preferred to buy from packers, as having more responsibility than "* * * the dealer from whom you buy it second hand." Examining one of the labels he said that from the word "Distributors" he would assume that "Atlantic" had not packed the goods.

Copies of three of the labels in evidence are printed in the record. In all three, the name "Atlantic Packing Company" is on a line by itself and in larger type than the word "Distributors" which appears beneath it. There is testimony by Earl Perloff, one of the petitioners, that they now put the word "Distributors" in as large type as Atlantic Packing Company.

As seen, all three consumer witnesses and two of the four wholesalers affirmatively support the Commission's finding that the name

"Atlantic Packing Company" is erroneous and misleading as applied to those items which the petitioners do not pack. In addition, the labels speak for themselves. As used, it can be reasonably implied that the particular goods so labeled have been at least packed by the company. This is not negated by the word "Distributors" on the line below, whether the latter word is in the same or in smaller type than the name of the company. Packing and distributing are two different, but not inconsistent activities. The business of the petitioners themselves shows that a concern may engage in either or in both. The characterization of a "Packing" company as a distributor is not a representation that it is not a packer. This is again indicated by the practice of the petitioners who both pack and distribute certain dried foods which carry the same type of label as the canned or bottled goods not packed by the petitioners.

[759] The petitioners urge that the label is in accord with the pertinent Federal Food and Drug Act regulation.² There is no evidence in the record of approval of the label by any authority whatsoever under the Food and Drug Act. From a reading of Regulations (a) and (d) under Section 343, it is most questionable that the label legend is a proper one under that Act. Regulation (a), quoted in the footnote, provides that where the food is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase which reveals the connection such person had with such food, such as "Manufactured for and packed by * * *;" "Distributed by * * *;" or other similar phrase which expresses the facts; and (d) expressly states that the requirement that the label shall contain the name and place of business of the manufacturer, packer or distributor shall not be considered to relieve any food from the requirement that its label shall not be misleading in any particular. However, since compliance with the Food and Drug Act is not an issue in this appeal, it is sufficient to say that there is no conflict on the instant facts between that Act and the decision of the Federal Trade Commission.

It is contended on behalf of the petitioners that diversion of commerce to the petitioners from other competitors was not proved. That the petitioners had competition, was testified to by Earl Perl-

¹ Federal Food, Drug and Cosmetic Act, 21 U. S. C. A. 343 reads:

"A food shall be deemed to be misbranded * * * (e) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer or distributor; * * *

Regulation (a) under this Section, 21 C. F. R. Cum. Sup. 2.8 reads:

"Where a food is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase which reveals the connection, such person has with such food, such as 'Manufactured for and Packed by — —,' 'Distributed by — —,' or other similar phrase which expresses the facts."

Regulation (d) under the same Section, 21 C. F. R. Cum. Sup. 2.8 reads:

"The requirement that the label shall contain the name and place of business of the manufacturer, packer, or distributor shall not be considered to relieve any food from the requirement that its label shall not be misleading in any particular."

off, one of the petitioners; but there was no affirmative testimony that competitors were injured. We do not see that the latter is material under the Fair Trade Act. The jurisdiction of the Commission in cases of unfair trading is recognized, regardless of whether it is the public in general, or a particular class of competitors whose interest demands the suppression of the practice complained of. *Pep Boys v. Federal Trade Commission*, 122 F. (2d) 158 (C. C. A. 3) [33 F. T. C. 1807; 3 S.&D. 401]. In *Federal Trade Commission v. Artloom Corporation*, 69 F. (2d) 36 (C. C. A. 3) [18 F.T.C. 680; 3 S.&D. 256;] this Court said at page 38:

"The premise of misbranding being supported by the Commission's findings, the conclusion follows that when the respondent sold its misbranded rugs in commerce, it thereby harmed its competitors and deluded the ultimate consumers."

See also *Federal Trade Commission v. Raladam Company*, 316 U. S. 149 [34 F.T.C. 1843; 3 S.&D. 474].

It is also asserted that the allegation in the complaint that the petitioners deceived the public into thinking the product was packed by the "Atlantic Packing Company" and, therefore was (a) more uniform in quality and (b) cheaper in price, was not proved. The petitioners stress the proposition that no actual purchaser of "Atlantic" products testified as to being deceived, but it is enough that the name has both the capacity and tendency so to do *Jacob Siegel v. Federal Trade Commission*, 150 F. (2d) 751 (C. C. A. 3) [39 F.T.C. 714]. The evidence shows that all of the consumer witnesses and one of the four wholesalers testifying, thought the label meant that the goods had been packed by, or both packed and distributed by, "Atlantic." Another of the wholesalers was of that opinion when he first saw the label. Two of the dealers thought that the public would be deceived or would not understand the labels. While there was no affirmative evidence as to packers' goods being more uniform in quality, Ruskin, one of the wholesale grocers, did say that he preferred obtaining foods from packers, as more responsible than buying from dealers second hand. There was an indication for preference of packers' goods because they were cheaper, from the evidence of two of the consumers. It is true that no retailers testified; but with consumers being deceived, it follows that [760] in supplying retailers with such labeled goods, the retailers were furnished with the opportunity of misleading the public into thinking that they were obtaining packers' products. It is to be remembered that the public was and is the ultimate purchaser of the goods.

Petitioners insist that the alleged qualifying word "Distributors" takes care of the situation here presented and cite *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212 [17 F.T.C. 644; 2 S.&D. 217]; *N. Flugelman & Co., Inc. v. Federal Trade Commission* 37 F. (2d) 59 (C. C. A. 2) [13 F. T. C. 602; 2 S.&D. 621] and *Sheffield*

Silver Co. v. Federal Trade Commission, 98 F. (2d) 676 (C. C. A. 2) [27 F.T.C. 1689; 2 S.&D. 472]. As to this, the Commission said in its finding:

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

Since the *Royal Milling case* [*supra*] the Supreme Court has indicated in a number of decisions, involving principally labor board and tax cases, that in the absence of abuse of discretion, the matter of remedy is for the administrative agency. *Medo v. Labor Board*, 321 U. S. 678, and cases there cited. The Second Circuit has followed this in a series of Fair Trade cases since the Fluegelman and Sheffield decisions and starting with *Herzfeld v. Federal Trade Commission*, 140 F. (2d) 207 [38 F.T.C. 833]. To the same effect, *Jacob Siegel Company v. Federal Trade Commission* [*supra*] in this Circuit and *American Power and Light Co. v. Securities and Exchange Commission*, 141 F. (2d) 606 in the First Circuit.

The Commission, in holding that the word "Distributors" does not correct any wrong impression which might otherwise be conveyed through the use of "Atlantic Packing Company," clearly did not abuse its discretion. There is ample support in the evidence for its decision that the name "Atlantic Packing Company, Distributors" is erroneous and misleading as applied to those items which the petitioner does not pack. The order of the Commission is affirmed.

MICHEL LIPMAN AND JACK SILVERMAN, TRADING AS
CHIEF STATISTICIAN AND AS J. SILVERMAN &
ASSOCIATES v. FEDERAL TRADE COMMISSION¹

No. 10700—F. T. C. Dock. 4809

(Circuit Court of Appeals, Ninth Circuit, March 15, 1945)

ordered, pursuant to stipulation to abide final decision in companion cause of
Silverman v. Federal Trade Commission, Nov. 13, 1944, 145 F. (2d) 751
39 F.T.C. 704, that decree be filed affirming, etc., Commission's order in

¹ Reported in 148 F. (2d) 823 For case before Commission, see 38 F.T.C. 19.

Docket 4809, Jan. 8, 1944, 38 F.T.C. 19, requiring respondent petitioners herein to cease and desist, in connection with offer and sale in commerce, of delinquent debt collection material, from using words "Chief Statistician" etc., to designate, etc., their business; using, etc., mailing cards, etc., which misrepresent the Government as the source thereof, etc.; or using material which misrepresents the nature of their business, or the purpose of the information sought.

Petition to review and set aside order of Commission dismissed.

Seaman & Jackson, of San Francisco, Calif., for petitioners.

Mr. W. T. Kelley, Chief Counsel, and *Mr. Joseph J. Smith, Jr.*, Asst. Chief Counsel, Federal Trade Commission, both of Washington, D. C., for respondent.

Before WILBUR, DENMAN, and HEALY, *Circuit Judges*.

PER CURIAM.

It appearing from the files of this Court, that Mr. Edward N. Jackson, counsel for petitioner, and Mr. Joseph J. Smith Jr., Asst. Chief Counsel, Federal Trade Commission, counsel for respondent, entered into a stipulation that this cause should abide final decision in the companion cause, *Silverman v. Federal Trade Commission* which stipulation was filed on May 15, 1944, and that in said cause, *Silverman v. Federal Trade Commission*, an opinion was rendered and filed on November 13, 1944, 145 F. (2d) 751 [39 F.T.C. 704], and a decree affirming and enforcing order to cease and desist was filed and entered on December 5, 1944, which decree has now become final and no review thereof has been sought by petitioner herein, now therefore, it is ordered that a decree so filed and entered herein affirming and enforcing the order of the Federal Trade Commission to cease and desist, and that a certified copy of such decree be forthwith forwarded to the respective parties hereto.

FINAL DECREE AFFIRMING AND ENFORCING
ORDER TO CEASE AND DESIST

Michel Lipman and Jack Silverman, individually, and trading as Chief Statistician, and as J. Silverman & Associates petitioners herein, having filed with this Court on March 6, 1944 their petition to review and set aside an order to cease and desist issued against them on January 8, 1944, by the Federal Trade Commission, respondent, in a proceeding before the said respondent entitled "In the Matter of Michel Lipman and Jack Silverman, individually and trading as Chief Statistician and as J. Silverman & Associates, and William Edgar Spicer, individually, Docket No 4809"; 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, on May 8, 1944,

having stipulated and agreed *inter alia* that the disposition of this case shall abide and be determined by the decision of this Court in the case of Jack Silverman an individual trading under the names of Jack Silverman and Associates. General Forwarding System and Commercial Pen Co., being case No. 10,663 upon the docket of this Court, and that "If the respondent's order to cease and desist in said case No. 10,663 is affirmed and enforced, this Court shall enter a decree affirming and enforcing the order to cease and desist entered by the respondent in this case"—said stipulation having been approved by this Court on May 15, 1944; and this Court, on November 13, 1944, having rendered its decision in said case No. 10,663 affirming and enforcing the cease and desist order of the Federal Trade Commission there involved and denying 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 aforesaid petition to review and set aside said order to cease and desist be and the same hereby is denied; and that the said order to cease and desist be and it hereby is affirmed and enforced, and the petitioners are hereby commanded to obey said order and to comply therewith.

And it is hereby further ordered, adjudged and decreed. That within ninety (90) days after the entry of this decree the petitioners shall file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which they have complied with 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.

SAMUEL H. MOSS, INC. v.
FEDERAL TRADE COMMISSION¹

No. 136—F. T. C. Dock. 4405

(Circuit Court of Appeals, Second Circuit. Mar. 29, 1945)

METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2

(a)—COMPETITIVE EFFECT ON DISCRIMINATOR'S COMPETITORS.

¹ Reported in 148 F. (2d) 378. For case before Commission, see 36 F.T.C. 640. In per curiam opinion of June 3, 1946, 155 F. (2d) 1016, 42 F.T.C.—, the Court denied motion to modify its decree in the instant matter but held certain clarification in the opinion was required. The Court's opinion, as reproduced herein, is published as thus clarified.

The Clayton Act makes price discrimination unlawful only in case it lessens or tends to prevent competition with merchant who engages in the practice, and that means that lower price must prevent or tend to prevent competitors from taking business away from merchant which they might have secured had merchant not lowered his price below what he was charging elsewhere.

METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—PROCEEDINGS UNDER—BURDEN OF PROOF.

Upon proof of price discrimination, burden of proof then shifts to merchant to establish that the lower price did not prevent or tend to prevent any one from taking away the business.

METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—COMPETITIVE EFFECT ON DISCRIMINATOR'S COMPETITORS—IF LATTER'S EQUALLY LOW PRICE MERELY "MET" BY DISCRIMINATOR.

Although price discrimination by merchant prevented or tended to prevent competitors from taking business away from him, merchant would not be guilty of violating the Clayton Act if he could show that his lower price did not undercut his competitors, but merely "met" their "equally low price".

METHODS, ACTS AND PRACTICES—DISCRIMINATION IN PRICE—CLAYTON ACT, SEC. 2 (a)—WHETHER VIOLATION OF—RUBBER STAMPS.

Evidence supported finding of Federal Trade Commission that petitioner was discriminating in price of rubber stamps sold in interstate commerce in violation of the Clayton Act.

EVIDENCE—METHODS, ACTS AND PRACTICES—DISCRIMINATION IN PRICE—CLAYTON ACT, SEC. 2 (a)—WHERE DIFFERENT PRICES BY DISCRIMINATOR SHOWN AND LACK OF LESSENING OF COMPETITION NOT SHOWN BY LATTER—IF PROFFER OF TESTIMONY OF SOLICITATION OF DISCRIMINATOR'S CUSTOMERS BY LATTER'S FORMER EMPLOYEES AT PRICES TO GET BUSINESS WITHOUT SHOWING DISCRIMINATOR'S OFFERS IN FACT NO LOWER THAN COMPETITORS'.

Where petitioner was shown to have charged different prices for its rubber stamps and failed to prove that it did not lessen competition, petitioner's proffered testimony that two of its former employees set up a competing business and proceeded to solicit petitioner's customers at prices they knew they could get customers' trade, without showing that offers which petitioner made were in fact no lower than that of its competitors, was not relevant.

PROCEEDINGS BEFORE COMMISSION—RECEPTION OF EVIDENCE—CRITERIA OF ADMISSIBILITY—PRICE DISCRIMINATION CASES.

Federal Trade Commission, at hearing on charge of price competition in violation of Clayton Act, should admit all evidence which could conceivably throw any light upon the controversy.

(The syllabus, with substituted captions, is taken from 148 F. (2d) 378.)

On petition to review order of Commission, order affirmed, and enforced.

Mr. Henry Ward Beer, of Washington, D. C. and *Lewis, Marks & Kanter*, of Brooklyn, N. Y., for petitioner.

[379] *Mr. Joseph J. Smith, Jr.*, of Washington, D. C., and *Mr. W. T. Kelley*, Chief Counsel, and *Mr. Jno. W. Carter, Jr.*, both of Washington, D. C., for Federal Trade Commission.

Before L. HAND, AUGUSTUS N. HAND, and CLARK, *Circuit Judges*.

PER CURIAM:

This is an appeal from (petition to review), an order of the Federal Trade Commission directing the petitioner not to discriminate in the price of rubber stamps sold in interstate commerce. The only points which we find it necessary to discuss are whether the findings support the order; whether there was evidence to support the findings; and whether the petitioner was prevented from introducing relevant evidence. After finding that the petitioner was engaged in interstate commerce in the sale of rubber stamps, the Commission found that it had sold stamps of the same size at different prices to different customers in eight specified instances; that the discrimination so practiced had not been made "in good faith to meet an equally low price of a competitor"; and that there was "no evidence that such differences in price were based upon differences in cost of manufacture, sale or delivery resulting from the different methods or quantities in which such rubber stamps were sold and delivered to various purchasers thereof." Finally, it found that these practices had a "tendency to induce the purchase of respondent's rubber stamps by various users thereof, and have tended to and do divert trade to the respondent from its competitors." That these findings supported the order is too obvious to admit of discussion.

The case was tried in part upon a stipulation declaring that in the eight instances mentioned in the findings the respondent sold rubber stamps to some of its customers at lower prices than it was selling the same stamps to other customers. The Commission's position was that, having proved this, § 2(b) put upon the petitioner the burden of justifying the discrimination; and warranted the order if it failed to do so. The petitioner did not prove affirmatively that the discrimination did not lessen competition or tend to prevent it: nor did it prove that its lower prices were only "to meet an equally low price of a competitor." On the contrary, it did not know its competitors' prices, but merely "bid low enough to get the business." This made it proper and indeed necessary for the Commission to make the findings it did. It is true that § 2(a) makes price discrimination unlawful only in case it lessens, or tends to prevent, competition with the merchant who engages in the practice; and that no doubt means that the lower price must prevent, or tend to prevent, competitors from taking business away from the merchant which they might have got, had the merchant not lowered his price below what he was charging elsewhere. But that is often hard to prove: the accuser must show that there were competitors whom the higher

of the two prices would, or might, not have defeated but who could not meet the lower. Hence Congress adopted the common device in such cases of shifting the burden of proof to anyone who sets two prices, and who probably knows why he has done so, and what has been the result. If he can prove that the lower price did not prevent or tend to prevent anyone from taking away the business; he will succeed, for the accuser will not then have brought him within the statute at all. Nevertheless he may succeed even though he fails to establish such a negative; for, although it will then appear that he has lessened, or prevented, competition, the proviso of § 2(b) will still excuse him, if he can show that his lower price did not undercut his competitors, but merely "met" their "equally low price." In short, that is a defence to the violation of § 2(a). This is as we interpret § 2(a) and § 2(b), when read together. We are not sure that our interpretation accords with the rulings of the Seventh Circuit in *A. E. Staley Manufacturing Co. v. Federal Trade Commission*, 135 F. (2d) 453 [36 F. T. C. 1126; 3 S.&D. 556]; S. C. 144 F. (2d) 221 [39 F. T. C. 677]. In the first of these the Court said (p. 455) that it was not enough to prove mere discrimination in price, but that the Commission must also prove that this did not lessen competition; and for this it relied upon *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346, decided before the amendment of 1936. Indeed, the decision appears actually to have turned upon the Commission's failure affirmatively to prove that the discrimination had lessened competition. To that we cannot agree for the reasons we have given. However, in the second appeal we do not understand that the majority of the court found it necessary to rely upon that doctrine; on the contrary they based their decision upon the conclusion that the petitioner had carried the burden of showing that the discrimination had not in fact lessened competition. If that be the right understanding, there is no longer any difference between us.

The Commission appears to believe that, in order to prove the affirmative defence anyone who sells at two prices must prove that he knew what was his competitors' price must mean not to undercut it, and must offer to sell at what he knows to be no lower than his competitors' price. We agree that he must prove that he did not mean to undercut his competitors' price; but when he has in fact undercut that price, we reserve the question whether it is necessary as part of that proof for him to show that he did not know what that price was. If in fact he does not undercut his competitors' price perhaps he may escape, even though he does not know what that price is, though it is only by chance that he has not undercut it. That is to say, we need not now decide more than that the offer shall be made without actual intent to undercut his competitors' price. That question does not arise here, for the petitioner did not prove

that in any of the instances its price was no lower than that of its competitors. For these reasons we hold that the findings were supported by the evidence.

The last question is whether the examiner excluded testimony which he should have admitted. This testimony was presented in very disjointed form, and it is somewhat difficult to know from the questions just what it was designed to prove; we therefore resort to the offer of proof made by the petitioner's attorney in the following words: "my purpose is to show these two were employees of ours, were familiar with the customers and prices charged our customers for the products; that they left our employ and set up a competing business and proceeded to solicit our customers at prices they knew they could get it for. Some of the customers are the very customers set out in the stipulation." In the light of what we have already said, this testimony was not relevant to the issue. It made no difference whether the petitioner's former salesmen offered goods "at prices they knew they could get it" (the business), "for." Once the petitioner was shown to have charged different prices, and failed to prove that this did not "lessen competition," it could not escape without showing that the offers which it made were either in fact no lower than that of its competitors, or that it did not mean them to be. Its attorney did not suggest that the witnesses would testify to that; and, if the case was to be tried with strictness, the examiner was right. It is quite true that if he had not so tried it, a less confusing record would have resulted. Why either he or the Commission's attorney should have thought it desirable to be so formal about the admission of evidence, we cannot understand. Even in criminal trials to a jury it is better, nine times out of ten, to admit, than to exclude, evidence and in such proceedings as these the only conceivable interest that can suffer by admitting any evidence is the time lost, which is seldom as much as that inevitably lost by idle bickering about irrelevance or incompetence. In the case at bar it chances that no injustice was done, but we take this occasion to point out the danger always involved in conducting such a proceeding in such a spirit, and the absence of any advantage in depriving either the Commission or ourselves of all evidence which can conceivably throw any light upon the controversy.

Order affirmed; an enforcement order will pass.

HOWE ET AL. v. FEDERAL TRADE COMMISSION¹

No. 10486—F. T. C. Dock. 4729

(Circuit Court of Appeals, Ninth Circuit, Apr. 4, 1945)

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—FINDINGS OF COMMISSION—IF SUPPORTED BY EVIDENCE.

¹ Reported in 148 F. (2d) 561. For case before Commission, see 36 F.T.C. 685.

In proceedings to review cease and desist order of Federal Trade Commission, if Commission's findings are supported by evidence, they are conclusive and Commission's order based thereon must be affirmed.

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—CONCLUSION OF COMMISSION—IF RATIONAL BASIS FOR.

In proceedings to review cease and desist order of Federal Trade Commission, where there is a rational basis for conclusion of Commission, duty of court is ended.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—SOURCE OR ORIGIN, AND SUCCESS, USE OR STANDING OF PRODUCT—FALSE AND MISLEADING ADVERTISING, LABELS, BRAND NAMES AND LEGENDS—"HOLLYWOOD" AND "FAVORITE OF THE STARS".

Where firm, engaged in sale and distribution of cosmetics preparations, used trade-name "Hollywood" and the legend "Favorite of the Stars", but of some 20 items sold by the firm only three were obtained from sources in Hollywood and firm's preparations were not recognized by Hollywood actresses as being of superior quality, record sustained finding of Federal Trade Commission that use of word "Hollywood" was misleading and justified order directing the firm to cease and desist from using the word "Hollywood" to designate any product which was not in fact manufactured in Hollywood, Calif., and from using words "Favorite of the Stars".

(The syllabus, with substituted captions, is taken from 148 F. (2d) 561.)

On petition to review and set aside order of Commission, order amended and, as amended, affirmed.

Mr. Edward Starin, of Seattle, Wash., for petitioners.

Mr. W. T. Kelley, Chief Counsel, *Mr. Joseph J. Smith, Jr.*, Asst. Chief Counsel, and *Mr. Jno. W. Carter, Jr.*, Sp. Atty., Federal Trade Commission, all of Washington, D. C., for respondent.

Before GARRECHT, MATHEWS, and HEALY, *Circuit Judges*.

GARRECHT, *Circuit Judge*:

The petitioners, Phil Howe, David A. Howe and Joanne B. Howe, trading as Howe and Company, are and have been engaged in the sale and distribution of cosmetic preparations. The preparations when sold are transported from their place of business in Seattle, Washington, to various other states of the United States and in the District of Columbia. For the purpose of inducing the purchase of the cosmetics, the petitioners use the trade name "Hollywood" and the legend under that "Favorite of the Stars." Of the some twenty items sold by the petitioners, only three are obtained from sources in Hollywood, although more than 52 percent of the firm's purchases consist of the three items manufactured in Hollywood, and as to such items the trade name is not inhibited.

The Federal Trade Commission after considering the evidence found that the word "Hollywood" when used to designate cosmetic preparations is associated by a substantial portion of the purchas-

ing public with the motion picture industry and is understood as indicating that the cosmetics are manufactured there and are used by Hollywood stars, which is further strengthened by use of the legend "Favorite of the Stars." The Commission found that the use of the word "Hollywood" was deceptive and misleading, and concluded such deception to constitute unfair practice within the meaning of the Federal Trade Commission Act.

An order was issued to cease and desist from using the word "Hollywood" to designate any product which is not in fact manufactured in Hollywood, California, or using the words "Favorite of the Stars." The other matters contained in the order have been complied with and are not in issue here.

The petitioners have asked this court to review the order of the Federal Trade Commission.

[562] If the findings are supported by evidence, they are conclusive, and the order must be affirmed. Federal Trade Commission Act, § 5, 15 U.S.C.A. § 45(c).

Witnesses testified that the label "Howe's HOLLYWOOD, favorite of the Stars" gave the impression that it was a Hollywood preparation and was endorsed by the stars of motion pictures. Two other witnesses testified that they would interpret it to mean that the product was used by the movie stars. Another testified that Hollywood is one city in the world most every one knows and it is outstanding because of the motion picture industry, and the label "Hollywood, favorite of the Stars" could only mean that it was a product of Hollywood and used and preferred by the stars. There was other testimony that the legend "Favorite of the Stars" meant certain Hollywood actresses favored it. Another witness said "that the word 'Hollywood' used in connection with any aid to beauty or cosmetics has more significant meaning than the word 'Hollywood' used in other lines of products and has more value."

A great many witnesses testified on behalf of the Commission and on behalf of the petitioners. To some of these witnesses the word "Hollywood" had no particular significance. However, a substantial portion of the purchasing public and persons in the cosmetic trade associated the label with the motion picture colony and thought the cosmetics were manufactured there. There was also evidence that a Hollywood origin in a cosmetic product was a business asset. The evidence showed also that the preparations in question were not recognized by the actresses of Hollywood as being of superior quality.

In the case of *Stanley Laboratories, Inc. v. Federal Trade Commission*, 138 F. (2d) 388 [37 F. T. C. 801; 3 S. & D. 596], this court found that the use of the words "M.D." in marketing a douche was a deception attempting to capitalize on the prestige of the medical profession. In the cosmetic field, a parallel endorsement would be that of actresses of Hollywood. It was reasonable therefore to find

the advertisement misleading and deceptive, and where there is a rational basis for the conclusion of the administrative body, our duty is ended.

The motion to insert after the words "Hollywood, California" in the order, the parenthetical sentence: (The term "Hollywood, California," as used herein, means the entire city of Los Angeles, California, and those adjacent or contiguous independent municipalities which are generally regarded as comprising the Los Angeles metropolitan area, such as Culver City, Beverly Hills, Glendale and Santa Monica.), is hereby granted and the order as amended is affirmed and must be so enforced.

Affirmed.

CORN PRODUCTS REFINING CO. ET AL.

V.

FEDERAL TRADE COMMISSION¹

No. 680—F. T. C. Docket. 3633

(United States Supreme Court. Apr. 23, 1945)

METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—DELIVERED PRICES FICTITIOUS OR "PHANTOM" FREIGHT—WHERE PREDICATED ON INCLUSION OF.

The sale of glucose at delivered prices which included freight rate from Chicago, irrespective of whether shipments were made from manufacturer's Chicago or Kansas City plant, discriminated in price between different purchasers contrary to the Clayton Act.

METHODS, ACTS AND PRACTICES DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a) PROHIBITIONS OF—WHETHER RESTRICTED BY PLACE DISCRIMINATION PROHIBITIONS OF SEC 3 OF ROBINSON-PATMAN ACT.

Section 3 of the Robinson Patman Act imposing criminal penalties for selling goods in any part of the United States at prices lower than those exacted elsewhere in the United States for the purpose of destroying competition does not restrict the operation of the prohibitions, with civil sanctions, of the Robinson Patman amendment to section 2 (a) of the Clayton Act.

METHODS, ACTS AND PRACTICES DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a) WHERE EFFECT "MAY" BE TO SUBSTANTIALLY LESSEN COMPETITION, ETC.

Under the Clayton Act which prohibits discriminations which "may" substantially lessen competition, etc., probability rather than mere possibility is required.

APPELLATE PROCEDURE AND PROCEEDINGS EVIDENCE—WEIGHT AND INFERENCES—COURT LIMITATION

Report 1 in 324 U. S. 726; 65 S. Ct. 961. For case before Commission, see 34 F.T.C. 850 (Case in Circuit Court of Appeals, Seventh Circuit, affirming Commission's order reported in 144 F. (2d) 211

In proceedings before Federal Trade Commission, the weight to be attributed to the facts proved or stipulated and the inferences to be drawn from them are for the Commission to determine, not the courts.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—DISCRIMINATION IN PRICE—CLAYTON ACT, SEC. 2 (a)—DELIVERED PRICES—FICTITIOUS OR "PHANTOM" FREIGHT—WHERE PREDICATED ON INCLUSION OF.

Where manufacturer sold glucose at delivered prices which included freight from Chicago, irrespective of whether shipments were from manufacturer's Chicago or Kansas City plant, the Federal Trade Commission's finding that there was a reasonable probability that the effect of such discrimination might be to substantially lessen competition was sustained by the evidence and supported Commission's order that such practice be discontinued.

METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—TERMS AND CONDITIONS OF SALE—BOOKING PRACTICES OR OPTIONS, AND DELIVERIES.

A glucose manufacturer's practice of permitting certain customers to secure longer options, or lower prices, or longer periods in which to take deliveries, constituted "price discrimination" within Clayton Act.

EVIDENCE—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—THAT LOWER PRICES TO MEET COMPETITION—IF WITNESSES WITHOUT PERSONAL KNOWLEDGE OF TRANSACTIONS.

In proceedings before Federal Trade Commission, evidence by witnesses, who had no personal knowledge of the transactions, that lower prices were allowed to favored customers in order to meet competition was insufficient to sustain burden placed on manufacturer.

METHODS, ACTS AND PRACTICES—TERMS AND CONDITIONS OF SALE—OPTIONS AND DELIVERY PERIODS.

Finding by Federal Trade Commission that a glucose manufacturer's practice of permitting certain customers to secure longer options, or lower prices, or longer periods in which to take deliveries, might diminish competition within the Clayton [1914] Act was sustained by the evidence.

METHODS, ACTS AND PRACTICES—DISCRIMINATION IN PRICE—CLAYTON ACT, SEC. 2 (a)—DISCOUNTS TO FAVORED PURCHASERS.

Finding by Federal Trade Commission that discounts allowed to certain favored purchasers constituted a substantial threat to competition within Clayton Act was sustained by the evidence.

EVIDENCE—WEIGHT AND INFERENCES—CONTEMPORANEOUS PURCHASING FROM MANUFACTURER VENDOR ADVERTISER BY ADVERTISING'S BENEFICIARY USER OF MANUFACTURER'S PRODUCT AS RAW MATERIAL FOR PRODUCT OF BENEFICIARY.

Where candy company purchased dextrose from manufacturer during period that manufacturer expended large sums for benefit of such company to promote sales of dextrose for use in candy manufacture, Federal Trade Commission could properly infer that the advertising contemplated the sale of dextrose to the candy company and that the advertising contemplated offering for sale of the candy by the candy company.

METHODS, ACTS AND PRACTICES—DISCRIMINATION IN PRICE—CLAYTON ACT, SEC 2 (a)—WHETHER PURCHASE CONTRACT EMBODYING DISCRIMINATION PRE-REQUISITE.

Under the Clayton Act, discrimination in favor of one purchaser against another need not be provided for in purchase contract, but it is enough if the discrimination is made in favor of one who is a purchaser and denied to another purchaser or other purchasers of the same commodity.

METHODS, ACTS AND PRACTICES—DISCRIMINATION IN PRICE—CLAYTON ACT, SEC 2 (e)—SERVICES OR FACILITIES—WHETHER CONNECTED WITH "PROCESSING" ETC., OF DISCRIMINATOR'S COMMODITY.

"Processing" as used in Clayton Act means a mode of treatment of materials to be transformed or reduced to a different state or thing, and includes the conversion of dextrose into candy.

METHODS, ACTS AND PRACTICES—DISCRIMINATION IN PRICE—CLAYTON ACT, SEC. 2 (e)—SERVICES OR FACILITIES—WHETHER CONNECTED WITH "PROCESSING". ETC., OF DISCRIMINATOR'S COMMODITY—MATERIALITY OF NATURE OR EXTENT OF PROCESSING.

The Clayton Act is aimed at discrimination by supplying facilities or services to a purchaser not granted to others in all cases where the commodity is to be resold whether in its original form or in a processed product, and the precise nature or extent of the processing before resale is immaterial.

METHODS, ACTS AND PRACTICES—DISCRIMINATION IN PRICE—CLAYTON ACT, SEC. 2 (e)—SERVICES OR FACILITIES—WHEN ACCORDED TO ONE AND NOT OTHERS—WHERE INTERSTATE COMMERCE INVOLVED.

Evidence showed that there was a discrimination against sales in interstate commerce so as to give Federal Trade Commission jurisdiction of proceedings against glucose manufacturer.

METHODS, ACTS AND PRACTICES—DISCRIMINATION IN PRICE—CLAYTON ACT, SEC 2 (e)—SERVICES OR FACILITIES—ADVERTISING BY MANUFACTURER VENDOR ADVERTISER AS PROMOTIVE OF SALES OF MANUFACTURER'S PRODUCT AS RAW MATERIAL IN PRODUCT OF ADVERTISING'S BENEFICIARY.

Where candy company purchased dextrose from manufacturer during period that manufacturer expended large sums for benefit of such candy company to promote sales of dextrose for use in candy manufacture, advertising furnished was a service or facility "connected with the processing, sale, or offering for sale of a commodity" and therefore violated the Clayton Act.

(The syllabus, with substituted captions, is taken from 65 S. Ct. 961.)

On writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, in which an adverse order of the Commission was sustained by that Court [963] 144 F. (2d) 211, judgment affirmed.

Mr. Parker McCollester, of New York City, for petitioners.
Mr. Charles Fahy, Sol. Gen., of Washington, D. C. for respondent.

MR. CHIEF JUSTICE STONE delivered the opinion of the Court.

Petitioners, a parent corporation and its sales subsidiary, use a basing point system of pricing in their sales [729] of glucose. They sell only at delivered prices, computed by adding to a base price at Chicago the published freight tariff from Chicago to the several points of delivery, even though deliveries are in fact made from their factory at Kansas City as well as from their Chicago factory. Consequently there is included in the delivered price on shipments from Kansas City an amount of "freight" which usually does not correspond to freight actually paid by petitioners.

The Federal Trade Commission instituted this proceeding under § 11 of the Clayton Act, c. 323, 38 Stat. 730, 15 U. S. C. § 21, charging that petitioners' use of this single basing point system resulted in discriminations in price between different purchasers of the glucose, and violated § 2(a) of the Act, as amended by § 1 of the Robinson-Patman Act, c. 592, 49 Stat. 1526, 15 U. S. C. § 13. The complaint also charged petitioners with other discriminations in prices or in services rendered to favored customers, which will presently be stated in detail, all in violation of § 2(a) or § 2(e) of the Clayton Act, as amended.

Section 2(a) provides in part:

"(a) * * * it shall be unlawful for any person engaged in commerce * * * either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, * * * where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: * * *"

[730] After hearings, at which much of the evidence was stipulated, the Commission made its findings of fact. It concluded that petitioners had violated § 2 of the Clayton Act, as amended, and ordered them to cease and desist from such violations. On petition to review the Commission's order, the Circuit Court of Appeals for the Seventh Circuit sustained the order, except in particulars not material here. 144 F. (2d) 211.

We granted certiorari, 323 U. S. 706, because the questions involved are of importance in the administration of the Clayton Act in view of the widespread use of basing point price systems. The principal questions for decision are whether, when shipments are made from Kansas City, petitioners' basing point system results in discrimina-

tions in price between different purchasers of glucose, within the meaning of § 2(a); and, if so, whether there is support in the evidence for the finding of the Commission that these discriminations have the effect on competition defined by that section. Further questions are raised as to whether the other discriminations charged violate § 2(a) and § 2(e).

I. *Basing Point Practices.*

The evidence as to petitioners basing point system for the sale of glucose was stipulated. The Commission found from the evidence that petitioners have two plants for the manufacture of glucose or corn syrup, one at Argo, Illinois, within the Chicago switching district, and the other at Kansas City, Missouri. The Chicago plant has been in operation since 1910. and that at Kansas City since 1922. Petitioners' bulk sales of glucose are at delivered prices which are computed, whether the shipments are from Chicago or Kansas City at petitioners' Chicago prices, plus the freight rate from Chicago to the place of delivery. Thus purchasers in all places [964] other than Chicago pay a higher price than do Chicago purchasers. And in the case of all shipments from Kansas City to purchasers in cities [731] having a lower freight rate from Kansas City than from Chicago, the delivered price includes unearned or "phantom" freight to the extent of the difference in freight rates. Conversely, when the freight from Kansas City to the point of delivery is more than that from Chicago, petitioners must "absorb" freight upon shipments from Kansas City, to the extent of the difference in freight.

The Commission illustrated the operation of the system by petitioners delivered prices for glucose in bulk in twelve western and southwestern cities, to which shipments were usually made from Kansas City. On August 1, 1939, the freight rates to these points of delivery from Chicago were found to exceed those from Kansas City by from 4 to 40 cents per hundred pounds, and to that extent the delivered prices included unearned or phantom freight. As petitioners' Chicago price was then \$2.09 per hundred pounds, this phantom freight factor with respect to deliveries to these twelve cities represented from 2 to 19 percent of the Chicago base price. From this it follows, as will presently be seen, that petitioners' net return at their Kansas City factory on sales to these twelve cities, in effect their f. o. b. factory price, varied according to the amount of phantom freight included in the delivered price.

Much of petitioners glucose is sold to candy manufacturers, who are in competition with each other in the sale of their candy. Glucose is the principal ingredient in many varieties of low priced candies which are sold on narrow margins of profit. Customers for such

candies may be diverted from one manufacturer to another by a difference in price of a small fraction of a cent per pound.

The Commission found that the higher prices paid for glucose purchased from petitioners by candy manufacturers located in cities other than Chicago, result in varying degree in higher costs of producing the candies. The degree in each instance varies with the difference in the delivered price of the glucose, and the proportion of glu[732]cose in the particular candy. Manufacturers who pay unearned or phantom freight under petitioners' basing point system necessarily pay relatively higher costs for their raw material than do those manufacturers whose location with relation to the basing point is such that they are able to purchase at the base price plus only the freight actually paid. The Commission found that the payment of these increased prices imposed by the basing point system "may * * * diminish" the manufacturers' ability to compete with those buyers at lower prices.

The Commission concluded from these facts that petitioners' basing point system resulted in discriminations in price among purchasers of glucose, and that the discriminations result in substantial harm to competition among such purchasers. Petitioners challenge each conclusion.

First. Section 2(a) of the Clayton Act, as amended, makes it unlawful for any person "either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality * * *." The statute permits differentials "which make only due allowance for differences in costs of manufacture, sale, or delivery * * *."

Petitioners' pricing system results inevitably in systematic price discriminations, since the prices they receive upon deliveries from Kansas City bear relation to factors other than actual costs of production or delivery. As in the case of the twelve cities selected by the Commission for illustrative purposes, the freight actually paid by petitioners in making deliveries usually varies from the freight factor from Chicago, used in computing the delivered price. When the actual freight is the lesser of the two, petitioners charge and collect unearned or phantom freight; when it is the greater, petitioners absorb the excess freight, which they pay, but do not include in the computation of their delivered price.

[733] In either event, on shipments from Kansas City, the delivered price to the purchaser depends not only on the base price plus the actual freight from Kansas City, but also upon the difference between the actual freight paid and the freight rate from Chicago which is included in the delivered price. This difference also results in varying net prices to petitioners at their factory at Kansas City, according to the [965] destination of the glucose. The factory net varies according as petitioners collect phantom freight or ab-

sorb freight, and in each case in the amount of this freight differential.¹ The price discriminations resulting from this systematic inclusion of the freight differential in computing the delivered price are not specifically permitted by the statute. Hence they are unlawful, unless, as petitioners argue, there is an implicit exception to the statute for such a basing point system.

[734] Petitioners point out that there is no discrimination under their basing point system between buyers at the same points of delivery, and urge that the prohibition of § 2(a) is directed only at price discriminations between buyers at the same delivery points. There is nothing in the words of the statute to support such a distinction, since the statute is not couched in terms of locality. And its purpose to prevent injuries to competition through price discriminations would preclude any such distinction, not required by its language. The purchasers of glucose from petitioners are found to be in competition with each other, even though they are in different localities. The injury to the competition of purchasers in different localities is no less harmful than if they were in the same city.

We find nothing in the legislative history of the Clayton or Robinson-Patman Acts to support the suggested distinction. It is true that § 3 of the Robinson-Patman Act, 15 U. S. C. § 13a incorporating the Borah-Van Nuys Bill, S. 4171, 74th Cong., 2d Sess., imposes criminal penalties for selling goods "in any part of the United States at prices lower than those exacted * * * elsewhere in the United

¹The illustrative prices found by the Commission show this sharply varying factory net and also the amounts of phantom freight. The figures given are upon deliveries from Kansas City for August 1, 1930, when the Chicago base price was \$2.09.

	A	B	C	D	E	F
	Freight from Chicago	Delivered price (Chicago base price, from \$2.09, plus column A)	Actual freight from Kansas City	Net to petitioners at factory in Kansas City (column B minus column C)	Variance in petitioners' net from their net on deliveries at Kansas City	Phantom freight (column A minus column C)
Kansas City, Mo. ---	\$.40	\$2.49	\$.00	\$2.49	\$.00	\$.40
St. Joseph, Mo. ----	.40	2.49	.09	2.40	-.09	.31
Springfield, Mo. ----	.40	2.49	.36	2.13	-.36	.04
Fort Smith, Ark. ---	.65	2.74	.45	2.29	-.20	.20
Hutchinson, Kan. ---	.61	2.70	.36	2.34	-.15	.25
Lincoln, Neb. - ----	.45	2.54	.13	2.41	-.08	.32
Sioux City, Iowa ---	.40	2.49	.24	2.25	.24	.16
Waco, Tex. - - - - -	.85	2.94	.63	2.31	-.18	.22
Sherman, Tex. ---	.77	2.86	.54	2.32	.17	.23
San Antonio, Tex. ---	.88	2.97	.69	2.28	.21	.19
Denver, Colo. ---	.66	2.75	.56	2.19	.30	.10
Salt Lake City Utah	.77	2.86	.67	2.19	.30	.10

States for the purpose of destroying competition * * *." But this section does not restrict the operation of the prohibitions, with civil sanctions, of the Robinson Patman amendments to § 2(a) of the Clayton Act. This was specifically pointed out by the Conference Report on the Robinson-Patman Act² H. Rep. No. 2951, 74th Cong., 2d Sess., p. 8.

Petitioners further contend that basing point systems were well known prior to the enactment of the Robinson-Patman Act and were considered by Congress to be legal. From this petitioners conclude that they remained legal in the absence of a clear command to the contrary. Cf. [735] *Parker v Motor Boat Sales* 314 U. S. 244; *Helvering v. Griffiths*, 318 U. S. 371. But we think that the premise falls, and [966] with it the conclusion, whatever it might be if the premise were valid.

In support of the legality of basing point systems, petitioners rely on *Maple Flooring Assn. v United States*, 268 U. S. 563, 570, and *Cement Manufacturers Assn. v United States* 268 U. S. 588; 597. But these were suits to restrain violations of the Sherman Act, and did not involve the prohibition of the Clayton Act upon discriminations in price. The only question for decision in those cases was whether there was a concerted price fixing scheme among competing sellers, accomplished in part by their adoption of a uniform basing point system: in fact, no prohibited concert of action was found.

In any event, the basing point systems involved in those cases were quite unlike that used by petitioners. In the *Maple Flooring* case, *supra*, the single basing point was so close to most of the points of production as to result in but trivial freight variances; and the defendants in that case were willing to sell on a f o b mill basis whenever the purchaser so requested. In the *Cement* case, *supra*, the defendants used a multiple basing point system, with a basing point at or near each point of production. Under this system, any manufacturer, in order to compete in the territory closer freightwise to another, would absorb freight, by adjusting his mill price to make his delivered price as low as that of his competitors. Under this system the delivered price for any locality was determined by the nearest basing point. We have no occasion to decide whether a basing point system such as that in the *Cement* case is permissible under the Clayton Act, in view of the provisions of § 2(b), permitting reductions in price in order to meet a competitor's equally low price. Cf. *Federal Trade Commission v. A. E. Staley Mfg. Co.*, No. 559 decided this day.

When the Robinson-Patman Act was adopted in 1936 [736] there was no settled construction of the Clayton Act in the federal courts

² The report said: "Section 3 authorizes nothing which that amendment [to § 2 of the Clayton Act] prohibits, and takes nothing from it."

contrary to that now urged by the Commission, as was the case with the measures involved in *Helvering v. Griffiths, supra*. Nor was there any settled administrative construction to the contrary. In fact in 1924 in the only decision involving the problem, the Federal Trade Commission, after extensive investigation and hearings, ordered the United States Steel Corporation and its subsidiaries to cease and desist from the sales of their rolled steel products on the "Pittsburgh-Plus" price system. 8 F. T. C. 1. The Commission held that the use of a single basing point at Pittsburgh for steel plants over the country was a violation of § 2 of the Clayton Act, as well as § 5 of the Federal Trade Commission Act, 15 U. S. C. § 45, as they then read. The respondents in that case sought no review of the Commission's order and filed with the Commission a formal statement of intended compliance with it.

Petitioners also rely on the failure of the Commission to make further orders against basing point systems in the period from 1924 to the passage of the Robinson-Patman Act in 1936. The Commission undertook no further proceedings because of difficulties of enforcement which it attributed to the exemption provisions of § 2 and to decisions of the lower federal courts in Clayton Act cases. Instead it pressed for clarifying amendments to the Act. See the Commission's Final Report on the Chain Store Investigation (1936) Sen. Doc. No. 4, 74th Cong., 1st Sess., pp. 89-90, 96-97. The Robinson-Patman Act was adopted in response to the Commission's recommendation that defects in § 2 be remedied and its prohibition of price discrimination strengthened.

Finally, petitioners argue that Congress, by the rejection of a provision of the Robinson-Patman Bill, which would have in effect prohibited all basing point systems, has indicated its intention to sanction all such systems. [737] This provision, as reported to the House by the Committee on the Judiciary, would have defined "price," as used in § 2 of the Clayton Act, as meaning "the amount received by the vendor after deducting actual freight or cost of other transportation, if any, allowed or defrayed by the vendor."

The practical effect of this provision would have been to require that the price of all commodities sold in interstate commerce be computed on an f. o. b. factory basis, in order to avoid the prohibited discriminations in selling price. It would have prohibited any system of uniform delivered prices, as well as any basing point [967] system of delivered prices. These effects were recognized in the Committee's report, see II. Rep. No. 2287, 74th Cong., 2d Sess., p. 14, and in the debates upon the Robinson-Patman Bill. Cf. 80 Cong. Rec. 8118, 8223-8224. Indeed the provision would have prohibited such a multiple basing point system as that in *Cement Manufacturers Assn. v. United States, supra*, as well as the present system.

Such a drastic change in existing pricing systems as would have

been effected by the proposed amendment engendered opposition, which finally led to the withdrawal of the provision by the House Committee on the Judiciary. 80 Cong. Rec. 8102, 8140. 8224. We think this legislative history indicates only that Congress was unwilling to require f.o.b. factory pricing, and thus to make all uniform delivered price systems and all basing point systems illegal per se. On the contrary we think that it left the legality of such systems to be determined accordingly as they might be within the reach of § 2(a), as enacted, and its more restricted prohibitions of discriminations in delivered prices.

We conclude that the discriminations involved in petitioners' pricing system are within the prohibition of the Act. We pass to the question whether these discriminations had the prescribed effect on competition.

[738] *Second.* Section 2(a) of the Clayton Act, as amended, prohibits only discriminations whose "effect * * * may be substantially to lessen competition * * * in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them * * *." Petitioners insist that the Commission's findings, based upon the facts stipulated, do not support its conclusion that petitioners' discriminations have the prescribed effect.

It is to be observed that § 2(a) does not require a finding that the discriminations in price have in fact had an adverse effect on competition. The statute is designed to reach such discriminations "in their incipiency," before the harm to competition is effected. It is enough that they "may" have the prescribed effect. Cf. *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346, 356-357. But as was held in the *Standard Fashion* case, *supra*, with respect to the like provisions of § 3 of the Clayton Act, prohibiting tying clause agreements, the effect of which "may be to substantially lessen competition," the use of the word "may" was not to prohibit discriminations having "the mere possibility" of those consequences, but to reach those which would probably have the defined effect on competition.

Since petitioners' basing point system results in a Chicago delivered price which is always lower than any other, including that at Kansas City, a natural effect of the system is the creation of a favored price zone for the purchasers of glucose in Chicago and vicinity, which does not extend to other points of manufacture and shipment of glucose. Since the cost of glucose, a principal ingredient of low-priced candy, is less at Chicago, candy manufacturers there are in a better position to compete for business, and manufacturers of candy located near other factories producing glucose, distant from the basing point, [739] as Kansas City, are in a less favorable posi-

tion. The consequence is, as found by the Commission, that several manufacturers of candy, who were formerly located in Kansas City or other cities served from petitioners' Kansas City plant, have moved their factories to Chicago.

Further, we have seen that prices in cities to which shipments are made from Kansas City are frequently discriminatory, since the prices in such cities usually vary according to factors, phantom freight or freight absorption, which are unrelated to any proper element of actual cost. And these systematic differentials are frequently appreciable in amount. The Commission's findings that glucose is a principal ingredient of low-priced candy and that differences of small fractions of a cent in the sales price of such candy are enough to divert business from one manufacturer to another, readily admit of the Commission's inference that there is a reasonable probability that the effect of the discriminations may be substantially to lessen competition.

The weight to be attributed to the facts proven or stipulated, and the inferences to be drawn from them, are for [968] the Commission to determine, not the courts. See *Federal Trade Commission v. Pacific States Paper Trade Assn.*, 273 U. S. 52, 63 [11 F. T. C. 636; 1 S. & D. 583] *Federal Trade Commission v. Algoma Lumber Co.* 291 U. S. 67, 73 [18 F. T. C. 669; 2 S. & D. 247] cf. *Labor Board v. Southern Bell Tel. Co.*, 319 U. S. 50, 60. We cannot say that the Commission's inference here is not supported by the stipulated facts, or that it does not support the Commission's order.

II. Booking Practices.

Ordinarily, when petitioners announce an advance in the price of glucose, they allow their customers a period of five days to "book" orders, that is, secure options to purchase, at the old price, and a period of thirty days in which to take delivery upon the options. The Commis[740]sion charged that petitioners have further violated § 2(a) of the Clayton Act, as amended, by permitting certain favored customers to secure options for the purchase of glucose and to take delivery at the old price, for periods longer than those usually permitted to other customers. The Commission also charged other violations of § 2(a) in that petitioners favored certain tank wagon customers by permitting them to book orders at the lower prices charged for tank car deliveries, and to take deliveries by tank wagon over extended periods of time. The Commission found upon ample evidence, that these discriminations were in fact made by petitioners.

Petitioners assert that the practices prohibited by § 2(a) are discriminations in price, and not in the terms and conditions of sale other than price. They rely on the fact that in the course of the progress of the Robinson-Patman Bill through Congress the phrase

"terms of sale," originally included in the prohibited discriminations, was stricken from the bill. But even if the contention be accepted, we cannot ignore the fact that the present discriminations in the terms of sale operated to permit the favored customers to purchase at a lower price than other customers, so that their only practical effect was to establish discriminations in price, precisely the evil at which the statute was aimed. And the Conference Committee, in reporting on this elimination of the phrase "terms of sale" from the bill, made it clear that § 2(a) still applied to indirect as well as direct discriminations in price. It said that with the elimination of the phrase "terms of sale," the act is inapplicable to "terms of sale except as they amount in effect to the indirect discriminations in price within the meaning of the remainder of subsection (a)." II. Rep. No. 2951, 74th Cong., 2nd Sess., p. 5.

Petitioners also contend that these sales to favored customers were to meet the competition of other sellers of glucose, and were therefore excepted from the pro[741]hibition of § 2(a), by the proviso of subsection (b) of § 2 of the Clayton Act, as amended. Subsection (b) provides:

"Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price * * * the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however,* That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price * * * was made in good faith to meet an equally low price of a competitor * * *"

The only evidence said to rebut the prima facie case made by proof of the price discriminations was given by witnesses who had no personal knowledge of the transactions, and was limited to statements of each witness's assumption or conclusion that the price discriminations were justified by competition. Examination of the testimony satisfies us, as it did the court below, that it was insufficient to sustain a finding that the lower prices allowed to favored customers were in fact made to meet competition. Hence petitioners failed to sustain the burden of showing that the price discriminations were granted for the purpose of meeting competition. Cf. *Federal Trade Commission v. A. E. Staley Mfg. Co.*, No. 559, decided this day.

Finally it is contended that there was no evidence to support the Commission's finding, which was referable to these practices as well as petitioners' basing [969] point practices, that the discriminations in price may diminish competition within the meaning of § 2(a). This finding as to the effect of both types of discrimination was

based on the same stipulation of facts which we have already considered in connection with the basing point practices. [742] Since the customers here are the same manufacturers of low-priced candies as were there involved, and since the price discriminations here are relatively substantial in a field where differences of a fraction of a cent in the price of candy are sufficient to divert business from one manufacturer to another, we think that the stipulation which we find to be applicable to these as well as the basing point practices, is sufficient to support the finding of the prescribed effect on competition.

III. *Discounts to Purchasers of By-products.*

Still other price discriminations by petitioners charged and found by the Commission were discounts allowed to certain favored purchasers of gluten feed and meal, by-products of petitioners' refining of corn, and other discounts allowed to certain favored purchasers of starch and starch products. It was not and is not contended that these allowances were due to differences in the cost of manufacture sale or delivery. But it is asserted that these discriminations did not violate § 2(a), since there was not the requisite effect on competition.

It was stipulated, and the Commission found, that the allowances in question were "sufficient," if and when reflected in whole or in substantial part in resale prices, to attract business to the favored purchasers away from their competitors, "or to force [their] competitors to resell * * * at a substantially reduced profit, or to refrain from reselling." But it is asserted that there is no evidence that the allowances ever were reflected in the purchasers' resale prices. This argument loses sight of the statutory command. As we have said, the statute does not require that the discriminations must in fact have harmed competition, but only that there is a reasonable possibility that they "may" have such an effect. We think that it was permissible for the Commission to infer that these discriminatory allowances were a substantial threat to competition.

[743] IV. *Advertising Allowances.*

The Commission also charged and found that petitioners violated § 2(e) of the Clayton Act, which provides:

"(e) * * * it shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms."

The alleged violation consisted of advertising expenditures made by petitioners for the Curtiss Candy Company in order to promote the sale of dextrose or corn sugar for use in candy manufacture. For this purpose petitioners entered into an arrangement with the Curtiss Candy Company, whereby during the years 1936 to 1939 they spent over \$750,000 in advertising Curtiss candy as being "rich in dextrose." At the same time Curtiss advertised its candy as being "rich in dextrose," and made the same statement on its labels. While Curtiss was free to purchase dextrose used in the advertised candies from other manufacturers, it in fact made all such purchases from petitioners, in annually increasing quantities until it purchased a total of seven million pounds in 1939. During the same period it purchased of petitioners large quantities of glucose, the purchases increasing from nothing in 1937 to almost fifteen million pounds in 1939. Although petitioners sold dextrose to others, it did not furnish proportionally equal advertising services to them.

Petitioners say that the advertising arrangement is not forbidden by § 2(e) because it was not made with the Curtiss Candy Company as a "purchaser." But during the period in question the Curtiss Company was in fact a purchaser of petitioners' commodity. The Commission could [744] properly infer that the advertising for which petitioners paid, contemplated the sale of that commodity to Curtiss, and that the advertising contemplated the offering for sale of the candy by Curtiss. Petitioners thus furnished a service connected with the sale or offering for sale of a com[970]modity upon terms not accorded to other purchasers. The statute does not require that the discrimination in favor of one purchaser against another shall be provided for in a purchase contract or be required by it. It is enough if the discrimination be made in favor of one who is a purchaser and denied to another purchaser or other purchasers of the commodity.

It is said also that the Curtiss Company was not a purchaser of a commodity "bought for resale, with or without processing" within the meaning of § 2(e), since the Curtiss Company buys dextrose from petitioners, but uses it with other ingredients to produce candy, an entirely new commodity, which it sells. While the Act does not define the term "processing," the conversion of dextrose into candy would seem to conform to the current understanding that processing is a mode of treatment of materials to be transformed or reduced to a different state or thing. See *Cochran v. Deener*, 94 U. S. 780, 788. In view of the purpose of the statute to prevent the enumerated discriminations attending the sale of a commodity for resale, the precise nature or extent of the processing before resale would seem to be immaterial. The statute is aimed at discrimination by supplying facilities or services to a purchaser not accorded to others, in all cases where the commodity is to be resold, whether in

its original form or in a processed product. The evils of the discrimination would seem to be the same whether the processing results in little or much alteration in the character of the commodity purchased and resold.

And finally it is said that the Commission was without jurisdiction because the dextrose sold by petitioners to [745] Curtiss was not found to have been sold in interstate commerce; that if the section is construed to apply to such transactions, it would be unconstitutional; and that in any case there is no showing that the transactions complained of, although not themselves in interstate commerce, have in any way affected such commerce. But the effect upon the commerce is amply shown by the interstate and national character of the Curtiss Company's business; by petitioners advertising for Curtiss, which was itself frequently in interstate commerce, amounting to \$750,000; and by Curtiss's own admission that it competed in the sale of its candy in interstate commerce, with all manufacturers of one cent and five cent bars of candy. Moreover some of petitioners' sales to other companies, to whom these allowances were not accorded, were made in interstate commerce; thus there was a discrimination against sales in interstate commerce, well within the power of the Commission to remedy.

Petitioners make a number of other arguments or contentions of lesser moment which we have considered but find it unnecessary to discuss. We conclude that the advertising furnished by petitioners was a service or facility "connected with the processing * * * sale, or offering for sale" of the commodity purchased by the Curtiss Company upon terms not accorded to other purchasers, and therefore violated the statute.

The several violations of §§ 2(a) and 2(e) of the Clayton Act, found by the Commission, sustained by the court below, and brought here for review, fall within the prohibitions of the Act. The Commission's conclusions are amply supported by its findings and the evidence, and the judgment is affirmed.

Mr. Justice ROBERTS took no part in the consideration or decision of this case.

Mr. Justice JACKSON concurs in the result.

FEDERAL TRADE COMMISSION

v

A. E. STALEY MFG. CO.¹

No. 559—F. T. C. Docket 3803

(Supreme Court of United States, Apr. 23, 1945)

METHODS, ACTS AND PRACTICES DISCRIMINATION IN PRICE—CLAYTON ACT, SEC.

¹ Reported in 324 U.S. 746, 65 S. Ct. 971. For case before Commission see 34 F.T.C. 1342. Lower court case reported in 144 F. (2d) 221.

2 (a)—DELIVERED PRICES AND TERMS AND CONDITIONS OF SALE—"PHANTOM FREIGHT". BOOKING PRACTICES AND DELIVERIES.

A Decatur, Ill., glucose manufacturer's delivered prices which included freight from Chicago, and practice of granting favored customers additional time to take deliveries, or lower prices constituted "price discrimination" within the Clayton Act.

METHODS, ACTS AND PRACTICES—DISCRIMINATION IN PRICE—CLAYTON ACT, SEC.

2 (a)—THAT PRICE DISCRIMINATION MADE TO MEET COMPETITION.

The amendment of the Clayton Act was for the purpose of making the defense that a price discrimination was made in order to meet competition a matter of evidence in each case.

METHODS, ACTS AND PRACTICES—DISCRIMINATION IN PRICE—CLAYTON ACT, SEC.

2 (a)—IF SIMILAR UNLAWFUL PRACTICE THERETOFORE ENGAGED IN BY ANOTHER.

Under the Clayton Act as amended, that a person charged with violation of the law had merely adopted a similar unlawful practice of another constitutes no defense.

PROCEEDINGS BEFORE COMMISSION—DISCRIMINATION IN PRICE—CLAYTON ACT,

SEC. 2 (a)—THAT PRICE DISCRIMINATION MADE TO MEET COMPETITION—WHETHER IN GOOD FAITH TO MEET EQUALLY LOW PRICE OF COMPETITOR.

Whether a price discrimination was made in good faith in order to meet a competitor's equally low prices must be determined by the Federal Trade Commission.

APPELLATE PROCEDURE AND PROCEEDINGS—FINDINGS OF COMMISSION—DISCRIMINATION IN PRICE—CLAYTON ACT, SEC. 2 (a)—THAT PRICE DISCRIMINATION MADE TO MEET COMPETITION—WHETHER IN GOOD FAITH TO MEET EQUALLY LOW PRICE OF COMPETITOR—COURT LIMITATION.

The Federal Trade Commission's finding that the inclusion of freight from Chicago in delivered prices of glucose manufactured in Decatur, Ill., was not in good faith to meet a lower price by competitor was supported by the record, and the Court of Appeals was without power to set aside such finding.

METHODS, ACTS AND PRACTICES—DISCRIMINATION IN PRICE—CLAYTON ACT, SEC.

2 (a)—THAT PRICE DISCRIMINATION MADE TO MEET COMPETITION—WHETHER IN GOOD FAITH TO MEET EQUALLY LOW PRICE OF COMPETITOR—BURDEN OF SHOWING.

Under the Clayton Act as amended, the burden of showing that price discrimination was made in good faith to meet a lower price by competitor rests upon person making such discrimination, and good faith of the discrimination must be shown in the face of the fact that the seller is aware that the discrimination is unlawful, unless good faith is shown, and in circumstances which are peculiarly favorable to price discrimination abuses.

METHODS, ACTS AND PRACTICES—DISCRIMINATION IN PRICE—CLAYTON ACT, SEC.

2 (a)—THAT PRICE DISCRIMINATION MADE TO MEET COMPETITION—WHETHER IN GOOD FAITH TO MEET EQUALLY LOW PRICE OF COMPETITOR—BURDEN OF SHOWING—REASONABLE AND PRUDENT PERSON CRITERION.

Under the Clayton Act as amended, a seller who has knowingly discriminated in price must show the existence of facts which would lead a

reasonable and prudent person to believe that the granting of a lower price would in fact meet the equally low price of a competitor.

METHODS, ACTS AND PRACTICES—DISCRIMINATION IN PRICE—CLAYTON ACT, SEC. 2 (a)—TERMS AND CONDITIONS OF SALE—BOOKING PRACTICES AND DELIVERIES.

Evidence sustained finding of Federal Trade Commission that glucose manufacturer's practices of granting favored customers additional time to take deliveries or lower prices were not adopted in good faith in order to meet the lower prices of competitors.

APPELLATE PROCEDURE AND PROCEEDINGS—EVIDENCE—WEIGHT AND INFERENCES—CLAYTON ACT PROCEEDING—COURT LIMITATION.

In proceeding before Federal Trade Commission under the Clayton Act, the appraisal of the evidence and the inferences to be drawn from it are for the Commission, not the courts.

(The syllabus, with substituted captions, is taken from 65 S. Ct. 971.)

On writ of certiorari to the Court of Appeals for the Seventh Circuit, judgment reversed and cause remanded, with instructions to enforce the Commission's order.

Mr. Walter B. Wooden, of Washington, D. C., for petitioner.

Messrs. Carl R. Miller, of Decatur, Ill., and *Wm. D. Whitney*, of New York City, for respondents.

MR. CHIEF JUSTICE STONE delivered the opinion of the Court.

Respondents, a parent company and its sales subsidiary, are engaged in the manufacture and sale of glucose or corn syrup in competition with others, including the Corn Products Refining Company, whose methods of marketing and pricing its products are described in our opinion in *Corn Products Refining Company v. Federal Trade Commission*, No. 680, decided this day. Respondents in selling their glucose, have adopted a basing point delivered price system comparable to that of the Corn Products Refining Company. Respondents sell their product, manufactured at Decatur, Illinois at delivered prices based on Chicago, Illinois, the price in each case being the Chicago price plus freight from Chicago to point of delivery.

In this proceeding, brought under § 11 of the Clayton Act, c. 323, 38 Stat. 730, 15 U. S. C. § 21, the Federal Trade Commission charged that respondents' pricing system resulted in price discriminations between different purchasers of glucose in violation of § 2(a) of the Clayton Act, as amended by the Robinson-Patman Act, c. 592, 49 Stat. 1526, 15 U. S. C. § 13. The case was heard by the [748] Commission on stipulations of facts and exhibits upon the basis of which the Commission ultimately made its findings. Applying the same principles as in the *Corn Products Refining Company* case it concluded that respondents had made discriminations between dif

ferent purchasers in the price of their product; and that respondents were unable to justify the discriminations, as permitted by § 2(b) of the Clayton Act, by showing that they were made "in good faith" to meet a competitor's equally low price. The Commission accordingly made its order directing respondents to cease and desist from the price discriminations.

On review of the Commission's order, the Court of Appeals for the Seventh Circuit set the Commission's order aside, one judge dissenting. 144 F. (2d) 221. One of the majority judges did not consider whether the price discriminations violated § 2(a), but held that in any event they were made in good faith to meet their competitors' price within the meaning of § 2(b). Another concurred in the result on the ground that the Commission had failed to make out a case of unlawful price discrimination, and for that reason he found no occasion to pass upon the merits of respondents' defense. The third judge dissented on the ground that respondents' discriminations were unlawful and not justified by competition. We granted certiorari, 323 U. S. 702.

The principal question for decision is whether respondents, who adopted the discriminatory price system of their competitors, including the Corn Products Refining Company, have sustained the burden of justifying their price system under § 2(b) of the Clayton Act, as amended, by showing that their prices were made "in good faith" to meet the equally low prices of competitors. A further question is whether there was evidence to support the Federal Trade Commission's findings that respondents, in granting to certain favored buyers, discriminatory prices [749] for their product, did not act "in good faith" to meet a competitor's equally low price within the meaning of § 2(b) of the Clayton Act.

[973] The Commission found that at all relevant times respondents have sold glucose, shipped to purchasers from their plant at Decatur, Illinois, on a delivered price basis, the lowest price quoted being for delivery to Chicago purchasers. Respondents' Chicago price is not only a delivered price at that place. It is also a basing point price upon which all other delivered prices, including the price at Decatur, are computed by adding to the base price, freight from Chicago to the point of delivery. The Decatur price, as well as the delivered price at all points at which the freight from Decatur is less than the freight from Chicago, includes an item of unearned or "phantom" freight, ranging in amount in instances mentioned by the Commission, from 1 cent per hundred pounds at St. Joseph, Missouri, to 18 cents at Decatur. The Chicago price, as well as that at points at which the freight from Decatur exceeds freight from Chicago, required respondents to "absorb" freight, varying in instances cited by the Commission from 4 cents per one hundred pounds at St. Louis, Missouri, to 15½ cents per hundred pounds at Chicago:

The Commission found that this inclusion of unearned freight or absorption of freight in calculating the delivered prices operated to discriminate against purchasers at all points where the freight rate from Decatur was less than that from Chicago and in favor of purchasers at points where the freight rate from Decatur was greater than that from Chicago. It also made findings comparable to those made in the *Corn Products Refining Company* case that the effect of these discriminations between purchasers, who are candy and syrup manufacturers competing with each other, was to diminish competition between them.

[750] The Commission also found that respondents during a period of from five to ten days after they advance the prices of their product, customarily permit purchasers generally to "book" orders or secure options to purchase glucose at the old price, for delivery within thirty days, but that they also have permitted certain favored purchasers to secure additional extensions of time for delivery upon such options. In consequence of these time extensions, the favored buyers were enabled to secure glucose at a lower price than that concurrently being charged to other buyers. In some instances, after a price advance, respondents also made fictitious bookings on which deliveries were later made, at the option of the favored buyers; and in still other cases sales were made to favored purchasers long after the expiration of the booking period. Respondents also book glucose in tank car lots to certain purchasers who lack storage facilities for such quantities; respondents then actually make deliveries in tank wagon lots over a period of many months, during which they are selling to others upon like deliveries at higher prices

These findings and the conclusion of the Commission that the price discriminations involved are prohibited by § 2(a) are challenged here. But for the reasons we have given in our opinion in the *Corn Products Refining Company* case the challenge must fail. The sole question we find it necessary to discuss here is whether respondents have succeeded in justifying the discriminations by an adequate showing that the discriminations were made "in good faith" to meet equally low prices of competitors.

I.

We consider, first, respondents' asserted justification of the discriminations involved in its basing point pricing system. As we hold in the *Corn Products Refining Company* case with respect to a like system, price discriminations are necessarily involved where the price basing point [751] is distant from the point of production. This is because, as in respondents' case the delivered prices upon shipments from Decatur usually include an item of unearned phantom freight or require the absorption of freight with the

consequent variations in the seller's net factory prices. Since such freight differentials bear no relation to the actual cost of delivery, they are systematic discriminations prohibited by § 2(a), whenever they have the defined effect upon competition.

Respondents sought to justify these discriminations before the Commission, by a stipulation detailing the history and use of their present pricing system. From this it appears that in 1920, when respondents began the manufacture of glucose or corn syrup, they found that syrup manufactured by their competitors "was being sold at delivered prices in the various markets of the United States;" that in Chicago two [974] large factories were manufacturing syrup and delivering it in Chicago at prices lower than prices then prevailing in any other market; and that the delivered price in such other markets was generally equal to the Chicago price plus the published freight rate from Chicago to the point of delivery. Respondents thus found in operation a pricing system which, if followed, would produce exact identity in prices of glucose of the several producers when sold in any city of the United States. Respondents, to gain access to the markets thus established, made their sales "by first quoting the same prices as were quoted by competitors and then making whatever reduction in price * * * was necessary to obtain business." When respondents soon found that their product would command the same market price as that of their competitors, they "adopted the practice of selling at the same delivered prices as [their] competitors, whatever they might be." Respondents have followed the same practice since June 19, 1936, the date of enactment of the Robinson-Patman Act.

[752] Section 2(b) of the Clayton Act provides:

"Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price * * * the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however,* That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price * * * was made in good faith to meet an equally low price of a competitor * * *."

It will be noted that the defense that the price discriminations were made in order to meet competition, is under the statute a matter of "rebutting" the Commission's "prima-facie case." Prior to the Robinson-Patman amendments, § 2 of the Clayton Act provided that nothing contained in it "shall prevent" discriminations in price "made in good faith to meet competition." The change in language

of this exception² was for the purpose of mak[753]ing the defense a matter of evidence in each case, raising a question of fact as to whether the competition justified the discrimination. See the Conference Report, H. Rep. No. 2951, 74th Cong., 2d Sess., pp. 6-7; see also the statement of Representative Utterbach, the Chairman of the House Conference Committee, 80 Cong. Rec. 9418.

But respondents argue that they have sustained their burden of proof, as prescribed by § 2(b), by showing that they have adopted and followed the basing point system of their competitors. In the *Corn Products Refining Company* case we hold that this price system of respondents' competitor in part involves unlawful price discriminations, to the extent that freight differentials enter into the computation of price, as a result of the selection as a basing point of a place distant from the point of production and shipment. Thus it is the contention that a seller may justify a basing point delivered price system, which is otherwise outlawed by § 2, because other competitors are in part violating the law by maintaining a like system. If respondents' argument is sound, it would seem to follow that even if the competitor's pricing system were wholly in violation of § 2 of the Clayton Act, respondents could adopt and follow it with impunity.

[975] This startling conclusion is admissible only upon the assumption that the statute permits a seller to maintain an otherwise unlawful system of discriminatory prices, merely because he had adopted it in its entirety, as a means of securing the benefits of a like unlawful system maintained by his competitors. But § 2(b) does not concern itself with pricing systems or even with all the seller's discriminatory prices to buyers. It speaks only of the seller's "lower" price and of that only to the extent that it is made "in good faith to meet an equally low price of a competitor." The Act thus places emphasis on individual competitive situations, rather than upon a general system of competition. Respondents are here seeking to [754] justify delivered prices which discriminate in favor of buyers in Chicago and at points nearer, freightwise, to Chicago than to Decatur, by a pricing system involving phantom freight and freight absorp-

²As originally introduced, the Robinson-Patman amendment contained no provision similar to that in § 2 of the Clayton Act as originally enacted, which provided "That nothing herein contained shall prevent * * * discrimination in price in the same or different communities made in good faith to meet competition." In the Senate this existing provision was added by amendment to the Robinson-Patman bill. 80 Cong. Rec. 6426, 6435. In the House, the Judiciary Committee reported the bill with the proviso, substantially as enacted in § 2(b). 80 Cong. Rec. 8139. The Conference Committee rejected the Senate version and approved the House amendment. The Report of the Conference Committee, speaking of the Senate proviso, said: "This language is found in existing law, and in the opinion of the conferees is one of the obstacles to enforcement of the present Clayton Act. * * * A provision relating to the question of meeting competition, intended to operate only as a rule of evidence in a proceeding before the Federal Trade Commission, is included in subsection (b). * * *" H. Rep. No. 2951, 74th Cong., 2d Sess., pp. 6-7.

tion. We think the conclusion is inadmissible, in view of the clear Congressional purpose not to sanction by § 2(b) the excuse that the person charged with a violation of the law was merely adopting a similarly unlawful practice of another.³

The statutory test is whether respondents, by their basing point system, adopted a "lower price * * * in good faith to meet an equally low price of a competitor." This test presupposes that the person charged with violating the Act would, by his normal, non-discriminatory pricing methods, have reached a price so high that he could reduce it in order to meet the competitor's equally low price. On the contrary, respondents have used their pricing system to adopt the delivery prices of their Chicago competitors, by charging their own customers upon shipments from Decatur the Chicago base price plus their competitors' costs of delivery from Chicago. Even though respondents, at many delivery points, enjoyed freight advantages over their competitors, they did not avail of the opportunity to charge lower delivered prices. Instead they maintained their own prices at the level of their competitors' high prices, based upon the competitors' higher costs of delivery, by including phantom freight in their own delivered prices.

Respondents have never attempted to establish their own non-discriminatory price system, and then reduced [755] their price when necessary to meet competition. Instead they have slavishly followed in the first instance a pricing policy which, in their case, resulted in systematic discriminations, by charging their customers upon shipments from Decatur, the Chicago base price plus their competitors actual costs of delivery from Chicago. Moreover, there is no showing that if respondents had charged non-discriminatory prices, they would be higher in all cases than those now prevailing under their basing point system. Hence it cannot be said that respondents' price discriminations have resulted in "lower" prices to meet equally low prices of a competitor.

Respondents make an ingenious argument that they could have used their present price for deliveries at Decatur (which is the Chicago base price plus freight from Chicago to Decatur) as their base price; and that with the addition of freight from Decatur to the points of delivery, the delivered prices would in all cases then be higher than the present prices, so that reduction to meet the lower prices of their competitors would be permissible under § 2(b). But this is no answer to the ruling of the Commission that the competi-

³The Chairman of the House Conferees, in presenting the Conference Report, emphasized with illustrations, that "this procedural provision cannot be construed as a carte blanche exemption to violate the bill so long as a competitor can be shown to have violated it first, nor so long as that competition cannot be met without the use of oppressive discriminations in violations of the obvious intent of the bill." See 80 Cong. Rec. 9418.

tive situation did not justify respondents' pricing system, since respondents' argument is based upon a hypothesis, which never in fact existed. The fact that respondents' prices are lower than those they might have charged, but never did charge, does not tend to show the establishment of a lower price to meet an equally low price of a competitor.

Further, we cannot say that respondents' discriminations in price were shown to have been made in a "good faith" effort to meet competition, as § 2(b) requires. As we have pointed out here and in our opinion [976] in the companion case, *Corn Products Refining Company v. Federal Trade Commission, supra*, the basing point system used by respondents discriminates systematically in favor of buyers in Chicago and at points nearer, freightwise, to Chicago [756] than to Decatur, and against purchasers at Decatur and points nearer to it, by reason of respondents' absorption of freight and collection of phantom freight.

This is illustrated most graphically by respondents' delivered prices at Decatur and Chicago. On August 1, 1939, these were \$2.09 at Chicago, and \$2.27 at Decatur. Since respondents incurred 18 cents freight in shipping to Chicago, their net price at the Decatur factory on shipments to Chicago was \$1.91. The discrimination in favor of Chicago and against Decatur was thus 36 cents, or 17 percent of the Chicago price, in a field where a difference of a fraction of a cent in the sales price of the candy processed from the glucose could divert buyers from one candy manufacturer to another. Only to a lesser degree are there like discriminations when other points of delivery are compared.

The Commission's conclusion seems inescapable that respondents discriminations, such as those between purchasers in Chicago and Decatur, were established not to meet equally low Chicago prices of competitors there, but in order to establish elsewhere the artificially high prices whose discriminatory effect permeates respondents' entire pricing system. The systematic adoption of a competitor's prices by including unearned freight in respondent's delivery price or what amounts to the same thing, the maintenance of a discriminatory and artificially high f. o. b. factory price in order to take advantage of the correspondingly high prices of a competitor, based on its higher costs of delivery, is not sufficient to justify the discrimination, for respondent fails to show, as the statute requires, the establishment of a "lower price" made in good faith to meet the equally low price of a competitor. By adopting the price system of their competitors, respondents have succeeded in many instances in establishing an artificially high price and have thus secured the benefit of the high [757] price levels of a competitor whose costs of delivery are greater.

A price discrimination is measured by the difference between the

high price to one purchaser and the lower price to another. Respondent's price discriminations were not dictated by the lower delivery costs or lower delivery prices of their competitors. In none of the markets in which respondents had a freight advantage over their Chicago competitors did respondents reduce their prices below those of their competitors. Instead they met and followed their competitors' prices by prices rendered artificially high by the inclusion of unearned freight proportioned to the amount by which their competitors' delivered costs exceeded their own.

We cannot say that a seller acts in good faith when it chooses to adopt such a clearly discriminatory pricing system, at least where it has never attempted to set up a non-discriminatory system, giving to purchasers, who have the natural advantage of proximity to its plant, the price advantages which they are entitled to expect over purchasers at a distance. And for like reasons, we must reject respondents' argument that the Commission's order could be rendered nugatory, by respondents' establishing such a high factory price as always to admit of reductions in order to meet the prices of competitors who are using a Chicago basing point system. For we think it could not be said that this practical continuation of the present discriminatory basing point system would be in good faith. But it does not follow that respondents may never absorb freight when their factory price plus actual freight is higher than their competitors' price, or that sellers, by so doing, may not maintain a uniform delivered price at all points of delivery, for in that event there is no discrimination in price.

[758] Congress has left to the Commission the determination of fact in each case whether the person, charged with making discriminatory prices, acted in good faith to meet a competitor's equally low prices. The determination of this fact from the evidence is for the Commission. See *Federal Trade Commission v. Pacific States Paper Trade Assn.*, 273 U. S. 52, 63 [11 F. T. C. 636; 1 S. & D. 583;] *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 73 [18 F. T. C. 669; 2 S. & D. 247]. In the present case the Commission's finding that respondents' price discriminations were not made to meet a "lower" price and consequently were not in good faith, is amply supported by the record, and we think the Court of Appeals erred in setting aside this portion of the Commission's order to cease and desist.

II.

The Commission found that respondents had not sustained the burden of rebutting the prima-facie case of price discriminations involved in their booking practices, since they had failed to show that their lower prices were "made in good faith to meet an equal"

low price of a competitor." The facts as stipulated were only that the discriminations were made in response to verbal information received from salesmen, brokers or intending purchasers, without supporting evidence, to the effect that in each case one or more competitors had granted or offered to grant like discriminations. It is stipulated that respondents, "believing such report to be true, has then granted similar" price discriminations. The record contains no statements by the persons making these reports and discloses no efforts by respondents to investigate or verify them, and no evidence of respondents' knowledge of their informants' character and reliability. It is admitted that in some instances respondents made sales upon bookings which they suspected had been made without knowledge of the buyers.

[759] In appraising the evidence, the Commission recognized that the statute does not place an impossible burden upon sellers, but it emphasized the good faith requirement of the statute, which places the burden of proving good faith on the seller, who has made the discriminatory prices. The Commission commented on the tendency of buyers to seek to secure the most advantageous terms of sales possible and upon the entire lack of a showing of diligence on the part of respondents to verify the reports which they received, or to learn of the existence of facts which would lead a reasonable and prudent person to believe that the granting of a lower price would in fact be meeting the equally low price of a competitor. The Commission thought that respondents' allowance of discretionary prices, in circumstances which strongly suggested that the buyers' claims were without merit, as well as respondents' readiness to grant discriminatory prices without taking any steps to verify the existence of a lower price of competitors, and the entire absence of any showing that respondents had taken any precaution to conduct their business in such manner as to prevent unwarranted discriminations in price, all taken together, required the conclusion that respondents had not sustained the burden of showing that their price discriminations were made in good faith to meet the lower prices of competitors.

Section 2(b) does not require the seller to justify price discriminations by showing that in fact they met a competitive price. But it does place on the seller the burden of showing that the price was made in good faith to meet a competitor's. The good faith of the discrimination must be shown in the face of the fact that the seller is aware that his discrimination is unlawful, unless good faith is shown, and in circumstances which are peculiarly favorable to price discrimination abuses. We agree with the Commission that the statute at least requires the seller, who has knowingly discriminated in price, to show the ex[760]istence of facts which would lead a reasonable and prudent person to believe that the granting of a

lower price would in fact meet the equally low price of a competitor. Nor was the Commission wrong in holding that respondents failed to meet this burden.

The appraisal of the evidence and the inferences to be drawn from it are for the Commission, not the courts. See *Federal Trade Commission v. Pacific States Paper Trade Assn.*, *supra*, 63; *Federal Trade Commission v. Algoma Lumber Co.*, *supra*, 73. We cannot say that the Commission's inference is not supported by the stipulated facts or that its inference does not support its order.

The Commission's order will be sustained. The judgment below will be reversed, and the cause remanded with instructions to enforce the Commission's order.

So ordered.

Mr. Justice ROBERTS took no part in the consideration or decision of this case.

Mr. Justice JACKSON concurs in the result.

FEDERAL TRADE COMMISSION
v.
STANDARD EDUCATION SOCIETY¹

No. 14517—F. T. C. Dock. 1574

(Circuit Court of Appeals, Second Circuit, Apr. 24, 1945)

APPELLATE PROCEDURE AND PROCEEDINGS—COURT OF APPEALS—CORRECTION OF RECORDS.

The Circuit Court of Appeals retains jurisdiction, regardless of expiration of term, to correct its records so that they shall speak the truth.

APPELLATE PROCEDURE AND PROCEEDINGS—COURT OF APPEALS—ENFORCEMENT ORDERS—IF SUBSEQUENT DISTRICT COURT DECISION IN PENALTY PROCEEDING.

The Circuit Court of Appeals had power to amend its enforcement order in proceedings by Federal Trade Commission to enforce its order directing respondent to cease and desist from certain unfair methods of competition to declare what court had in fact decided, if order did not so state, irrespective of subsequent decision of a District Court in action under statute to collect penalties for violations of Commission's order, where no final judgment had been entered in that act and no decision made whether record of enforcement order was correct, and in view that Circuit Court of Appeals may of its own motion correct its records, irrespective of decision of any other court.

APPELLATE PROCEDURE AND PROCEEDINGS—COURT OF APPEALS—IF ORDER OF, REVERSED BY SUPREME COURT—MANDATE'S INTERPRETATION.

Where Supreme Court reversed order of Circuit Court of Appeals and remanded cause with instructions to proceed in conformity with opinion, Circuit Court of Appeals was required to look to Supreme Court's opinion to interpret the mandate.

¹ Reported in 148 F. (2d) 931. For case before Commission, see 16 F.T.C. 1, as modified by 30 F.T.C. 827. Original modification of the cease and desist order is reported in 86 F. (2d) 692, and reversed by the U.S. Supreme Court of such decree in 302 U.S. 112.

APPELLATE PROCEDURE AND PROCEEDINGS—COURT OF APPEALS—CORRECTION OF RECORDS—ENFORCEMENT ORDERS—WHERE PURSUANT TO MANDATE AFTER REVERSAL OF PRIOR ORDER—IF RETROACTIVE EFFECT NOT INTENDED.

Where it did not appear that Circuit Court of Appeals, in entering enforcement order in proceedings by Federal Trade Commission to enforce its order directing respondent to cease and desist from certain unfair methods of competition pursuant to mandate of Supreme Court after reversal of prior order, intended to make the order retroactive as of December 10, 1937, order would not be amended after expiration of term to so provide.

(The syllabus, with substituted captions, is taken from 148 F. (2d) 931.)

In proceeding by Commission for enforcement of an order to cease and desist and in which order of enforcement was entered on May 20, 1938, and on defendant's motion to amend the enforcement order, motion denied.

Mr. Henry Ward Beer, of New York City, for the motion.

Mr. Joseph J. Smith, Jr., of Washington, D. C., opposed.

Before L. HAND, SWAN, and CHASE, *Circuit Judges*.

PER CURIAM:

This cause again comes before us, now upon a motion of the respondent to amend our order of May 20, 1938, by inserting the phrase "*nunc pro tunc*." The facts are as follows: In 1929 the Commission brought its own proceeding against the respondent, which ended in the entry of a "cease and desist" order on December 24, 1931, forbidding it to continue a number of specified representations in the sale of its encyclopedia. The respondent having failed to obey this order, the Commission, on January 20, 1936 filed the "enforcement proceeding" at bar, which on December 14, 1936, resulted in our decision, affirming and enforcing the Commission's order in some respects, but reversing it in others. *Federal Trade Commission v. Standard Education Society, Inc.*, 86 F. (2d) 692 [24 F. T. C. 1591; 2 S. & D. 366]. The Commission appealed from so much of this decision as modified its order, and on November 8, 1937, the Supreme Court reversed our order except as it had modified "clause ten." *Federal Trade Commission v. Standard Education Society, Inc.* 302 U. S. 112 [25 F. T. C. 1715; 2 S. & D. 429]. Its opinion concluded with these words, p. 120: "The decree below will be reversed except as to modification of clause ten of the Commission's order, and the cause is remanded with instructions to proceed in conformity with this opinion." The mandate, remitted to us on December 9, 1937 ordered: that "this cause be, and the same is hereby, remanded to the said Circuit Court of Appeals for further proceedings in conformity with opinion of this Court." On December 10 our clerk in accordance with our Rule 46, entered the usual order, *sua sponte*, which recited the filing of the mandate and

ordered "that the decision of the Supreme Court of the [932] United States be made the decision of this court." The respondent moved in the Supreme Court for a rehearing, and to recall the mandate; and, after both motions had been denied wrote to the Commission on January 11, 1938, announcing that on the 15th or 16th it would move "to resettle the order * * * entered upon the Mandate." The Commission's counsel answered on February 5, 1938, as follows: "In line with the understanding at the recent conference * * * I am enclosing herewith five copies of a proposed final decree in this case. The respondent, which did not accept this form, moved on April 14, 1938, to "resettle" the clerk's order, and the Commission submitted an alternate form, which we accepted and entered as our own on May 20, 1938. It is that order to whose amendment the present motion is directed. The respondent moved to resettle that order, and we denied the motion on June 13, 1938, *Federal Trade Commission v. Standard Education Society*, 97 F. (2d) 513 [27 F. T. C. 1680; 2 S. & D. 366] and on November 7, 1938, the Supreme Court denied its application for certiorari. *Standard Education Society v. Federal Trade Commission*, 305 U. S. 642.

Meanwhile § 45 of Title 15, U. S. Code, had been amended on March 21, 1938, by adding subdivision (1) which imposed a penalty of \$5000 for every violation of an order of the Commission "after it has become final." On March 28, 1940, nearly two years after the entry of our order of May 20, 1938, the Commission entered its own order, directing the respondent to file a report stating how it had complied with the original order. The respondent replied that it was obeying the "law"; and on October 20, 1941, the Commission sought a change in our order of May 20, 1938, which we refused. The Attorney General thereafter filed an action in the District Court for the Northern District of Illinois to collect penalties under § 45(1) of Title 15 for violation of the Commission's order, and that court decided on October 20, 1943, that our order of May 20, 1938, modified and affirmed the Commission's original order; and that the Commission's order of March 28, 1940, was "issued in compliance with § 45(i)." However, the district court refused to proceed in the action until the Commission, in accordance with our order, had reported to us as special master. The cause being in this posture, the respondent seeks the amendment of our order of May 20, 1938, on the theory that it should be regarded as intended to speak from the date of the clerk's order—December 10, 1937—in which event it argues that no penalties can be collected for the disobedience of any order of the Commission entered thereafter. Hence the supposed importance of amending our order, "*nunc pro tunc*."

Like all courts, we retain jurisdiction, regardless of the expiration of the term, to correct our records, so that they shall speak the

truth: shall declare what we have in fact decided. *Insurance Co. v. Boon*, 95 U. S. 117, 126, 127; *In Re Wight*, 134 U. S. 136; *Wetmore v. Karrich*, 205 U. S. 141, 153; *United States v. Mayer*, 235 U. S. 55, 67; *Blair v. Durham*, 139 F. (2d) 260 (C. C. A. 6). The decision of the District Court for the Northern District of Illinois does not conclude us from doing this here, as the Commission seems to suppose. In the first place, no final judgment has ever been entered in that action; in the second, that court did not decide whether the record of the order of May 20, 1938, is correct; in the third place, we may correct our records *ex mero motu*, in any satisfactory way regardless of the decisions of another court. Hence, if at the time we in fact intended to make the order of May 20, 1938 retroactive as of December 10, 1937, there would be nothing in the respondent's path. On the other hand, if we did not then so intend we have now no longer any power to make it retroactive, because that would be to make an operative change, our power to do which ended with the October, 1937, term.

There is not the least evidence that we meant the order of May 20, 1938, to operate retroactively, assuming it would have been permissible to do so. The clerk's order of December 10, 1937, merely followed the mandate, and the mandate by its very terms required further action by us: we were to proceed "in conformity with opinion" of the Supreme Court. Indeed, we must always look to the opinion to interpret the mandate. *West v. Brashear*, 14 Pet. 51, 54, 55; *Supervisors v. Kennicott*, 94 U. S. 498, 499; *Gaines v. Rugg*, 148 U. S. 228, 244; *In Re Sanford Fork & Tool Co.*, 160 U. S. 247, 256; *ex parte The Union Steamboat Company*, 178 U. S. 317, 319. It is true that there [933] are mandates which require no further action by this court: affirmances and reversals, which direct a dismissal of the complaint, are examples. But this mandate was not of that kind; it was desirable, when the time for enforcement arrived, that the forbidden conduct should not be imprecise, and to be gathered from the opinion at large. We might indeed have made our order of May 20, 1938, relate back to December 10, 1937, in which event—though only in that event—this motion would have been proper. But we did not mean to do so; and, in so far as the original order was in fact imprecise, it might have been unjust to the respondent if we had. That the respondent thought there was ample ground for imprecision in the order of December 10, 1937, is abundantly evident, not only from its disagreement with the Commission, but from its motion to resettle the order of May 20, 1938, and its effort to secure certiorari upon our denial of that motion.

Finally, we need scarcely add that the denial of this motion is not to be taken as any expression of opinion as to the validity of the Commission's order of March 28, 1940.

Motion denied.

A. P. W. PAPER CO.

v.

FEDERAL TRADE COMMISSION¹

No. 169—F. T. C. Dock. 4747

(Circuit Court of Appeals, Second Circuit, May 17, 1945)

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—PRODUCT NAMES AND SYMBOLS—"RED CROSS"—WHETHER TENDENCY TO MISLEAD.

Whether manufacturer's use of words "Red Cross" and Greek red cross emblem, in sale of toilet tissues and paper towels, has tendency to mislead the public presents a question of fact as to which Federal Trade Commission's judgment, if not arbitrary, should be accepted.

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—PRODUCT NAMES AND SYMBOLS—"RED CROSS"—WHETHER TENDENCY TO MISLEAD—IF APPROVAL BY OR ASSOCIATION WITH AMERICAN RED CROSS INDICATED.

[425] Testimony that words "Red Cross" and Greek red cross emblem used on toilet tissues and paper towels indicated to witnesses that goods were in some way approved by or associated with the American Red Cross sustained Federal Trade Commission's finding that use of quoted words and emblem had tendency and capacity to deceive the public.

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—PRODUCT NAMES AND SYMBOLS—"RED CROSS"—WHETHER TENDENCY TO MISLEAD—IF MORE CAREFUL OBSERVERS NOT MISLED.

That more careful observers were not misled by use of words "Red Cross" and Greek red cross emblem on toilet tissues and paper towels is immaterial in determining violation of Federal Trade Commission Act, since the act is intended to protect the unthinking and credulous members of the public as well as the more sophisticated and intelligent.

STATUTES AND STATUTORY CONSTRUCTION—RED CROSS STATUTE—PRIOR USERS OF WORDS OR EMBLEMS.

The legislative history and language of statute creating the American National Red Cross, and providing that prior users of emblem or words "Red Cross" should not be prohibited from continued use thereof, indicate congressional intent to permit continued use of "Red Cross" words and the symbol to those who were lawfully using them prior to January 5, 1905.

STATUTES AND STATUTORY CONSTRUCTION—RED CROSS STATUTE—PRIOR USERS OF WORDS OR EMBLEMS—WHETHER SUCH USE FOR "LAWFUL PURPOSE"—IF USE THERETOFORE ALSO MISLEADING.

Under statute providing that no person or corporation which actually used the Red Cross emblem, sign, insignia, or words, for any lawful purpose prior to January 5, 1905, should be deemed forbidden to continue the use thereof, a manufacturer's commercial use of words "Red Cross" on toilet tissue and paper towels prior to 1905 was not forbidden on theory that the Red Cross name and symbol had long been familiar to the American public and that the use prior to 1905 was also misleading so that its use was not for a "lawful purpose", since statutory proviso would be meaningless if such construction were adopted.

¹ Reported in 149 F. (2d) 424. For case before Commission, see 38 F.T.C. 1.

STATUTES AND STATUTORY CONSTRUCTION—THAT TWO STATUTES DEAL WITH RELATED SUBJECT MATTER.

Two statutes dealing with related subject matter should, if possible, be so construed as to give effect to both.

STATUTES AND STATUTORY CONSTRUCTION—RED CROSS STATUTE—PRIOR USE OF WORDS OR EMBLEM—WHEELER-LEA AMENDMENT'S EFFECT ON RIGHTS UNDER COMMISSION LIMITATION BY.

The provision creating the American National Red Cross which permits use of words "Red Cross" to those who used such words prior to January 5, 1905, was not impliedly repealed by 1938 amendment to Federal Trade Commission Act prohibiting "unfair or deceptive acts or practices in commerce", so that Federal Trade Commission may not forbid use of words "Red Cross" and symbol to pre-1905 lawful users, but may require them to state that goods are not in any manner connected with American National Red Cross.

FEDERAL TRADE COMMISSION ACT—CEASE AND DESIST ORDERS UNDER—MEASURE OF NECESSARY RELIEF—WHERE MISREPRESENTATION.

Under Federal Trade Commission Act, measure of necessary relief against use of misleading words or symbols is peculiarly within province of Federal Trade Commission.

(The syllabus, with substituted captions, is taken from 149 F. (2d) 424.)

On petition to review order of Commission, order reversed and cause remanded.

Sullivan & Cromwell, of New York City (*Mr. Edward H. Green* and *Mr. E. H. Sykes*, both of New York City, of counsel), 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 SWAN, AUGUSTUS N. HAND, and CLARK, *Circuit Judges*.

[126] SWAN, *Circuit Judge*:

By a proceeding initiated in 1942 the Commission charged the petitioner with a violation of section 5 of the Federal Trade Commission Act, 15 U. S. C. A. § 45 (a), in using the words "Red Cross" and the Greek red cross emblem to designate certain of its products. The petitioner is a New York corporation engaged in the business of selling toilet tissues and paper towels in interstate commerce. Among its products are certain brands designated by it as "Red Cross Toilet Tissue" and "Red Cross Towels." On the wrappers of each package or roll, as well as in the petitioner's advertisements for these brands, the words "Red Cross" and the Greek red cross emblem are prominently displayed. Toilet tissues have been marketed by the petitioner under such trade name and emblem since 1897 and paper towels since 1933. In 1911 the trade-mark was

registered in the Patent Office, and the registration was extended to cover paper towels on an application filed in October 1933. The wrappers of each package or roll and the petitioner's advertisements contain additional words showing that the goods are the petitioner's product but these words catch the eye less readily than do the trade name and emblem.

The Commission found that the name "Red Cross" and the emblem of the Greek red cross on a white ground have long been associated in the minds of the public with the American National Red Cross and that the petitioner's use of the words "Red Cross" and the emblem has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that the petitioner's goods are sponsored or approved by, or in some manner connected with, the American Red Cross organization. The Commission further found that the additional words on the wrappers showing manufacture by the petitioner and registration of the trade name and mark are insufficient to correct the erroneous impression created through use of the name and emblem. Accordingly the Commission entered the order which the petitioner now challenges.

If success of the attack upon the order turned on maintaining the contention that the Commission's findings are not supported by substantial evidence, the petitioner would fail. Whether the petitioner's use of the words and emblem has the tendency and capacity to mislead the public presents a question of fact as to which the Commission's judgment, if not arbitrary, should be accepted. See *Brougham v. Blanton Mfg. Co.*, 249 U. S. 495, 499; *Leach v. Carlisle*, 258 U. S. 138, 140; *Herzfeld v. Federal Trade Commission*, 140 F. (2d) 207, 209 (C. C. A. 2) [38 F. T. C. 833]; *Zenith Radio Corp. v. Federal Trade Commission*, 143 F. (2d) 29, 31 (C. C. A. 7) [38 F. T. C. 903]. In the case at bar the Commission's inference is supported by the testimony of witnesses that the Red Cross words and emblem indicated to them that the goods were in some way approved by or associated with the American Red Cross. That more careful observers were not so misled is, of course, immaterial for the statute is intended to protect the unthinking and credulous members of the public as well as the more sophisticated and intelligent. *Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 116; *Charles of the Ritz Dist. Corp. v. Federal Trade Commission*, 143 F. (2d) 676, 679 (C. C. A. 2) [39 F. T. C. 657].

Decision must turn on the validity of the petitioner's contention that its use of the trademark is expressly permitted by the Act of January 5, 1905, 33 Stat. 599, as amended in 1910. 36 Stat. 604. Section 1 of the Act created a corporation by the name of "The American National Red Cross"; section 2 defined its powers—among others, the right to use "as an emblem and badge a Greek red cross on a white ground"; section 3 designated the purposes of the cor-

poration; and section 4 declared it unlawful for any other corporation, "not now lawfully entitled to use the sign of the Red Cross, hereafter to use such sign * * * for the purposes of trade * * *," and made the violation of "the provisions of this section" a misdemeanor punishable by fine or imprisonment or both, any fine so collected to be paid to the American National Red Cross. In 1910 section 4 was amended. After declaring the prohibition against use of the red cross emblem or the words "Red Cross," a proviso was inserted in 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 for[427]bidden by this Act to continue the use thereof for the same purpose and for the same class of goods."

We think it clear that the exception in the original section 4 of persons "now lawfully entitled to use such sign" and the even more specific language of the proviso in the 1910 amendment indicate the intention of Congress to permit the continued use of the Red Cross words and symbol to those who were lawfully using them prior to January 5, 1905. Further support for this view may be found in the committee report² on the 1910 amendment in the statement that "the section as amended gives the American Red Cross the fullest protection it is possible to afford by Congressional enactment, and at the same time amply protects the concerns possessing vested property rights in the emblem." Subsequent Congressional action is also significant. In 1919 a bill was introduced (H. R. 14330, 65th Cong., 3rd Sess., reprinted in Hearings before the Committee on Foreign Affairs on H. R. 6911, 77th Cong., 2d Sess., p. 371) to amend section 4 by striking out the proviso and making the prohibition general, but it failed of passage. In 1912 another bill (S. 469, 77th Cong., 2d Sess.) was introduced authorizing pre-1905 users "to continue to use the Red Cross" until July 1, 1917 with a tapering off period until July 1, 1933. This bill was passed by the Senate and sent to the House. The House Committee reported the bill to the House with minor amendments, and its report recognizes "that under existing law there are legal uses of the symbol by commercial users." (Report No. 2054, 78th Cong., 2d Sess., p. 4) However Congress adjourned before this bill was reached on the calendar. We think that this legislative history, as well as the statutory language, supports the petitioner's contention that its right to continue the use of the Red Cross words and symbol has received congressional recognition.

² Report No. 1256, 61st Cong., 2d Sess., reprinted in Hearings before the Committee on Foreign Affairs on H. R. 6911, 77th Cong., 2d Sess., p. 345, at 347.

The Commission advances two arguments in opposition. It says first that since the Red Cross name and symbol have long been familiar to the American public it may fairly be inferred that the petitioner's commercial use prior to 1905 was just as misleading as it is now; hence its pre-1905 use was not for a "lawful purpose" and the petitioner does not come within the proviso to section 4. This proves too much. It would be equally true, as counsel conceded upon oral argument, of any of the many pre-1905 commercial users of the Red Cross words and symbol; hence the 1910 proviso would be meaningless. Secondly, the Commission argues that section 4 does not confer upon pre-1905 users a right to continue to use the Red Cross words and emblem, but merely exempts them from criminal liability for continuing such use; and, if construed broadly enough to permit a use which misleads the public, it was, to this extent, impliedly repealed by the 1938 amendments to the Federal Trade Commission Act which extended the prohibition of section 5 so as to include not only unfair methods of competition in commerce but also "unfair or deceptive acts or practices in commerce." 52 Stat. 111; 15 U. S. C. § 45. That repeals by implication are not favored and that two statutes dealing with related subject matter should, if possible, be so construed as to give effect to both are principles of statutory construction too elementary to require the citation of authorities. Both principles may be recognized in the case at bar by holding that the Red Cross Act gives the petitioner the right to continue to use the Red Cross words and symbol but the Federal Trade Commission Act empowers the respondent to prevent their use in a deceptive manner. In other words, the Commission may not absolutely forbid the use of the words and symbol to pre-1905 lawful users but may require them to state, so plainly as to avoid the creation of misleading inferences by such use, that the goods are not sponsored, approved or in any manner connected with the American National Red Cross. The present order goes beyond permissible limits in forbidding any use of the words and mark. Accordingly the order must be reversed and the cause remanded to the Commission for the entry of an order which will not infringe the rights of the petitioner under the Red Cross Act as above construed. We do not ourselves attempt to formulate the new order because our recent decisions have held that the measure of the necessary relief is peculiarly within the competence of the Commission, *Herzfeld v. Federal Trade Comm.*, 140 F. (2d) 207, 209 [38 F. T. C. 833]; *Parke, Austin & Lipscomb v. Federal Trade Comm.*, [428] 142 F. (2d) 437, 442 [38 F. T. C. 881], cert. den. Oct. 16, 1944; *Charles of the Ritz Dist. Corp. v. Federal Trade Comm.*, 143 F. (2d) 676, 680 [39 F. T. C. 657].

Order reversed and cause remanded for further proceedings in conformity with this opinion.

CLARK, *Circuit Judge* (dissenting):

The net effect of our decision is that the remedial measures which the Commission may order to stop the deception of the public here found are limited to additional explanatory matter concerning petitioner's use of the well-known Red Cross emblem, and cannot reach that use itself. Had the Commission found such remedy adequate and ordered it, I should have viewed the result with equanimity as a presumptively fair adjustment of public and private rights. But having in mind our quite limited control over the Commission's decisions as to the appropriate remedies to be ordered against deceptive practices, I think we are bound to recognize the obvious fact that it is the Greek Red Cross which to the public symbolizes the Society itself; and mere explanatory material, however carefully framed, will be no more effective in the future than it has been in the past. In the nature of things, our decision must be one not of discretion, but of law; and as such it suggests potentially grave limitations, by the process of implied exception upon the far-reaching Federal Trade Commission Act of 1938.

As is well known, it had long been considered a defect of the original Federal Trade Commission Act that it reached only unfair competition or unfair competitive trade practices, and not, more directly, deception of the consuming public. Hence the 1938 amendments which also made unlawful "unfair or deceptive acts or practices in commerce," 15 U. S. C. A. § 45(a), were an important enlargement of the Commission's jurisdiction. *Cf. Fresh Grown Preserve Corp. v. F. T. C.*, 2 Cir., 125 F. (2d) 917, 919 [34 F. T. C. 1827 3 S. & D. 460]. That amendatory Act contains its own exceptions, and thus under well-known rules makes less possible the implication of other exceptions not stated. *Bondurant v. Watson*, 103 U. S. 281 288; *Amy v. City of Watertown* 130 U. S. 320, 323, 324; *Brown v. Duchesne*, 60 U. S. 183, 195, 198. The opinion, I think, inverts the problem when it overlooks this rule to say that there is no repeal by implication of the Red Cross Act of 1910 by the 1938 Act. Since they subserve quite different ends, and do not overlap, there is no question of implied repeal. The 1905 Act and its amendment of 1910 were grants of charter to the American National Red Cross, coupled with penal provisions and a limited exception therefrom to protect its official name; compare the significant direction that fines collected for violation of the statute should be paid to the Society. Certainly this shows no legislative intent to legalize deception of the public, which was not then a matter of federal administrative concern. Of course, the later bills designed to limit and eventually to end the limited exception from prosecution contained in the 1910 Act naturally would have less scope than the original Act, and the legislative discussions and committee reports show nothing else. I think the opinion confuses two separate problems viz. "legal

uses of the symbol" as against the society and the United States permitted by the special legislation of 1910 with deception of the consuming public prohibited by the broad regulatory Act of 1938. Hence I think we lack power to set aside the remedy here chosen by the Commission.

UNITED STATES STEEL CORPORATION, AMERICAN BRIDGE COMPANY, CARNEGIE-ILLINOIS STEEL CORPORATION (FORMERLY KNOWN AS CARNEGIE STEEL COMPANY, AND SUCCESSOR BY MERGER TO AMERICAN SHEET & TIN PLATE COMPANY), THE AMERICAN STEEL AND WIRE COMPANY OF NEW JERSEY, AND TENNESSEE COAL, IRON AND RAILROAD COMPANY v. FEDERAL TRADE COMMISSION¹

No. 6796—F. T. C. Dock. 760

(Circuit Court of Appeals, Third Circuit. May 24, 1945)

Motion by Commission—in proceeding by petitioners to review and set aside Commission's order in United States Steel Corp. et al., D. 760, July 21, 1924, 8 F.T.C. 1, requiring respondents to cease and desist from the use of their Pittsburgh Plus basing point system, as therein set forth—to strike from the petition, as neither logically nor legally relevant, all allegations which set up as grounds for vacation of order, alleged changes in factual conditions subsequent thereto; denied.

Messrs. Nathan L. Miller, Roger M. Blough, John J. Heard, II, Eastman Hackney, and John C. Bane, Jr., and Reed. Smith, Shaw & McClay, of Pittsburgh, Pa., for petitioners.

Mr. W. T. Kelley, Chief Counsel, and Mr. Joseph J. Smith, Jr., Asst. Chief Counsel, Federal Trade Commission, both of Washington, D. C., for respondent.

PER CURIAM:

This is a motion by the respondent to strike from the record the averments of paragraphs 8, 9, 10 and 11 of the Petition for Review. At this stage of the matter it is not entirely clear that such averments are irrelevant, as is asserted. The motion is therefore denied.

NOTE: Said order, entered on July 21, 1924, 8 F.T.C. 1, at pp. 59 and 60, required respondents, their subsidiaries, officers, etc., to cease and desist—

1. From quoting for sale or selling in the course of interstate commerce their rolled steel products known as plates, bars, structural shapes, sheets, tin plate, wire and wire products at Pittsburgh Plus prices. (By quoting for sale or selling at Pittsburgh Plus prices is meant respondents' systematic practice of quoting and selling said products manufactured at and shipped from points outside of Pittsburgh at their f. o. b. Pittsburgh prices plus amounts equivalent to what the railroad freight charges on such products would be from Pittsburgh to each different destination if such products were actually shipped from Pittsburgh.)

¹ Not reported in Federal Reporter.

2. From quoting for sale or selling in the course of interstate commerce their said rolled steel products upon any other basing point than that where the products are manufactured or from which they are shipped.

3. From selling or contracting for the sale of or invoicing such steel products in the course of interstate commerce without clearly and distinctly indicating in such sales, or upon such contracts or invoices, how much is charged for such steel products f. o. b. the producing or shipping point, and how much is charged for the actual transportation of said products, if any, from such producing or shipping point to destination.

4. From discriminating in the course of interstate commerce, either directly or indirectly, in price between different purchasers of their rolled steel products known as plates, bars, structural shapes, sheets, tin plate, wire and wire products sold for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition in any line of interstate commerce, including competition among the steel producers, or steel users, or both; provided, however, that nothing herein contained shall prevent discrimination in price between purchasers of said products on account of differences in the grade, quality or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition. The use by respondents in the course of such interstate commerce of the system of Pittsburgh Plus prices for their said steel products, manufactured at and shipped from points outside of Pittsburgh—which prices are their f. o. b. Pittsburgh prices plus amounts equivalent to what the railroad freight charges on such products would be from Pittsburgh to each different destination if such products were actually shipped from Pittsburgh—shall be deemed to constitute a violation of this order. The use by respondents in the course of such interstate commerce of any system similar to that of the Pittsburgh Plus system shall likewise be deemed to constitute a violation of this order. The practice by respondents of selling or contracting for the sale of said products in the course of interstate commerce upon any other basing point than that where the products are manufactured or from which they are shipped, shall be deemed to constitute a violation of this order.

On May 18, 1938, following the amendments of the Wheeler-Lea Act, March 21, 1938, to the Federal Trade Commission Act—which, among other things, subject to the time limitations and appellate procedure open to respondents as there provided, made the Commission's cease and desist orders self enforcing, and subsequent violation thereof punishable as there set out—petitioners filed their above petition to review and set aside the order in question.

The specific matter which the Commission moved be stricken namely, portions of par. b(8), and all of pars. b(9), b(10), and b(11) on pages 10-12 of the petition, was as follows:

(8) The order has been abandoned by the Commission and no longer has any validity * * * It has never been practicable for your petitioners or others similarly situated to comply and your petitioners have not complied with, the provisions of said order (other than paragraphs 1 and 3 thereof). The fact of such non-compliance has at all times been known to the Commission. Despite such knowledge of non-compliance, the Commission has never taken any action for the enforcement of said order and has abandoned such order

The Congress has refused for many years, and particularly recently, to pass legislation urged upon it which would have established as a matter of law the principle sought to be applied and the results hoped to be obtained by the Commission through its said order. Thus the order, now almost 14 years old, has neither legislative nor administrative sanction, and by the nonaction and refusal of Congress as aforesaid it has been clearly demonstrated that said order is contrary to public policy and the law of the land.

(9) The enforcement of the order at this time upon the record made prior to the year 1924 would, in view of changed conditions, deprive your petitioners of their right to a fair hearing. The Commission's findings as to the facts and the evidence adduced before the Commission all relate to a time preceding the entry of said order and not to conditions presently existing to which they are wholly inapplicable. Since the entry of said order, economic conditions and the practices and methods of competition (not only as they concern petitioners but as they concern petitioners' competitors and customers) have changed materially. The failure of the Commission to attempt to enforce said order has created the same situation for all practical purposes as would now exist if no order had been entered in 1924, but instead that now, in the year 1938, the Commission for the first time was entering its order based wholly upon the 1924 record. The entry of an order for the first time in 1938 based upon the 1924 record or, what amounts to the same thing, the making of the 1924 order automatically final and effective by the application of the provisions of the 1938 amendment without the right to review such order, would deprive petitioners of their right to a hearing upon the validity of said order in the light of present changed conditions, would deprive petitioners of their right to meet the present practices and methods of competition, and would otherwise be arbitrary, unreasonable, capricious and unlawful.

(10) The Commission, as expressly permitted by law, should have long since set aside its said order, but having failed to do so, it should set it aside prior to its filing with this Court the transcript of the record in the proceeding in which such order was entered. Such action by the Commission would give logical effect to its prior abandonment of the order and would give recognition to the fact that the record upon which such order was formulated is a "stale" record based upon past conditions, most of which have become non-existent. Unless the Commission sets aside its order while it still retains jurisdiction to do so, this Court should set aside such order for the reasons herein stated.

(11) The 1938 amendment provides a time when the aforesaid cease and desist order of the Commission shall become final, and provides heavy civil penalties for each violation of said order. Despite the aforesaid changed conditions and the aforesaid failure of the Commission to enforce said order, petitioners would nevertheless be subjected to such penalties with the resultant deprivation of property; such penalties could be enforced even though the Commission has made no attempt to obtain the enforcement of its order and even though it had previously determined that said order was erroneous or that it should not be enforced.

Thereafter, on October 4, 1944, the Commission filed its cross petition praying the court to make and enter a decree affirming and enforcing the cease and desist order in question, and following denial, as above, of the Commission's motion, the court, by order dated November 7, 1945, granted the Commission 60 days to "certify and file in this court a transcript of so much of the record before it in this proceeding as has not heretofore been certified and filed"; and further

ordered "that the petitioners herein shall make application within ninety days * * * (but not thereafter without special leave of court) for leave to adduce additional evidence as they may desire to adduce in this proceeding" and that "the petitioners and respondent shall file their briefs within such period of time thereafter as shall hereafter be fixed by special order of this court."

AMERICAN DRUG CORPORATION

v.

FEDERAL TRADE COMMISSION¹

No. 13064—F. T. C. Dock. 2170

(Circuit Court of Appeals, Eighth Circuit. June 8, 1945)

APPELLATE PROCEDURE AND PROCEEDINGS—ORDER OF COMMISSION SETTING ASIDE PRIOR CEASE AND DESIST ORDER AND DISMISSING COMPLAINT, WITHOUT PREJUDICE, ETC.—JURISDICTION TO REVIEW.

Circuit Court of Appeals had jurisdiction to review order of Federal Trade Commission setting aside a prior cease and desist order against petitioner which had become final and dismissing complaint without prejudice to Commission's right to institute further proceedings against the petitioner, regardless whether Commission's action was prompted because of changed conditions of fact or law or because public interest so required.

APPELLATE PROCEDURE AND PROCEEDINGS—ORDER OF COMMISSION SETTING ASIDE PRIOR CEASE AND DESIST ORDER AND DISMISSING COMPLAINT, WITHOUT PREJUDICE, ETC.—WHETHER PETITIONER RESPONDENT AGGRIEVED BY.

Whether petitioner was aggrieved by order of Federal Trade Commission setting aside a prior cease and desist order against petitioner and dismissing complaint without prejudice to Commission's right to institute further proceedings against petitioner depended upon merits of the controversy, and was not open to Circuit Court of Appeals upon motion to dismiss petition to review Commission's order.

(The syllabus, with substituted captions, is taken from 149 F. (2d) 608.)

On petition to review order of Commission and on Commission's motion to dismiss petition, motion denied.

Mr. William F. Fahey, for petitioner.

Mr. Joseph J. Smith, Jr., Asst. Chief Counsel, Federal Trade Commission, and *Mr. Donovan R. Divet*, Sp. Atty., Federal Trade Commission, for respondent.

Before **STONE** and **JOHNSEN**, *Circuit Judges*.

PER CURIAM:

On November 21, 1934, the Federal Trade Commission entered a cease and desist order against petitioner upon a complaint and an amended answer consenting to the order. No further proceedings

¹ Reported in 149 F. (2d) 608. For case before Commission, see 19 F.T.C. 436.

were taken in this matter for ten years until November 27, 1944. Then an assistant chief counsel of the Commission moved, in writing, to set aside the above order and to dismiss the complaint upon which the order was entered without prejudice to the right of the Commission to institute further proceedings against petitioner. A show cause order why the motion should not be granted was issued by the Commission and petitioner filed a return opposing the motion and challenging the jurisdiction of the Commission to set aside its earlier order on the ground that it was "not in the public interest" that such order be set aside and stating the reasons for its opposition. Oral arguments were heard by the Commission in support of and in opposition to the motion and counsel for petitioner states orally to this court that he there informed the Commission that he wished to and was prepared to present evidence, which was denied. On January 17, 1945, the Commission entered an order vacating and setting aside its order of November, 1934, and dismissing the complaint without prejudice. Petitioner has filed its petition for review of this order of January 17, and the Commission has filed the present motion to dismiss the petition to review. The bases of the motion to dismiss are (a) that the court has no jurisdiction to review this order and (b) that petitioner is in no way aggrieved by the order.

(a) JURISDICTION

The jurisdiction of this court to review orders of the Federal Trade Commission is defined by statute (Title 15 U.S.C.A. section 15 (b) and (c)).

Subsection (c) gives an affected party against whom a "cease and desist" order is issued by the Commission the right to a review by the proper circuit court of appeals.

Subsection (b) provides that until the time allowed for filing a petition for review has passed or until the transcript of the record in the proceeding has been filed in the circuit court in a review proceeding, the Commission may at any time upon notice "and in such manner as it shall deem proper modify or set aside, in whole or in part, any report or any order made or issued by it." This subsection further provides that if no petition for review has been filed within the allowable 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." The just quoted provision as to reopening carries a proviso "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."

The just quoted proviso seems to settle the right of this petitioner to file a petition for review. Here no petition for review had been filed to the order of 1934 and the time for such filing had long expired. In this situation the statute clearly gives the Commission the power at any time to "reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section." However, the sentence governs such action by the Commission in two respects: (1) it requires the opinion of the Commission as to changed conditions of fact or law or the opinion of the Commission that the public interest requires the exercise of such power; and (2) it requires that the exercise of such power be only "after notice and opportunity for hearing." Acting under these conditions and limitations the Commission may reach any result it deems proper. Among these specifically authorized results are to "set aside, in whole or in part, any report or order made or issued by it under this section." What the Commission has done here is to set aside in whole the order made by it in 1934. Whether it took that action because of changed conditions of fact or law or because the public interest so required is not revealed in the papers now before the court. But whatever may have prompted its action, the before quoted proviso expressly gives the right to review to the petitioner from this "order entered after such a reopening."

Obviously, changed conditions of fact or of law may be contestable issues. No less true is the issue of whether such action is required by "the public interest" (*Federal Trade Commission v. Klesner*, 280 U. S. 19, 23, 27, 30) [13 F. T. C. 581; 1 S. & D. 1166].

American Chain & Cable Co. v. Federal Trade Commission, 4 Cir., 142 F. (2d) 909, 912, 913 [33 F. T. C. 896], holds that, when no petition for review has been filed to the original order within the allowable time, such order is thereafter subject to "modification" under this subsection and that such modifying order is subject to review. The wording of the subsection makes no difference, as to right of review, between such a modification of an order and a setting aside in whole of such order—both are expressed in the statute.

(b) PETITIONER AGGRIEVED

Whether the petitioner is aggrieved by this order depends upon the merits of the controversy and is not open to us upon this motion to dismiss.

The present motion should therefore be denied.

GULF OIL CORPORATION
v.
FEDERAL TRADE COMMISSION¹

No. 11028—F. T. C. Dock. 4581

(Circuit Court of Appeals, Fifth Circuit. June 12, 1945)

FEDERAL TRADE COMMISSION ACT—PROTECTION OF PUBLIC.

The purpose of the Federal Trade Commission Act is the protection of the public.

EVIDENCE—IMPRESSION TESTIMONY—GENERAL PUBLIC—WHETHER FALSE AND MISLEADING ADVERTISING.

Upon hearing before Federal Trade Commission upon complaint charging a corporation with engaging in unfair practices in interstate commerce in advertising an insecticide manufactured by the corporation, testimony of witnesses drawn from the general public of impressions made upon their minds upon reading the advertisements was admissible as against contention that such testimony was a matter of opinion for the Commission to decide.

APPELLATE PROCEDURE AND PROCEEDINGS—EVIDENCE—WEIGHT AND INFERENCE—COURT LIMITATIONS.

In proceeding before Federal Trade Commission, the appraisal of evidence and inferences to be drawn therefrom are for the Commission, not the courts.

APPELLATE PROCEDURE AND PROCEEDINGS—MISLEADING ACTS AND PRACTICES—ADVERTISEMENTS—PUBLIC IMPRESSION—WHETHER CALCULATED TO DECEIVE.

The meaning of advertisement to the public, and whether it is calculated to deceive, is a question of fact, and Federal Trade Commission's conclusion with respect thereto may not be disturbed unless arbitrary or clearly wrong.

APPELLATE PROCEDURE AND PROCEEDINGS—FINDINGS OF COMMISSION—IF SUPPORTED BY SUBSTANTIAL EVIDENCE.

The Federal Trade Commission's fact findings when supported by substantial evidence are conclusive.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—FALSE AND MISLEADING ADVERTISING—QUALITIES OR PROPERTIES OF PRODUCT.

Substantial evidence sustained Federal Trade Commission's finding that statements in advertisements of insecticide as giving a cow complete protection and increasing the milk supply were deceptive, warranting an order forbidding the use of such statements.

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—FALSE AND MISLEADING ADVERTISING—IF CAPACITY TO DECEIVE—PROTECTION OF GENERAL PUBLIC INCLUDING IGNORANT, UNTHINKING AND CREDULOUS AS OBJECT OF ACT—APPEARANCES AND GENERAL IMPRESSIONS AS CRITERIA.

Advertisements having a capacity to deceive may be prohibited, since the Federal Trade Commission Act is not made for protection of experts,

¹ Reported in 150 F. (2d) 106. For case before Commission, see 38 F.T.C. 242.

but for the general public including the ignorant, the unthinking and the credulous, who in making purchases do not stop to analyze but are governed by appearances and general impressions.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—FALSE AND MISLEADING ADVERTISING—QUALITIES OR PROPERTIES OF PRODUCT—WHETHER MERE “PUFFING”—IF VIRTUES NOT POSSESSED, CLAIMED.

The Federal Trade Commission's order prohibiting certain statements in advertising an insecticide was not erroneous on ground that benefits set forth in advertisements beyond those actually derived from use of insecticide were merely “puff[107]ing,” which refers generally to expression of opinion not made as representation of fact, since while a seller has some latitude in puffing his goods he is not authorized to misrepresent or to assign to them benefits or virtues they do not possess.

(The syllabus, with substituted captions, is taken from 150 F. (2d) 106.)

On petition to review order of Commission, petition denied, and enforcement granted.

Mr. Alex F. Smith, of Shreveport, La., *Mr. John E. Green, Jr.*, of Houston, Tex., and *Mr. J. S. Atkinson*, of Shreveport, La., for petitioner.

Mr. Joseph J. Smith, Jr., Asst. Chief Counsel, Federal Trade Commission, of Washington, D. C., for respondent.

Before HOLMES, McCORD, and LEE, *Circuit Judges*.

LEE, *Circuit Judge*:

After a hearing upon a complaint charging the Gulf Oil Corporation with engaging in unfair and deceptive acts and practices in interstate commerce in violation of the Federal Trade Commission Act,¹ an order was issued by the Federal Trade Commission forbidding the use of certain statements in advertising Gulf Livestock Spray, an insecticide manufactured by the Gulf Oil Corporation and sold in interstate commerce. The case is brought here on petition by the Gulf Oil Corporation to review and set aside the Commission's order.

The petitioner is a Pennsylvania corporation carrying on business in Texas, Georgia, and Florida. To induce the purchase of the spray, it advertised the product in magazines, newspapers, circulars, and other advertising media which it caused to be distributed among the purchasing public generally throughout the United States.

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).

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."

"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.'"

"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."

These statements and representations and others of similar import, the Commission found, falsely represented, directly or by implication, that Gulf Livestock Spray afforded complete protection to livestock from all insects and that its use would cause milk production to increase and cows to be healthier; and that said misrepresentations were calculated to deceive.

[103] The petitioner here urges that:

1. The Commission erred in considering the testimony of "public witnesses" of the meaning conveyed to them by certain words and phrases in petitioner's advertisements;

2. The meaning of petitioner's advertisements is a question of law, not a question of fact;

3. The Commission's finding that petitioner was falsely advertising Gulf Livestock Spray is not supported by substantial evidence; and

4. Petitioner's representations are "puffing," hence excusable.

At the hearing before the Commission several lay witnesses were asked, over the objection of the petitioner, the meaning conveyed to them by the advertisements of the beneficial results to be obtained from the use of Gulf Livestock Spray. Petitioner urges that these questions called for the opinion of the witnesses with respect to a matter to be decided by the Commission, and cites authorities that deal in the main with the impropriety of such questions where the issue involved the interpretation of contracts.

The purpose of the law is the protection of the public, and the hearing was had in the public interest. No contract was before the Com-

mission for interpretation. The issue was the impression made or likely to be made upon the reading public by the petitioner's representations of the good qualities of its product, as conveyed in the advertisements. The testimony of witnesses drawn from the general public of the impressions made upon their minds upon reading the advertisements was admissible. This procedure in investigations of this kind has been in use over a period of years, and has received the sanction of the courts.²

"The appraisal of the evidence and the inferences to be drawn from it are for the Commission, not the courts." *Federal Trade Commission v. Staley Manufacturing Co., et al.*, 324 U. S. 746, decided April 23, 1945. The meaning of an advertisement to the public, and whether it is calculated to deceive is a question of fact, and the Commission's conclusion with respect thereto may not be disturbed unless arbitrary or clearly wrong.³

The statute provides that the Commission's findings as to facts, when supported by substantial evidence, are conclusive,⁴ and the courts have uniformly so held.⁵ That there was substantial evidence to support the Commission's findings in this case may not be seriously questioned. All of the experts—those testifying for the petitioner and those testifying for the Commission—were agreed that a tight spraying of the Gulf Livestock Spray would not give a cow complete protection. Not one witness among the number placed upon the stand by petitioner claimed that "one spraying lasts all day." Most of them stated that the spraying gave good results under favorable conditions for some seven to nine hours and fair results for a short time thereafter.

These witnesses were also in accord in their statement that the use of the spray from two to three times daily during the summer months, when the different fly [109] pests infesting cows were at their worst, would make the cows more contented and healthy and more productive than would be the case where no preventive measures were used;

² *Stanley Laboratories v. Federal Trade Commission*, 138 F. (2d) 388, 391 [37 F.T.C. 801; 3 S.&D. 596]; *Charles of the Ritz Distributors Corp. v. Federal Trade Commission*, 143 F. (2d) 676, 679 [39 F.T.C. 657]; *Aronberg v. Federal Trade Commission*, 132 F. (2d) 165, 167-168 [35 F.T.C. 979; 3 S.&D. 528]; *D. D. D. Corporation v. Federal Trade Commission*, 125 F. (2d) 679, 681-682 [34 F.T.C. 1821; 3 S.&D. 455]; *Ford Motor Co. v. Federal Trade Commission*, 120 F. (2d) 175, 182 [33 F.T.C. 1781; 3 S.&D. 378]; *Hall v. United States*, 267 Fed. 795, 797.

³ *Brougham v. Blanton Manufacturing Co.*, 249 U. S. 495, 499-500; *Leach v. Carlisle*, 258 U. S. 138, 140; *A. P. W. Paper Co., Inc. v. Federal Trade Commission*, 149 F. (2d) 424 (C. A. 2) decided May 17, 1945. See also *Bates & Guild Co. v. Payne*, 194 U. S. 106, 108-109 ("where Congress has committed to the head of a department certain duties requiring the exercise of judgment and discretion, his action thereon, whether it involve questions of law or fact, will not be reviewed by the courts, unless he has exceeded his authority or this court should be of opinion that his action was clearly wrong").

⁴ Federal Trade Commission Act, Sec. 5(c).

⁵ *Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 117 [25 F.T.C. 1715; 2 S.&D. 429]; *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 73 [18 F.T.C. 669; 2 S.&D. 247]; *Federal Trade Commission v. Pacific States Paper Trade Assn.*, 273 U. S. 52, 63 [11 F.T.C. 636; 1 S.&D. 583]; *Standard Container Manufacturers' Assn. v. Federal Trade Commission*, 119 F. (2d) 262, 265 [32 F.T.C. 1879; 3 S.&D. 364].

but all of them stated that this resulted from killing and driving off the fly pests, and that the spray as such neither increased the milk nor insured a healthier, more contented cow. According to the evidence there are a number of insects which are little affected by the spray, and while dairymen and entomologists from various sections of the United States testified to the good results had from the use of the spray, it may not be denied that no one of them testified to results from its use as completely beneficial as those set forth in the advertisements. We think that the Commission's findings⁶ with respect to the four advertisements fairly reflect the evidence.

Advertisements having a capacity to deceive may be prohibited.⁷ The "law is not made for the protection of experts, but for the public—that vast multitude which includes the ignorant, the unthinking, and the credulous, who, in making purchases, do not stop to analyze, but are governed by appearances and general impressions." *Florence Manufacturing Co. v. J. O. Dowd & Co.*, 178 Fed. 73, 75; *Charles of the Ritz Distributors Corp. v. Federal Trade Commission*, 143 F. (2d) 676, 679 [39 F. T. C. 657].

Petitioner argues that the benefits set forth in the advertisements beyond those actually derived from use of the spray are merely trader's talk or "puffing," hence excusable. "Puffing" refers, generally, to an expression of opinion not made as a representation of fact. 51 C. J. 90; *Vavricka, et al. v. Mid-Continent Co.*, 143 Neb. 94, 8 N. W. (2d) 674, 679; *Gould, et al. v. Escondido Valley Poultry Assn.*, 56 Cal. App. (2d) 681, 133 P. (2d) 448, 451. While a seller has some latitude in "puffing" his goods, he is not authorized to misrepresent them or to assign to them benefits or virtues they do not possess.

⁶"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."

⁷*Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 81 [18 F.T.C. 669; 2 S.&D. 247]; *Charles of the Ritz Distributors Corp. v. Federal Trade Commission*, 143 F. (2d) 676, 680 [39 F.T.C. 657]; *D. D. D. Corporation v. Federal Trade Commission*, 125 F. (2d) 679, 682 [34 F.T.C. 1821; 3 S.&D. 378]; *Ford Motor Co. v. Federal Trade Commission*, 120 F. (2d) 175, 181 [33 F.T.C. 1781; 3 S.&D. 455]; *General Motors Corp. v. Federal Trade Commission*, 114 F. (2d) 33, 35-36 [31 F.T.C. 1852; 3 S.&D. 282].

"It may be that there was no intention to mislead and that only the careless or the incompetent could be misled. But if the Commission, having discretion to deal with these matters, thinks it best to insist upon a form of advertising clear enough so that, in the words of the prophet Isaiah, 'wayfaring men, though fools, shall not err therein,' it is not for the courts to revise its judgment."⁸

The petition to set aside the order of the Commission is denied. The Commission's [110] request that a decree be entered commanding petitioner to obey its order and to comply therewith is granted.

⁸ *General Motors Corp. v. Federal Trade Commission*, 114 F. (2d) 33, 36 [31 F.T.C. 1852; 3 S.&D. 282]; *Charles of the Ritz Distributors Corp. v. Federal Trade Commission*, 143 F. (2d) 676, 680 [39 F.T.C. 657]; *Stanley Laboratories v. Federal Trade Commission*, 138 F. (2d) 388, 392-393 [37 F.T.C. 801; 3 S.&D. 596]; *Aronberg v. Federal Trade Commission*, 132 F. (2d) 165, 167 [35 F.T.C. 979; 3 S.&D. 528].

MODERN MARKETING SERVICE, INC. ET AL.

v.

FEDERAL TRADE COMMISSION¹

RED & WHITE CORPORATION ET AL. v. SAME

Nos. 8483, 8484—F. T. C. Dock. 3783

(Circuit Court of Appeals, Seventh Circuit. June 13, 1945)

APPELLATE PROCEDURE AND PROCEEDINGS—FINDINGS OF COMMISSION—IF SUPPORTED BY SUBSTANTIAL EVIDENCE.

Findings of fact by Federal Trade Commission are conclusive if supported by substantial evidence.

APPELLATE PROCEDURE AND PROCEEDINGS—EVIDENCE—WEIGHT AND INFERENCES—COURT LIMITATIONS.

The weight to be given to proven facts, as well as inferences reasonably to be drawn therefrom, are for the Federal Trade Commission.

METHODS, ACTS AND PRACTICES—DISCRIMINATION IN PRICE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE FEES—WHERE COLLECTED FROM SELLERS BY FIRM AND SEPARATE ENTITY DEALING IN GROCERIES UNDER BRANDS AND TRADE MARKS LEASED FROM PURCHASING AGENT FOR BUYERS—IF LESSEE FIRM ACTING FOR LESSOR FIRM IN COLLECTION AND DISTRIBUTING FEES, ETC.

Substantial evidence supported findings of Federal Trade Commission that a firm, engaged in business of manufacturing, packing, and selling groceries under brands and trade marks leased from a firm which was purchasing agent for buyers, was acting for or in behalf of lessor firm and buyers, and that brokerage fees collected by lessee firm from sellers were distributed to and accepted by lessor firm and buyers in violation of a statute prohibiting payment or receipt of commissions by any person or separate [071] entity from lessor and buyers.

¹ Reported in 149 F. (2d) 970. For case before Commission, see 37 F.T.C. 386.

METHODS, ACTS AND PRACTICES—DISCRIMINATION IN PRICE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE FEES—WHETHER LAWFULLY PAYABLE BY SELLERS TO AGENT FOR BUYERS FOR SERVICES OF VALUE TO SELLERS, BUT INCIDENTAL TO AGENT'S MAIN ACTIVITIES FOR FORMER.

Brokerage commissions could not be paid by sellers to firm acting as agent for buyers for services which were incidental to firm's main activities on behalf of buyers, even though services were genuine and of benefit to sellers.

The syllabus, with substituted captions, is taken from 149 F. (2d) 970.)

On petitions for review of orders of Commission, petitions denied, and cross-petition for enforcement allowed.

Mr. Franklin D. L. Stowe, of Buffalo, N. Y., *Mr. John T. Chadwell*, of Chicago, Ill., *Mr. Jos. C. Dinsmore*, of Cincinnati, Ohio, *Mr. John W. Ogren*, *Mr. L. McBride*, *Mr. Wm. D. McKenzie*, and *Mr. James M. Best*, all of Chicago, Ill., *Mr. Lawrence B. Murdock*, of St. Louis, Mo., and *Mr. Louis L. Rosen*, of New Orleans, La., for petitioner Modern Marketing Service.

Mr. Dana B. Hellings, of Buffalo, N. Y., for petitioner Red & White Corporation.

Mr. Joseph J. Smith, Jr., Asst. Chief Counsel, and *Mr. John T. Haslett*, both of Washington, D. C., for respondent.

Before *EVANS, MAJOR*, and *KERNER, Circuit Judges*.

MAJOR, Circuit Judge:

These are petitions to review and set aside a cease and desist order issued by the Federal Trade Commission, for alleged violation of Sec. 2 (c) of the Clayton Act as amended June 19, 1936 by the Robinson-Patman Act (15 U. S. C. A. 13 (c)). Petitioners also ask leave to adduce additional evidence in the event their petitions for review are denied. The Commission has filed a cross-petition for enforcement of its order. The petitioners in No. 8483 are Modern Marketing Service, Inc., hereinafter referred to as Modern Marketing; The Diamond Match Company, Morton Salt Company, The Quaker Oats Company, Ralston Purina Company, Wesson Oil & Snowdrift Sales Company, and the Procter and Gamble Distributing Company, hereinafter referred to as sellers. The petitioners in No. 8484 are Red and White Corporation, hereinafter referred to as Red and White; S. M. Flickinger Company, Inc., Juitard Cockcroft Corporation, Laurans Brothers, Inc., West Coast Grocery Company, H. O. Wooten Grocery Company, and Nash-Finch Company, hereinafter referred to as buyers.

The complaint was issued by the Commission on May 6, 1939, and alleged that Modern Marketing, an Illinois corporation, was engaged in the business of providing purchasing and other services for the buyers, maintaining its principal office and place of business in

Chicago, Ill., with branch purchasing offices in Buffalo, N. Y. and San Francisco, Calif. The complaint also alleged that Red and White up to October 1, 1936, which was the date of the formation of Modern Marketing, furnished purchasing and other services for the same buyers, with its principal office and place of business in Chicago, Ill., with branch offices in Buffalo, N. Y. and San Francisco, Calif.; that the sellers named in No. 8483 were engaged in the business of manufacturing, packing and selling groceries, food commodities and allied products in interstate commerce, and that said sellers are fairly typical and representative of a large group or class of manufacturers, processors and producers, engaged in the practice of selling a substantial portion of their commodities to buyers who purchase through Modern Marketing as an intermediary for buyers; and that the buyers named in No. 8484 were engaged in the wholesale grocery business and are stockholders of Red and White. The buyers are representative of a group or class of a large number of wholesale grocers, each of which is a stockholder in Red and White.

The complaint alleged that Red and White was organized on December 27, 1927, and from that period up until October 1, 1936 engaged in the business of providing purchasing and other services for the buyers; that during this period it received orders from its various stockholders to purchase commodities, particularly groceries and foodstuffs, and transmitted such orders [972] as agent of said buyers to sellers, and as a result thereof goods, wares and merchandise were by the sellers shipped to the buyers and the sellers paid brokerage to Red and White on such purchases. It was alleged that Red and White furnished advertising and promotional services to the buyers and their retail affiliated food stores, and that the cost of such services performed by Red and White for the buyers and their retail stores prior to October 1, 1936, was defrayed from funds derived from brokerage fees paid by sellers upon such purchases.

The complaint further alleged that Modern Marketing was organized and incorporated on or about October 1, 1936 by former employees of Red and White for the purpose of having it act as the purchasing agent for the stockholders of Red and White, to collect a brokerage fee from sellers and to furnish advertising services for such stockholders; that on or about October 1, 1936, Red and White entered into an agreement with Modern Marketing whereby the brands, trademarks and trade names owned or controlled by Red and White were leased to Modern Marketing for a consideration of \$30,000 per year. Also, pursuant to its obligations under the leasing agreement, Modern Marketing thereafter performed the same services for and in behalf of the buyers which were performed for the buyers by Red and White prior to October 1, 1936.

It was also charged that in all the buying and selling transactions the brokerage fees or commissions were paid and transmitted by

sellers to and accepted and received by Modern Marketing upon the purchases of buyers while Modern Marketing was subject to the control of Red and White, and was acting in fact for and in behalf of the buyers; and that the brokerage fees and commissions paid to Modern Marketing as intermediary upon the purchases of the buyers were transmitted to and accepted and received by the buyers in the form of services performed by Modern Marketing and Red and White for and in behalf of said buyers.

It was charged that the transmission and payment of such brokerage fees and commissions by sellers to Modern Marketing upon the purchases of buyers while acting for the buyers and under the control of Red and White, and the receipt and acceptance thereof by Modern Marketing, Red and White and the buyers, were in violation of the provisions of Sec. 2(c), which reads as follows:

"That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control of any party to such transaction other than the person by whom such compensation is so granted or paid."

Modern Marketing in its answer denied, among other things, that it acts for or in behalf of buyers or that it is subject to the direct or indirect control of Red and White or the buyers, or that it passes on to Red and White or the buyers any of the brokerage fees it collects from sellers upon the purchases of buyers.

Red and White in its answer denied, among other things, that prior to June 19, 1936 (the effective date of the amended Act), it was the purchasing agent for its stockholders. It denied that the receipt of the \$30,000 from Modern Marketing was the distribution of brokerage collected by Modern Marketing upon the purchases of its stockholders. Both Modern Marketing and Red and White in their answers alleged that the provision charged to have been violated was unconstitutional.

The sellers filed separate answers, disclaiming knowledge of the facts surrounding the organization and functions of Modern Marketing. They all admitted that upon the purchases of Red and White buyers, they had paid Modern Marketing brokerage fees and commissions, and prior to the passage of Sec. 2(c) they had paid brokerage to Red and White upon the purchases of its stockholders. They also alleged that the brokerage fees paid were for valuable services rendered to them.

The buyers filed answers in substantially the same form as that

filed by Red and White, except buyer Nash-Finch Company. This buyer admitted that it had placed orders for its requirements of Red and White branded products, prior to the formation of Modern Marketing, through Red and White, and subsequent thereto through Modern Marketing. It alleged, however, [973] that neither Modern Marketing nor Red and White was its agent and denied that it had received brokerage fees from Modern Marketing or Red and White upon its purchases, either directly or indirectly.

Extended hearings were held before a Trial Examiner for the Commission. 5,487 pages of typewritten testimony were taken, and 1,099 exhibits introduced. The Trial Examiner filed his report June 20, 1941. The case was presented to the Commission on briefs and oral argument May 24, 1943, and the Commission on September 8, 1943 issued its findings, conclusions and the cease and desist order now sought to be reviewed.

As is apparent, the record is voluminous. The same observation may be made as to the briefs which have been filed in this court by the parties in support of their respective contentions. Even to summarize the testimony contained in the record or the numerous theories and contentions advanced before this court would require an almost endless discussion. Furthermore, such a discussion would serve no useful purpose as the findings of the Commission are conclusive if supported by substantial evidence. *Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 117 [25 F. T. C. 1715; 2 S. & D. 429]; *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 73 [18 F. T. C. 669; 2 S. & D. 247]. Also the weight to be given to proven facts and circumstances, as well as the inferences reasonably to be drawn therefrom, are for the Commission. *Federal Trade Commission v. Pacific States Paper Trade Assn.*, 273 U. S. 52, 63 [11 F. T. C. 636; 1 S. & D. 583].

At this point, it is sufficient to observe that all or at any rate substantially all of the issues raised by the complaint and the answers thereto have been decided adversely to the petitioners by the Commission, and that the Commission has made findings which support its decision on such issues. This, of course, does not dispose of petitioners' contention that many of the material facts found by the Commission are not supported by substantial evidence, and we shall subsequently refer to the proof relied upon by the Commission in support of such findings.

Prior thereto, it appears appropriate to state the contested issues. In this connection, we note that the Commission makes a rather extended argument in favor of the constitutionality of the provision in question and that it is not related to or dependent upon other provisions of Sec. 2(c). We think we need not enter into any discussion of these questions, as no contention is made before this court by petitioners that the provision is unconstitutional. Nor do peti

tioners contend other than that the involved provision is separate and independent from the other provisions of the Act. In fact, petitioners in a joint reply brief expressly disclaim that they ever made a contrary contention. Furthermore, the provision has been considered and construed favorably to the Commission in the following cases: *Biddle Purchasing Co., et al. v. Federal Trade Commission*, 96 F. (2d) 687 [26 F. T. C. 1511; 2 S. & D. 447]; *Oliver Bros., Inc., et al. v. Federal Trade Commission*, 102 F. (2d) 763 [28 F. T. C. 1926; 3 S. & D. 86]; *Great Atlantic & Pacific Tea Co. v. Federal Trade Commission*, 106 F. (2d) 667 [29 F. T. C. 1591; 3 S. & D. 146]; *Webb-Crawford Co. v. Federal Trade Commission*, 109 F. (2d) 268 [30 F. T. C. 1630; 3 S. & D. 184]; and *Quality Bakers of America v. Federal Trade Commission*, 114 F. (2d) 393 [31 F. T. C. 1858; 3 S. & D. 287]. In these cases, the constitutionality of the provision has been sustained, as well as the fact that it is not dependent upon any other provision of the Act for force and validity. Petitioners make no contention that any of these cases have been erroneously decided but rely upon the argument that they are distinguishable and therefore inapplicable to the facts of the instant case.

While the contested issues are stated by the respective parties in different phraseology, we think they mean substantially the same thing. They are (1) whether petitioner Modern Marketing is controlled by Red and White and the buyers; (2) whether petitioner Modern Marketing is acting in fact for or in behalf of Red and White and the buyers; (3) whether petitioner Modern Marketing has distributed brokerage fees collected upon purchases of buyers to Red and White and the buyers; (4) whether sellers have paid brokerage fees and commissions to petitioner Modern Marketing as a buyer controlled intermediary or as an intermediary who acts in fact for and in behalf of the buyer; or (5) whether petitioner Red and White and the buyers have accepted brokerage fees and commissions from sellers through Modern Marketing upon their purchases. The Commission made findings upon which it decided each of these issues adversely to petitioners.

It is well to observe that Red and White is not charged by the Commission with the violation of any law prior to June 19, 1936 [974] (date of the Robinson-Patman Act). It is the position of the Commission, however, that Red and White and the buyers since that date have exercised control over Modern Marketing, that Modern Marketing has acted for the buyers and that Red and White and the buyers have received the benefit of brokerage paid Modern Marketing by sellers in violation of law. Notwithstanding that Red and White is not charged with any law violation prior to June 19, 1936, a large part of the testimony, as well as the findings of the Commission and the argument before this court, is devoted to Red and White. The pertinency of such testimony is based upon the Commission's

theory that the business conducted by Red and White was outlawed by the Robinson-Patman Act and that Modern Marketing was organized for the purpose of evading the law, in other words, to accomplish indirectly that which had theretofore been accomplished by Red and White. On this theory, the Commission places great stress upon the similarity of the operation by Modern Marketing as compared with that theretofore followed by Red and White.

Red and White on the other hand contends that Modern Marketing was organized not for the purpose of evading the law but in a good faith attempt to comply with it. It admits that it was a buyer controlled organization and for that reason came within the proscription of Sec. 2(c). It strenuously disclaims, however, that it was a buyer's agent, as found by the Commission. It insists it was an agent for the sellers. While it may be that the Commission has unduly stressed the importance of the operations by Red and White during the period it was conducting a lawful business, we think under the circumstances surrounding the organization of Modern Marketing such testimony was material and throws considerable light upon its activities.

We find it unnecessary to relate in detail the voluminous testimony concerning Red and White prior to the enactment of the provision in question. We have considered it and think there is no doubt but that it was not only buyer controlled but that it was a purchasing agent for the buyers as found by the Commission. Red and White was organized by a group of wholesale grocers on December 27, 1927, under the laws of the State of New York. Its capital stock was owned in its entirety by wholesale grocers. It acquired through a license agreement with its principal incorporator, Mr. S. M. Flickinger, certain brands herein referred to as Red and White brands. On June 18, 1932, it created a corporation under the name of Kitchen Products, Inc., which was a wholly owned subsidiary of Red and White and a holding company for certain Red and White brands and trademarks. Flickinger, president of Red and White, was also president of the buyer petitioner, S. M. Flickinger Co., Inc. He continued as president of both companies until his death in 1939.

The stockholders of Red and White, situated throughout the United States, were engaged in the sale and distribution of groceries and allied products under Red and White brands. Each stockholder was required to promote the sale of Red and White branded products to the consuming public through Red and White retail food stores associated with it.

At the beginning of its organization, the following resolution was adopted by its stockholders:

"That this company enter into a grocery products brokerage business, (a) obtaining from its stockholders and others orders for products bearing the Red and White, Serv-us, and other approved brands, and, (b) distributing orders for grocery products so solicited

among approved manufacturers, canners, packers, and wholesalers, who will ship the goods to customers, make collection, and pay to this corporation a suitable brokerage fee for its services."

The language "distributing orders * * * so solicited among approved manufacturers" discloses that Red and White at its very inception was intended to represent its stockholders in the purchase of products rather than the manufacturer in their sale. If there be any doubt, however, as to the situation which was intended and which as a matter of fact existed, it is dispelled by the contracts entered into between Red and White and its stockholders. By such contracts, the stockholders were granted authority to sell products packaged under Red and White brands in their respective operative territories. Each stockholder was allowed the exclusive right to sell in a designated territory, as well as the exclusive right to sell Red and White branded products, to Red and White retail affiliated outlets in the franchise territory. The stockholders were allowed to purchase "seasonable" canned goods such as fruits and veg[975] etables at a saving in price as compared with prices quoted by Red and White. On items so purchased, Red and White agreed to supply the jobber with labels at cost plus a reasonable handling charge. Such items, however, were required to be submitted to Red and White for approval as to quality.

Certain provisions of these contracts are of particular significance.

They provide:

"* * * the Jobber agrees that such Red and White Brand * * * products shall be purchased by said Jobber or its successors, only from or through the Corporation and subject to the conditions herein set forth; on which purchases the Corporation shall have the right to receive and collect from the manufacturer, packer, canner or shipper a reasonable brokerage commission. * * * The Jobber agrees to buy from or through the said Corporation Red & White Brand * * * products * * * a total of not less than One Hundred Twenty-five Thousand Dollars (\$125,000.00) during the first year from the date of this contract and not less than One Hundred Twenty-five Thousand Dollars (\$125,000.00) * * * worth during * * * each succeeding year."

These contracts are for a term of four years and thereafter are automatically renewed "provided the Jobber shall have purchased through the Corporation merchandise under the Red & White Brand * * * during the preceding year, a total of not less than One Hundred Twenty-five Thousand Dollars (\$125,000.00)." Thus, the effect of these contracts was to authorize Red and White to purchase on behalf of the buyers a minimum amount of products and to collect from the manufacturer a commission thereon.

Red and White also made contracts with the sellers, in which it was agreed that the seller "is to offer through the Corporation (Red

and White) the following commodities bearing the brand or brands of the Corporation and that he will confine the sale of such brands exclusively to Red and White wholesale supply houses." Red and White was given the right to approve the quality of the merchandise, and the manufacturer agreed that the price to Red and White supply houses would be no higher than "merchandise of equal quality to other buyer or buyers, however brokerage paid to the Corporation shall not be considered as part of the price." The manufacturer also agreed "to send copies of all invoices covering shipments to Red & White supply houses, immediately after shipment is made, to Red & White Corporation, Chicago, and to the branch office from which order was received or into whose territory shipment was made."

Usually the orders were placed with sellers by Red and White for its stockholders. On some occasions, however, the orders were sent to the sellers directly by the stockholders. In either instance brokerage on the sale was paid to Red and White. In some cases the stockholder, when submitting its orders to Red and White, would specify the seller to whom the order was to be submitted. In numerous cases, however, the name of the seller was omitted from the order and in such instances Red and White determined who the seller should be. Red and White stockholders handled products under brands other than Red and White. Orders for such products were placed with the seller's own salesman.

Red and White maintained a merchandising, advertising and a store development service. Under its merchandising service, it distributed to its stockholders price lists of commodities manufactured by sellers with whom it had working arrangements. Personal calls were made by various employees of Red and White upon stockholders to promote the sale of Red and White branded stock through such stockholders. The advertising service was inaugurated in 1933, and consisted of numerous publications prepared by Red and White for distribution to the Red and White retail stores. The stockholders were charged for this advertising matter and they in turn were reimbursed by Red and White retail stores. Later, each stockholder was allocated a certain amount for advertising within its territory and the Red and White retail stores were reimbursed from such allocation the money expended for advertising. The record discloses the amount of commissions which Red and White received from sellers on account of purchases by its stockholders for different years. For the fiscal year ending November 30, 1936, Red and White collected from sellers the sum of \$310,092.94 as fees and commissions upon the purchases of Red and White stockholders. This exact amount was paid to such stockholders as advertising allowances to promote the sale of Red and White branded products through such stockholders. Thus it is plain that such stockholders

received the entire benefit of the bro[976]kerage collected from the sellers by Red and White.

The store development committee, sometimes referred to as the field service committee, was organized by Red and White to promote the affiliation of retail outlets with the stockholders. In this connection, a field man was employed whose duty it was to promote the Red and White brand of products to the retail outlets. Conventions were held annually, in each of the six regions into which the United States was divided, for the stockholders and their retail affiliated Red and White food stores. The purpose of the conventions was to build up the enthusiasm of Red and White stockholders and their retail food stores for Red and White branded products. At such conventions "pep" speeches were made and educational matter presented for the purpose of promoting the sale of Red and White branded products through the retail stores. Suggestive bulletins were distributed to the stockholders and by them to the retail stores regarding supervision and management of such stores. These field activities were financed by Red and White. This feature of Red and White's business has been continued by it since the organization of Modern Marketing.

This brings us to a consideration of the status occupied by Modern Marketing. As already shown, its organization followed shortly after the enactment of the Robinson-Patman Act. In fact, it was the direct result of such enactment and was for the purpose either of compliance, as contended by petitioners, or of evasion, as claimed by the Commission. We need not decide or even express any opinion as to the motive which activated its organization. The mere circumstance of its organization is not inconsistent with petitioners' contention that it was for the purpose of compliance. Regardless of the motive, however, the question remains as to whether its activities violated the provision.

All of the stock of Modern Marketing was purchased by former employees of Red and White, and a majority of its shares were purchased by Mr. Asa Strause who held the position of secretary-treasurer and general manager of Red and White. Another stockholder, formerly a "merchandise man" for Red and White, became secretary and divisional manager for Modern Marketing. Another, formerly advertising manager of Red and White, was elected vice president of Modern Marketing, where he performs practically the same duties as he performed with Red and White. Another stockholder, formerly employed by Red and White as manager of its San Francisco branch, performs practically the same function for Modern Marketing, and another, formerly employed as branch officer of the Buffalo office of Red and White, was employed at the same time as branch officer for Modern Marketing. All of Red and White's twenty-four employees in the Chicago office except four were em

ployed by Modern Marketing. Numerous other Red and White employees at different branch offices were employed by Modern Marketing. The office furniture and equipment owned by Red and White in Chicago as well as several of its branch offices was purchased by Modern Marketing.

Shortly after, it became evident that Red and White could not lawfully operate as it had. Conferences took place between Strause, secretary and general manager of Red and White, and Flickinger, president of Red and White, relative to the formation of Modern Marketing. It was proposed by Strause that Modern Marketing become the licensee of Red and White brands. A plan was finally agreed upon, approved by the board of directors of Red and White which resulted in a license agreement, executed October 14, 1933 between Red and White as Licensor and Modern Marketing as Licensee.

This agreement among other things in an introductory clause recites:

"Whereas, said ownership and control of said brands, * * * are subject to various existing contracts between the Licensor and its stockholders and/or others."

It then provides:

"The Licensee for the period of one year from the date hereof shall have the exclusive right, privilege and authority throughout the United States to use and deal in, with jobbers or wholesalers the brands, * * * and to sublicense manufacturers to pack, ship and sell to jobbers or wholesalers goods and merchandise bearing said brands, * * * subject, however, to any and all existing contracts between the Licensor and its stockholders and/or others relative to said brands * * *."

If we understand the meaning of this provision, and we think we do, Modern Marketing merely stepped into the shoes formerly occupied by Red and White and assumed all contractual obligations existing [1933] between Red and White and its stockholders. Red and White, as heretofore pointed out, by contract with its stockholders received its authority to collect brokerage from the sellers and it also obligated its stockholders by the same contract to purchase from it a minimum amount of Red and White products annually or run the risk of forfeiting their franchise. The license agreement between Red and White and Modern Marketing having been made subject "to any and all existing contracts between" Red and White and the stockholders, it appears reasonable to conclude that Modern Marketing received its authority from the stockholders of Red and White to collect brokerage from the sellers. By the same token, the stockholders of Red and White were obligated to purchase from Modern Marketing a minimum amount of Red and White products annually, and in the case of failure to do so would

forfeit their contract with Red and White. This relation alone assumed by Modern Marketing relative to the stockholders of Red and White furnishes strong support for the Commission's finding that Modern Marketing is controlled by Red and White and the buyers and that it in fact acts on their behalf.

There are many other relevant circumstances which point in the same direction and which are inconsistent with petitioners' contention that Modern Marketing was a bona fide brokerage agent of the sellers. Under the license agreement, Modern Marketing was prohibited by Red and White from licensing any other person or firm to use or deal in the brands. It was granted the right of allowing sellers to pack goods under Red and White brands, but such sellers could only sell such products through Modern Marketing. It was provided that Modern Marketing was to furnish labels to the Red and White stockholders at cost plus a handling charge of 15 percent, and that the goods purchased under Red and White brands should be of a grade and quality approved by Red and White Corporation. The mere fact that Red and White retained the right to pass judgment upon the quality of the goods which the sellers distributed through Modern Marketing is indicative of control by Red and White.

Another indication of control lies in the fact that Modern Marketing was precluded from sublicensing anyone to deal in Red and White branded products. In this connection, it is also pertinent to note that Red and White brands are owned and controlled by Red and White and its stockholders. Without the use of these brands, Modern Marketing could not exist. The record shows that at least 70 percent of the total business done by Modern Marketing was under Red and White brands. Some 30 percent of its business was under manufacturers' and jobbers' brands, but it is reasonable to believe, as pointed out by the Commission, that even this business was acquired largely, if not entirely from Modern Marketing's right to use the Red and White brands. In addition to the licensing agreement between Modern Marketing and Red and White, agreements were entered into between Modern Marketing and the stockholders of Red and White for the advertising of Red and White branded products. Modern Marketing agreed with the Red and White stockholders to allocate money to such stockholders for the promotion and sale of Red and White branded products only.

A further circumstance relied on by the Commission as evidencing control by Red and White resides in the terms of the license agreement between Red and White and Modern Marketing, by which the license was to extend for the period of one year from October 1, 1936, subject to renewal for successive yearly periods upon terms and conditions to be agreed upon mutually "unless either party shall before September 1 of any year, give written notice to the Presi-

dent of the other party of its intention to terminate the license at the end of such yearly period." Under this provision, Red and White had a right to cancel the license agreement at the close of any year by written notice. It is true that at the end of the first year, the license agreement was renewed for a period of three years from October 1, 1937. While this power of cancellation may not in itself be evidence of control by Red and White, yet it carries with it the power to enforce control which we think has otherwise been established.

As heretofore pointed out, Nash-Finch, a buyer-defendant, admitted by its answer that it placed orders for its requirements of Red and White products through Modern Marketing. True, it denied that the latter was its agent, but its admission clearly implies that Modern Marketing was acting for it and is inconsistent with the theory that Modern Marketing was a salesman of the sellers.

[978] Sec. 2. (c) makes it unlawful to pay brokerage "to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control of any party to such transaction." We are of the view that the proof firmly supports the Commission's conclusion that Modern Marketing comes within the meaning and purpose of this language, notwithstanding the fact that certain testimony offered by the petitioner might reasonably lead to a contrary result. We also are of the view that the proof sustains the finding that it was the agent or representative of Red and White and the buyers, and certainly that it was an intermediary under their "direct or indirect control."

Looking at the realities of the situation in contrast to mere form it is evident that the only change of any consequence effected by the organization of Modern Marketing and its licensing agreement with Red and White was to change the ownership of the buyer-agent. None of the stock of Modern Marketing was owned by Red and White or the buyers; it was a separate entity whose stock was owned by parties other than buyers. This fact, while a circumstance to be considered, does not disprove that Modern Marketing was controlled by the buyers or that it was an intermediary subject to their direct or indirect control. As was said by the court in the Biddle case, *supra*, page 690:

"While the Biddle Company was disassociated in ownership and management from either buyers or sellers, direct and indirect control can be exercised by buyers or sellers over a broker in transactions of purchase and sale by means other than participation in the broker's ownership and management."

In view of what we have said, the voluminous testimony offered by petitioners, upon which their argument is largely predicated, is of little consequence and certainly not determinative. It is true that

Modern Marketing subsequent to its organization entered into brokerage contracts with the sellers and received commissions for services rendered. We assume, in fact we think the proof shows, that such services were genuine and of benefit to such sellers. This is not disputed by the Commission, in fact it is conceded, but it is claimed that such services were incidental to the main activities of Modern Marketing which were performed on behalf of Red and White and the buyers. Sec. 2 (c) has been construed in numerous cases as prohibiting the payment of brokerage commission under such circumstances. The court in *Oliver Bros., Inc. et al., v. Federal Trade Commission*, 102 F. (2d) 763, 770 [28 F. T. C. 1926; 3 S. & D. 86], said:

"While such services resulting in sales by the sellers and obviating, no doubt, the adoption of other sales defenses, are of undoubted benefit to them, this benefit is incidental and is an entirely different thing from the rendering of services by an agent responsible to the seller as principal."

In *Great Atlantic & Pacific Tea Co. v. Federal Trade Commission*, 106 F. (2d) 667, 674 [29 F. T. C. 1591; 3 S. & D. 146], the court stated:

"The phrase 'except for services rendered' is employed by Congress to indicate that if there be compensation to an agent it must be for bona fide brokerage, viz., for actual services rendered to his principal by the agent. The agent cannot serve two masters simultaneously rendering services in an arm's length transaction to both. While the phrase, 'for services rendered,' does not prohibit payment by the seller to his broker for bona fide brokerage services, it requires that such service be rendered by the broker to the person who has engaged him. In short, a buying and selling service cannot be combined in one person."

Sec. 2 (c) has been similarly construed in *Quality Bakers of America v. Federal Trade Commission*, 114 F. (2d) 393, 399 [31 F. T. C. 1858; 3 S. & D. 287], and in *Webb-Crawford Co., et al. v. Federal Trade Commission*, 109 F. (2d) 268, 270 [30 F. T. C. 1630; 3 S. & D. 184]. We agree with the construction that Sec. 2(c) prohibits the payment for services rendered by a broker who is related to the opposite party in any of the ways designated in the provision. Furthermore, we are of the view that where such relationship exists it is immaterial whether the services rendered the seller were genuine or fictitious and whether they were incidental or otherwise. Even good faith on the part of both the broker and the seller cannot be utilized to escape the condemnation of the provision.

We also think that the proof supports the Commission's findings to the effect that brokerage fees collected by Modern Marketing from the sellers upon purchases made on behalf of the buyers were distributed to and accepted by such buyers and Red and White.

True, the distribution was not direct as it was in some of the [979] cases to which we have referred. The fact, however, that it was more subtle does not change its purpose or effect. For the year from December 1, 1936 to December 1, 1937, Modern Marketing had a brokerage income of \$320,658.56, received from its sellers upon purchases by stockholders of Red and White, and of this income it paid to such stockholders \$135,712.85 as advertising allowances for point-of-sale advertising. It does not seem unreasonable, as argued by petitioners, that money thus expended for advertising increased the consumer demand for Red and White products and therefore was of benefit to the manufacturer as the seller of such products. On the other hand, it must be conceded that such advertising was for the benefit of Red and White stockholders and buyers, in fact we think it was for their primary benefit, and that such allowance for advertising must be treated the same as though it had been paid to such buyers without any restriction as to the manner of its use.

Red and White received directly from Modern Marketing \$30,000 per annum by reason of the license agreement between it and Modern Marketing for the use by the latter of the labels owned by Red and White. Modern Marketing did not keep its brokerage income separate from its other income. Petitioners argue that there is no proof but that this license fee was paid from income of Modern Marketing other than its brokerage fees. This conceivably could be the fact, but we think it is also true, as pointed out by the Commission, that all of Modern Marketing's income was the result directly or indirectly of the license agreement and its right to use the labels of Red and White. Without such use it could not have existed. The great value and worth of the labels owned by Red and White is emphasized by petitioners. The value and worth of such labels after their use had been licensed to Modern Marketing could only be maintained through the activities of the latter. This result was achieved by the allocation of money to the stockholders of Red and White and by other services rendered by Modern Marketing. We think it cannot be logically contended but that Red and White received a direct benefit from the commissions collected by Modern Marketing from the sellers. Moreover, the buyers were stockholders of Red and White and the allowances received by them from Modern Marketing on account of their purchase of Red and White products inured, even though indirectly, to Red and White itself. There is no point in further relating or discussing numerous other circumstances relied upon by the Commission in support of its finding that Red and White and the buyers accepted brokerage fees from Modern Marketing which had been received by it from the sellers.

Red and White and the buyers, as well as Modern Marketing and the sellers, have filed separate petitions for leave to adduce additional testimony. All of such testimony was offered at the hearing

before the Examiner and its admission denied. We see no occasion to set forth or discuss it. We have examined the record and are satisfied that in the main such evidence is not material to the issues involved. Especially is this so in view of the determination which we have made of such issues. We might add that in our opinion the rulings of the Examiner on the admission of evidence were as free from error as could reasonably be expected considering the length of the hearing and the volume of testimony which was offered. The petitions are denied.

Modern Marketing contends that even if the order is not set aside it should be modified. We do not agree. A reading of the order discloses, so we think, that it is predicated upon the findings of the Commission which we have approved.¹ It may be, as argued, that the order will work a hardship upon Modern Marketing. If so, that is the fault of the congressional enactment and not the Commission's order. The harshness of the order, if such is the case, [1980] constitutes no legal reason for its non-enforcement.

The petitions and each of them to set aside and vacate the Commission's order are denied. The cross-petition by the Federal Trade Commission for enforcement of its order is allowed. A decree will be entered accordingly.

¹The order directs:

"1. That the buyers cease and desist from accepting from sellers any brokerage fee or commission, or discount or allowance in lieu thereof; and from accepting from Red & White or Modern Marketing, any brokerage fee received by the two corporations from such sellers, either in the form of money or credits, or in services or benefits provided by the two corporations through the use or expenditure of any such brokerage.

"2. That the sellers cease and desist from paying to any such purchasers, or to Modern Marketing or Red & White, anything of value as brokerage or other compensation.

"3. That Modern Marketing cease and desist from receiving brokerage fees from the sellers; and from transmitting such fees to the purchasers or to Red & White, either in the form of money or credits, or in services or benefits furnished by it through the use or expenditure of such fees.

"4. That Red & White cease and desist from accepting from the sellers, or from Modern Marketing, any brokerage fee; and from transmitting any brokerage fee to such purchasers, either in the form of money or credits, or in the form of services or benefits provided by it through the expenditure of any such brokerage fees."

PENALTY PROCEEDINGS

Within the 6-months period covered by volume 40, \$7,900 in penalties were assessed for violations of cease and desist orders in the following cases:

United States v. Rango Tablet Company, et al., United States District Court for California, Southern District; \$5000 penalty assessed with \$23.10 costs, on January 23, 1945.

Albert F. Cooley, doing business as Rango Tablet Company, etc., his representatives, etc., in connection with the offering for sale, etc., in interstate commerce of the products known as Daddy Rango's "H and H Tablets," Daddy Rango's "Laxative Herb Tablets," etc., was ordered as of December 18, 1936, forthwith to cease and desist from representing:

(a) That Daddy Rango's Laxative Herb Tablets or any other products of substantially the same composition and ingredients are a cure, remedy, or competent and adequate treatment for constipation, headaches, dizzy spells, neuritis, rheumatism, over-acid condition of the system, back troubles, liver and kidney troubles, and for removing poison from the system; or that said tablets are not habit forming no matter how long taken;

(b) That Daddy Rango's Sunshine Kelp Tablets or any other products of substantially the same composition and ingredients are a cure, remedy, or competent and adequate treatment for goiter and for a run-down condition; that they promote growth and build for a sturdy bones and teeth in children; that they will supply all the minerals necessary to the human body, and assure buoyant and vigorous health; that they produce health and happiness; that they will prevent goiter; that said tablets possess and impart to those taking them the therapeutic, medicinal, and beneficial effects of natural sunshine; that said tablets are rich in organic minerals and bring to the daily diet an abundant supply of iodine, copper and iron, and that said tablets are an ideal food supplement;

(c) That Daddy Rango's Asthma and Hay Fever Remedy or any other product of substantially the same composition and ingredients is a cure, remedy, or competent and adequate treatment for asthma and hay fever;

(d) That Daddy Rango's H and H Tablets or any other products of substantially the same composition and ingredients are a cure, remedy or competent and adequate treatment for over-acid condition of the system, neuritis, dizzy spells, headache, backache, rheu-

matism, stomach ulcers, gastric ulcers, duodenal ulcers, and for the removal of impurities from the body;

(e) That any of said products have such therapeutic value to constitute a proper, competent, and adequate treatment or remedy for the diseases, ailments, maladies, and conditions of the human body named herein (D. 2641, 24 F. T. C. 244).

United States v. Rogers Redemption Bureau, etc., United States District Court for Minnesota; penalty of \$400 assessed on February 1, 1945.

Matthew A. Willis, trading as Rogers Redemption Bureau, or under any other name, his representatives, etc., had been ordered as of March 1, 1939, in connection with the offering for sale. etc. of silverware or sales-promotional plans. including premium certificates, gift cards, or coupons redeemable in silverware or other articles of merchandise in commerce, to cease and desist from:

1. Representing, through use of the word "Rogers." either alone or in connection with any other word or words, in a corporate or trade name, or through statements in advertising, or in any other manner, that respondent has an interest in, forms a part of, or has any connection with Oneida, Ltd., manufacturer of Wm. A. Rogers silverware; provided, however, that this order shall not be construed to prohibit the respondent from dealing in Wm. A. Rogers silverware.

2. Representing that certificates, gift cards, or other similar device can be redeemed in silverware or other merchandise unless and until all of the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with such offer and there is no deception as to the services or other actions to be performed or the price to be paid in connection with obtaining such silverware or other articles of merchandise.

3. Representing that the purchase price for said certificates or gift cards will be refunded to the dealer purchasers thereof or that the respondent will supply to such dealer purchasers without charge display sets of silverware, to become the property of such dealers, unless and until such are the facts and unless all of the terms and conditions of such offer or offers are clearly and unequivocally stated in equal conspicuousness and immediate connection or conjunction with such offer or offers and there is no deception as to the services or other actions to be performed by the dealer purchasers in connection with obtaining such refund and display set of silverware.

4. Representing that a complete set of silverware or any specific item of silverware can be acquired through the redemption of such

certificates, gift cards, or similar devices unless and until such is the fact.

5. Using any representations with respect to the number of certificates or gift cards required to be redeemed in order to obtain any specific merchandise, which representations do not clearly and accurately disclose the number of such certificates or gift cards actually required to obtain such merchandise (D. 3198, 28 F. T. C. 877, 889).

United States v. Lanteen Laboratories, Inc., et al.; United States District Court for the Northern District of Illinois; \$2500 penalty assessed, with \$26.22 costs, on February 19, 1945.

Lanteen Laboratories, Inc., et al., their officers, etc., in connection with the offering for sale, etc., of so-called feminine hygiene preparations and appliances, known and sold under the names "Lanteen Blue," "Lanteen Brown," etc., or any other preparation or appliance composed of similar ingredients or possessing similar characteristics, in interstate commerce, were ordered as of April 1, 1939, to cease and desist from representing:

1. That any of said preparations or appliances, whether used alone or in connection with any other preparation or appliance, forms or constitutes a competent treatment, remedy or preventive of ill health of any nature, or is of any beneficial therapeutic value.
2. That the use of any of said preparations or appliances, whether used alone or in connection with others of said preparations or appliances, will prevent conception.
3. That the appliance now known as and sold under the name "Lanteen Browne," described as a diaphragm, or any other of said appliances, will fit all anatomies or all normal anatomies.
4. That any of said preparations or appliances has been tested and approved by an independent non-profit organization, or any organization, devoted to scientific research on questions involving the methods of preventing conception and the prevention treatment and cure of the diseases, maladies and conditions peculiar to women, or that respondents are noted on account of the manufacture and sale of high class pharmaceutical products, when such is not the fact.
5. That any of said preparations or appliances is prepared, designed, approved or recommended by a member or members of the medical profession, when such is not the fact.
6. That any of said preparations or appliances may be used with safety and without deleterious effects by all women.
7. That the use of a diaphragm, or the so-called diaphragm method, is the only method that has the approval of medical specialists, marriage hygiene clinics and hospitals, or that the use of the diaphragm or the so-called diaphragm method is recognized by medical specialists, marriage hygiene clinics and hospitals as su-

perior to all other methods for the prevention of conception, or that such an appliance or said method provides complete security against the hazards of "foreign" germ life.

8. That any of said preparations or appliances (a) destroys germ life, (b) gives double protection, (c) insures complete reliability, (d) provides complete security against the hazards of "foreign" germ life, (e) acts as a prophylactic, (f) has the full approval of specialists in the medical profession, marriage hygiene clinics or hospitals, (g) is recognized as superior to all other products of a similar type, or (h) will bring health, happiness and freedom to the user thereof (D. 3051, 28 F. T. C. 1297, 1308).

United States v. Magnecoil Co., Inc.; United States District Court for Utah; dismissed on the merits, June 21, 1945.

The Commission as of October 6, 1939, had ordered Magnecoil Co., Inc., its officers, etc., directly or through any corporate or any other device in connection with the offering for sale, etc., of its blanket or other devices fitted with wires or other conductors for the transmission of electric current, in commerce, to cease and desist from:

1. Representing that the use of said products has any therapeutic value in the treatment of any ailment, disease, disorder, or condition of the human body other than that which is obtained by the application of heat to the exterior of the body or any part thereof.

2. Representing that the use of said products produces any radio-magnetic or thermoelectromagnetism which will be transmitted to, or have any effect upon, the human body.

3. Representing that said products have been endorsed tested, used, or recommended by hospitals, members of the medical profession, or any other parties, when such is not the fact.

4. Representing that respondent has or maintains a laboratory unless respondent owns, operates, or controls a scientific laboratory and employs trained scientists and technicians and is equipped to test its products in the manner and with the methods used by recognized scientific laboratories.

5. Representing that respondent has an advisory or consulting board of medical experts for analyses or advice, unless and until such is the fact.

6. Misrepresenting in any manner the extent or nature of the building space occupied by the respondent in the conduct of its business (D. 1846, 29 F. T. C. 1069, 1076).

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