FEDERAL TRADE COMMISSION DECISIONS

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FINDINGS, ORDERS, AND STIPULATIONS

JUNE 12, 1929, TO MAY 4, 1930

PUBLISHED BY THE COMMISSION

VOLUME 13

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1930

For sale by the Superintendent of Documents, Washington, D. C. - - Price $2.25 (Buckram)

MEMBERS OF THE FEDERAL TRADE COMMISSION

AS OF MAY 4, 1930

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

Took oath of office November 14, 1927, and January 9, 1928.[1]

CHARLES W. HUNT.

Took oath of office June 16, 1924, September 23, 1925,[2] and March 16, 1926.[1]

WILLIAM E. HUMPHREY.

Took oath of office February 25, 1925.

CHARLES H. MARCH.

Took oath of office February 1, 1929.

EDGAR A. MCCULLOCH.

Took oath of office February 11, 1927.

OTIS B. JOHNSON, *Secretary.*

Took oath of office August 7, 1922.

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[1] Second term.

[2] Recess appointment.

ACKNOWLEDGMENT

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

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[1] Dismissed as to this respondent.

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TABLE OF CASES IN WHICH PETITIONS FOR REVIEW OF, OR APPLICATIONS TO ENFORCE, ORDERS OF THE COMMISSION HAVE BEEN FILED IN THE UNITED STATES CIRCUIT COURTS OF APPEALS FROM JUNE 12, 1929, TO MAY 4, 1930, INCLUSIVE

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JUNE 12, 1929, TO MAY 4, 1930

IN THE MATTER OF

CALUMET BAKING POWDER COMPANY

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

Docket 1127. Complaint, Feb. 26, 1924[1]*—Decision, June 12, 1929*

Where a corporation engaged in the manufacture of baking powder; in promoting the sale of its product through salesmen and demonstrators, who systematically covered and recovered assigned territories in large numbers as required satisfactorily to sustain the sale of the product and thus "demonstrated" whole States,

Employed the so-called cold water glass test of its powder and those of its competitors, before retail and wholesale grocers or dealers and their customers, bakers, chefs, and managers or owners of cafés, restaurants and hotels, department stores and cooking or demonstrating schools, housewives, and the purchasing and consuming public, together with talks, representations, and statements to show and claim the superiority of its said powder over competitive products by reason of its alleged quick and sustained action irrespective of oven and other conditions, as demonstrated by the rising or effervescence of its own product to the top of the glass and beyond, upon the addition of cold or room temperature water thereto, and/or the relative stability of the resulting foaming effervescence, in contrast with results secured from competitive powders, which in either one or both of the foregoing respects fell short, and thereby allegedly indicated corresponding shortcomings of said powders, in being too slow, or fast, or not sustained, in their action, and thus responsible for soggy or fallen bread, biscuits, etc., and unsatisfactory or unwholesome results;

The facts being that the amount of effervescence of the various powders was dependent on the chemical reaction from the particular acids employed and the relative stability of its own mixture was due to inclusion in the product of a small proportion of dried white of egg (to which product said ingredient added nothing in the way of carbon dioxide strength or leavening power or efficiency), action of said powder in the test was in nowise comparable to the action taking place in baking and cooking, the test afforded no criterion whatever as regards size, character or uniformity of

[1] Amended, Nov. 21, 1925.

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bubbles, collapse of competing foam mixtures and retention of its own under the manipulations of its salesmen and demonstrators, or otherwise, as to the efficacy or carbon dioxide or leavening strength of its powder or competing products in mixes and cooking, but falsely indicated powders of superior leavening efficiency as being inferior and was made the basis for falsely representing such powders as having only one-third to one-half the leavening power of its own product, and was in and of itself deceptive irrespective of any statements as to comparative gas strength or leavening efficiency:

With the result that through the making of said cold water glass test by its salesmen and demonstrators, as authorized, directed and required by it, and its misrepresentation and false statements and those of its agents as to the alleged superiority of its powder and alleged inferiority of competitive powders, made in conjunction with and as a part of said test, countless housewives and others of the consuming and purchasing public purchased its said powder:

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

Mr. Richard P. Whiteley for the Commission.

Mr. Daniel R. Forbes, of Washington, D. C., and *Miller, Gorham, Wales & Noxon* of Chicago, Ill., for respondent.

SYNOPSIS OF COMPLAINT[1]

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the manufacture and sale of baking powder to wholesale and retail dealers in the various States, and with principal office and place of business in Chicago, with disparaging or misrepresenting products of competitors, misrepresenting own product, and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged in the sale of its product, as above set forth, in competition with competitive products including the "K. C. Baking Powder" of the Jaques Manufacturing Co., a wholesome product, properly composed of good materials, i. e., of that standard of purity commonly used in the trade and in nowise adulterated, falsely and misleadingly asserts (said false and misleading assertions being among numerous others concerning said K. C. powder), in advertisements, articles, and other writings in newspapers and trade journals, and in circulars, letters, pamphlets, and other trade literature, and orally through salesmen and other agents, that said K. C. Baking Powder is (*a*) cheap, (*b*) of a poor

[1] As amended.

and inferior quality, (*c*) composed of inferior materials, (*d*) carelessly compounded by inexact methods, so that it does not function properly, uniformly or satisfactorily in the preparation of foodstuffs and renders food products in which used, unwholesome, and (*e*) adulterated; with the direct effect and result of misleading the trade into believing said K. C. Baking Powder to be "an inferior, impure, adultered, and undesirable product; to prejudice the trade against the said Jaques Manufacturing Co. and its said product, and to injure and damage the business and good will of said company".

Respondent further, as charged, employs through its canvassers, salesmen, and demonstrators a false and misleading purported comparative test of its powder with those of its competitors, to wit, the so-called water glass test or foaming test, in which it places samples of the two powders to be compared in glasses or similar containers and adds and stirs in a small quantity of water, with the result that the mixture of respondent's powder (which contains a minute quantity of albumen or white of egg), rises higher in the glass and remains sustained longer than the mixture of such competitive powders as that of the aforesaid Jaques Manufacturing Co. or the Royal Baking Powder Co. or other competitive powders containing no white of egg, sometimes with statements of the demonstrator to the effect that the test represents the respective leavening strength and efficiency of the two powders concerned.

The aforesaid test, as alleged, whether accompanied by such statements or not, "does not represent the leavening strength of the respective powders and the results shown in the comparative tests are misleading and deceptive in that the method used by respondent when applied to a powder containing no white of egg can not and will not fairly or accurately evidence the gas strength of the competitive baking powder and said method inherently possesses the capacity and tendency to deceive the merchant or consumer before whom said comparative water glass test may be made", by said house-to-house canvassers and demonstrators, who are "carefully trained and instructed in the manner of so manipulating the said samples above referred to that the desired deceptive and misleading results are obtained, all of which tend to create a state of mind in the purchasing public which is detrimental to the purchase and use of powders of respondent's competitors and especially products of the Jaques Manufacturing Co. and of the Royal Baking Powder Co., and consequently tend to injure the trade and business conducted by said competitors".

Respondent further, as charged, for several years last past, in making its aforesaid test through its house-to-house persons, can-

vassers, demonstrators, and salesmen, against competitive powders also containing white of egg, "varies its manipulations and treatments of the two respective powders tested so as to cause the mixture in the glass containing respondent's powder to rise higher and to remain sustained longer in the glass than the mixture in the glass containing the competitor's powder, thereby falsely misleading and deceiving the purchasing public into the belief that Calumet Baking Powder has a greater leavening strength or efficiency than the powder of the said competing company so tested against".

The above alleged acts and things done by respondent, as charged, "are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5".

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served an amended complaint upon the respondent, Calumet Baking Powder Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed its answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondent before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for a final hearing on the briefs and oral argument, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts in accordance with and in affirmation of the findings of the trial examiner and conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

Paragraph 1. The respondent, Calumet Baking Powder Co., is, and has been for more than 10 years prior to the date of the service of the amended complaint herein, a corporation duly organized under the laws of the State of Illinois, having at all said times its principal factory and place of business in the city of Chicago in said State.

Par. 2. The respondent is and has been since about 1890 engaged in the manufacture of baking powder under the brand name "Calumet Baking Powder" and throughout said period has been and still is engaged in the sale of said baking powder to various individuals,

firms, and corporations, and wholesale and retail dealers, located in the District of Columbia and in various States of the United States of America, other than in the State of Illinois, and has caused and still causes its said baking powder when so sold by it to be transported, in commerce, from its principal factory and place of business in the city of Chicago, Ill., to, into, and through said other States and the District of Columbia to the said individuals, firms, and corporations, and wholesale and retail dealers, to whom the said baking powder was sold by respondent.

PAR. 3. During the times above mentioned and referred to, other corporations, firms, and individuals, located in the various States of the United States have been engaged in the manufacture and in the sale of baking powder, which they have sold and still sell to corporations, firms, and individuals, and to wholesale and retail dealers located in the various States of the United States and in the District of Columbia. The respondent during the aforesaid times was, and still is, in competition in commerce in the sale of its baking powder with said other corporations, firms, and individuals likewise engaged in the manufacture and sale and distribution of baking powder.

PAR. 4. The labels attached to the cans of baking powder manufactured and sold by respondent as described in the preceding paragraphs contain the following statement with respect to the ingredients of said baking powder:

This baking powder is composed of the following ingredients and none other:

Sodium bicarbonate, calcium acid phosphate, corn starch, sodium aluminum sulphate, and fifteen one-hundredths of 1 per cent of dried white of egg.

The dried white of egg furnishes a means of estimating the available gas, and is not a substitute for eggs in cooking.

For a number of years, at least 20 or more, respondent has required its salesmen and demonstrators to make what is called the cold water glass test of Calumet Baking Powder and of competing powders. This so-called test has been made by respondent's salesmen and demonstrators in various States of the United States before retail and wholesale grocers or dealers and the purchasing and consuming public. These so-called cold water glass tests have usually been made by respondent's salesmen before retail and wholesale dealers, before the customers of said dealers, and before bakers, chefs, and managers or owners of cafés, restaurants, and hotels. The said tests have usually been made by respondent's demonstrators in department stores and cooking or demonstrating schools and in the homes of the consuming public before housewives and cooks. The so-called cold water glass test consists of mixing a small quantity of baking powder,

usually two, three, or four level teaspoonfuls with an equal quantity of cold water or water at room temperature, the mixing taking several seconds. With the addition of water to the baking powder a chemical reaction occurs, differing according to the different acid ingredients used in the several powders. To the acid ingredients, which cause the evolution of carbon dioxide gas (the leavening agent in baking powder) when combined with moisture and bicarbonate of soda, the respondent adds a minute quantity of dried white of egg or dried albumen. This quantity of dried white of egg, which is fifteen one-hundredths of 1 per cent by weight, adds nothing to the leavening efficiency of the baking powder but causes a film (a minute quantity of soap or glue would bring about the same result) to form over the foam mixture, thereby restraining the escape of the carbon dioxide gas evolved. The mixture of foam which results from the making of the water glass test, in the case of respondent's powder, at the end of two minutes or in an even shorter period of time, rises to the top or over the top of the demonstrating glass used by respondent's representatives and gives the appearance of finely beaten whites of fresh eggs. In the case of powders containing acid ingredients like the respondent's but without this added bit of dried white of egg the mixture of baking powder and water will also rise similarly, but will immediately or very soon drop back into the glass because of the escape of the gas. In case of powders containing different acid ingredients varying results are obtained.

In the case of a powder which contains a small amount of calcium acid phosphate in proportion to the sodium aluminum sulphate such as Snow King Baking Powder, manufactured by the Kenton Baking Powder Co. of Cincinnati, Ohio, the volume of the foam mixture in the cold water glass test is sufficient to fill the testing glass to the extent of one-half to two-thirds only. This powder also contains fifteen one-hundredths of 1 per cent of dried white of egg which, to a certain extent, restrains the escape of the gas. The white of egg was added by the manufacturers of Snow King Baking Powder in order to protect said powder against the cold water glass tests made by respondent. In the case of a powder which contains a larger percentage of sodium aluminum phosphate than its percentage of calcium acid phosphate, such as K. C. Baking Powder, manufactured by the Jaques Manufacturing Co. of Chicago, Ill., the volume of foam mixture in the cold water glass test is sufficient to fill the testing glass to the extent of one-half or two-thirds, but the mixture soon collapses because the powder contains no dried white of egg to restrain the gas from escaping. In the case of a powder containing as its acid ingredients calcium acid phosphate alone, such as

Rumford Baking Powder manufactured by the Rumford Chemical Works of Providence, R. I., the foam mixture in the cold water glass test rises as high in the testing glass as the foam mixture of respondent's powder. The mixture, however, upon being jarred collapses, leaving the glass about half full of foam. This powder also contains fifteen one-hundredths of 1 per cent of dried white of egg, added by its manufacturers for the purpose of protecting it against the cold water glass test as made by respondent. In the case of powders such as Royal Baking Powder, manufactured by the Royal Baking Powder Co. of Brooklyn, N. Y., where the acid ingredients are cream of tartar and tartaric acid and which powder does not contain dried white of egg the foam mixture in the cold water glass test rises to the top of the testing glass but upon jarring the glass or if the mixture be allowed to stand for a short period of time, the foam mixture collapses.

Respondent issues test talks, instructions, and various other literature to its salesmen and demonstrators, directing and requiring them to make the cold water glass test of its powder and other competing powders. The following are some of the statements contained in said talks, instructions, or other literature issued by respondent:

This moisture when applied to baking powder immediately evolves the gas just as it occurs when the housewife adds cold water or milk in making up her mix. Seeing is believing.

This shows exactly the amount of leavening power or gas strength Calumet has in the cold.

White of egg added to baking powder imprisons the gas which in itself is of great importance. The white of egg serves as a distinct aid to the efficiency of our powder by making a larger percentage of gas strength available. Practical tests have proven that it contributes in an appreciable degree to produce lightness in biscuits, through its power of entangling and holding in the dough the gas evolved.

Now I stated to you that Calumet has an ingredient that held its gas which a cream of tartar powder did not have. This ingredient is dried white of egg. All we need to take is the pin head of the white of an egg. We will take the same amount of baking powder and water as used before and stir it the same. Now you notice how this looks and holds its gas exactly like Calumet. Now isn't this very plain that this one ingredient alone is a great improvement? You have heard your wife or sister or whoever does the baking in your family, complaining a number of times about their bread, cake, or biscuits being soggy or falling, and these complaints occur frequently when you are going to have company and are very anxious to turn out a nice baking. The cause of it is that this powder is so compounded that there is no secondary action, and there is nothing to retain the gas that it produces. Therefore, if ideal conditions of oven temperature are not maintained or if there is any jarring of the oven through opening the door or walking on the floor, gas will escape, it makes the baking fall and that is the cause for its being soggy. Calumet overcomes this by the aid of white of egg and the secondary action.

This white of egg holding the baking exactly where the gas in the powder has the power to put it, and anyone can make a successful baking with this baking powder.

CHEAP OR BIG CAN POWDER

I am going to test this powder for you just to show you what it is. Baking powders of this class are generally made by rule of thumb methods, the ingredients put together according to weight and not according to chemical strength; consequently, they are undependable, and it is impossible to secure a uniform product. The gas strength of these goods run very irregular. They are manufactured with but one idea—that of giving a large amount of goods for a small amount of money. This is accomplished by using a large quantity of cheap ingredients. Generally a cheap grade of starch is used. A few firms have been fined for using White Earth as a filler in these cheap goods.

You see, we have taken exactly the same amount of this powder as of the other powders. We treat them exactly alike. You can see there is very little chemical action. There is hardly any change in the powder, except for the presence of the moisture, it remains about the same as it was in the can. There is practically no leavening from this powder till a mix is warmed in the oven and when the oven is hot it crusts over before the gas is all liberated, and proper leavening is not accompanied. The residues are extremely bitter, making the food unpalatable. Inasmuch as baking powder is not a food, but only valuable in leavening strength, you can readily see the false economy of allowing your trade to be deceived by Big Can goods.

The test is decidedly the most important part of your work, and your standing as a demonstrator will depend largely on your percentage of tests to calls. * * * It is better to lose a sale than to miss an opportunity to test.

Now I will treat the Royal exactly the same as I did Calumet, but this cold water test will not show the strength of Royal because it does not contain white of egg and is therefore not a comparative test of the strength of the powders, but there are other things about baking powder, just as important as strength, as I will show you.

I take one spoonful of Royal exactly as I did Calumet, and add three spoons of water. You see the powder effervesces very quickly. The gas bubbles are uneven, some large, some small. They break rapidly. The gas escapes. To bake a good cake with this powder you must handle the dough very quickly, get it into a hot oven at once and great care must be taken or your cake will fall just as this mixture has fallen. This often occurs in the oven if cold air is allowed to strike the baking.

Cheap and "Big Can" powders, such as K. C. Health Club, Jack Frost or 10 cents a pound powders such as Bon Bon, Good Luck, Snow King, Sodarine, etc. (If you find the housewife using this class of baking powder.)

Oh! do you use ———. The goods are manufactured with but one idea, that of giving a big can for a small amount of money. This can only be accomplished by using cheap materials together with a surplus of cheap fillers.

These slow acting baking powders which give off almost no gas when mixed with cold water or milk and set the gas free only when heated in the oven require a slow oven. If placed in a hot oven they crust over before the gas is set free, and heavy, poorly leavened food results.

RUMFORD, Horsford's Baking Powder or Horsford's Self-Rising Bread Preparation.

1 Findings

(If the housewife is using either of these say:)

An exceptionally good and careful cook may SOMETIMES GET FAIRLY GOOD RESULTS WITH THESE POWDERS IF the powder is perfectly fresh.

Being quick-acting powder it will not keep like Calumet. They are forced to sell their goods almost exclusively in large cities, where they hope to have the goods used quickly before they deteriorate.

Make test: See how quickly it acts. It effervesces very quickly, having only one action and requiring expert handling to get good results even from fresh goods. Food prepared with such quick-acting powder must be baked in a quick oven. If baked in a slow oven the gas will escape before it is set by cooking and any jarring will result in a fallen cake.

The expert cook, when everything goes well, can get fair results from a straight phosphate baking powder, if perfectly fresh. One who is a little careless or somewhat slow in handling their mix is almost sure to make a failure. Frequently the powder loses more than half its strength before the can is used.

This test of leavening strength can not be made with baking powders that do not contain white of egg. Buy it—Use it. Be protected against baking powder that has lost its proper leavening strength.

Similar statements are contained in numerous other advertising matter and sales literature and distributed by respondent to its salesmen and demonstrators to be used by them in their selling talks and demonstrations before dealers, housewives, and the purchasing public. As recently as 1913, the respondent advertised in the Daily Press under the heading "BAKING POWDER TESTS Made from actual photographs taken two minutes after moisture was applied." Under this heading appeared pictures of photographs of three water glass tests. Under the first picture in which the foam mixture is shown to have risen less than one-half way up the testing glass appears the following:

CHEAP OR "BIG CAN" BAKING POWDER

Note the uneveness of the contents; also the small amount of leavening gas from the height the powder has risen in the glass. The residues from these powders vary considerably.

Under the second picture in which the foam mixture is shown to have risen about one-half way up the testing glass appears the following:

CREAM OF TARTAR POWDER

You will also note the small amount of leavening gas here; also the sediment in the bottom of glass, which is a solution of Rochelle Salts. About 80 per cent of this powder used is left in the food as Rochelle Salts. Ask your doctor about constant dosing with Rochelle Salts.

Under the third picture in which the foam mixture is shown to have risen above the top of the glass in a nicely mushroomed form appears the following statement:

CALUMET BAKING POWDER

Note here the amount of leavening gas by the way the powder has risen over the top of the glass. Note how light and fluffy it is; also how even the grain is. This test proves CALUMET has a great amount of leavening gas that is gradually and uniformly given off. It leaves no unwholesome residue.

Under the above quoted statements describing these three water glass tests of Cheap or Big Can Baking Powder, Cream of Tartar Powder and Calumet Baking Powder, the following statement was made:

This Proves the Wonderful Leavening Qualities—the Purity—the Economy—the Superiority of CALUMET Baking Powder.

Ask your Grocer—Insist on Calumet.

The vice president and former general sales manager of respondent stated late in 1927 that the cold water glass test was being made at that time and had been made constantly in all essential respects in the same way that it was made in 1913, and that representations as to it were being made by respondent's salesmen and demonstrators similar to those made in 1913 although the newspaper advertising as above described had been discontinued in 1913 or 1914.

PAR. 5. When the so-called cold water glass test, as made by respondent, is made of competing powders which also contain a minute quantity of dried white of egg the representatives of respondent are instructed to state, and they do state, that the said tests show the comparative gas strength or leavening efficiency of respondent's powder and the competing powders; that as the foam mixture rises and remains sustained in the testing glass, so will the cakes or other baked products rise in the oven and be light or palatable. As a matter of fact the extent to which the said foam mixtures rise in the so-called cold water glass test is not indicative of the comparative leavening strength of powders so tested and the statements made by respondent to that effect are literally false, deceptive and misleading. The foam mixture in the case of Snow King Baking Powder rises to about one-half the extent that the foam mixture of respondent's powder rises in the cold water glass test, and Snow King Baking Powder is approximately 15 per cent stronger in leavening efficiency than is Calumet Baking Powder. Rumford Baking Powder also contains fifteen one-hundredths of 1 per cent of dried white of egg and the agents of respondent are instructed to state that it can be tested against respondent's powder for gas strength. While the cold water glass test of Rumford evolves a foam mixture which rises as high as the foam mixture of Calumet in the cold water glass test the mixture collapses when jarred and as a result gives the appearance of being greatly inferior to respondent's powder. Other powders con-

taining dried white of egg are tested with similar results and respondent's salesmen and demonstrators constantly claim that said results indicate the inferiority of the competing powder and the superiority of their own brand. These statements are untrue.

PAR. 6. In the case of powders not containing dried white of egg, the respondent, in writing, instructs its salesmen and demonstrators to test such powders and at the same time to demonstrate Calumet by means of the same test. The respondent also, from time to time, issues cautionary letters to its salesmen and demonstrators, in which said letters the salesmen and demonstrators are instructed to follow closely the written instructions, and are told to emphasize that the test is not a comparison between baking powders that contain white of egg and those that do not. The salesmen and demonstrators are required to make the test of the two powders before the eyes of the merchant or consumer, and despite these letters of caution, if the instructions are carried out and the test is made, it is, in fact, an implied test of the comparative gas strength of the two powders. In numerous instances the salesmen and demonstrators of the respondent make a cold water glass test of competing powders not containing dried white of egg, and state that the resulting foam mixtures indicate the gas strength of the powders. Numerous statements are made that the cold water glass tests of Calumet and K. C. show that Calumet is several times as strong as K. C. in carbon dioxide gas or leavening efficiency. These statements have been and are made by experienced Calumet salesmen and demonstrators to retail dealers and to the purchasing and consuming public. Calumet instructors have told their salesmen and demonstrators to make such statements, and salesmen and demonstrators are told that in making the cold water glass tests they should follow the example of experienced salesmen and demonstrators. Repeated instances of the making of the cold water glass test accompanied by statements set forth above have been brought to the attention of the directing officials of respondent, and it does not appear that a single salesman or demonstrator has ever been dismissed because of the manner in which the test has been made, or because of the statements made during the demonstration. With or without any statements or representations by respondent or its agents in connection or conjunction with the making of the water glass test, the test in itself misrepresents the facts as to the strength and efficiency of Calumet Baking Powder and of competing powders.

PAR. 7. In making the water glass test before retail merchants and consumers, the following statements are made by the salesmen or demonstrators of respondent: "That Calumet is stronger and purer

than Snow King or K. C. and that the test so shows." "That Calumet was two or three times stronger than K. C., and that cakes won't fall with Calumet." "That bread made overnight with Calumet would stand, but with K. C. it would not." "That K. C. would function in cake baking just as it does in the water glass test." "That Calumet contained white of egg and cakes would not fall made with it and that they would with K. C., and that Calumet was stronger than K. C." "That Calumet was as strong a baking powder and that if oven was not at proper heat K. C. would fall, but it didn't matter how cold you got the oven with Calumet it would not fall." "That Calumet would cause the cake to rise in the oven just as the foam mixture rises in the water glass test." "That you see how much more strength Calumet has than the K. C., boiling up like that." "That you could see for yourself the results of the tests and that to use a half or a third as much Calumet as K. C. would give the same results." "The powder that would fall like that in the water glass would fall in the cake in the same way." "You see how much better the Calumet is; it has the rising qualities that stay and the others subside." These and similar statements to the effect that the water glass test shows how Calumet and other powders will function in the baking have been made by respondent's salesmen and demonstrators throughout the United States. In some instances they call attention to the fact that Calumet contains white of egg and in other instances they do not do so. In some cases they do not say anything about the absence of white of egg in competing powders unless the matter is suggested by the person before whom they are demonstrating.

PAR. 8. Many of the statements of the agents, employees, and officers of respondent made in connection and conjunction with the making of the cold water glass test consist of statements to the effect that the several competing powders will function in the baking just as they do in the tests. That, as the foam mixture fails to rise or, after having risen, collapses either with or without jarring, so the baked products will fail to rise or collapse or become heavy and soggy, if said competing powders are used instead of Calumet. These representations have been made continuously and uniformly for years, and are still being made by respondent's agents and representatives throughout the country, with respect to various competing powders, among which are the following: Davis, Dr. Price, K. C., Royal, Rumford, Snow King, Red Front (A & P brand), Sea Gull, Aunt Jemima, Hunt's Perfection, Clabber Girl, Dakota Maid, Monkey and Parrott, Southern Maid, Crystal Pearl, Delecto, Jewel T., Hellick's Grand Union, Golden Seal, Golden Key, Bob

White, Sodarine, Success, Richelieu, Excelo, Good Luck, Golden Rule, Watkins, and Larkin. At times the incorporation of the white of egg is mentioned as the reason why Calumet bread and cakes will rise and be well leavened in the oven just as its foam mixture rises and remains sustained in the cold water glass tests; at other times no mention is made of the said white of egg.

PAR. 9. Respondent, in addition to its sales force which calls on the retail dealers and the wholesalers, upon café and hotel owners or managers and upon bakers, uses a large force of demonstrators or canvassers who call upon the housewife and there make the water glass test of Calumet and of any other baking powder which said housewife may be using. These demonstrators travel in crews of from 12 or 15 to 25 or more, each crew being in charge of a crew leader and an assistant. Headquarters are established by these crews and the members of the crews systematically cover an entire territory, being instructed to call upon at least 90 per cent of all housewives and to make water glass tests in every possible instance. Where a housewife is absent, a later visit is made. Checkers, also employed by respondent, follow the demonstrators to see that they have made calls and demonstrations according to their reports and to ascertain how the water glass tests and talks are made. In this way, whole States are demonstrated, the work lasting several years in some cases and where a diminution in the sale of its baking powder is reported, the same territory is often redemonstrated after a lapse of a year or more. During the period from January 1, 1925, to June 30, 1926, inclusive, 1,500 of such demonstrators were employed in the 10 States of Tennessee, Iowa, Missouri, Arkansas, Oklahoma, Pennsylvania, New Jersey, Maryland, North Carolina, and South Carolina. In other States many more demonstrators were employed during that period. The respondent also employs at all times at least 200 salesmen who are instructed to make the cold water glass test constantly before retail grocers and such customers as may be present in the stores. These tests are made according to instructions and reports are constantly forwarded by salesmen and demonstrators to the principal office of the respondent in Chicago. The reports show the number of tests made, the name of the competing powder or powders, and, in the case of the demonstrators, whether the housewife made a purchase of Calumet Baking Powder. The demonstrating crews are equipped with the glasses to be used, teaspoons, cans of Calumet Baking Powder, and in many instances with cans of the principal competing powders in the territory in which they are demonstrating. Salesmen making water glass tests of competing powders usually purchase same from the retailer. The water

glass tests made before retailers are almost always made in connection with sales promotion talks of respondent's salesmen and rarely to test respondent's powder for deterioration.

PAR. 10. The addition of the fifteen one-hundredths of 1 per cent of dried white of egg to Calumet Baking Powder has no appreciable or measurable effect upon the leavening strength or efficiency of said powder. Biscuits, cakes, and other products baked with baking powder similar in all respects except for the incorporation of fifteen one-hundredths of 1 per cent of dried white of egg (the quantity used in respondent's powder) in one powder, and a like quantity of starch (the filler used in all baking powders) in the compared powder exhibits no appreciable or measurable differences either in volume or in quality. The statements made by salesmen and demonstrators of respondent to dealers, housewives, and other members of the purchasing and consuming public that the water-glass test shows the superiority of respondent's powder or the inferiority of competing powders are misleading, deceptive, and untrue. Statements made constantly by the agents of respondent that as the foam mixture rises or remains suspended in the testing glass after having risen, the efficiency and leavening strength of respondent's powder in comparison with competing powders, is determined, are misleading, deceptive, and untrue.

PAR. 11. In testing Calumet and competing powders by means of the cold water-glass test both before housewives and merchants the representatives of respondent have upon innumerable occasions stated that products baked with Calumet would rise and remain light and palatable just as the foam mixture rises in the testing glass, and that products baked with the competing powders would often be heavy, soggy or poorly leavened just as the foam mixtures of said competing powders failed to rise in the testing glass or, after having risen, collapsed. Respondent's salesmen and demonstrators strike the testing glasses sharply with their hand or upon the table after making the test causing the foam mixtures of many powders to collapse while the Calumet foam mixture does not collapse, and it is stated that as these mixtures fall in the glass so will the baked products fall in the oven or fail to rise. Baking powders such as Snow King, K. C., and Hellicks (the first of which contains fifteen one-hundredths of 1 per cent of dried white of egg, while the other two contain none) all of which have a higher carbon dioxide gas strength and leavening efficiency than respondent's powder, are made to appear to have not more than one-half the gas strength of Calumet in the cold water-glass test. Demonstrators and salesmen of respondent have many times told the purchasing and consuming public that the cold water-glass tests showed that Snow King and K. C. baking powders were

only one-half or one-third as strong as Calumet. The test itself is misleading and deceptive in such cases and in similar ones, even when the salesman or demonstrator makes no statement as to comparative gas strength or leavening efficiency. The spectator, housewife, or dealer sees the respondent's powder rise to the top of the glass during the test and remain sustained; he sees the competing powder fail to rise or after having risen collapse. Such a test causes the average spectator to conclude that respondent's powder is stronger, or more efficient, when, as a fact, the test furnishes no evidence whatever as to the comparative leavening strength of the powders tested, and is, in fact, not a test of leavening strength, or of baking efficiency.

PAR. 12. The action of Calumet Baking Powder in the cold water glass test—that is, the extent to which the foam mixture rises and the size, character, and uniformity of the gas bubbles in said foam mixture—is in no wise similar or comparable to the action of said powder when mixed with doughs or batters for baking purposes. The flour in a batch of dough contains several hundred times as much soluble protein as the albumenized baking powder in said batch contains. The flour albumen functions in the same way as the egg albumen in the cold water glass test, and water glass tests made with albumen from wheat are indistinguishable from those made with egg albumen. The addition of one part of egg albumen in baking powder to a batch of dough already containing several hundred parts of flour albumen has no appreciable or measurable effect in the leavening power or efficiency of the baking powder used. Respondent's agents are constantly directed and required by it to assert and they do assert, that the addition of dried white of egg (fifteen-hundredths of 1 per cent) to Calumet Baking Powder serves as a distinct aid to the efficiency of said powder and that it contributes to an appreciable degree in producing lightness in biscuits. These statements are false.

PAR. 13. In some instances the salesmen and demonstrators of respondent test Calumet Baking Powder only and the retail dealer or housewife is advised that they may make their own tests in a similar way of competing powders, or they are advised that the tests show the leavening strength, purity, and freshness of Calumet Baking Powder. Respondent prints instructions with regard to the making of the water glass test which are widely distributed by it both to dealers and housewives as follows:

HOW TO MAKE THE TEST

First, take an ordinary drinking glass holding one-half pint, or in other words, the quantity that is usually known in the household as "one-cupful". All that is needed is this empty glass, which must be dry, an ordinary teaspoon and a

little water of the ordinary room temperature (not ice water nor hot water). Place 2 level teaspoonfuls of the powder in the dry glass, to which add the same quantity (2 teaspoonfuls) of water, quickly; stir rapidly for a moment; (while counting 5) just long enough to thoroughly moisten the powder; remove the spoon and watch the mixture rise. Note the action of the powder. CALUMET rises slowly and evenly, requiring 2 minutes to show the full strength. If the powder is of full strength, and you have proceeded properly, the gas released will form bubbles sufficient to HALF fill the glass.

The statement of the respondent, "If the powder is of full strength and you have proceeded properly, the gas released will form bubbles sufficient to half fill the glass", is false and deceptive. The alleged test is in no sense a true test for or of the leavening strength of Calumet or any other powder. A powder which is 2 per cent or even 3 per cent below the legal standard set for carbon dioxide (leavening) strength by the United States Department of Agriculture or by the laws or regulations of various States, will, if it contains white of egg, act in the cold water test as favorably as a powder containing the full legal strength or even going 3 per cent above it; and such a test has the capacity and tendency to mislead and deceive the dealer or housewife who relies upon same to determine the strength of the baking powder to be sold or used.

PAR. 14. The Department of Agriculture of the United States on February 26, 1918, adopted as a guide for the officials of that department in enforcing the Food and Drugs Act, the following standard of strength for baking powder shipped in interstate commerce:

It yields not less than 12 per cent of available carbon dioxide.

A number of the States of the Union have adopted the standard of the Department of Agriculture of 12 per cent, and baking powder offered for sale which has a carbon dioxide strength less than 12 per cent by weight is subject to seizure and condemnation by the authorities of said States and the food officials of most of the States of the Union are charged with the duty of seizing and condemning baking powder which does not conform to the minimum standard of available gas strength, in some States 10 per cent by weight, but in most States 12 per cent by weight.

As a result of a great number of chemical analyses of cans of Calumet Baking Powder purchased on the open market, it was found that many of these powders containing less than 12 per cent available carbon dioxide gas strength by weight produced larger volumes of foam in the cold water glass test than samples of said powder containing more than 12 per cent available carbon dioxide gas. In many cases water glass tests of Calumet powder containing less than 12 per cent available carbon dioxide gas gave foam volumes sufficient to one-half fill an 8-ounce glass, or to more than one-half fill

it, and in some instances Calumet powders containing less than 10 per cent available carbon dioxide gas gave foam volume in the water glass test sufficient to one-half fill an 8-ounce glass. A large number of housewives used samples of Calumet Baking Powder purchased on the open market and followed the printed instructions of respondent for the making of the cold water glass test, made said tests in accordance with their understanding of said instructions. One hundred and nine housewives made these tests using powders ranging in available carbon dioxide gas strength from 8.51 per cent to 12.15 per cent, most of said powders having an available gas strength of less than 10 per cent. Over 80 per cent of the water glass tests so made gave a foam volume more than sufficient to one-half fill an 8-ounce glass.

PAR. 15. At times the respondent distributes literature or causes to be advertised in the daily press, in connection with the water glass tests made or to be made by its representatives, the following statement:

The demonstration and test she will make are interesting and instructive. The test is not a comparative test of the strength of different baking powders because the water glass test does not show the strength of baking powder that does not contain white of egg. The test will, however, show the superiority of Calumet in other respects and prove why it has solved all baking problems in millions of homes.

Snow King Baking Powder manufactured by the Kenton Manufacturing Co. of Cincinnati, Ohio, contains fifteen one-hundredths of 1 per cent of dried white of egg and can be tested for available gas strength by dealers and housewives under the above quoted directions of respondent. The cold water glass test of Snow King Baking Powder which is approximately 15 per cent stronger in carbon dioxide gas than respondent's powder, produces a foam mixture of not more than half as much as the cold water glass test of respondent's powder. Other competing powders, also containing dried white of egg, but which contain acid ingredients which do not react in cold water to the same extent that the acid ingredients in respondent's powder react are tested or demonstrated against by respondent with results similar to those obtained in a test of Snow King Baking Powder.

PAR. 16. Where the respondent makes the cold water glass test against competing powders containing dried white of egg and also containing acid ingredients which react in cold water to the same extent that the acid ingredients in Calumet Baking Powder react, the salesman or demonstrator of respondent calls attention to the difference in the size and uniformity of the gas cells and strikes the

testing glasses sharply with his hand or against the table which usually causes the foam mixture of the competing powder to collapse but leaves the foam mixture of the Calumet test standing. In many instances the glass containing the foam mixture of Calumet is inverted and the mixture does not fall from the glass. In the case of the competing powders, the mixture will pour out. The dealers and housewives are told by respondent's salesmen and demonstrators that doughs or batters in which respondent's powder and the competing powders are used will function in the baking just as the foam mixtures have functioned in the water glass test.

That is to say, those food products in which competing powders are used will collapse or become heavy or soggy in the baking and those in which Calumet Baking Powder are used will remain light, well leavened, and palatable.

The recipes of respondent call for one level teaspoon of its baking powder to 1 cup of flour, and for 4 level teaspoons of its powder to 1 quart of flour. The fifteen one-hundredths of 1 per cent of dried white of egg in 1 level teaspoon of Calumet Baking Powder is equivalent to one eight-hundred-and-forty-third part of the white of one fresh egg, and in 4 level teaspoons of said powder the dried white of egg present is equivalent to one two-hundred-and-tenth part of the white of one fresh egg. The addition of the aforestated quantities of dried white of egg to doughs or batters made up with the stated quantities of flour has no appreciable or measurable effect in producing larger volumes of baked products or lighter or better leavened cakes or biscuits.

PAR. 17. Respondent alleges that the cold water test is valuable and necessary, in order to protect the retail grocer and the housewife by removing deteriorated powders from the grocer's shelves and from the housewife's kitchen. There is no evidence that the test is so used by grocers or by housewives. Most deteriorated powders offer physical evidence of deterioration, such as the condition of the powders, etc., and these physical evidences are equally, if not more dependable than the water glass test, and do not offer the opportunities for studied deception that the water glass test necessarily and inherently possesses.

PAR. 18. The addition of white of egg to a baking powder does not add to its carbon dioxide strength nor increase its baking efficiency. The water glass test is not a test for carbon dioxide or leavening strength, and when made with the powder of respondent, only, is misleading and deceptive. The water glass test is not a test for carbon dioxide or leavening strength, and when made in comparison

with competing powders which do or do not contain dried white of egg is misleading and deceptive and inherently possesses the capacity and tendency to deceive the merchant or consumer before whom it is made.

PAR. 19. As a result of the making of the cold water glass test by respondent's salesmen and demonstrators as they are authorized, directed, and required by respondent to make it, and as a result of the misrepresentations and false statements of respondent and its agents both as to the alleged superiority of Calumet Baking Powder and the alleged inferiority of competing baking powders made in conjunction with and as a part of the said cold water glass test countless housewives and others of the consuming and purchasing public have made purchases of said Calumet Baking Powder. Said sales of respondent's product have been secured by the false, deceptive, and misleading oral and written statements and representations of respondent and its authorized agents.

CONCLUSION

The practices of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and upon the answer of the respondent filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

It is now ordered, That the respondent above named, Calumet Baking Powder Co., its officers, agents, representatives, and employees, in connection with the sale or distribution in interstate commerce of Calumet Baking Powder, do cease and desist:

1. From making the water glass test described and set out in the findings of fact herein with Calumet Baking Powder in comparison with any other baking powder.

Order

2. From making the aforesaid water glass test with another manufacturer's baking powder or suggesting that such test be made with another manufacturer's baking powder.

3. From making any assertion, claim, or statement that the aforesaid water glass test in any way demonstrates or determines the carbon dioxide gas strength or leavening efficiency of any baking powder.

4. From making any assertion, claim, or statement that doughs or batters or like mixtures in which baking powders are used will function in the baking as the foam mixtures function in the aforesaid water glass test.

It is further ordered, That the respondent, Calumet Baking Powder Co., shall, within 60 days after the service on it of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which it has complied with the above order to cease and desist.

By the Commission; Commissioners Humphrey and March dissenting.

Syllabus

IN THE MATTER OF

JOHNSON & JOHNSON

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

Docket 1546. Complaint, Nov. 6, 1928—Decision, June 26, 1929

Where a corporation engaged in the manufacture and sale of medicinal and surgical plasters and toilet specialties, including an antiseptic borated talcum powder for nursery use, and other products; in furtherance of endeavors to maintain the minimum uniform selling price fixed by it for resale of its aforesaid nationally advertised, popular, and largely demanded powder, sold by it chiefly directly to retail dealers consisting principally of some 30,000 drug and department stores, and to a limited extent at the same price through the wholesale trade, with allowance for freight on certain minimum quantity purchases,

(*a*) Secured generally from customers promises and assurances to observe and maintain its said price;

(*b*) Secured from retail dealer customers and from its selling agents and otherwise information and evidence concerning price cutting by retailer customers and used such information to induce said price cutting customers thereafter to observe its said price;

(*c*) Refused further sales of its said product to customers disclosed as price cutters by investigations based upon customers' reports and also upon its own initiative, and secured said price cutters' promises and assurances to immediately maintain and thereafter observe its aforesaid price;

(*d*) Sought to ascertain source of supply of dealers cut off by it as price cutters in order to refuse further sales to the supplying dealer or dealers and did so discontinue selling such a supplying dealer; and

(*e*) Secured from all retailers in localities involving price cutting by one or more dealers, through its sales agents and with the assistance of favorably disposed dealer customers, a general agreement on the part of all to immediately put its price into effect therein and to observe and maintain the same thereafter;

With the result that its aforesaid suggested minimum resale price was rigidly enforced and maintained as both the minimum and maximum price for the resale of its said product in the eastern section of the United States to which its aforesaid activities, as disclosed, were principally related, and retail dealer customers were prevented therein from selling its said product at such lower prices as might be deemed by them to be warranted by their respective selling costs and by trade conditions generally and competition between retailers in respect of said product was thus suppressed and prevented:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. William T. Kelley for the Commission.

Mr. Archibald Cox, of New York City, for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New Jersey corporation engaged in the manufacture of medicinal and surgical plasters, absorbent cotton, surgical dressings, first-aid supplies, ligatures, dental floss, and toilet specialties, and in the sale thereof direct to retail dealers, principally drug and department stores, and to wholesalers, but chiefly directly to some 30,000 retail dealer customers, and with general offices and place of business in New Brunswick, N. J., and branch divisions at Chicago and San Francisco, with maintaining resale prices, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as alleged for more than three years last past, has enforced and enforces a merchandising system adopted by it directed to the fixing and maintaining of uniform minimum retail prices specified by it for the sale of its "Johnson's Toilet and Baby Powder," in the enforcement of which system it enlists and secures the support and cooperation of retail and wholesale dealers, and of its officers, agents, and employees, and employs "the following means whereby respondent and those cooperating with it have undertaken to prevent and have prevented retail dealers handling respondent's said product Johnson's Toilet and Baby Powder from reselling same to the public at prices less than aforesaid minimum resale prices established by" it, to wit:

(*a*) Fixing uniform minimum prices at which retailers shall resell its said powder to the purchasing public and issuing and sending to them price lists setting forth such uniform minimum prices;

(*b*) Making it generally known to the trade by letters, circulars, salesmen interviews, and otherwise that it expects and requires such retailers to maintain and enforce said prices and that it will refuse to further supply its product to those failing so to do;

(*c*) Entering into agreements, understandings, and arrangements with retailers for the maintenance by them of such prices as a condition of opening accounts with them or of continuing their supply of its said product;

(*d*) Procuring from such dealers reports of the failure of other retailers handling its product to observe and maintain its prices;

(*e*) Employing its salesmen and other employees to ascertain, investigate, and secure information as to any such failure and as to the sale of its said product by wholesalers to retailers failing to maintain its said prices;

(*f*) Seeking and securing the cooperation of its retail and wholesale dealers and of its agents and employees in preventing price-cutting retailers from obtaining its product from wholesalers, and tracing source of supply of such retailers in order to prevent them from securing further supplies of its products;

(*g*) Using information received through the means above set out to induce price-cutting retailers to maintain its prices thereafter, by exacting promises and assurances from them that they will so do and by threatening them with refusal of further supply in event of their failure so to do; and

(*h*) Refusing further supplies of its said product to offending retailers unless and until they give satisfactory assurances or undertaking of thereafter observing its said uniform minimum prices;

According to the complaint, "the direct effect and result of above alleged acts and practices of respondent has been and now is to suppress competition among retail dealers in the distribution and sale of respondent's product, Johnson's Toilet and Baby Powder; to constrain said dealers to sell said product at aforesaid prices fixed by respondent and to prevent them from selling said product at such less prices as they may desire, and to deprive the ultimate purchasers of said product of the advantages in prices and otherwise which they would obtain from the natural and unobstructed flow of commerce in said commodity under conditions of free competition"; all to the prejudice of the public.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent Johnson & Johnson, charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act. Respondent having entered its appearance and filed its answer herein, hearings were had and evidence was thereupon introduced upon behalf of the Commission, and the respondent before an examiner of the Federal Trade Commission theretofore duly appointed. Thereupon this proceeding came on for decision on the record, briefs of counsel for the Commission and counsel for the respondent, and the Commission being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is now and for many years last past has been a corporation organized and existing under and by virtue of the laws of the State of New Jersey. Its principal office and factory is located at New Brunswick, N. J., where respondent has been for several years last past and is now engaged in the business of manufacturing and selling medicinal and surgical plasters, absorbent cotton, surgical dressings, first-aid supplies, ligatures, dental floss and toilet specialties, including an antiseptic borated talcum powder for toilet and nursery use, sold under the name Johnson's Toilet and Baby Powder. It maintains and operates branch sales divisions at Chicago, Ill., and San Francisco, Calif. Respondent's products are sold to wholesalers and retail dealers located throughout the various States of the United States. Said products are shipped in interstate commerce to such purchasers from respondent's factory at New Brunswick, N. J., or from its said branch sales divisions. In the course of such business respondent is in competition with other concerns engaged in similar business in interstate commerce.

PAR. 2. This proceeding relates only to the merchandising policy of respondent with respect to the product Johnson's Toilet and Baby Powder, hereinafter referred to as talcum powder. Said product is sold to both the wholesale and retail trade at the same price, namely, $24 per gross, less a discount of 20 per cent. This price is regardless of quantity purchased, except when purchased in quantities amounting to $50 net, the price includes the freight, otherwise the purchaser pays the freight. Approximately 75 per cent of the amount of respondent's sales of said product are made direct to retail dealers, principally drug and department stores, numbering approximately 30,000. Respondent employs soliciting sales agents through whom it secures orders for its products. The respondent advertised its talcum powder in magazines and periodicals having a national circulation and has created a large and popular public demand for said product.

PAR. 3. The respondent for more than three years prior to the filing of the complaint in this case on November 6, 1928, has endeavored and now endeavors to maintain a fixed uniform selling price for its talcum powder. To that end respondent sent to all its customers on July 22, 1925, a printed communication entitled "Notice Concerning Resale Prices," wherein it specified 20 cents as the minimum price at which its talcum powder is to be resold by retail dealer customers to the public, which price is such as in the opinion of the

respondent affords a "reasonable" profit. In furtherance of respondent's endeavor to prevent retail dealer customers from selling its talcum powder for less than its said specified minimum resale price it has during the times herein mentioned and now does secure and utilize the assistance and cooperation of its customers and of its sales agents, as hereinafter set forth.

PAR. 4. Respondent secures from its retail dealer customers information and evidence concerning other retail dealer customers who sold its talcum powder below its said specified minimum resale price. Also respondent secures through its sales agents and otherwise information and evidence concerning the failure of retail dealer customers to observe and maintain said minimum resale price. The respondent has used information secured through the above means to induce customers who failed theretofore to observe and maintain its said minimum resale price to observe and maintain said price in the future and has secured generally from customers their promise and assurance to observe and maintain said price in the future.

PAR. 5. The respondent as a result of investigations instituted upon reports received from its customers and also as a result of investigations made upon its own initiative has in some instances refused further sales of talcum powder to customers found to have been selling said product below its specified minimum resale price and in many instances has through its sales agents secured from customers who sold said product below said resale price their promise and assurance to immediately put said price into effect and to observe and maintain same in the future.

PAR. 6. The respondent sought to ascertain the source of supply of dealers who were barred from buying talcum powder direct from it because of sales below its specified minimum resale price, for the purpose of refusing further sales of said product to the dealer or dealers supplying the dealer or dealers who sold for less than its said specified minimum resale price, and in one instance did discontinue direct sales to a dealer suspected of selling said product to another dealer who sold below its suggested minimum resale price.

PAR. 7. The respondent, through its sales agents and with the assistance and cooperation of retail dealer customers favorable to the observance of its specified minimum resale price, has secured from all retail dealers in localities where respondent's talcum powder has been sold by one or more dealers for less than said resale price a general agreement on the part of all dealers in said localities to immediately put said price into effect and to observe and maintain same in the future.

PAR. 8. The evidence upon which the foregoing findings of fact rest relate principally to the activities of the respondent throughout the eastern section of the United States. Throughout this section respondent's suggested minimum resale price of 20 cents was rigidly enforced and maintained and this price was, generally speaking, both the minimum and the maximum price at which respondent's talcum powder was sold to the public. The practices of the respondent as set out in these findings of fact prevented its retail dealer customers from selling respondent's talcum powder at such lower prices as might be deemed by them to be warranted by their respective selling costs and by trade conditions generally and thus suppressed and prevented competition between retail dealer customers in respect to said product.

CONCLUSION

The practices of the said respondent under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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 evidence submitted, and briefs of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

Now, therefore, it is ordered, That the respondent, Johnson & Johnson, its officers, directors, agents, representatives, and employees do cease and desist from carrying into effect or attempting to carry into effect a policy or system of securing the maintenance of resale prices for its product, Johnson's Toilet and Baby Powder—

(1) By entering into contracts, agreements, or understandings with dealers to the effect that said product will not be sold by them or any of them for less than the minimum resale price specified by respondent.

(2) By procuring either directly or indirectly from dealers or any of them their promise or assurance to observe and maintain the resale price specified by respondent.

(3) By acting upon reports or communications from dealers concerning sales at prices below respondent's specified minimum resale price by other dealers.

(4) By in any manner seeking the cooperation of dealers in the maintenance of resale prices specified by respondent.

It is further ordered, That the respondent, Johnson & Johnson, shall within 60 days after the service upon it of a copy 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

MARYLAND PHARMACEUTICAL COMPANY

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

Docket 1618. Complaint, May 9, 1929—Decision, June 27, 1929

Where a corporation engaged in the manufacture of a cough remedy under a brand name and in the sale thereof through wholesalers, and to some extent directly through retailers, principally chain stores; in pursuance of a policy directed to the resale of its said product by said wholesalers or distributors and retailers at the prices respectively fixed by it, entered into agreements and understandings therewith obligating them to resell its said product at the prices designated and fixed by it for resale to retailers and, by the latter, to the consuming public, whether purchased directly from it or through said distributors; with the result that there was practically complete cooperation between it, its distributors, and retailers in adhering to and maintaining its said prices, distributors and retailers engaged in the sale of said product were prevented from selling the same at such lower price or prices as might be deemed by them to be warranted by their respective selling costs and by trade conditions, and it was thereby enabled to and did suppress and prevent competition in interstate commerce between its distributors, on the one hand, in the sale of its products to retailers, and between retailers, on the other hand, in the sale thereof to the consuming public:

Held, That such practice, under the circumstances set forth, constituted an unfair method of competition.

Mr. James M. Brinson for the Commission.

Mr. Sidney L. Nyburg, of Baltimore, Md., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Maryland corporation engaged in the manufacture of a cough remedy under the name "Rem" and in the sale thereof through wholesalers or distributors, who resell to retail dealers, and to a certain extent directly to retailers, principally chain stores, and with principal office and place of business at Baltimore, with maintaining resale prices, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, "has adopted for the distribution and sale of its product, 'Rem', and for more than five years last past, has maintained a system, under and in pursuance of which it has designated and fixed, and now designates and fixes certain uni-

form minimum price or prices, at or for which said product purchased from it by its so called distributors, has been and is resold to retail dealers and at or for which said retail dealers purchasing directly from respondent, or from distributors, resell to the consuming public. Respondent has enforced, and enforces adherence to and maintenance of the prices designated and fixed by it for the resale of its product by wholesale and retail dealers and their acquiescence in, and compliance with, any and all requirements of the system maintained for its distribution and sale, by employment of the following among other methods ":

(*a*) Designating and fixing uniform minimum prices to be observed by said distributors in reselling to retailers and entering into agreements with them for the maintenance of such prices as a condition to initial and all subsequent sales by respondent to them;

(*b*) Designating and fixing such prices for observance by retailers purchasing either directly from it or its distributors and entering into agreements with such retailers for maintenance of such prices as a condition to direct purchases from it or purchases of its product, with its knowledge and approval, from its distributors;

(*c*) Soliciting and securing cooperation of wholesale and retail dealers selling its product in maintaining its said system of merchandising and enforcing the general and continued maintenance of its designated resale prices by wholesale and retail dealers;

(*d*) Warning and threatening its distributors that failure to sell its said product to retailers at the price designated by it, or sale to price cutting retailers would be followed by refusal of further sales to the offending distributors;

(*e*) Requesting and expecting its distributors and retail dealers handling its product, to report to it any price-cutting distributor or retail dealer, and securing cooperation of such wholesalers and retailers by compliance with its aforesaid requests, through reports by them to it of such price cutting;

(*f*) Requesting its distributors to refuse to sell its product to any price-cutting wholesaler or retailer or to any dealer selling to any such price cutters;

(*g*) Visiting centers of distribution for its product and requesting information as to price cutting by distributors or retailers;

(*h*) Refusing to sell to distributors believed from information obtained by its officers or from distributors or retailers to have cut prices;

(*i*) Soliciting and receiving assurances from wholesale and retail dealers refused further sales on account of price cutting, that if again supplied they would maintain the designated resale price and

reopening accounts with said distributors and selling or permitting sales by its distributors to the aforesaid retailer;

(*j*) Notifying its other distributors of any and all price-cutting distributors and dealers and seeking and obtaining cooperation of wholesale and retail dealers generally in preventing its product from being obtained by price-cutting wholesalers or retailers;

The aforesaid acts and practices resulted, as alleged, in the general maintenance of the resale prices designated and fixed by respondent for its product, and each and all of such acts and practices "has and have had and has and have the tendency to coerce or constrain all wholesale and retail dealers handling its product to sell the same uniformly at the price or prices designated and fixed by respondent for the sale to retail dealers and to the public, and to prevent said wholesale and retail dealers from selling such product at such lower price or prices as they might from time to time consider adequate and warranted, and have been and are adequate and warranted by their respective selling cost, efficiency and other conditions or considerations relating thereto and thereby has and have had and has and have the tendency to hinder and suppress competition in the sales of such product of respondent by its distributors, wholesale dealers, and by retail dealers, and each and all of said practices of respondent has and have had and has and have a tendency unduly and dangerously to restrain competition and trade in commerce among the various States of the United States"; all to the prejudice of the public.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint upon the respondent Maryland Pharmaceutical Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act of Congress. The chief counsel for the Federal Trade Commission and counsel for respondent, having thereafter signed and filed a stipulation, waiving answer by respondent to the complaint, testimony and evidence, briefs and arguments, and containing an agreed statement of the facts in lieu of testimony and evidence, and it having been provided in said stipulation that the Commission may forthwith make and file its report, stating its findings as to the facts and conclusion drawn therefrom, and issue its order disposing of the proceeding,

thereupon, this proceeding came on for decision and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is now, and for more than 20 years last past has been, a corporation organized and existing under and by virtue of the laws of Maryland, with its principal office and place of business at Baltimore, in said State. It has been and is engaged in the manufacture and sale in commerce among various States of the United States, of a cough remedy known and described as "Rem," which it causes to be transported, when sold to purchasers, in the various States of the United States, in competition with individuals, partnerships, and corporations engaged in like commerce, in the sale of cough remedies.

PAR. 2. In the course of the conduct of its said business, respondent has sold and sells said product to and distributes it through wholesalers who are called distributors, and in turn sell to retail dealers, but to some extent respondent sells direct to retail dealers, principally so-called chain stores. It has adopted for the distribution and sale of its product, "Rem", and for more than five years last past, has maintained a policy and system under and in pursuance of which it has designated and fixed, and now designates and fixes certain uniform price or prices, at or for which said product purchased from it by its so-called distributors, has been and is resold to retail dealers and at or for which said retail dealers purchasing directly from respondent, or from distributors, resell to the consuming public.

It has been and is the practice of respondent, in the conduct of said system and the execution of such policy to enter into agreements and to have understandings with its distributors, and retail dealers, by, under, or inaccordance with which it undertakes to sell to them, and they severally undertake to buy its product "Rem", on condition that the said distributors will resell it to retail dealers, and that said retail dealers, whether purchasing directly from respondent or indirectly through its distributors, will resell it to the consuming public, at the price or prices designated and fixed by respondent for its said resale by distributors and retail dealers, respectively.

PAR. 3. There has been and now is by means of the agreements and understandings mentioned in paragraph 2 hereof, practically

complete cooperation between respondent, its distributors and retail dealers, in adherence to and maintenance of the price or prices designated and fixed by respondent for the resale of its said product, with the effect that distributors of respondent and retail dealers engaged in the sale of said product have been and are prevented from selling it at such lower price or prices as might be deemed by them to be warranted by their respective selling costs and by trade conditions. Respondent thereby has been enabled to suppress and prevent and has suppressed and prevented competition in interstate commerce, on the one hand, between its distributors in their sale of its product to retail dealers, and on the other hand, between retail dealers in its sale to the consuming public.

CONCLUSION

The practices of the said respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon its complaint and an agreed statement of the facts, answer to the complaint having been waived, and the Commission having made and filed its report, stating its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now therefore it is ordered, That respondent Maryland Pharmaceutical Co., its officers, directors, agents, representatives, and employees do cease and desist from carrying into effect or attempting to carry into effect a policy or system of securing the maintenance of resale prices designated or fixed by respondent for its product "Rem"—

(1) By entering into contracts or agreements or having understandings with its distributors, or any of them, to the effect that they will not sell said product for less than the resale price designated or fixed by respondent.

(2) By entering into contracts or agreements or having understandings with retail dealers, or any of them, that said product will

not be sold by them to the consuming public for less than the retail price designated or fixed by respondent.

(3) By procuring either directly or indirectly from distributors or any of them, or from retail dealers, or any of them, the promise or assurance to observe and maintain the resale price or prices designated or fixed by respondent for said product.

(4) By seeking in any manner the cooperation of distributors or retail dealers in the observance and maintenance of resale price or prices designated or fixed by respondent for said product.

It is further ordered, That the respondent Maryland Pharmaceutical Co., shall within 60 days after the service upon it of a copy 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

NON-PLATE ENGRAVING COMPANY, INC.

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

Docket 1283. Complaint, Feb. 14, 1925—Decision, June 29, 1929

Where a corporation engaged in producing and selling business and social stationery, with imprints produced by a process which (1) involved sprinkling ordinary wet, type printing, with a chemical, followed by baking, and resulted in a raised letter effect so closely simulating genuine engraving as to be readily distinguishable only by an expert, and (2) was named "thermography" by an association of the trade;

(*a*) Described its product as "Non-Plate Engraving" and set forth in its advertising matter, on letterheads, and on other literature the words "NON-PLATE ENGRAVING COMPANY, INC. Engraved and Embossed Effects Without Copper Plates or Steel Dies"; and

(*b*) Represented that its said "Non-Plate Engraving" will meet all social requirements and result in a saving of half the time and cost of work done with a plate;

With the capacity and tendency to deceive the public into the mistaken belief that the stationery in question was genuine engraved stationery, i. e., as long known and understood by the public, stationery upon which impressions had been made from inked engraved plates or dies:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Richard P. Whiteley for the Commission.

Mr. George Seagrave Franklin, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation, engaged in printing social and business stationery, including invitations, announcements, calling and business cards, letterheads, envelopes, and allied products, by a special process, and in the sale of its said stationery products to persons, firms, and corporations in various States, and with principal office and printing plant in New York City, with using misleading corporate name and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged, as above set forth and producing letters, words, or designs upon its stationery by a process which involves the placing of said letters, etc., upon the stationery through use of inked type or cuts, and the application thereto while the ink is wet of a powdered chemical, followed by the baking of the stationery, with a resulting raised letter effect so closely resembling "engraved" products in appearance, feel, and finish that persons that are not experts are unable to distinguish between respondent's products and "engraved" products, features its corporate name, together with the statements "Non-plate Engraving", "Engraved Effects", "Non-plate Engraved", "We Specialize in Copper Plate and Steel Die Effects" and other similar statements as descriptive of its business and products, in advertisements in newspapers of general circulation throughout the United States and in letters, price lists, sample books, pamphlets, folders, and other advertising literature, notwithstanding the fact that the letters, words, or designs upon respondent's said stationery are not the result of "engraving", nor "engraved" according to the trade and public understanding of the term, that is to say, stationery containing "letters, words, or designs which are raised from the general plane of the stationery surface, and are in relief, and are the result of the application, under pressure, of metal plates which have been specially engraved, cut, or carved for, and are used in, the production of such stationery".

The use by respondent of the word "engraving" in its corporate name, and of words and phrases, as above set forth, in advertising, offering, and selling its said products, as charged, "were and are calculated to, and had and have the tendency and capacity to, and did and do mislead and deceive the purchasing public into the erroneous belief that respondent is an engraving company, and that respondent is engaged in the business of producing and selling engraved stationery, and that the letters, words, or designs contained upon the stationery products offered for sale and sold by respondent, were and are engraved."

The use by respondent of the word "engraving" in its corporate name and use of the aforesaid words and phrases in its advertising literature, and the placing of such literature "in the hands of agents, representatives, and dealers", further, as charged, "enables unscrupulous agents, representatives, and dealers to mislead and deceive customers and prospective customers into the erroneous belief that respondent is an engraving company, and that respondent is engaged in the business of producing and selling engraved stationery products, and that the stationery products offered for sale and sold by respondent are engraved products."

Such alleged acts and practices, as charged, divert trade from and otherwise prejudice and injure competitors, many of whom produce engraved stationery products, for business and social purposes and sell the same to purchasers in other States, and others of whom manufacture and sell in interstate commerce, stationery for business and social purposes which is not engraved and do not in any manner hold themselves out or represent themselves as manufacturers of or dealers in engraved stationery products; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, Non-Plate Engraving Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed its answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondent before an examiner of the Federal Trade Commission duly appointed.

Whereupon, this proceeding came on for a final hearing on the briefs and oral argument, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Non-Plate Engraving Co., Inc., is a corporation organized in 1916 under the laws of the State of New York, with its principal place of business in the city of New York, in said State. Upon its organization as a corporation it took over a business theretofore carried on, since 1913, by a partnership trading under the name and style of "Non-Plate Engraving Co."

PAR. 2. Since 1916, and at all times herein mentioned, respondent has been engaged in the business of producing and selling stationery, including invitations, announcements, greeting cards, calling cards, business cards, letterheads, and similar items of business and social stationery, and has caused said stationery, when sold, to be transported from its said place of business in the State of New York through and into various other States of the United States to the respective purchasers thereof. In the course and conduct of its said business, respondent at all times since its organization has been in

active competition with various persons and partnerships and other corporations also engaged in the production and sale of commercial and social stationery, invitations, announcements, greeting cards, business cards, letterheads, and similar items of business and social stationery, in commerce among the several States of the United States.

PAR. 3. Respondent, in the course of its business, as set out in paragraphs 1 and 2 hereof, produces imprints by type presses on the stationery sold by it by the following process:

Ordinary type is used to print upon paper. While the ink is still damp it is sprinkled with a chemical in powdered form and then baked; which causes the chemical to melt, fuse with the ink, become solid and present a raised letter effect.

Printing by this process raises the lettering above the surface of the paper, closely simulates genuine engraving, and only an expert can readily distinguish it from engraving. Respondent describes its product as "Non-Plate Engraving," and upon its advertising matter, letterheads, and other literature, there appears the following caption:

NON-PLATE ENGRAVING COMPANY, INC.

ENGRAVED AND EMBOSSED EFFECTS WITHOUT
COPPER PLATES OR STEEL DIES

The advertising matter of respondent is distributed by it among its customers and prospective customers in various States of the United States, and in one piece of advertising matter the claim is made that its product, "Non-Plate Engraving" will meet all social requirements, and that its use will result in a saving of half the time and half the price of work done with a plate.

PAR. 4. For a number of years prior to September, 1928, a group of members of the New York Employing Printers' Association, who produced stationery imprinted by a process similar to that used by the respondent in the manufacture of its products, endeavored to reach an agreement as to a proper descriptive name for the raised printing produced by such process, and in September, 1928, as the result of said efforts they selected the name "Thermography." Notice to this effect was contained in a leaflet which the members of this group caused to be published for general distribution, and which has been and is now being distributed among customers and prospective customers of respondent.

PAR. 5. The word "engraving", as it is used in the graphic arts, may be applied either to an engraved intaglio plate upon which words, letters, designs, etc., have been incised or cut, or to impressions made from such a plate. Such plates are cut or incised by hand, by

machine, by etching with acid, by a transfer from other engravings, and by other means, but in all cases the words, letters, designs, etc., sought to be produced upon stationery, cards, etc., are cut below the surface of the plate. To make impressions from such a plate the ink is applied, then the plate is wiped, so that the ink remains only in the lines cut below the surface. The inked plate is then put upon the piece of stationery or other article to be engraved and pressure is applied sufficient to force the surface of the stationery into the lines cut in the plate, causing the ink in such lines to adhere to the paper or other material on which the impression is to be made.

PAR. 6. The word "engraving", when applied to business and social stationery, has been well known and understood by the public for a long period of years to include only stationery upon which impressions have been made from inked engraved plates or dies, upon which plates or dies there have been made lines, letters, designs, or inscriptions, by cutting or otherwise producing same below the surface of such plates or dies. The stationery produced and sold by respondent, as set out in paragraph 3 hereof, closely simulates engraved stationery in appearance and finish, and when designated and advertised under a name consisting of a combination of words which includes the word "engraving", or the word "engraved", has had and has the capacity and tendency to deceive the public into the mistaken belief that the same is engraved stationery.

CONCLUSION

The practices of the respondent, under the conditions and circumstances set forth in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and upon answer of the respondent filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent above named, Non-Plate Engraving Co., Inc., its officers, agents, representatives, and employees, do cease and desist from using the word "engraving" or "engraved" in its corporate name, business signs, or advertising matter used in the offering for sale or sale of stationery in interstate commerce, upon which the words, letters, figures, and designs have not been produced from metal plates, into which such words, letters, and designs have been cut.

PLATELESS ENGRAVING CO., INC., Docket 1330. The Commission as of the same date made substantially similar findings and order in the case of the aforesaid respondent (against whom complaint was issued as of July 2, 1925), it appearing that said respondent, a New Jersey corporation with principal place of business and office in New York City, in its advertising matter, letterheads, and other literature employed the caption "Plateless Engraving Co., Inc.", "Engraved and Embossed Effects Without Copper Plates or Steel Dies", though it does not appear that respondent, as in the preceding case, made any claim as to its said so-called engraving meeting all social requirements, and advantages thereof in time and price of work done, as compared with work done with a plate; the Commission being represented by *Mr. Richard P. Whiteley* and respondent by *Mr. George Seagrave Franklin*, of New York City.

IN THE MATTER OF

MARION BUTLER KIRTLAND AND ROY M. KIRTLAND TRADING UNDER THE NAME AND STYLE OF RAY LABORATORIES

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

Docket 1513. Complaint, May 10, 1928—Decision, June 29, 1929

Where a firm engaged in the sale and distribution of a so-called hair-color restorer, which (1) was and acted only as a dye, (2) was apt to be harmful to the body, (3) produced a color which was impaired by shampooing or bathing in salt or fresh water and wore off, and (4) was not a stimulant to hair growth nor effective in any degree as a remedy or cure for dandruff; in its advertisements of its said so-called "Youthray",

(*a*) Falsely represented that the same neither was nor acted as a dye, but permanently restored gray hair to its original and natural color through its action through the hair channels in supplying natural-color pigment to the inside of the hair through the roots thereof, and thus caused nature to assimilate such coloring matter and to replenish the color glands with the original coloring;

(*b*) Falsely represented that the color thus produced, since within the hair itself, neither came off, nor was impaired in any way by shampooing or bathing in salt or fresh water; and

(*c*) Falsely represented that said preparation should be frequently applied, and that so applied, it was not only harmless, but a distinct benefit, aside from its restoration of the natural color, and constituted a stimulant to hair growth and an effective remedy and cure for dandruff;

With the effect of misleading and deceiving large and substantial numbers of the consuming public into purchasing said lead-and-sulphur dye in reliance on the truth of the aforesaid statements and representations, and with the capacity and tendency so to do, all to the prejudice and injury of the public and of its competitors from whom trade was thereby unfairly diverted:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Henry Miller for the Commission.

Nugent & O'Hara, of Washington, D. C., and *Church, Traxler & Kennedy*, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, Marion Butler Kirtland and Roy M. Kirtland, engaged as partners in the sale of a hair color restorer under the name of

"Youthray", by mail order throughout the various States, and doing business under the firm name of Ray Laboratories, with principal offices and main place of business in Chicago, with advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, and doing a large amount of advertising of their said product in magazines, periodicals, booklets, circulars, and other printed matter, in their said advertising falsely and misleadingly represent that their said "Youthray" is a natural color restorer and not a dye, but a result of a new discovery, supplying the hair roots or glands with the proper substance to provide the channels inside the hair with their proper coloring, that is to say, the process used by nature herself, consequently is permanent and will not wash off or come off like the theretofore unsatisfactory dyes which are purely external, that it is safe, and, in addition to its qualities above referred to, stimulates growth and contains an effective remedy for dandruff, a menace which has taken on new proportions for women with their adoption of the practice of bobbing hair, and "is a thousand times more to be desired than merely dying the hair"; the facts being that the preparation in question is nothing more nor less than a lead and sulphur dye, which will not restore gray hair to its natural color except by its dying process, and is a poison apt to be harmful if frequently rubbed into the scalp, and that the color gland in the hair root can not be replenished, by said hair color restorer.[1]

[1] Excerpts from the substance of respondents' advertising, as more fully alleged and set out in the complaint, follow:

No one wants gray hair. Most people do something to overcome the condition. Dyes are not satisfactory. Nor are the many so-called colorless liquids that cause the hair to turn dark. For these liquids are nothing more than dyes. They contain chemicals which darken when exposed to light, air and heat. And with all dyes and stains, the hair again becomes gray as it grows out.

Now science has found the way to actually restore gray hair to its original color. You will realize the importance of this discovery when you know that for years chemists and hair specialists all over the world have worked continuously to find the secret.

Youthray is the answer science has found to the problem of gray hair. So remarkable is Youthray that women (also men) are acclaiming it the greatest beauty discovery of all time. And well they may; for nothing ages one's appearance as much as gray hair. The first gray hair—as women well know—strikes terror to the heart; for it seems to say "Youth is fleeting."

Then they resort to dyes. But not any more—for those who learn of Youthray. One fact is convincing proof that Youthray is different, that it cannot be a dye, or stain. For Youthray is not applied to the hair itself, but is rubbed into the scalp, acting thru the hair canal.

Study of the hair reveals that it depends for color upon the activity of a tiny bulb at the hair root. Nature takes certain chemicals and transforms them into color. Then, since the hair is hollow in the center, the natural color is present along the hair shaft, clear to the tip. Also it is known that the hair is formed of tiny scales and cells. These

The said statements and representations so made by respondents, as charged, have the tendency and capacity to mislead and deceive the public into the erroneous belief that said product is a natural color restorer, and not a dye, which will restore the original color by replenishing the color gland, will not harm the scalp in any way, and is effective in curing dandruff, and into believing such statements and representations to be true; all to the prejudice of the public and of respondents' competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provision of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Marion Butler Kirtland and Roy M. Kirtland, trading under the name and style of Ray Laboratories, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearance herein and filed answer to said complaint, a stipulation as to the facts was agreed upon by and between respondents and the chief counsel of the Federal Trade Commission wherein it was stipulated and agreed that the facts therein stated may be taken as the facts in the proceeding before the Federal Trade Commission and in lieu of testimony before the Commission in support of the charges stated in said complaint or in opposition thereto, and that the Commission may proceed further upon said stipulation to make and enter its report in said proceeding, stating its findings as to the facts and conclusion and entering its order disposing of the proceeding.

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can be plainly seen under a powerful microscope. The coloring matter supplied by nature fills the minute cells and is deposited in the spaces between the scales.

It is then found that when hair grays, nature has ceased producing color at the hair root. This deprives the hair of color throughout its length. The actual appearance of gray is caused by air which gets into the hair in place of color.

In working to perfect Youthray, the coloring matter nature uses was analyzed to discover its exact chemicals. The next step was to duplicate these natural chemicals for Youthray. As you will observe when you use Youthray, the necessary natural chemicals do not form a dye, or stain. The actual color is produced within the hair itself. And that is the natural way. That is why Youthray is applied, not to the length of the hair, but to the scalp, to the hair roots themselves.

You quickly have proof that nature utilizes Youthray; for you apply a non-coloring liquid with the result that color creeps up the hairs from root to tip, restoring the gray hair to its original color.

This process, you now understand, is directly the opposite to the action of dye. For with dyes, or colorless liquids that change when exposed, you are always told to comb them through the hair. Great stress is laid upon this combing.

Dyes and stains may work a little more rapidly than Youthray. But a few days more are of no consequence to anyone when it is remembered that Youthray restores gray hair in a natural way, that there is no gray left at the hair root, that there is no streaking or uneven application of color, no hint of artificiality.

And of course Youthray does not come off; for it is actually within the hair itself.

Thereupon this proceeding came on for decision, and the Commission having duly considered the record, and now being fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PAR. 1. Respondents Marion Butler Kirtland and Roy M. Kirtland are copartners doing business under the firm name and style of Ray Laboratories with their office and place of business in the city of Chicago, State of Illinois; and as such copartners and under said firm name they are and for more than one year last past have been engaged in the business of selling and distributing to the consuming public a so-called hair color restorer named, designated and denominated by them as " Youthray ", being a liquid preparation for the care and treatment of the human hair and scalp.

PAR. 2. In the sale and distribution of said so-called hair color restorer, " Youthray ", respondents carry on and conduct, and for more than one year last past have carried on and conducted said business as in this paragraph set forth. Respondents offer for sale, solicit orders therefor, sell and advertise said so-called " Youthray " to the consuming public through and by means of numerous advertisements published by them from time to time in magazines, newspapers, and other periodicals circulating among the consuming public throughout the various States of the United States; and also through and by means of advertising booklets, circulars, and other printed matter, which respondents cause to be sent by mail and otherwise from their place of business in Chicago, Ill., through and into many other States of the United States to consumers and prospective consumers of said so-called " Youthray ". As a result of such advertising, solicitation and offering for sale of said so-called " Youthray ", respondents receive from time to time from consumers and other members of the public, numerous purchase orders for said so-called " Youthray ", which purchase orders, together with remittances of the purchase price of said product, are sent by mail and otherwise, pursuant to instructions in said advertising matter, from the respective purchasers in the several States of the United States to respondents at their place of business in Chicago, Ill. Upon receipt of said purchase orders, respondents, pursuant thereto, fill said orders and cause said product " Youthray " to be shipped and delivered by them from their place of business in Chicago, Ill., through and into other States of the United States to the respective purchasers thereof, thus accomplishing and conducting the inter-

state sale and distribution of said product to the consuming public. In so carrying on their business respondents are and throughout the course and conduct thereof have been engaged in interstate commerce and in direct, active competition with many other individuals, partnerships, and corporations similarly engaged in the sale and distribution, in commerce between and among the various States of the United States, of competing products and of products used for similar purposes.

PAR. 3. In said advertising matter, published and circulated by respondents throughout the space of about one year immediately prior to August, 1928, and through and by means of which respondents offered for sale, solicited purchase orders therefor, advertised and sold said so-called "Youthray", respondents caused to be set forth and printed, as inducements to the purchasing and consuming public to purchase said product, numerous statements and representations of and concerning said so-called "Youthray" so advertised, which statements and representations were to the following effect:

(1) That said so-called "Youthray" was not a dye and did not when used act as, but directly opposite to, a dye.

(2) That said so-called "Youthray" would permanently restore gray hair to its original and natural color.

(3) That said so-called "Youthray", when applied, acted through the hair channel and restored the original and natural color to gray hair by supplying natural color pigment to the inside of the hair through its roots, and thus caused nature to assimilate such coloring matter and to replenish the color glands of the hair with the original coloring matter.

(4) That the color produced by said so-called "Youthray" would not come off, because it is within the hair itself, and that shampooing or bathing in salt or fresh water would in no way impair said color.

(5) That said so-called "Youthray" should be applied to the scalp of consumers by frequently rubbing it into the scalp, and that when so used said product was harmless and would not cause any harmful results to the consumer.

(6) That said so-called "Youthray" when applied was a distinct benefit to the scalp, aside from its purpose of restoring the original and natural color to the hair.

(7) That said so-called "Youthray" was a stimulant to hair growth and was an effective remedy for and would cure dandruff.

PAR. 4. Because of said advertising matter and throughout the period same was published and circulated by respondents as set forth in paragraph 3 hereof, respondents sold and distributed large and substantial quantities of said so-called "Youthray" from their

place of business in Chicago, Ill., to the purchasing and consuming public in the several States of the United States, which so-called "Youthray" so advertised, represented, described, sold, and distributed was in truth and in fact a lead and sulphur dye and when applied as directed by respondents acted only as a dye. It could not and did not, when applied, act through the hair channels nor restore the original and natural color to gray hair by supplying the natural color pigment to the inside of the hair through its roots; nor could or did said product, when applied as directed by respondents, cause nature to assimilate such coloring matter or to replenish the color glands of the hair with the natural coloring matter. Said so-called "Youthray", when applied to the scalp as directed by respondents, was apt to be harmful to the human body and to cause disease of the skin. The color produced on the hair by said so-called "Youthray" would and did become impaired by shampooing or bathing in salt or fresh water and would and did wear off. Said so-called "Youthray" was not a stimulant to hair growth, nor was it effective in any degree as a remedy or cure for dandruff.

PAR. 5. The aforesaid statements and representations set out in subparagraphs (1), (2), (3), (4), (5), (6), and (7) of paragraph 3 hereof, and published and circulated by respondents as hereinbefore set forth, were false, had the capacity and tendency to and did mislead and deceive large and substantial numbers of the consuming public into purchasing said so-called "Youthray" in and because of the erroneous belief that said statements and representations were true in fact, all to the prejudice and injury of the public and of respondents' competitors.

CONCLUSION

The aforesaid false, misleading or deceptive statements, representations or assertions made by respondents, under the conditions and circumstances described in the foregoing findings, tended to and had the effect of unfairly diverting trade from respondent competitors, were to the prejudice and injury of the public, and constitute unfair methods of competition in interstate commerce in violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of re-

spondents thereto, and the stipulation as to the facts in lieu of testimony executed and filed by the respondents and the chief counsel of the Commission, and the Commission having made its findings as to the facts with its conclusion that the respondents have violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondents, Marion Butler Kirtland and Roy M. Kirtland, and each of them, their agents, representatives, servants, and employees, cease and desist, in connection with the sale and distribution in interstate commerce of any preparation or product for the care, treatment or dressing of the human hair or skin—

(1) From making or causing to be made in any manner whatsoever any representations, statements, or assertions to the effect that such perparation or product (*a*) is not a dye, (*b*) or that it does not act as a dye, (*c*) or that it will restore gray hair to its original or natural color, (*d*) or that it acts through the hair channel or that it supplies color pigment to the inside of the hair through the roots or otherwise, (*e*) or that it causes nature to assimilate such coloring matter, (*f*) or that it replenishes the color glands of the hair, (*g*) or that the color produced thereby will not come off or can not be impaired by shampooing or bathing, (*h*) or that it is harmless or will not produce harmful or deleterious effect upon the user, (*i*) or that it is beneficial to the scalp, (*j*) or that it is a stimulant to hair growth, (*k*) or that it is a remedy or cure for dandruff; when any such statements, representations, or assertions are not respectively true in fact.

(2) From making or causing to be made in any manner whatsoever any other false, misleading, or deceptive representation, statement, or assertion of or concerning the ingredients, uses, effects, action, origin, manufacture, sale, or distribution of any such preparation or product.

It is further ordered, That respondents, Marion Butler Kirtland and Roy M. Kirtland, shall, within 30 days after the service upon them of copies of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

BOWEY'S, INCORPORATED

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

Docket 1533. Complaint, July 21, 1928—Decision, June 29, 1929

Where a corporation engaged in the manufacture and/or sale of true fruits, true fruit flavors, and imitation fruit flavors made from aldehydes and esters, with acids and aniline colors, for compounding drinks simulating the color and taste of those made with the juices of the grape, cherry, and raspberry, respectively, sold under the names "Cherry Flip", "Raspberry Flip", and "Grape Flip", along with its true fruit "Lemon Flip" and "Orange Flip", to jobbers and operators of pool rooms and soda fountains,

(*a*) Conspicuously labeled the containers of its said imitation fruit flavors, "Grape Flip", "Cherry Flip", or "Raspberry Flip", as the case might be, together with the word "imitation" in relatively inconspicuous letters, and supplied and sold to customers coolers containing the words "Bowey's Fruity Flips, Chicago, U. S. A.", together with labels to be pasted upon the bottom thereof, exposed to view upon the inverting of the cooler or bottle, containing the words "Grape Flip", "Cherry Flip", or "Raspberry Flip", and with the word "imitation" in much smaller letters; and

(*b*) Advertised its said "Grape Flip" in a trade periodical of nation-wide circulation among dealers and dispensers of soft drinks, under the aforesaid name, and characterized the same, along with two other true fruit flips, as "dripping with the full, ripe, luscious flavor of the ripe fresh fruit", without indicating the imitation character of said first named product, and in its "Wholesale Price List of Crushed Fruit, Concentrated Fruit Stocks, Fudges, Hot Chocolate Powder, For the Soda Fountain", sent to customers, represented that its "Fruit Stocks and Concentrated Fruit Syrups are of Highest Quality and our Low Temperature Method of Packing Preserves in Full, Rich Flavor of Fresh Fruit", and described its fruitless imitation flavors as "Grape Flip, Cherry Flip, and Raspberry Flip", without disclosing that said flips were not made from true fruits;

With the capacity and tendency to mislead immediate buyers of its said imitation grape, cherry, and raspberry flavors into the belief that the same were made in whole or in part of the juice or fruit so designated, and to mislead and deceive ultimate purchasers of beverages made therefrom into believing the same to be composed in whole or in part of the fruit or juice designated:

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

Mr. E. J. Hornibrook for the Commission.
Lannen & Hickey, of Chicago, Ill., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the manufacture of flavoring extracts, concentrates and syrups not containing any fruit or fruit juices, and in the sale thereof to purchasers in various States for use in compounding soft drinks, and with principal office and place of business in Chicago, with naming product misleadingly, misbranding or mislabeling and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, brands, labels, describes, and sells its said product as "Bowey's Fruity Flips," "Grape Flip," "Cherry Flip," "Strawberry Flip," and "Raspberry Flip," and advertises said products thus labeled, branded, and described, in newspapers, magazines, periodicals, pamphlets, and other publications of general circulation throughout the various States with such representations as "Bowey's fruit stocks are concentrated syrups of the highest quality prepared at low temperature to preserve the delicious flavor of the fresh fruit," "Our low temperature method of packing, preserves the full rich flavor of the fresh fruit," "Highly concentrated flavors of the richest, truest aroma of the fresh fruit," "Dripping with the full, rich, luscious flavor of the ripe, fresh fruit," "Equal in flavor to the juice of the fresh squeezed fruit," and supplies its said extracts thus branded, labeled, described, and represented as regards the nature and character thereof, to dispensers of soft drink beverages, for display and by whom they are thus displayed to the public in the sale of beverages compounded therefrom.

Respondent's said brands, trade names, labels, descriptions, and representations of its said product, as charged, "have the capacity and tendency to, and do, mislead purchasers of said flavoring extracts, concentrates, and syrups and the beverages made therefrom into the belief that said flavoring extracts, concentrates, syrups, and beverages are composed, in whole or in part, of the fruits or the juice of the fruits, as represented and described, and the said advertising matter supplied to the dispensers and distributors of said flavoring extracts, concentrates, syrups, and beverages, and said trade names, brands, and labels furnish them with the means of deceiving and defrauding the consuming public," and respondent's said acts and practices, as above set forth, tend to and do divert business from and otherwise injure and prejudice competitors, among whom there are individuals and concerns dealing in pure fruit juices or extracts,

truthfully marked and advertised by them; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Bowey's, Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of section 5 of said act.

Respondent having entered its appearance and filed its answer to said complaint, hearings were had before a trial examiner, theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint, and in opposition thereto. Thereafter, this proceeding came on regularly for decision, and the Commission having duly considered the record, and being now fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Bowey's, Inc., is an Illinois corporation with its principal place of business in the city of Chicago. It was incorporated in the year 1908. It is engaged in the manufacturing and selling to jobbers and operators of pool rooms and soda fountains located in the several States of the Union, true fruits, true fruit flavors and imitation fruit flavors for use in compounding soft drinks. These fruits and flavors are named and called by respondent, Bowey's Lemon Flip, Bowey's Orange Flip, Bowey's Cherry Flip, Bowey's Raspberry Flip and Bowey's Grape Flip. The first two named flips are made from true fruit. The last three named flips are imitation fruit flips, artificially flavored and colored, and are entirely free of any fruit or the juice of any fruit. These three imitation fruit flavors are made from aldehydes and esters with acids and aniline colors for compounding drinks which simulate the color and taste of drinks made with the juices of the grape, cherry and raspberry, respectively.

PAR. 2. Respondent causes its products, when so sold, to be shipped from said place of manufacture through and into other States of the United States to the purchasers thereof, and in the course and conduct of its said business is in competition with other corporations, partnerships, and individuals making and/or selling true fruit juices and flavors and imitation fruit flavors in commerce.

PAR. 3. Respondent's sales of the said imitation fruit flips are approximately $1,000 per year. These said imitation fruit flips sell for $7 per gallon. Respondent began the manufacture and sale of these imitation flips in the year 1924 and has continued the same up to the present time.

PAR. 4. Prior to March, 1928, respondent placed upon the bottles shipped to its customers, which bottles contained said imitation flips, labels upon which were printed in very conspicuous red letters the words "Grape Flip," "Cherry Flip," and "Raspberry Flip," as the flavor might be, and on each label the word "imitation" appeared printed in much smaller, dark and less conspicuous letters. Respondent discontinued the use of the labels last described in March, 1928. Since then it has labeled its imitation products as—

IMITATION GRAPE FLAVOR, ARTIFICIALLY COLORED
or
IMITATION CHERRY FLAVOR, ARTIFICIALLY COLORED
or
IMITATION RASPBERRY FLAVOR, ARTIFICIALLY COLORED

For over two years prior to March, 1928, coolers to be used in the dispensing of true fruit flavors and these imitation flavors were sold by respondent to its customers in various States of the United States. These coolers bore the legend in large letters:

BOWEY'S FRUITY FLIPS
CHICAGO U. S. A.

In March, 1928, the following label was substituted for the label described last above:

BOWEY'S FLAVORED FLIPS
5 CENTS A GLASS

These coolers were sold by respondent to its said customers and about 400 of them have been disposed of. Prior to March, 1928, respondent also supplied its said customers, to whom it had sold these said coolers, with labels to be pasted upon the bottom of the bottles containing the imitation fruit juices, which labels contained the words "Grape Flip" or "Cherry Flip" or "Raspberry Flip" followed, in each instance, by the word "imitation" in letters much smaller than those used to designate the name of the flip. This label, when the bottle was inverted for use in this cooler, was in full view.

In March, 1928, respondent changed the wording of the labels which it supplied dealers to be affixed to said inverted bottles to read:

IMITATION GRAPE FLAVOR AND COLOR,
IMITATION CHERRY FLAVOR AND COLOR, and
IMITATION RASPBERRY FLAVOR AND COLOR

as the case might be. In these labels, described last above, the word "imitation" is printed in as conspicuous letters as the other words appearing thereupon.

In June, 1926, the respondent advertised "Grape Flip" in the "Soda Fountain", a publication of nation-wide circulation among dealers and dispensers of soft drinks as "Grape Flip" without indicating that the same was an imitation, and therein characterized grape flip and two other flips which were of true fruit as "dripping with the full, ripe, luscious flavor of the ripe fresh fruit." Respondent has not so advertised in a magazine since June, 1926.

For a year or more following September 1, 1926, respondent issued and sent to its customers what it styled its "Wholesale Price List of Crushed Fruit, Concentrated Fruit Stocks, Fudges, Hot Chocolate Powder, For the Soda Fountain". In this publication, respondent made the statement:

Bowey's Fruit Stocks and Concentrated Fruit Syrups are of Highest Quality and our Low Temperature Method of Packing Preserves in Full, Rich Flavor of Fresh Fruit.

and described its fruitless imitation as

Grape flip, Cherry flip, and Raspberry flip.

without explanation that these flips were not made of true fruit. This price list has not been used since March, 1928, and has only been distributed to its salesmen and jobber customers.

PAR. 5. The said representations made by respondent in the publication "Soda Fountain" and the said representations made by respondent prior to March, 1928, on labels and brands as set forth in the foregoing findings of fact have the capacity and tendency to mislead immediate buyers of respondent's imitation grape, cherry and raspberry flavors into the belief that same are made in whole or in part of the juice or fruit so designated, and have the capacity and tendency to mislead and deceive ultimate purchasers of beverages made from said imitation flavors into the belief that said beverages are composed in whole or in part of the juice or fruit so designated.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors, and are unfair methods of competition in commerce and constitute a violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence received by a trial examiner heretofore duly appointed by the Commission and the briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, Bowey's Inc., its representatives, agents, servants, employees and successors, cease and desist from using in connection with the sale in interstate commerce of any beverage flavor, the words "Cherry", "Raspberry", or "Grape" or either of them, or any other word or letter or pictorial illustration signifying a fruit or fruit juice as a trade brand, label or designation of a product not composed of the fruit or fruit juice indicated, unless the said words designating the product be immediately preceded by the word "Imitation" and followed by the word "Flavor" and by the words "Artificially Colored", all printed in type as conspicuous as that in which the other words designating the product are printed.

It is further ordered, That the respondent, Bowey's, Inc., shall within 60 days after the service upon it of a copy 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.

Syllabus

IN THE MATTER OF

SETHNESS COMPANY

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

Docket 1541. Complaint, Oct. 18, 1928—Decision, June 29, 1929

Where a corporation engaged in the manufacture of extracts, concentrates and flavors neither made from the juice or fruit of the grape, cherry, or other fruits concerned, nor containing the same in such substantial quantity as to be properly referred to by the names thereof or by such words as "Grapette", "Cherryette", etc., and in the sale of said products through traveling salesmen primarily to jobbers, manufacturers, and/or bottlers to serve as a basis for soft drinks bottled and sold by them to the retail and other trade in the various States,

(*a*) Made such statements in advertising said products in trade journals and other publications circulating among the various States as "'The Best Grape we have ever used' is the unanimous testimony of bottlers everywhere who have tried Sethness famous Concord Grape. 'Best Grape' means a grape of the true fruit character, a profit maker, and a prestige builder";

(*b*) Described its said products in certain advertising booklets issued by it periodically as "Grape Catawba White", "Grape Concord true", "Grapette", "Cherryette, clear", "Bananaette, clear", "Lemonette, cloudy", "Lymette, cloudy", "Limonette", "Orangette", "Peachette", "Raspberryette", and "Strawberryette", and labeled certain of its said products with the words "Catawba Grape White", "Cherryette", "Concord Grape", "Grapette", and other such names as immediately above set forth; and

(*c*) Stated on placards and tin signs furnished to its bottler customers for distribution by them among the retail trade "Drink Peachette, a refreshing carbonated beverage", or "Drink Concord Grape Soda", or "The real drink. 'The taste tells—try it' with Concord Grape Soda", and in connection therewith displayed a representation of a bottle and glass filled with a purple liquid to simulate the color of grape juice;

With the result of thereby asserting and clearly importing and implying to a substantial part of the purchasing public that beverages made from its said products were composed in whole or in part from natural fruit or the juice thereof and of thus supplying to jobbers and bottlers of said flavoring extracts, concentrates, and sirups, and retail dispensers of beverages made therefrom the means of deceiving and defrauding the consuming public, and with the capacity and tendency to mislead and deceive purchasers of said beverages as to the composition thereof, as above set forth, and to suppress competition in the sale of truthfully marketed extracts, sirups, concentrates, and beverages made therefrom, whether artificially colored and flavored and not made from the product of any fruit or juice thereof, or so made in whole or in part, and of diverting trade therefrom:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Edward L. Smith for the Commission.
Mr. W. Parker Jones, of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the manufacture of artificially colored and flavored, flavoring extracts, concentrates, and sirups containing no fruit or fruit juice, and in the sale thereof to bottlers, directly, and, indirectly, through jobbers located throughout various States, with naming product misleadingly, misbranding, or mislabeling and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged, as above set forth, conspicuously labels the containers of its aforesaid products with brand or trade names including the words "CATAWBA GRAPE WHITE", "CONCORD GRAPE", "GRAPETTE", "CHERRYETTE", "PEACHETTE", "STRAWBERRYETTE", "BANANAETTE", "LEMONETTE", "ORANGETTE", "LYMETTE", "LIMONETTE", and "RASPBERRYETTE", together with the word "imitation" underneath, in smaller type, and, in still smaller type the words "artificially colored", and directions for the manufacture of beverages therefrom, and sells its said products in containers thus labeled to bottlers of beverages made therefrom, by whom and by whose retail dealer vendees, said beverages, made from said flavoring extracts, concentrates, and sirups, and containing no fruit or fruit juice, and sold in bottles containing about six fluid ounces, usually, are described and designated in connection with their sale and offer to the public as "CATAWBA GRAPE WHITE", "CONCORD GRAPE", "GRAPETTE", "CHERRYETTE", "PEACHETTE", "STRAWBERRYETTE", "BANANAETTE", "LEMONETTE", "LYMETTE", "ORANGETTE", "LIMONETTE" and "RASPBERRYETTE", and in its advertisements of its said products under the aforesaid names or brands, in trade journals, booklets, pamphlets, circulars, periodicals, and other printed matter circulated generally throughout the various States, and on placards and tin signs and in circulars, booklets, and other printed matter supplied to bottlers and to retailers of beverages made from its said extracts, etc., and displayed to the public in connection with

the sale of the beverages in question, sets forth numerous false, misleading, and deceptive statements, representations, and depictions of and concerning the nature and character of its said products, including, in addition to said brand names, such statements as—

"The best grape we have ever used" is the unanimous testimony of bottlers everywhere who have tried Sethness Famous

CONCORD GRAPE

"Best Grape" means a grape of the true fruit character, a profit maker and a prestige builder.

Your customers will find in any "Ette" the same tempting, delicious flavor as in the rich, ripe fruit from which it takes its name.

DRINK CONCORD GRAPE SODA. THE REAL DRINK THE TASTE TELLS—TRY IT WITH CONCORD SODA.

and in connection therewith, a bottle and a glass filled with a purple liquid pictorially displayed to simulate the color of grape juice.

"Respondent's said brands, trade names, labels, and its aforesaid statements, representations, and depictions of and concerning the nature and character of its said flavoring extracts, concentrates, and sirups and beverages made therefrom", as charged, "tend to and do assert and clearly import and imply to a substantial part of the purchasing public that beverages made from respondent's said flavoring extracts, concentrates, and sirups are composed in whole or in part from natural fruit or the juice from natural fruit", and, along with its advertising matter carrying such statements, etc., have the capacity and tendency to mislead and deceive purchasers of the beverages in question into believing the same to be composed as above set forth, and said brands, trade names, labels, and advertising matter "supplied to jobbers and bottlers of said flavoring extracts, concentrates, and sirups, and retail dispensers of beverages made therefrom", further, as charged, "furnish them with the means of deceiving and defrauding the consuming public", and have the tendency and capacity to suppress competition in the sale of truthfully marketed flavoring extracts, sirups, and concentrates, and beverages made therefrom, whether containing no fruit or fruit juices and artificially colored and flavored, or made in whole or in part from fruits or fruit juices, and divert trade from said competitive truthfully branded, labeled, advertised, and otherwise marketed products; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondent, Sethness Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of the said act of Congress.

The respondent having entered its appearance and having filed its answer herein, and the chief counsel for the Federal Trade Commission and counsel for the respondent having thereafter executed and filed a stipulation containing an agreed statement of facts and having therein stipulated that the said statement of facts 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 the chief counsel for the Federal Trade Commission and counsel for the respondent having agreed in the said stipulation that the Federal Trade Commission might proceed upon said statement of facts to make its report, stating its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the said proceeding, without the presentation of argument or the filing of briefs (except that respondent in the said stipulation reserved the right to submit to the Commission a memorandum of argument regarding the form and substance of the order to cease and desist which, it was agreed in the said stipulation, the Commission might enter upon the facts stipulated); and the respondent having submitted such memorandum of argument to the Commission and the Commission having duly considered the same 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. Sethness Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located in the city of Chicago, in the State of Illinois. It is now and, for more than one year last past, has been engaged in the manufacture of extracts, concentrates, and flavors for use in the preparation of beverages, and in the sale and distribution of its said products in commerce

between and among various States of the United States. It causes its said products, when sold, to be shipped from its place of business located in the State of Illinois, to purchasers thereof located in States of the United States other than the State of Illinois. In the course and conduct of its business, Sethness Co. was at all times herein referred to, in competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, Sethness Co. sells its products through traveling salesmen primarily to jobbers, manufacturers, and/or bottlers, who use said products as a basis for the soft drinks which they bottle and sell to the retail and other trade located in various States of the United States. As means for promoting the sale of its products, the said company caused advertisements to be inserted in trade journals and other publications having circulation between and among various States of the United States, some of the said advertising matter used in 1927 containing such language as—

"The Best Grape we have ever used" is the unanimous testimony of bottlers everywhere who have tried Sethness Famous

CONCORD GRAPE

"Best Grape" means a grape of the true fruit character, a profit maker, and a prestige builder.

The aforesaid company also caused certain of its beverage extracts to be advertised in booklets issued in 1927 at intervals of about two months apart, wherein the said products were listed under the general trade name or designation "Cosco", and were described as "Grape Catawba White", "Grape Concord true", "Grapette", "Cherryette, true", "Bananaette, clear", "Lemonette, cloudy", "Lymette, cloudy", "Limonette", "Orangette", "Peachette", "Raspberryette" and "Strawberryette". The said company also furnished placards and tin signs to its bottler customers for distribution among the retail trade. The reading matter on said advertising media was as follows: "Drink Peachette, a refreshing carbonated beverage" or "Drink Concord Grape Soda", or "The real drink. 'The taste tells—try it' with Concord Grape Soda", and in connection therewith, a bottle and a glass were pictorially displayed as filled with a purple liquid to simulate the color of grape juice. On labels affixed to certain of its products, appeared the words, "Catawba Grape White", "Cherryette", "Concord Grape", "Grapette", "Orangette", "Peachette", "Strawberryette", "Ba-

nanaette", "Lemonette", "Lymette", "Limonette", "Raspberryette", and the like; when in truth and in fact, the products branded or labeled, designated, described, and/or advertised as aforesaid were neither manufactured from the juice or the fruit of either the grape, cherry, banana, lemon, lime, orange, peach, raspberry, or strawberry, nor did they contain the juice or the fruit thereof in such substantial quantity as to be properly and accurately designated, described, or referred to by the use of the words, "Lemon", "Grape", "Concord", "Catawba", "Cherry", "Banana", "Lime", "Orange", "Peach", "Raspberry", or "Strawberry", or any of them, or by the use of the words, "Grapette", "Cherryette", "Peachette", "Strawberryette", "Bananaette", "Lemonette", "Lymette", "Limonette", "Orangette", "Raspberryette", or any of them.

PAR. 3. Respondent's said brands, trade names, labels, and its aforesaid statements, representations, and depictions of and concerning the nature and character of its said flavoring extracts, concentrates, and sirups and beverages made therefrom tend to and do assert and clearly import and imply to a substantial part of the purchasing public that beverages made from respondent's said flavoring extracts, concentrates, and sirups are composed in whole or in part from natural fruit or the juice from natural fruit.

PAR. 4. Respondent's said brands, trade names, labels, and said advertising matter carrying aforesaid statements, representations, and depictions of and concerning the nature and character of respondent's said flavoring extracts, concentrates, and sirups and beverages made therefrom have the capacity and tendency to mislead and deceive purchasers of beverages made from respondent's said flavoring extracts, concentrates, and sirups into the belief that said beverages are composed in whole or in part of the fruits or the juice of the fruits, as represented and described in respondent's said brands, names, labels, and advertising matter. Respondent's said brands, trade names, labels, and said advertising matter supplied to jobbers and bottlers of said flavoring extracts, concentrates, and sirups, and retail dispensers of beverages made therefrom furnish them with the means of deceiving and defrauding the consuming public.

PAR. 5. Respondent's said brands, trade names, labels, and its said advertising matter carrying aforesaid statements, representations, and depictions of and concerning the nature and character of its said flavoring extracts, concentrates, and sirups and beverages made therefrom, as described herein, have the tendency and capacity to suppress competition in the sale of truthfully marketed flavoring extracts, sirups, and concentrates and beverages made therefrom,

which are not made from the product of any fruit or fruits, or the juice of any fruit or fruits, but are artificially colored and flavored and of diverting trade from said truthfully marketed products and have the capacity and tendency to suppress competition in the sale of truthfully marketed concentrates and beverages made in whole or in part from the product of fruits, or the juice of fruits, and of diverting trade from said truthfully marketed products.

CONCLUSION

The practices of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto by the respondent, and an agreed statement of facts, and the Commission having duly considered the same and having made its findings as to the facts and reached and entered its conclusion that the respondent has violated the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

Now therefore it is ordered, That the respondent, Sethness Co., its representatives, agents, servants, employees, and successors cease and desist from:

(1) Using in connection with the sale in interstate commerce of any beverage concentrate or sirup the words "Lemon", "Grape", "Concord", "Catawba", "Cherry", "Banana", "Lime", "Orange" "Peach", "Raspberry", or "Strawberry", or either of them, either with or without suffix, or any other word or letter or pictorial illustration, signifying a fruit or fruit juice as a trade brand, label, or designation of a product not composed of the fruit or fruit juice indicated unless the said words designating the product be immediately preceded by the word "Imitation" and followed by the words "Artificially Colored", all printed in type as conspicuous as that in which the other words designating the product are printed.

(2) Using in connection with the sale in interstate commerce of any beverage flavor, any or either of the aforementioned words or any other word, or letter or pictorial illustration signifying a fruit or fruit juice as a trade brand, label, or designation of a product not composed of the fruit or fruit juice indicated, unless the said word designating the product be immediately preceded by the word "Imitation" and followed by the word "Flavor" and by the words "Artificially Colored", all printed in type as conspicuous as that in which the other words designating the product are printed.

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

IN THE MATTER OF

MORRIS MASSING, TRADING UNDER THE NAME AND STYLE OF COLUMBIA PANTS MANUFACTURING COMPANY

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

Docket 1590. Complaint, Mar. 29, 1929—Decision, June 29, 1929

Where an individual engaged in the sale of men's and boys' pants and shirts, and neither making the same, nor owning, interested in, controlling, or operating any plant so doing, but having the same made by independent contractors,

(*a*) Falsely represented himself or his business as manufacturer and maker of said products, through use of a trade name including the word "manufacturing," and the placing thereof on his letterheads, envelopes, invoices, and other printed matter, together with such legends as "Manufacturers of Southern Brand Men's and Boys' Pants" and "Makers of Southern Brand Pants for Men and Young Men"; and

(*b*) Labeled, ticketed, or tagged the aforesaid articles so dealt in by him, "Union Made," notwithstanding the fact that neither he, nor said contractors, were employers of union labor;

With the capacity and tendency to mislead and deceive retailers and consumers into believing said products to have been made by him, and a substantial portion of the purchasing public into believing the same to have been made in mills or elsewhere by such labor and to induce the purchase thereof as and for garments bought directly from the manufacturer thereof and/or made by union labor and as such preferred by that substantial proportion of the purchasing public affiliated therewith, and thereby to divert trade from manufacturing competitors in fact employing union workmen in the making of the garments concerned and truthfully advertising and describing the same:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. James M. Brinson for the Commission.

Mr. Erwin I. Feldman, of Baltimore, Md., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commision Act, the Commission charged respondent, engaged at Baltimore in the sale of men's and boys' pants and shirts to purchasers in other States, and neither employing any union labor in connection with said articles, nor owning, controlling, nor operating any mill, factory, or plant making the same, but purchasing said products from independent contractors

who make them with nonunion labor, with using misleading trade name, misrepresenting business status, advertising falsely or misleadingly and misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, owning no factory or plant, as above set forth, displays the trade name Columbia Pants Manufacturing Co. in his business, conspicuously at or near the entrance to his place of business, and features the same on his letterheads, envelopes, invoices, and other printed matter, together with the words "Manufacturers of Southern Brand Men's and Boys' Pants" and "Makers of Southern Brand Pants for Men and Young Men" and further brands, labels, tickets, or tags the garments dealt in by him as above set forth "Union Made".

The use, as alleged, of the aforesaid trade name has the capacity and tendency "to mislead and deceive the public, including retailers and consumers, into the belief that the men's and boys' pants and shirts offered for sale by him in interstate commerce have been, and are, manufactured and made by the Columbia Pants Manufacturing Co., and to induce the purchase of said products in that belief," and respondent's practice of labeling his garments "Union Made" has the capacity and tendency to mislead and deceive "a substantial portion of the purchasing public, including retailers and consumers" into believing said garments to have been made by union labor and to induce the purchase in such belief and thereby divert trade from competitors truthfully advertising and describing their products;[1] all to the prejudice of the public and respondent's competitors; of whom some are engaged in the manufacture and sale of the articles in question, and so advertise and represent, and of whom some manufacture such articles with the employment of union labor, and are thereby entitled to label their products "Union Made".

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[1] Referring to the use of the words "Union Made", the complaint states in part:

A substantial proportion of the purchasing public in the various States of the United States has for several years last past belonged to, or affiliated with, directly or indirectly, and now belongs to, or affiliates with, directly or indirectly, various organizations of labor embracing artisans, craftsmen and workers of all classes, usually known as unions. Such portion of the public prefers to purchase for its or their consumption, articles of wearing apparel or other articles manufactured in factories, mills or plants, employing or using artisans, craftsmen or workers belonging to, or affiliated with, some union of organized labor, or by individuals so belonging to, or affiliated with, or employing artisans, craftsmen or workers belonging to, or affiliated with, some labor union.

The words "Union Made" applied to, or appearing on, the products sold or offered for sale signify and mean, and among such portion of the purchasing public are understood to signify and mean, that the said products have been manufactured by union labor.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued on the 29th of March, 1929, and thereafter served upon the respondent above named a complaint charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. Respondent entered his appearance and filed answer to said complaint on April 11, 1929.

Thereafter the respondent on June 19, 1929, filed with the Federal Trade Commission a motion for leave to withdraw his answer so filed on April 11, 1929, for the purpose of permitting respondent to file a return and consent to the making of findings as to the facts and an entry of an order to cease and desist, pursuant to the Commission's rules of practice with respect to answer (Rule III, subdivision 2). Thereafter the Commission on 29th day of June granted respondent's said motion and accepted and filed his return and consent to the making of findings as to the facts and an entry of an order to cease and desist.

Thereupon this proceeding came on for decision upon the complaint, respondent's return and answer filed June 21, 1929, and the record herein, and the Federal Trade Commission having duly considered the same and being now fully advised in the premises, pursuant to said rule of practice III, subdivision 2, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Morris Massing, under the name and style of Columbia Pants Manufacturing Co., for several years last past has been, and now is, engaged at Baltimore in the State of Maryland in the business of offering for sale and of selling in commerce among and between the various States of the United States, men's and boys' pants and shirts, and of transporting or causing the same to be transported, when sold, to purchasers in other States of the United States in competition with individuals, partnerships, and corporations likewise engaged in the sale and distribution of similar products in interstate commerce.

PAR. 2. In the course and conduct of said business, respondent displays in a conspicuous manner at or near the entrance to his place of business in Baltimore, State aforesaid, the name, Columbia Pants Manufacturing Co., and letterheads, envelopes, invoices and

other printed matter used, or distributed by him, in the various States of the United States, among purchasers and prospective customers, bear the legends: "Columbia Pants Manufacturing Co., Manufacturers of Southern Brand Men's and Boys' Pants", and "The Columbia Pants Mfg. Co., Makers of Southern Brand Pants for Men and Young Men", whereby and otherwise respondent has represented and represents the Columbia Pants Manufacturing Co. as manufacturers and makers of the men's and boys' pants and other garments offered for sale and sold by respondent under and through said trade name. In truth and in fact respondent neither individually nor as Columbia Pants Manufacturing Co. or otherwise has been, or is manufacturer or maker of said men's and boys' pants or other garments offered for sale or sold as aforesaid by respondent and neither respondent nor Columbia Pants Manufacturing Co. owns, controls, operates, directs, or has any interest in or connection with any mill, factory, plant, or other place or places wherein said products have been or are manufactured or made.

PAR. 3. In the course and conduct of said business, it has been and is the practice of respondent to affix or cause to affixed to the men's and boys' pants and shirts sold, or offered for sale, by him in commerce among the various States of the United States, labels, tickets, or tags, containing the words, "Union Made".

A substantial proportion of the purchasing public in the various States of the United States has for several years last past belonged to, or affiliated with, directly or indirectly, and now belongs to, or affiliates with, directly or indirectly, various organizations of label embracing artisans, craftsmen, and workers of all classes, usually known as unions. Such portion of the public prefers to purchase for its or their consumption, articles of wearing apparel or other articles manufactured in factories, mills, or plants, employing or using artisans, craftsmen, or workers belonging to, or affiliated with, some union of organized labor, or by individuals so belonging to, or affiliated with, or employing artisans, craftsmen, or workers belonging to, or affiliated with, some labor union.

The words, "Union Made" applied to, or appearing on, the products sold or offered for sale signify and mean, and among such portion of the purchasing public are understood to signify and mean, that the said products have been manufactured by union labor.

Respondent neither employs, nor has employed, at any time heretofore in connection with the men's and boys' pants and shirts sold or offered for sale by him so-called union labor, that is to say, mem-

bers of any labor union. Such products have been, and are, manufactured and made by independent contractors at the instance of respondent, on specified terms, none of whom employs or has employed, members of labor organizations or unions, in the manufacture of said products and none of whom has maintained or maintains so-called union shops, or is entitled to affix, or causes to be affixed the words, " Union Made ", to any of the products manufactured by them, or any of them, for the respondent.

PAR. 4. There are, and for several years last past have been, in competition with respondent individuals, partnerships, and corporations engaged in the manufacture and sale of men's and boys' pants and shirts in interstate commerce, and of so advertising and representing them, and also there have been and are among the competitors of respondent mentioned in paragraph 1 hereof manufacturers of men's and boys' pants and shirts employing in their mills or plants artisans and workmen belonging to, or affiliated with some labor union, and who by reason thereof have been, and are, entitled to affix or cause to be affixed to their products labels bearing the legend, " Union Made."

PAR. 5. The use by respondent of the name, Columbia Pants Manufacturing Co., as described in paragraph 2 hereof, has had, and has, the capacity and tendency to mislead and deceive the public, including retailers and consumers, into the belief that the men's and boys' pants and shirts offered for sale by him in interstate commerce have been, and are, manufactured and made by the Columbia Pants Manufacturing Co., and to induce the purchase of said products in that belief.

PAR. 6. The practice of respondent in affixing or causing to be affixed to men's and boys' pants and shirts sold by him in commerce among and between the various States of the United States, labels, tags, or tickets bearing the legend " Union Made " has had, and has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public, including retailers and consumers into the belief that the men's and boys' pants and shirts offered for sale by him in commerce among and between the various States of the United States have been, and are union made, that is, manufactured by union labor, or in mills, plants, or other places employing workmen, artisans, or others belonging to, or affiliated with, some union or branch of organized labor, and to induce their purchase in that belief and thereby to divert trade from competitors of respondent who truthfully advertise and describe their products.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, respondent's return and answer and the record herein, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

Now therefore it is ordered, That respondent Morris Massing cease and desist from:

(1) Using or trading under the name Columbia Pants Manufacturing Co., and from advertising, describing, or representing himself under or by such, or any name implying or importing that he is the manufacturer or maker of the men's and boys' pants and shirts offered for sale and sold by him in interstate commerce, unless or until he becomes, or is, actually the manufacturer and maker of said products.

(2) From advertising or in any manner representing that the men's and boys' pants and shirts sold and offered for sale by him in interstate commerce are "Union Made", and from attaching thereto any labels bearing the legend "Union Made", or otherwise signifying or indicating that such products are "Union Made" unless they have been or are made by union labor and in a shop or factory having authoritative recognition as a union shop or factory.

(3) It is further ordered that respondent Morris Massing, trading under the name Columbia Pants Manufacturing Co., shall within 60 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF

GLOBE SPECIALTY COMPANY

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

Docket 1595. Complaint, Apr. 17, 1929—Decision, June 29, 1929

Where a corporation dealing in lamp bases, gear shift balls, radiator cap ornaments and similar products made of a material or materials simulating the appearance of onyx and sold in competition with similar articles made thereof; in its advertisements, catalogues, stationery, and other trade literature and upon the packages or containers of its said products designated and represented the same as "The Crystal-Onyx Line", "Crystal-Onyx Standard Locking Radiator Cap, Equipped with 1 9/16" Crystal-Onyx Balls", "Solid Genuine Crystal-Onyx Balls", "Crystal-Onyx Gear Shift Balls, and No. 0 Gear Shift Extensions", with the tendency and capacity to mislead and deceive purchasers into believing said articles to be composed of onyx and to induce them to purchase the same in such belief, to the prejudice of the public and its customers:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. William A. Sweet for the Commission.
Mr. John C. Tucker, of Chicago, Ill., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the sale of lamp bases, gear shift balls, radiator cap ornaments and similar products, made of materials simulating onyx, a cryptocrystalline variety of quartz to purchasers in States other than Illinois, and with principal place of business in Chicago, with advertising falsely or misleadingly and misbranding or mislabeling, in violation of the provisions of section 5 of such act prohibiting the use of unfair methods of competition in interstate commerce, in that in its advertisements, catalogues, and other trade literature and upon packages or cartons of said products it uses such designations, statements, and representations in referring thereto as "The Crystal-Onyx Line", "Crystal-Onyx Standard Locking Radiator Cap, Equipped with 1 9/16" Crystal-Onyx Balls", "Solid Genuine Crystal-Onyx Balls", "Crystal-Onyx Gear Shift Balls and No. 0 Gear Shift Extensions"; with the tendency and capacity to mislead and deceive purchasers into believing the same

to be composed of onyx and to cause them to purchase such articles in said belief; to the injury and prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent above named on the 19th day of April, 1929, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act, together with a notice that an answer should be filed within 30 days after service of the complaint and with a copy of the Rules of Practice of the Commission as to answers (Rule III).

The respondent has not filed an answer to the complaint within the time required by the rules, or at all.

Thereafter the chief counsel for the Federal Trade Commission on June 17, 1929, filed with the Commission a motion moving that respondent's failure to answer be deemed and taken to be an admission of all the allegations of the complaint, to authorize the Commission to find them to be true, to waive hearing on the charges set forth in the complaint, and that thereupon an order to cease and desist issue as prayed for in the complaint.

Thereafter the Federal Trade Commission on June 19, 1929, issued and served upon respondent said motion of the chief counsel of the Commission and notified the respondent that the Commission would hear said respondent on said motion on June 24, 1929, at 2 o'clock p. m. in the hearing room of the Federal Trade Commission Building, 2000 D Street N. W., Washington, D. C. The respondent did not appear or answer said motion on the day fixed, or at all. No answer or return of any kind whatsoever has been filed by respondent.

Thereupon this proceeding came on for decision and the Commission having duly considered the record and being now fully advised in the premises, pursuant to Rule of Practice III, subdivision 3, makes this its findings as to the facts and conclusions drawn therefrom:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal place of business located in the city of Chicago in said State.

PAR. 2. The respondent is and has been for more than one year last past engaged in the sale and distribution of various articles of merchandise fashioned into lamp bases, gear shift balls, radiator cap ornaments and similar products.

PAR. 3. The respondent has sold during the times above mentioned and referred to and continues to sell its said products to various individuals, firms, and corporations located in the District of Columbia and in various States of the United States other than the State of Illinois, and has caused and still causes its said products when sold to be transported from its said place of business to, into and through said other States and the District of Columbia to the purchasers thereof located therein.

PAR. 4. During the times above mentioned and referred to other individuals, firms, and corporations located in various States of the United States have been engaged in the manufacture and sale of various articles of merchandise similar to those sold by respondent, which articles are composed of onyx, a cryptocrystalline variety of quartz, which they have sold and still sell and transport in commerce to various individuals, firms, and corporations located in the various States of the United States and in the District of Columbia. The respondent during the aforesaid times was and still is in competition in commerce in the sale of its said merchandise with said other individuals, firms and corporations.

PAR. 5. The respondent has caused and still causes various designations, statements, and representations descriptive of its said products to be printed and displayed in advertisements, catalogues, stationery, and other trade literature and upon packages or cartons containing its said products. Among such designations, statements, and representations are the words and phrases "The Crystal-Onyx Line", "Crystal-Onyx Standard Locking Radiator Cap, Equipped with $1\frac{3}{16}$" Crystal-Onyx Balls", "Solid Genuine Crystal-Onyx Balls", "Crystal-Onyx Gear Shift Balls and No. 0 Gear Shift Extensions", and others. Onyx is a mineral, a cryptocrystalline variety of quartz, and is so known and understood to be by the trade and purchasing public. The articles designated and represented by respondent as above and sold by it in commerce are not made of onyx but are made of materials or a material simulating onyx in appearance.

PAR. 6. The use by respondent of the words and phrases set forth in paragraph 5 hereof upon the packages or cartons containing its said articles and in advertisements, stationery, and other trade literature has the tendency and capacity to mislead and deceive purchasers of said articles into the belief that they are composed of onyx and to cause them to purchase said articles in that belief.

CONCLUSION

The practices of the respondent under the circumstances and conditions set forth in the foregoing findings are to the prejudice of the public and of respondent's customers and are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the record, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, Globe Specialty Co., its agents, representatives, employees, and successors cease and desist from the use of the words "Crystal-Onyx" or the word "Onyx" in the designation of or in the advertising, branding, labeling, or description of articles offered for sale or sold in interstate commerce unless said articles or the parts of said articles so designated, labeled, or described are composed of onyx.

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

IN THE MATTER OF

JEFFERSON FURNITURE MANUFACTURING CORPORATION

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

Docket 1605. Complaint, Apr. 22, 1929—Decision, June 29, 1929

Where a corporation engaged in the sale, at retail, of furniture, rugs, lamps, etc., to members of the public in various States, and neither a manufacturer nor jobber,

(*a*) Adopted and used a corporate name including the word manufacturing, and featured said name in its advertisements and circulars, together with the slogan "Factory to Home"; and

(*b*) Made such statements and representations in its aforesaid advertisements and circulars as "High Grade Furniture Direct from Factory to You"; "Manufactured at Tremendous Savings Direct to Consumer"; "Made in Our Own Factory"; "Here's What you Save: Tremendous retail profits, high freight rates, extra delivery hauling, enormous overhead expenses, and you get clean, crisp, new furniture right out of the factory direct to your home"; "Made in our own factory to sell direct to you at real wholesale"; "While we are manufacturers, we of course have a large furniture store trade, and like most manufacturers, have a regular retail list price which is 100 per cent more than our wholesale price. In other words, our discount to customers is 50 per cent off the list price"; "Manufacturers living room suites, upholstered chairs, tables—Novelty furniture—Jobbers—Bedroom and dining room furniture, cedar chests, bed springs, mattresses, breakfast suites"; "You owe it to yourself—buy wholesale—save your money. Here proves the power of the manufacturer. Mail orders are solicited"; "Do you know that its products are sold direct to the consumer at wholesale?";

With the capacity and tendency to mislead and deceive many among the consuming public into believing it to own, control, and operate a factory making the products dealt in by it and/or to be a jobber thereof, and to induce many to purchase said products in the belief that they were saving the profits of the middlemen:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Baldwin B. Bane for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Alabama corporation engaged in the sale separately or in suites of dining room, bed room, parlor or living room suites, pieces of furniture, rugs, lamps, etc., at retail to members of the

public in various States and with principal place of business in Birmingham, with using misleading corporate name, misrepresenting business status or advantages and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged, as above set forth, and neither a manufacturer nor jobber, in advertising the articles dealt in by it, in newspapers and magazines of general circulation and in circulars sent to prospective customers, features its aforesaid corporate name and its slogan "Factory to Home" and makes such statements and representations as "High-grade furniture direct from factory to you"; "Manufactured at tremendous savings direct to consumer"; "Made in our own factory"; "Here's what you save: Tremendous retail profits, high freight rates, extra delivery hauling, enormous overhead expenses, and you get clean, crisp, new furniture right out of the factory direct to your home"; "Yes, sir! You owe it to yourself to at least come see what you save"; "Made in our own factory to sell direct to you at real wholesale"; "While we are manufacturers, we of course have a large furniture store trade, and like most manufacturers have a regular retail list price which is 100 per cent more than our wholesale price. In other words, our discount to customers is 50 per cent off the list price"; "Manufacturers, living-room suites, upholstered chairs, tables—Novelty furniture—Jobbers—Bed room and dining room furniture, cedar chests, beds, springs, mattresses, breakfast suites"; "Come to the factory for your rugs. Buy them at wholesale. All sizes."

According to the complaint, the name, slogan, statements, and representations as used by respondent in the manner set out above, signify to and are understood by a substantial part of the public to mean that respondent manufactures the products which it sells and/or is a jobber of such products, selling direct to the consuming public, whereas in truth and in fact respondent is not such a manufacturer or jobber. Said name, slogan, statements, and representations so used by respondent are false and misleading and have the capacity and tendency to mislead and deceive many among the consuming public to believe that respondent owns, controls, and operates a factory in which it manufactures the products which it offers for sale and/or is a jobber of such products, and to induce many of the consuming public to purchase said products of the respondent in the belief that in so doing they are saving the profits of the middlemen, all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served upon the respondent above named, on the 24th day of April, 1929, a complaint, charging it with the use of unfair methods of competition in interstate commerce, in violation of the provisions of said act, together with notice that answer should be filed within thirty days after service of the complaint, and with a copy of the Rules of Practice of the Commission as to answers (Rule III).

The respondent did not enter an appearance and has not filed an answer to the complaint within the time required by the rules, or at all.

Thereafter, the chief counsel for the Federal Trade Commission, on June 13, 1929, filed with the Federal Trade Commission a motion moving respondent's failure to appear and answer to be deemed and taken to be an admission of all the allegations of the complaint; to authorize the Commission to find them to be true, to waive hearing on the charges set forth in the complaint, and that thereupon an order to cease and desist issue, as prayed for in the complaint.

Thereafter the Federal Trade Commission, on June 20, 1929, issued and served upon respondent said motion of the chief counsel for the Commission and notified respondent that the Commission would hear said respondent on said motion on Friday, June 21, 1929, at 10 a. m., in the hearing room of the Federal Trade Commission building, 2000 D Street NW., Washington, D. C. The respondent did not appear or answer said motion on the day fixed, or at all. No answer or return of any kind whatsoever has been filed by respondent.

Thereupon this proceeding came on for decision, and the Federal Trade Commission having duly considered the record and being now fully advised in the premises, pursuant to Rule of Practice III, subdivision 3, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its principal place of business in the city of Birmingham, in the State of Alabama. Respondent was organized and incorporated January 28, 1927. Respondent is engaged in the business of selling separately or in suites, articles or pieces of furniture, rugs, lamps, etc., for use in furnishing homes, at retail, to members

of the public located in various States of the United States, and respondent causes said products, when so sold, to be transported from its place of business in Alabama through and into other States of the United States to the purchasers thereof. In the course and conduct of its aforesaid business respondent is in competition with other corporations, partnerships, and individuals.

PAR. 2. In the course and conduct of its aforesaid business respondent causes advertisements to be inserted in newspapers and magazines of general circulation throughout the United States and in various sections thereof, and causes circulars to be sent through the mails to prospective customers in various States of the United States in which advertisements and circulars respondent causes to be prominently displayed its name "Jefferson Furniture Manufacturing Corporation," and its slogan, "Factory to Home." Respondent in such advertisements and circulars makes such statements and representations as, "High-grade furniture direct from factory to you"; "Manufactured at tremendous savings direct to consumer"; "Made in our own factory"; "Here's what you save: Tremendous retail profits, high freight rates, extra delivery hauling, enormous overhead expenses, and you get clean, crisp, new furniture right out of the factory direct to your home"; "Buy direct from the big factory that has been operating at this same plant for four years"; "While we have only sold exclusively to dealers for the past four years, we have been building up a reputation for high-grade furniture, and since opening our salesroom three months ago, selling to anyone who wishes to buy, our business has doubled and our prices reduced 25 per cent"; "Yes, sir! You owe it to yourself to at least come see what you save"; "Made in our own factory to sell direct to you at real wholesale"; "While we are manufacturers, we of course have a large furniture store trade, and like most manufacturers, have a regular retail list price which is 100 per cent more than our wholesale price. In other words, our discount to customers is 50 per cent off the list price"; "Just come and see our magnificent sample room, loaded with bedroom, living room, and dining room furniture, odd chairs, end tables, library tables, lamps, and novelties"; "Made by two men of nation-wide reputation—Men who know the furniture business from every angle"; "Manufacturers' living room suites, upholstered chairs, tables—Novelty furniture—Jobbers—Bedroom and dining room furniture, cedar chests, beds, springs, mattresses, breakfast suites"; "Come to the factory for your rugs. Buy them at wholesale. All sizes." "You owe it to yourself—Buy wholesale—Save your money. Here proves the power of the manufacturer. Mail orders are solicited"; "Do you know that its products are sold direct to the consumer at whole-

sale?" "Made in our own factory, 100 beautiful hand-painted floor lamps"; "Built from the ground up in our big modern factory. Come see it to-morrow sure. You will be well pleased"; and many other statements and representations of similar and like import.

PAR. 3. The name, slogan, statements, and representations as used by respondent in the manner set out above, signify to and are understood by a substantial part of the public to mean that respondent manufactures the products which it sells and/or is a jobber of such products, selling direct to the consuming public, whereas, in truth and in fact, respondent is not such a manufacturer or jobber. Said name, slogan, statements, and representations so used by respondent are false and misleading, and have the capacity and tendency to mislead and deceive many among the consuming public into the belief that respondent owns, controls, and operates a factory in which it manufactures the products which it offers for sale and/or is a jobber of such products, and to induce many of the consuming public to purchase said products of the respondent in the belief that in so doing they are saving the profits of the middlemen.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in interstate commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard and considered by the Federal Trade Commission upon the complaint of the Commission and the record, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, Jefferson Furniture Manufacturing Corporation, its agents, representatives, servants, and employees, cease and desist, in connection with the sale and distribution of furniture in interstate commerce:

1. From conducting business under the name Jefferson Furniture Manufacturing Corporation, or under any other corporate or trade name containing the word "Manufacturing".

2. From using the phrases: "Factory to home"; "High-grade furniture direct from factory to you"; "Manufactured at tremendous savings direct to consumer"; "Made in our own factory"; "Here's what you save: Tremendous retail profits, high freight rates, extra delivery hauling, enormous overhead expenses, and you get clean, crisp, new furniture right out of the factory, direct to your home"; "Buy direct from the big factory that has been operating at this same plant for four years"; or any phrase or slogan of similar import; or any statement or representation whatsoever that respondent is the manufacturer or jobber of furniture and is selling and distributing same direct from the manufacturer or factory to its customer purchasers without the intervention of middlemen.

3. Making representations or statements in any manner whatsoever that the prices at which respondent is offering for sale and selling furniture are factory or manufacturer's prices, or jobber's prices.

It is further ordered, That respondent shall, within 60 days after service upon it of a copy 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.

Syllabus

IN THE MATTER OF

I. J. ROSENBLOOM AND JAKE A. ABLIN, PARTNERS DOING BUSINESS UNDER THE TRADE NAME AND STYLE THE RESTORAL COMPANY

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

Docket 1616. Complaint, May 6, 1929—Decision, June 29, 1929

Where a firm engaged in the sale of a shampoo and of a hair color restorer, which (1) operated simply as a dye, (2) did not bring back the natural color of the hair except as, applied over a sufficient length of time, it brought a shade possibly very similar to or even identical with the original, (3) contained as its essential ingredients Sodium Thiosulphate, Resorcinal, and Lead Acetate, long used for dyeing the hair and a poison apt to be harmful when frequently rubbed into the scalp, and (4) possessed no tonic properties and had no efficacy in making the hair grow, or in preventing dandruff, and which preparation, together with said shampoo, was sold by it, under the name Restoral, by mail, and was extensively advertised in magazines, booklets, circulars, and other printed matter,

(*a*) Falsely labeled the bottles containing said hair restorer "RESTORAL 'Double Duty' TONIC For Gray Hair For Falling Hair Not a dye but a new kind of tonic that brings back the original color to the hair and promotes the growth of new hair";

(*b*) Stated in its said advertisements that said Restoral would gradually bring back the original color of the hair and aided the growth thereof through its excellent tonic qualities, with no harmful ingredients;

(*c*) Advised the use thereof from one to three times a week as needed, after the restoration of the natural color, as a tonic for the scalp and to insure beautiful color permanence, and advised the user not to be alarmed at possible development at first of a slight variation of shades but to continue the treatment as directed, which would soon bring the desired shade, the facts being, in addition to those above set forth, that said variation usually happened and was of long persistence and that the desired shade rarely developed; and

(*d*) Falsely and unfairly stated in the labels and advertisements of its said Restoral Shampoo, endorsed by it for use with said tonic, that the same was free from harmful ingredients found in average soaps, many of which were injurious to the scalp, containing free alkali, strong chemicals, and other harmful ingredients, notwithstanding the fact that there were on the market excellent soaps free from such ingredients and chemicals;

With the tendency and capacity to mislead and deceive the public into purchasing said Restoral in the false belief that the same was a natural hair color restorer and not a dye, and a preparation which would restore the original color by replenishing the color glands, stop falling hair and prevent

dandruff, and constituted an effective hair tonic; to the prejudice of the public and its competitors:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. William T. Kelley for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individuals, partners engaged at Chicago in the sale of a hair color restorer and a shampoo, with advertising falsely or misleadingly and misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, in describing their so-called hair color restorer, a dye containing lead acetate, sodium thiosulphate, and resorcinal and apt to be harmful to the body if frequently rubbed into the scalp by reason of the first-named ingredient, and with no tonic effect or virtue in preventing falling hair, or in bringing back the original color, in advertisements in magazines, circulars, etc., and on the bottles containing the same made such false and misleading statements as "'Double Duty' TONIC For Gray Hair For Falling Hair. Not a dye but a new kind of tonic that brings back the original color to the hair and promotes the growth of new hair", "* * * an excellent tonic and hair restorer. There are no harmful ingredients of any kind in Restoral", and in advertising and labeling its Restoral Shampoo made the false and unjust statements and representations "It is free from harmful ingredients found in average soaps and we indorse this shampoo for use with Restoral Tonic", "Free alkali, strong chemicals, and various other harmful ingredients found in many soaps are injurious to the scalp and hair", there being excellent soaps on the market free from strong chemicals and harmful ingredients.

Said statements and representations, as alleged, have the tendency and capacity to mislead and deceive the purchasing public into purchasing the product in question as and for a natural hair color restorer and not a dye, and as an effective hair tonic and a product which will restore the original color by replenishing the color glands, stop falling hair and prevent dandruff; all to the prejudice of the public and respondents' competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served upon the respondents above named on the 8th day of May, 1929, a complaint charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act, together with notice that answer should be filed within 30 days after service of the complaint and with a copy of the Rules of Practice of the Commission as to answers (Rule III).

The respondents did not enter an appearance and have not filed an answer to the complaint within the time required by the rules or at all.

Thereafter, the chief counsel for the Federal Trade Commission on June 19, 1929, filed with the Federal Trade Commission a motion moving respondents' failure to appear and answer to be deemed and taken to be an admission of all allegations of the complaint, to authorize the Commission to find them to be true, to waive hearing on the charges set forth in the complaint, and that thereupon an order to cease and desist issue as prayed for in the complaint.

Thereafter, the Commission on June 20, 1929, issued and served upon respondents said motion of the chief counsel for the Commission and notified respondents that the Commission would hear said respondents on said motion on Friday, June 28, 1929, at 2 p. m. in the hearing room, Federal Trade Commission Building, 2000 D Street NW., Washington, D. C. The respondents did not appear or answer said motion on the day so fixed or at all. No answer or return of any kind whatsoever has been filed by said respondents.

Thereupon this proceeding came on for decision and the Federal Trade Commission having duly considered the record and being now fully advised in the premises, pursuant to Rule of Practice III, subdivision 3, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents are partners doing business under the trade name and style The Restoral Co., with their principal office and place of business in the city of Chicago, State of Illinois. They are engaged in the business of selling a hair color restorer called Restoral and a shampoo called Restoral Shampoo under the firm name "The Restoral Co."

PAR. 2. Respondents in the conduct of their business as aforesaid sell and distribute said hair color restorer Restoral and said shampoo called Restoral Shampoo throughout the various States of the United States. They cause said hair color restorer and shampoo when so sold to be transported from their place of business in the city of Chicago, State of Illinois, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of their said business respondents are in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of hair color restorers and shampoos in commerce between and among the various States of the United States.

PAR. 3. Respondents sell and distribute their said products by mail order and to facilitate the sale of said products respondents do a large amount of advertising in magazines, periodicals, booklets and circulars, and other printed matter, wherein they cause to be set forth certain alleged merits for their said products. Respondents procure orders by mail through the means above set out and fill said orders by causing their said products so ordered to be shipped from their said place of business in the city of Chicago, to such vendees.

PAR. 4. In said advertisements so published in magazines, periodicals, and in said printed booklets and circulars, and on the bottles containing said hair color restorer Restoral, respondents make the following false statements and representations in language substantially as follows, to wit:

(1)

RESTORAL
Double Duty
TONIC
For Gray Hair
For Falling Hair
Not a dye but a new kind of tonic that brings back the original color to the hair and promotes the growth of new hair.
(Bottle label)

The above statements are false and misleading. In truth and in fact Restoral is not a tonic for gray hair. Restoral will neither bring back the original color nor will it promote hair growth. Restoral is of no value in preventing falling hair. Falling hair is a natural process. A certain amount of hair is regularly dislodged from the follicles. It is true that in certain conditions where the follicles are undernourished or otherwise disturbed, there may be and often is a greater degree of loss than at other times. Restoral can not rectify this.

(2) After the color has been restored to your hair, make it a point to use Restoral one to three times a week as needed. This will insure a permanent beautiful color and the tonic will aid the growth of the hair. (Advertisements.)

The above statements are false. Restoral does not restore the color to the hair. It simply dyes it. Applying Restoral repeatedly is simply for the purpose of maintaining or accentuating the color and dyeing the hair as it grows out of the scalp. Restoral does not possess any tonic properties. It will not make the hair grow.

(3) Restoral will gradually bring back the original color to your hair. (Advertisements.)

The above statement is false. Restoral will not bring back the original color. Restoral if applied over a sufficient length of time will dye the hair some shade but will not bring back the natural color. There may be cases where dyeing will give a color very similar to or even identical with the original shade.

(4) Do not be alarmed if you should notice a slight variation of shades at first because this is merely an action sometimes noticeable when Restoral starts to work. Continue with the treatment according to the directions and soon the hair will take on the shade you desire. (Advertisements.)

The above statements are false. This variation usually happens at the outset and persists a long time in many cases. A shade of some color will develop but it is rare that it will be the desired shade. It can not restore the natural color.

(5) Restoral, as you know, is an excellent tonic and hair restorer. There are no harmful ingredients of any kind in Restoral. (Advertisements.)

The above statements are false. Restoral is neither an excellent tonic nor a hair restorer. The essential ingredients in Restoral are lead acetate, sodium thiosulphate, and resorcinal. Lead acetate itself is a well known chemical that has long been used for the purpose of artificially dyeing the hair. Lead acetate is a poison which is apt to be harmful to the human body if frequently rubbed into the scalp.

(6) Use Restoral as a tonic for the scalp even after you have restored the natural color to your hair. (Advertisements.)

The above statement is false. Restoral is not a hair tonic, neither will it restore hair to its natural color.

PAR. 5. In order to induce the users of Restoral to employ Restoral Shampoo, respondents made the following statements and representations:

It is free from harmful ingredients found in average soaps and we indorse this shampoo for use with Restoral Tonic. (Bottle Label.)

Free alkali, strong chemicals, and various other harmful ingredients found in many soaps are injurious to the scalp and hair. (Advertisements.)

The above statements are false, unfair, and unjust. There are excellent soaps on the market free from strong chemicals and harmful ingredients.

PAR. 6. The statements and representations so made by respondents have the tendency and capacity to mislead and deceive the public into purchasing the product Restoral under the false belief—

That said hair color restorer is a natural hair color restorer and not a dye; that said hair color restorer will restore the original color of hair by replenishing the color glands; that said hair color restorer will stop falling hair and prevent dandruff, and that said hair color restorer is an effective hair tonic.

CONCLUSION

The practices of the said respondents under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and of respondents' competitors, and are unfair methods of competition in interstate commerce and constitute a violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the record, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondents, I. J. Rosenbloom and Jake A. Ablin, and each of them, their agents, representatives, servants, and employees, cease and desist in connection with the sale and distribution in interstate commerce of any preparation or product for the care, treatment or dressing of the human hair or skin:

(1) From making or causing to be made in any manner whatsoever any representation, statement, or assertion to the effect that such preparation or product (*a*) is not a dye, (*b*) or that it does not act as a dye, (*c*) or that it will restore hair to its original or natural color, (*d*) or that it is a tonic for hair, (*e*) or that it will promote the growth of hair, (*f*) or that it will stop hair from falling out, (*g*) or that it is harmless or will not produce harmful or deleterious effect upon the user, (*h*) or that it is beneficial to the scalp, (*i*) or that it replenishes the color glands of the hair, (*j*) or that it is a

remedy or cure for dandruff, when any such statements, representations, or assertions are not respectively true in fact.

(2) From making or causing to be made in any manner whatsoever any other false, misleading, or deceptive statement, representation, or assertion of or concerning the ingredients, uses, effects, action, origin, manufacture, sale, or distribution of any such preparation or product.

It is further ordered, That respondents, I. J. Rosenbloom and Jake A. Ablin, shall within 60 days after the service upon them of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF

PAN-AMERICAN MANUFACTURING COMPANY, INC.

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

Docket 1472. Complaint, July 23, 1927—Decision, July 5, 1929

Where a corporation engaged in the manufacture and sale of extracts, ice cream powder, syrups and flavors for soft drinks, including an artificially colored and flavored product first made by itself and its predecessor in the form of a syrup and later as a concentrate, for use in making an artificial grape drink, and with the taste, smell and color of a genuine grape drink, but with only an infinitesimal amount of the juice or fruit thereof,

(*a*) Sold said product in competition with makers of and dealers in genuine grape juice, under the name "Grapico" and featured said word in the labels thereof, with only a relatively small notice, if any, of the artificial flavoring and coloring of the product; and

(*b*) Set forth said trade name, together with the words, in smaller letters, "Sparkling," and "Naturally Good," in its advertisements in trade periodicals, display cards, newspapers, boys' caps for customers' use, and in its price lists, order blanks, and stationery, with no such notice whatever, and upon the bottle caps or crowns supplied at its instance to customers outside the State, with only relatively small notice of such coloring and flavoring;

With the capacity and tendency to mislead and deceive purchasers of beverages made therefrom into believing the same to be composed wholly or in substantial amount of the juice or fruit of the grape and of placing in the hands of customers the means of committing a fraud upon the consuming public by enabling them to offer and sell said public a drink made substantially from imitation fruit flavors as and for one made from the true fruit:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. E. J. Hornibrook for the Commission.

Legier, McEnery & Waguespack, of New Orleans, La., and *Mr. W. Parker Jones*, of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Louisiana corporation engaged in the manufacture of a concentrate or syrup under the name "Grapico," and in the sale thereof to bottling concerns through the various States, and with principal office and place of business in New Orleans, with naming product misleadingly, advertising falsely or misleadingly, and misbranding or mislabeling, in violation of the provisions of section 5

of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in advertising its said products in publications of general circulation throughout various States, under its said trade name "Grapico," and in other advertising matter which it circulates in interstate commerce, displays pictures or designs of grape vineyards, bunches of grapes, and similar pictorial representations, together with the qualifying statements:

Sparkling
Grapico
Naturally Good
Acknowledged
The Best
Grape Drink
On The Market
Sparkling
Grapico
Naturally Good
The Drink of The Nation

and also with numerous other similar statements in connection with its said trade name or brand, tending to and directly asserting or clearly importing or implying "to a substantial part of the purchasing public that said product is composed in whole or in part of the juice of the grape, when in truth and in fact said product is not made from juice of the grape or the fruit of the same."

Respondent further, as charged, markets its aforesaid products in bottles with molded labels featuring prominently a pictorial representation of a bunch of grapes, together with its said trade name or brand "Grapico," said use of grapes as a bottle mold or label and of such trade name or brand "Grapico," as alleged, either independently, or in conjunction with one another, and particularly with the product in question, artificially colored and flavored to simulate the appearance, taste and smell of grape juice, tending to and directly asserting or clearly importing and implying that the product in question is composed of pure grape juice.

The use by respondent, as charged, of its said trade name or brand "Grapico," in connection with its aforesaid artificially colored and flavored product, "has the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that such product is made of the juice of the grape or the fruit of the same, and said purchasing public buys respondent's product on the

strength of such misleading and deceptive trade name or brand," and respondent's said advertising matter, bottle mold, or label, and trade name or brand, whether used independently or in connection with one another "are calculated to and do have the effect of stifling and suppressing competition in the sale of beverages made in whole or in part from the juice of the grape or the fruit of the same, and further in diverting trade from truthfully marked goods"; to the prejudice of the public and of respondent's competitors of which there are a considerable number engaged in the manufacture and sale of beverages composed in whole or in part of the juice of the grape or fruit thereof.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Pan-American Manufacturing Co., Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of section 5 of said act.

Thereupon respondent entered its appearance and filed its answer to the complaint, and formal hearings were had thereon before an examiner of the Commission theretofore duly appointed, and testimony and evidence were offered and received, and duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for hearing before the Commission on such complaint and answer, and on testimony and evidence, and the report of the examiner, and on the briefs of counsel (counsel for respondent did not appear at the time fixed for oral argument), and the Commission duly considered the same and now makes this report in writing and states its findings as to the facts and conclusion as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Pan-American Manufacturing Co., Inc., is a Louisiana corporation, with its principal place of business in the city of New Orleans, in said State. It was incorporated in the year 1911.

PAR. 2. Respondent manufactures at its plant in the said city of New Orleans, extracts, ice cream powder, sirups, and various flavors for soft drinks.

Since May 14, 1926, it has been manufacturing and selling in interstate commerce, a concentrate under the name of "Grapico."

This concentrate is sold to bottlers for the purpose of making an imitation grape drink. Respondent acquired the formula for making "Grapico" and all rights in connection therewith, in the spring of 1926, from J. J. Crossman & Sons, a defunct corporation, which latter concern had been, since the year 1914, manufacturing said "Grapico" and selling and advertising the same as such extensively in interstate commerce.

PAR. 3. "Grapico" was first made in the form of a syrup by respondent, and its said predecessor. It is now manufactured in the form of a concentrate. It was formerly shipped in barrels and is now shipped in gallon bottles from respondent's plant in New Orleans, in the State of Louisiana, to various bottling works or companies located in several of the States of the United States.

PAR. 4. Respondent, in the sale of "Grapico" concentrate, is in competition with Welch Grape Juice Co. and other corporations, copartnerships, and individuals making and selling real grape juice in interstate commerce, as well as with those corporations, copartnerships, and individuals making and selling in interstate commerce, imitations of grape flavor and color for the purpose of flavoring and coloring beverages under their respective brands or trade names.

Respondent has three customers residing outside of the State of Louisiana, who sell the finished beverage made from "Grapico" concentrate under the name "Grapico" and they are:

Grapico Bottling Works, Birmingham, Ala.
One company operating at Natchez, Miss.
One company operating at Picayune, Miss.

PAR. 5. "Grapico" concentrate, when used as directed by respondent, produces an artificially-colored and artificially-flavored drink which tastes like, smells like, and resembles in color a drink made from grapes.

The amount of grape juice or fruit of the grape in "Grapico" is infinitesimal. These statements were made in the testimony of the president of respondent:

There would be hardly any grape juice in the finished beverage.

We do not claim grapico is made from grape juice or made from the fruit of the vine.

We claim that it is an artificially-colored and flavored grape drink.

"Grapico" concentrate sells for $7.50 per gallon. The finished "Grapico" beverage sells to the ultimate customer for 5 cents per 7-ounce bottle.

PAR. 6. Since October, 1906, and until the year 1928, respondent generally used the label carrying the words:

ONE GALLON
GRAPICO IMITATION
GRAPE CONCENTRATE
ARTIFICIALLY FLAVORED AND COLORED

The printed word "Grapico" on this label is several times the size of the printed words "Artificially Flavored and Colored" and the words "Grape Concentrate" are approximately four times as large as the word "imitation." This label was used by respondent on its bottles in which it shipped "Grapico" concentrate in interstate commerce.

In 1928 the respondent learned of an investigation being carried on by the Federal Trade Commission. It then adopted and is now using the following label on bottles containing "Grapico" concentrate:

IMITATION
GRAPE CONCENTRATE SYRUP
ARTIFICIALLY FLAVORED AND COLORED

The words "Grape concentrate syrup" appearing on this label are about five times as large as the words "Artificially flavored and colored" and about three times as large as the word "imitation."

When Grapico was shipped in barrels by respondent, prior to October, 1926, the following words were stenciled upon the same:

IMITATION
GRAPE SYRUP
GRAPICO
NATURALLY GOOD
SYRUP
Pan-American Manufacturing Company
Mfg.
New Orleans, Louisiana.

At times, the word "Grapico," standing alone, has been stenciled on Grapico syrup which was shipped to respondent's customers residing outside the State of Louisiana.

In the month of July, 1927, one R. R. Rochelle, a customer of respondent who makes a beverage from "Grapico" concentrate and sells the same under the name "Grapico" and who conducts his bottling business under the name and style of Grapico Bottling Works at Birmingham, Ala., caused to be erected at the State fairgrounds in said city, a stand or booth from which he dispensed and sold the finished beverage "Grapico" during said fair time of said

year. He caused to be erected on the top of said stand or booth, signs advertising "Grapico," upon which said signs appeared bunches of grapes, a picture of a bottle of "Grapico" with the word "Grapico" thereupon and also with the words: "Drink Sparkling Grapico, Naturally Good." No explanation was made on these signs that "Grapico" is an imitation, artificially colored and flavored drink. This stand or booth and the said signs appearing on the top thereof were erected without the knowledge or consent of respondent.

Respondent advertises its products in trade journals such as the Carbonator and Bottler and the National Bottlers Gazette, both being magazines of general circulation among the bottling trade throughout the United States. On page 167 of the April, 1927, issue of the Carbonator and Bottler, "Grapico" is advertised in very large conspicuous letters, but no reference is made to its being an artifically colored or imitation drink. The same is true of the May issue of the Carbonator and Bottler. The same is true of the April, 1927, issue of the National Bottlers Gazette.

Commission's Exhibits 12, 13, and 16 are large yellow signs 13 by 20 inches, upon which appear in very prominent red and yellow letters the words "Drink of the Nation" and "Drink Sparkling Grapico, Naturally Good, in Bottles." These signs were sent to respondent's customers who reside outside the State of Louisiana for the purpose of advertising the finished beverage "Grapico."

Exhibit 14 is a sign 10 by 7 inches bearing the same words as Exhibits 12, 13, and 16, and was sent out to respondent's customers residing outside of the State of Louisiana for the purpose of advertising the finished beverage "Grapico."

None of the said signs referred to in the two preceding paragraphs state that "Grapico" is an imitation drink or that it is artificially colored or flavored.

The bottle caps or crowns used in bottling the finished beverage "Grapico" are made by a firm in New Orleans which has no connection with respondent, but when "Grapico" concentrate is sold to a customer outside of the State of Louisiana, the customer is told where such caps can be procured, or if the customer prefers, the respondent orders the same to be shipped to the bottler at the bottler's expense. Commission's Exhibits 17 and 18 are samples of these caps. Commission's Exhibit 17 bears the word "Grapico" in very large letters and the words "Artificially flavored and colored" in much smaller letters. In Commission's Exhibit 18 there appears the word "Grapico" in very large letters and the words "imitation, color and flavor" in much smaller letters. Commission's Exhibit 17

is the cap now used in bottling "Grapico," and Exhibit 18 is the cap which was used prior to February, 1929.

Commission's Exhibit 19 is a price list sent to the customers and prospective customers of respondent, residing outside of the State of Louisiana, and carries the word "Grapico" in very large letters with the word "sparkling" and the words "naturally good" in much smaller letters, but does not explain that "Grapico" concentrate is artificially colored and flavored or that it is an imitation product.

Commission's Exhibit 28 is an order blank which refers to "Grapico" without the explanation that the same is artificially colored and flavored, and an imitation.

The stationery of respondent has printed thereupon the words "Grapico" in very large letters without the explanation that "Grapico" is artificially flavored and colored and is an imitation.

Respondent also sent to its customers residing outside of the State of Louisiana, a quantity of boys' caps to be given to boys to wear, which caps bear the word "Grapico" in large red letters, and in smaller white letters, the words "sparkling" and "naturally good." No other words appear upon these caps.

The World Bottling Co. is a corporation organized and existing under and by virtue of the laws of the State of Louisiana, with its principal place of business in the city of New Orleans. Fifty per cent of the capital stock of this company is owned by respondent and the officers and directors of respondent company are the same as those of the World Bottling Co. The World Bottling Co. bottles all of "Grapico" finished beverage which is sold in Louisiana. The World Bottling Co. advertises "Grapico" beverage extensively in the New Orleans Picayune, the New Orleans Times-Picayune, and New Orleans State Item, all daily newspapers of general circulation in the State of Louisiana, and of extensive circulation in the States of Alabama and Mississippi.

PAR. 7. Respondent's said advertisements, brands, labels, descriptions, and representations of its said product have the capacity and tendency to mislead and deceive purchasers of beverages made from said "Grapico" concentrate into the belief that said beverage is composed in whole or contains a substantial amount of the juice of the grape or the fruit of the same.

PAR. 8. Respondent's said acts and practices place in the hands of its customers the means of committing a fraud upon the consuming public by enabling said customers to offer for sale and sell to the consuming public a drink made substantially from imitation fruits flavors as and for drinks made from true fruit.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors, and are unfair methods of competition in commerce, and constitute a violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commisison, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence received by a trial examiner heretofore duly appointed by the Commission, and the briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, Pan-American Manufacturing Co., Inc., its representatives, agents, servants, employees, and successors, cease and desist from:

Using, in connection with the sale in interstate commerce of any beverage concentrate or syrup the word "Grapico" as a trade name, brand, or label, or as a designation of a product not composed of the juice of the grape.

It is further ordered, That the respondent, Pan-American Manufacturing Co., Inc., 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 it has complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF

N. SHURE COMPANY

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

Docket 1478. Complaint, Oct. 1, 1927—Decision, July 5, 1929

Where a corporation engaged in the sale of various articles of general merchandise at wholesale, by mail order to retail dealers in various States, labeled soft-drink powders and liquid flavors containing no more than a negligible amount of fruit juices and consisting principally of tartaric acid as a base and artificially colored and flavored, "Orangeade Powder," "Grape Powder", and "Lemon Powder", and "Grape", "Cherry", "Raspberry" and "Loganberry", respectively, and in its advertisements of its aforesaid powders and flavors set forth pictorial representations of the containers so labeled, together with the words "Orangeade", "Grape", "Lemon", and the other names of the fruits suggested or indicated, as above set forth, and the statement that the powders were "artificial products composed of a citrous base, flavored with true Italian flavors, and artificially colored" and that "a delicious drink suggesting the rich fruit flavor of the true fruit itself is obtained by using Superior Powders", thereby falsely implying that the aforesaid products were derived from the fruits or juices of the fruits so designated and represented; with the capacity and tendency to mislead and deceive the public into believing the same to be so derived and to induce the purchase thereof in such belief and with the result of thereby supplying to and passing into the hands of others the means of deceiving the purchasing public as above set forth and of diverting business from and otherwise injuring and prejudicing competitors' manufacturing, selling, and transporting pure fruit juices or extracts thereof for the compounding of beverages, and beverages already compounded, truthfully labeled and advertised by them:

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

Mr. William A. Sweet for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged at Chicago in the sale by mail, at wholesale, of various articles of general merchandise to retailers located in various States throughout the United States, including certain soft drink powders and liquid flavors for making beverages, with misbranding or mislabeling and advertising

falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, labels the containers of its said powders and liquids, containing none of the fruit or fruit juices indicated, respectively, "Orangeade", "Grape" and "Lemon", and "Raspberry", "Grape", "Cherry" and "Loganberry", and advertises its aforesaid powders and flavors, thus labeled, in its catalogues distributed to its customers and prospective customers in various States, together with descriptive matter including, among other things, the representation "superior soft drinks", and "superior liquid flavors in bottles" for the powders and liquids, respectively, and pictorial representations of the containers of said powders and flavors, labeled as above set forth.

The use by respondent, as charged, "of the words 'Orangeade', 'Grape', and 'Lemon' in the labels upon the containers of its said powders, and the words 'Raspberry', 'Grape', 'Cherry', and 'Loganberry' in the labels upon the containers of its said liquid flavors, and of the pictorial representations of the containers, including the labels, of said powders and liquid flavors in its said catalogues has the capacity and tendency to and does mislead purchasers of said powders and liquid flavors into the belief that said powders and liquid flavors are composed in whole or in part of the fruit or juice of the fruit, so represented, and to induce such purchasers to purchase the same in that belief", and by reason of the resale by respondent's wholesale dealer customers of said powders and flavors to retail dealers, by whom said products and the beverages made therefrom are offered and sold to the purchasing public, results in respondents thereby supplying to and placing in "the hands of others the means of deceiving purchasers of said powders, liquid flavors, and the beverages made therefrom, into the belief that the same are made from or contain, in whole or in part, the fruit or juice of the fruit as represented", and respondent's said acts and practices, as charged, tend to and do divert business from and otherwise injure and prejudice competitors, among whom there are concerns and individuals engaged in the manufacture, sale, and transportation, in commerce, of "pure fruit juices, or extracts thereof, to be used for the compounding of beverages, and beverages already compounded, who truthfully mark their products", all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, N. Shure Co., charging it with the use of unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the said act.

Hearings were held in the course of which testimony and evidence were received in support of the charges in the complaint and in opposition thereto. The trial examiner filed his report upon the facts. A brief was filed by counsel for the Commission. The time within which the brief on behalf of respondent was required to be filed under the Commission's rules and practice expired on May 8, 1929, and no brief has been filed by the respondent.

Thereupon this proceeding came on for decision and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is a corporation organized and existing by virtue of the laws of the State of Illinois with its principal office and place of business in the city of Chicago in said State. It has been and is now engaged in the wholesale mail order business selling various articles of general merchandise at wholesale to retail dealers therein located in various States throughout the United States. It causes its said merchandise when so sold to be transported from its said place of business in the city of Chicago into and through various States of the United States other than the State of Illinois to the purchasers thereof located in the said States. The respondent is in competition with other corporations, partnerships, and individuals engaged in the sale and transportation of articles of general merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its said business as described in paragraph 1 hereof the respondent has been and is now soliciting the sale, selling, and transporting in commerce of certain soft drink powders and liquid flavors designed and intended to be converted into beverages by the addition of water. During the times referred to in the complaint herein and until the summer of the year 1928 re-

spondent caused to be affixed to the containers of said soft drink powders labels bearing the words "Orangeade Powder", "Grape Powder", and "Lemon Powder", respectively, and with said labels bearing said names and designations so affixed sold and transported said soft drink powders in commerce as aforesaid to its retail dealer customers who in turn sold the same with said labels so affixed and the beverages made therefrom to the public. During the times herein mentioned respondent caused to be affixed to the containers of said liquid flavors labels bearing the words "Grape", "Cherry", "Raspberry", and "Loganberry", respectively, and with said labels bearing said names and said designations so affixed sold and transported said products as aforesaid to its retail dealer customers who in turn sold the same, with said labels as affixed, and the beverages made therefrom to the public.

In soliciting the sale of and in selling its said soft drink powders and liquid flavors respondent during the times herein mentioned caused to be inserted in catalogues issued and distributed by it to its customers and prospective customers located in various States of the United States advertisements describing said soft drink powders and liquid flavors and depicting the containers thereof. Said advertising matter describing said powders contained pictorial representations of the containers of said powders, including the labels bearing the words "Orangeade Powder", "Grape Powder", and "Lemon Powder", respectively, and directly underneath said pictorial representations the words "Orangeade", "Grape", and "Lemon", respectively. Said advertising matter describing said liquid flavors contained pictorial representations of the containers of said liquid flavors, including the labels thereon bearing the words "Grape", "Cherry", "Raspberry", and "Loganberry", respectively, directly underneath the pictorial representations of the respective containers of said liquid flavors. Said advertising matter also contained and still contains the following statement:

Superior Soft Drink Powders, artificial products composed of a citrous base, flavored with true Italian flavors, and artificially colored. A delicious drink suggesting the rich fruit flavor of the true fruit itself is obtained by using Superior Powders.

Subsequent to the latter part of the year 1928 the labels placed or caused to be placed upon the containers of the soft drink powders and liquid flavors sold in commerce by respondent have borne the word "imitation" immediately preceding the names of the fruits represented, and the names of the fruits so represented have been

followed by words describing said powders as an artificial product composed of a citrous base flavored with high-grade flavor and artificially colored, and describing the liquid flavor as an artificial product composed of a citrous base flavored with true and artificial flavor and artificially colored.

The advertisements describing said soft-drink powders and liquid flavors in catalogues issued and distributed by respondent subsequent to the year 1927 have contained the word "artificial" immediately preceding the several names of the fruits represented in connection with the said names which appear immediately below the pictorial representations of the several containers of the same.

PAR. 3. The soft drink powders and liquid flavors labeled and described as set forth in paragraph 2 hereof are not made from the fruit or juice of the fruit so represented and do not contain more than a negligible amount thereof, but consist principally of tartaric acid as a base, and artificially colored and flavored.

PAR. 4. The labels and advertising matter used by respondent in connection with the sale of its soft drink powders and liquid flavors carried the false implication that the products so labeled and advertised were derived from the fruits or the juices of the fruits so designated and represented when such is not the fact, and had the capacity and tendency to mislead and deceive the public into the belief that said products were so derived and to cause them to purchase the same in that belief; and the respondent thus supplies to and passes into the hands of others the means of deceiving the purchasing public into the belief that said powders and liquid flavors and the beverages derived therefrom are made from or contain in whole or in substantial part the fruits or juices of the fruits represented.

PAR. 5. There are among the competitors of the said respondent those who manufacture, sell, and transport in commerce pure fruit juices or extracts thereof to be used for the compounding of beverages and beverages already compounded who truthfully label and advertise their products and respondent's acts and practices as hereinbefore set forth tend to and do divert business from and otherwise injure and prejudice said competitors.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors, and are unfair methods of competition in commerce, and constitute a violation of the act of

Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony in support of the complaint and in opposition thereto, and the brief of counsel for the Commission, respondent having failed to file a brief, and the Commission having made its findings as to the facts with its conclusion that the respondent has and is violating the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is ordered, That the respondent, N. Shure Co., its officers, agents, representatives, employees, and successors, do cease and desist from:

(1) Using in connection with the sale in interstate commerce of any beverage powder the words "Orangeade", "Grape", "Lemon", "Raspberry", "Cherry", or "Loganberry", or either of them, or any other word or letter or pictorial illustration signifying a fruit or fruit juice as a trade brand, label, or designation of a product not composed of the fruit or fruit juice indicated, unless the said words designating the product be immediately preceded by the word "imitation" and followed by the words, "artificially colored", all printed in type as conspicuous as that in which the other words designating the product are printed.

(2) Using, in connection with the sale in interstate commerce of any beverage flavor, the word "Grape", "Cherry", "Raspberry", or "Loganberry", or either of them, or any other word or letter or pictorial illustration signifying a fruit or fruit juice, as a trade brand, label, or designation of a product not composed of the fruit or fruit juice indicated, unless the said words designating the product be immediately preceded by the word "imitation" and followed by the word "flavor" and by the words "artificially colored" all printed in type as conspicuous as that in which the other words designating the product are printed.

It is further ordered, That respondent, N. Shure Co., pursuant to the provisions of Rule XVI of the Commission's Rules of Practice, shall within 60 days after the service upon it of a copy of the order to cease and desist hereinbefore set forth file with the Commission a report in writing setting forth in detail the manner and form in which said order has been complied with.

IN THE MATTER OF

GRAHAM GRISWOLD, DOING BUSINESS AS THE GRISWOLD LUMBER CO.

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

Docket 1606. Complaint, Apr. 23, 1929—Decision, Sept. 23, 1929

Where an individual engaged in the wholesale lumber business,

(*a*) Delivered to customers lumber caused by him to be scant sawn, in fulfillment of orders for rough lumber to be cut and milled to specified larger sizes and dimensions; and

(*b*) Charged said customers the considerably higher amounts which would in fact have accrued and been properly payable for freight had said individual caused such lumber to be cut, milled, and delivered as ordered by said customers;

With the result that ability of competitors who filled orders with specified sizes and dimensions and collected only the true and actual freight charges for the transportation thereof, to compete with said individual and secure and hold customers for rough lumber in the various States was impaired and dangerously hampered, and trade tended to be and was unfairly diverted therefrom, wholesalers and retailers were misled into buying and accepting rough lumber of smaller sizes and dimensions than ordered, and buildings, bridges, and other structures were constructed of timbers and lumber of less strength than intended and required by specifications of dealers and architects; to the injury and prejudice of said competitors and of the public:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Ellis DeBruler for the Commission.

Mr. James W. Crawford, of Portland, Oreg., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the operation of a wholesale business at Portland, Oreg., with making and collecting full measure charges for short measure shipments, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as sales agent for certain corporations engaged in lumber milling, and, in some cases affiliated with him, for three years last past (1) caused orders received by him for rough lumber, for milling to certain sizes and dimensions, to be milled scant sawn, i. e., at smaller dimensions than specified by the customers, and to be transported thereto as conforming to specified

sizes, and (2) billed and collected from said customers freight charges exceeding those actually paid by him, namely, the approximate freight charges which would have been paid for the transportation of lumber cut to the full sizes and dimensions specified by the customers in their orders.

Such methods and practices, as alleged, "are to the detriment of the public requiring and using rough lumber in that wholesale and retail buyers of rough lumber have been and are in many certain instances deceived into buying and accepting rough lumber of lesser sizes and dimensions than ordered and desired by them," and also "in that in some instances buildings, bridges, and other structures are, as the result of the said described methods of competition, constructed of timbers and other lumber of less strength than intended and required by dealers' and architects' specifications," and said methods and practices, further, as charged, lessen, impair, and hinder the ability to complete and hold customers of competitors who do not pursue such methods of competition but sell rough lumber of the sizes and dimensions ordered, and collect from their customers "the true and actual freight charges for the transportation" thereof; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Graham Griswold, doing business as the Griswold Lumber Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent filed his answer to said complaint and stated that he refrained from contesting the proceeding and consented that the Commission make, enter, and serve upon him an order to cease and desist from the alleged violation of the law as set forth in the complaint, and then followed, in the answer, a practical denial of all of the principal allegations of the complaint; but thereafter, upon application of said respondent, said answer was withdrawn and the files and record in this matter show that said respondent refrains from contesting this proceeding and consents that the Commission may make, enter, and serve upon him an order to cease and desist from the violation of the law as alleged in the complaint in this matter.

Thereupon this proceeding came on for decision and the Commission having duly considered the record, and now being fully advised

in the premises, makes this its report, stating its findings as to the facts and conclusion drawn therefrom, and finds that the allegations of the complaint herein are true, and also that the following is a true statement of the facts herein, based upon the record:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Graham Griswold, doing business as the Griswold Lumber Co., is the owner and active manager of an unincorporated wholesale lumber business, having his place of business at Portland, Oreg., and which business is operated under the registered trade name of the Griswold Lumber Co.

PAR. 2. The respondent, in the conduct of his wholesale lumber business, acts as the sales agent for certain corporations engaged in lumber milling in the State of Oregon, some of which are affiliated with said Griswold Lumber Co., and in his capacity as sales agent said respondent solicits sales of lumber and sells the same and causes such lumber to be transported from the State of Oregon to purchasers and consignees thereof located in Illinois, Missouri, Colorado, Kansas, Iowa, and other States, and has been doing the same for at least three years last past.

PAR. 3. Said respondent, in the course and conduct of his said wholesale lumber business, in interstate commerce, and for the past three years, has from time to time received orders for rough lumber to be cut and milled to certain sizes and dimensions named and specified by his customers, and respondent has thereupon ordered from lumber milling corporations, which are closely affiliated with said respondent, and also other milling concerns, rough lumber to be cut and milled scant-sawn, or at sizes and dimensions less than the dimensions named and specified by his customers. Thereafter, the said scant-sawn rough lumber was transported by said respondent to his customers as conforming to and actually being of the sizes and dimensions by them respectively specified in their orders.

Said respondent has then billed to and collected from his customers as freight charges amounts in excess of those actually paid by him to transportation companies for the lumber or timber actually shipped by him to his various customers. The freight charges which were included in respondent's invoices to his customers, and actually collected from them were always approximately the amount which would have been paid to the transportation companies for the transportation of the said lumber had the same been cut to the full and actual sizes and dimensions named and specified by the customers of said respondent in their respective orders, but the amount of freight

actually paid by respondent was based on the delivered scant-sawn lumber and timber, and considerably less than the amount collected from customers.

The amounts so billed by respondent and collected from his various customers were considerably in excess of the amount of freight that respondent actually paid for the transportation of the said lumber and timber, which said lumber and timber in each instance was cut under the size specified by respondent's said customers, and the actual freight paid was paid on the basis of the size of the lumber and timber as actually cut, but the actual freight collected by respondent from his customers was in each instance considerably in excess of the amount of freight that respondent paid for the transportation of the lumber and timber in the filling of orders.

PAR. 4. There are other individuals and corporations in the State of Oregon and many other States engaged in selling rough lumber at wholesale, having customers located in States other than the States of production, who have not pursued and who do not pursue the methods of competition which are pursued by respondent. There are many of respondent's competitors who do not receive orders for rough lumber to be filled to certain sizes and dimensions named and specified and then fill such orders from lumber which is cut and milled at sizes and dimensions less than those named and specified by their respective customers, but his said competitors sell rough lumber of the actual sizes and dimensions ordered and only collect from their customers the true and actual freight charges for the transportation of such lumber to their respective customers, and whose ability to compete with respondent and secure and hold customers in the various States for rough lumber is and has been lessened, impaired and dangerously hampered by the methods of competition pursued by respondent in filling orders for lumber and timber with lumber and timber cut scant or cut much lower than specified in the orders, and charging and collecting for lumber and timber that was presumed to be cut to the full size specified.

PAR. 5. The Commission further finds as a fact that the methods of competition and practices of respondent in filling orders for rough lumber, to be milled to certain sizes and dimensions specified by respondent's customers, by filling such orders by delivering lumber and timber of sizes and dimensions less than those named and specified by his respective customers, and thereafter billing and collecting from his said customers as freight charges amounts considerably in excess of those actually paid by him to transportation companies for the lumber shipped by him to his respective customers, when his competitors do not follow such methods but actually fill

orders for lumber as specified and who pay freight on the basis of lumber and timber cut and milled to dimensions ordered and specified, are detrimental to his competitors and place them at a disadvantage in competing with him, and the methods of respondent are also further to the detriment of the public requiring and using rough lumber, in that wholesale and retail buyers of rough lumber have been and are in many instances deceived into buying and accepting rough lumber of lesser sizes and dimensions than ordered and described by them. Moreover, the interests of the public are prejudiced and injured by the said described methods of competition and practices of respondent in filling orders with scant-sawn lumber, as hereinbefore set out, in that, in some instances, buildings, bridges, and other structures are, as the result of such described methods of competition, constructed of timbers and other lumber of less strength than intended and required by dealers' and architects' specifications.

CONCLUSION

By reason of the aforesaid acts and practices of the respondent, as hereinabove set out, it is concluded by the Commission that the acts and practices of respondent are clearly unfair methods of competition in interstate commerce, and that such practices do have the tendency to and actually have the effect of unfairly diverting trade from respondent's competitors, and that the acts and things hereinabove set out are to the prejudice and injury of the public, and that such acts constitute unfair methods of competition in interstate commerce in violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST [1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and upon the consent of respondent that the Commission may make, enter, and serve upon him an order to cease and desist from the violation of the law as alleged in the complaint in this matter, as fully appears from the record herein; and the Commission having made its findings as to the facts with the conclusion that the respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and, further, the Com-

[1] Substitute order made as of Feb. 24, 1930.

mission having issued an order to cease and desist in terms broader than the allegations of the complaint, in this respect to wit, that the prohibitions of the said order purport to relate to lumber generally and to timber, whereas the complaint and the findings herein related to rough lumber only, as distinguished from surfaced lumber on the one hand and from timber on the other;

Now, therefore, it is hereby ordered, That the order to cease and desist heretofore, on the 23d day of September, 1929, made and entered, and thereafter served upon respondent, be and the same is hereby rescinded and revoked; and

It is further ordered, That respondent, Graham Griswold, doing business as the Griswold Lumber Co., his agents, representatives, servants, and employees, and all persons under his authority or direction, cease and desist, in the sale of lumber in interstate commerce, from the following unlawful practices:

(1) From filling orders for rough lumber which are received from his customers to be cut and milled to certain sizes and dimensions named and specified by said respondent's customers, and then and thereupon filling such orders by the delivery of scant-sawn lumber and lumber of sizes and dimensions less than those sizes and dimensions mentioned and specified by his said customers.

(2) From filling orders for rough lumber from customers to be cut and milled to certain sizese and dimensions named and specified by respondent's said customers, and then and thereupon filling such orders, in interstate commerce, by the delivery of scant-sawn rough lumber, and then charging to and collecting, or charging to or collecting, freight from his said customers in excess of the amount of freight actually paid by said respondent to the transportation companies for the lumber actually shipped to respondent's customers in filling such orders.

(3) From hereafter delivering rough lumber, in filling orders in interstate commerce, of less sizes or dimensions than those specified by respondent's customers, and also from hereafter charging to and collecting, or charging to or collecting, from customers freight charges in excess of amounts actually paid by respondent, and also from all similar unlawful or unfair practices in the sale of lumber in interstate commerce.

It is further ordered, That respondent, Graham Griswold, doing business as the Griswold Lumber Co., shall, within 30 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the substitute order to cease and desist hereinabove set out.

IN THE MATTER OF

MAX KLEIN, DOING BUSINESS AS KLIMATE-PRUF MANUFACTURING COMPANY

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

Docket 1579. Complaint, Mar. 14, 1929—Decision, Sept. 25, 1929

Where an individual engaged in the sale of waterproofing compounds, roof coatings, paints, and similar products, and neither owning, operating, nor controlling any mill or plant, nor engaged in manufacturing, but filling orders through a manufacturer by whom quantities called for were supplied from its regular line of products, packed in containers with labels furnished by said individual and featuring his trade name, and shipped, thus labeled, directly to said individual's purchaser customers; employed a trade name including the word "manufacturing" and featured and used said name in advertising matter distributed to customers and prospective customers in various States and on business stationery and circular letters, together with the representation that the commodity was "manufactured exclusively by the Klimate-Pruf Manufacturing Co.", and a depiction of said company's purported manufacturing plant and the words, in conspicuous type, "factory and warehouse, Kingsland, N. J.", with the tendency and capacity to mislead and deceive the purchasing public into believing him to be a manufacturer and that purchasers from him were buying directly from the manufacturer and thereby saving themselves the middleman's profit:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. William T. Kelley for the Commission.
Ruttenberg & Ruttenberg, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an individual engaged in the distribution and sale of waterproofing compounds, roof coating and paints to purchasers in States other than the State of New Jersey, where said products were manufactured, and with principal office and place of business in New York City, with using misleading trade name, misrepresenting business status or advantages, and advertising falsely or misleadingly in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth and neither owning nor operating any factory making the products dealt in by him, but filling orders from products made in plants neither owned nor operated by him, has used and uses a trade name containing the word "manufacturing", in the sale and distribution of his products, together with the words "manufactured exclusively by" or the words "factory and warehouse, Kingsland, N. J.", or alone, or in connection or conjunction with a pictorial representation of a factory in its circulars and/or letterheads, invoices, etc.

Such statements and representations, pictorial or otherwise, as alleged, "have had and do have the tendency and capacity to deceive and mislead purchasers and prospective purchasers of its products into the belief that respondent was and is the manufacturer of the products so advertised and sold or distributed by him in commerce between and among certain States of the United States and thereby to divert trade from truthfully described products"; to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon Max Klein, doing business under the trade name and style Klimate-Pruf Manufacturing Co., hereinafter referred to as respondent, charging him with unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Thereupon the respondent entered his appearance and filed his answer to the complaint and formal hearing was had thereon before an examiner of the Commission theretofore duly appointed, and testimony, documentary evidence, and exhibits were offered and received, and duly recorded and filed in the office of the Commission; thereafter the proceedings regularly came on for hearing before the Federal Trade Commission on such complaint and answer, and on the testimony, evidence, and exhibits on file, and on the briefs of counsel, and the Federal Trade Commission duly considered the same, and now makes this report in writing and states its findings as to the facts, as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Max Klein, at the time of the issuance of the complaint herein, on March 14, 1929, and for more than two years prior thereto, was and now is engaged in the business of buying and selling waterproofing compounds, roof coatings, paints,

and similar products, and carried on such business under the name and style Klimate-Pruf Manufacturing Co., with principal place of business in the city of New York, State of New York. The commodities so dealt in by respondent have been obtained by him through an arrangement with the Stanleen Manufacturing Co. from the M. J. Merkin Paint Co., Inc., a manufacturer of paints, varnishes, and allied products, with factory and principal place of business at Lyndhurst, in the State of New Jersey. The respondent caused such commodities when so sold to be transported to the respective purchasers thereof from Lyndhurst, in the State of New Jersey, through and into other States of the United States. In the course and conduct of his said business respondent at all times mentioned herein has been and is now in active competition with various corporations, partnerships, and other persons also engaged in the business of buying and selling waterproofing paints, roof coatings, paints, and similar products in commerce among the several States of the United States.

PAR. 2. The respondent, in the course of his business as set out in paragraph 1 hereof, has made use of advertising matter which he caused to be distributed among his customers and prospective customers in various States of the United States, in which the trade name under which he carried on business, viz, KLIMATE-PRUF MANUFACTURING Co., appeared in large display type and some of such advertising matter contained the representation that the commodity therein described was manufactured exclusively by the Klimate-Pruf Manufacturing Co. In the course of such business respondent has also made use of business stationery which featured the said trade name Klimate-Pruf Manufacturing Co. and has caused circular letters to be mailed to prospective customers in various States of the United States, which circulars were printed upon letterheads used by him in the course of such business, which letterheads had printed thereon in large display type the said trade name under which he carried on business, together with the words " factory and warehouse, Kingsland, N. J." Some of said advertising matter carrying the words " Klimate-Pruf Manufacturing Co.", distributed by respondent as aforesaid, contained pictorial representations of what purported to be a manufacturing plant operated by respondent.

PAR. 3. The respondent at no time during the course of his business carried on by him, as described in paragraphs 1 and 2 hereof, owned, operated, or controlled a mill, factory, or manufacturing plant, and was not engaged in the manufacture of any of the commodities dealt in by him or any other commodities, but at all times during the course of such business has had orders for such com-

modities taken by him from customers, transmitted through a jobber of paints, varnishes, and allied products to the M. J. Merkin Paint Co., Inc., a manufacturer of paints, varnishes, and allied products, of Lyndhurst, N. J., which orders were in all cases filled from the regular line of the products of said M. J. Merkin Paint Co., Inc., and the quantities so ordered were packed into containers and there were attached to such containers labels furnished by the respondent, which labels featured the trade name under which he carried on business, namely Klimate-Pruf Manufacturing Co., and the quantities so packed and labeled were then transported to the respective purchasers thereof.

PAR. 4. The use by respondent of the word "manufacturing" in his trade name Klimate-Pruf Manufacturing Co., and the use of the word "manufactured" in the phrase "manufactured exclusively by the Klimate-Pruf Manufacturing Co.", and the use of pictorial illustrations of what purported to be a manufacturing plant operated by respondent, and other similar statements and representations on letterheads, business stationery, and advertising matter in the manner and under the circumstances hereinbefore set out has the tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that respondent is a manufacturer of the commodities in which he deals and that persons who purchase from respondent are buying direct from the manufacturer and are thereby saving themselves the middleman's profit.

CONCLUSION

The practices of respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and testimony and evidence submitted, the trial examiner's report upon the facts and the exceptions thereto, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

Order

It is now ordered, That the respondent Max Klein, individually, and trading under the name Klimate-Pruf Manufacturing Co., his agents, servants, representatives, and employees, cease and desist in connection with the sale and distribution of waterproofing compounds, roof coatings, paints, and similar products in interstate commerce:

(1) From conducting business under the name Klimate-Pruf Manufacturing Co., or under any other trade or corporate name containing the word "manufacturing."

(2) From using the phrases "manufactured exclusively by the Klimate-Pruf Manufacturing Co.", "factory and warehouse, Kingsland, N. J."; or any phrase, slogan, or pictorial representation of similar import; or any statement or representation whatsoever that respondent is the manufacturer of said commodities; or any statement or representation or pictorial representation importing or implying that respondent is selling and distributing said commodities direct from the manufacturer or factory to his customer purchasers without the intervention of middlemen.

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

IN THE MATTER OF

ROCKWOOD CORPORATION OF ST. LOUIS

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

Docket 1536. Complaint, Oct. 3, 1928—Decision, Oct. 14, 1929

Where a corporation engaged in the manufacture and sale of building materials, which (1) were composed of some 80 per cent of calcined gypsum and from 1 to 2 per cent cottonwood fibre, with balance water of crystallization, (2) had the shape, but not the appearance, weight, or texture of lumber and were not lumber as long known and understood, i. e., wood from trees, trimmed as boards, etc., (3) were put in place with carpenters' tools and served to take the place of lumber, and (4) were sold in competition therewith and with gypsum blocks, clay tiles, building bricks, and other varieties of building materials, used the words "lumber" and "Rockwood lumber" in its description and advertisement of its aforesaid building materials, in pamphlets, leaflets, and other advertising, without explanatory qualifying word or words; with the capacity and tendency to mislead and deceive the public into believing said materials to be the product of the tree, to the prejudice of the public and its competitors:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Richard P. Whiteley for the Commission.

Mr. John H. Bruninga and *Mr. John H. Cassidy*, of St. Louis, Mo., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Missouri corporation engaged in the manufacture and sale of gypsum blocks for building purposes, and with principal place of business in St. Louis, with naming product misleadingly and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged in the sale of its aforesaid products, represented, designated, and described the same as "Rockwood lumber" or "Rockwood gypsum lumber", and in advertising the same in circulars distributed among various States, used such phrases as "Rockwood lumber is made of gypsum", "Rockwood lumber makes both the wall and the form for the concrete", and various other phrases containing the word "lumber", notwithstanding the

fact that the product in question " was not lumber, a material sawed or cut from trees or logs of wood into boards, planks, or timber, or other shapes generally understood and recognized by the purchasing public as and to be lumber ".

Respondent further, as charged, designated and advertised its said product in circulars distributed by it in interstate commerce through such words and phrases as " Rockwood is fireproof ", " The best sort of fire prevention is the construction of your entire building fireproof of Rockwood ", " Fire can not steal upon you unheard and unseen in the middle of the night to destroy all in its path when you live in a home built of Rockwood ", notwithstanding the fact the said product was neither fireproof nor " proof against disintegration caused by the application thereto of extreme heat, so as to be advertised and described properly and accurately as aforesaid ".

The use by respondent of the words " lumber " or " fireproof ", " either independently or in connection or conjunction with any other word or words ", as above set forth, has had and has the capacity and tendency to mislead and deceive and confuse the purchasing public into believing the product in question, respectively, to be lumber, as above set forth, and to be fireproof so as to be properly and truthfully so advertised and described; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, Rockwood Corporation of St. Louis, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed its answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondent before an examiner of the Federal Trade Commission duly appointed.

Whereupon, this proceeding came on for a final hearing on the briefs and oral argument, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1. The respondent, Rockwood Corporation of St. Louis, is a corporation organized under the laws of the State of

Delaware, with its principle office in the city of St. Louis, State of Missouri, and its principle factory in the city of East St. Louis, State of Illinois.

PAR. 2. For several years, and at all times herein mentioned, respondent has been engaged in the manufacture of gypsum castings, consisting of sections for interior nonbearing partitions, for exterior walls and for floors, for use in the construction of buildings, and has caused said gypsum castings, when sold, to be transported from its factory located in the State of Illinois to purchasers located in other States of the United States, said purchasers being located principally in the State of Missouri. In the course and conduct of its said business, respondent at all times since its organization has been and now is in active competition with various persons, partnerships, and other corporations engaged in the manufacture and sale of lumber, gypsum blocks, clay tiles, building bricks, and other varieties of building materials, in commerce among several States of the United States.

PAR. 3. Respondent, in the course of its business as set out in paragraph 2 hereof, manufactures, sells, and causes to be transported building materials composed of from 1 to 2 per cent by weight of cottonwood fibre and of about 80 per cent by weight of calcined gypsum (calcium sulphate), the balance being water of crystallization. The building materials so produced and used as set out in paragraph 2 hereof are described and advertised by respondent by means of pamphlets, leaflets, and other forms of advertising matter, which respondent has caused to be distributed among customers and prospective customers in various States of the United States, as "Rockwood," "Rockwood lumber" and "Rockwood gypsum lumber." The advertising matter so distributed by respondent also contains the statement that said building material is made of gypsum and is fireproof.

PAR. 4. The Department of Commerce of the United States on July 1, 1925, issued a revised draft of a publication described as "Simplified Practice Recommendation No. 16", pursuant to the action of the conferences held, respectively, on December 12 and 13, 1923, April 22, 1924, and May 1, 1925, by representatives of manufacturers, distributors, wholesalers, retailers, and users of lumber and representatives of architects, engineers, and general contractors, which said publication contained recommendations concerning the classification, nomenclature, etc., of lumber. Said publication contained the following definition: "Lumber is the product of the saw

and planing mill, not further manufactured than by sawing, resawing, passing lengthwise through a standard planing mill, crosscut to length and matched."

The building materials manufactured by respondent as described in paragraph 3 hereof have the contour shape of lumber and are put in place with carpenters' tools, such as the saw, plane, brace and bit, chisel, nails and hammer. Where they are used they take the place of lumber although they do not resemble lumber in appearance, weight, or texture.

PAR. 5. The word "lumber," when applied to building materials has been well known and understood by the public for a long period of years to mean wood sawed or cut from trees in various sizes and lengths and thereafter trimmed as boards, planks, or other dimensions. It is made wholly from the wood of the tree. Respondent's products made from gypsum are not lumber in the accepted sense and the use of the word "lumber" to describe them, unless qualified by the word "gypsum" or some equally explanatory word or words, has had and has the capacity and tendency to deceive the public into the mistaken belief that they are products of the tree.

CONCLUSION

The practices of the respondent, under the conditions and circumstances set forth in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and upon answer of the respondent filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

It is now ordered, That the respondent above named, Rockwood Corporation of St. Louis, its officers, agents, representatives, and employees, do cease and desist from using the word "lumber"

and/or the words "Rockwood lumber" in catalogues, pamphlets or advertising matter used in the offering for sale or sale in interstate commerce of gypsum products or gypsum building materials unless and until the word "lumber" and/or the words "Rockwood lumber" are qualified by the use of the word "gypsum" or some other word or words equally explanatory in lettering equally as conspicuous as the word "lumber".

It is further ordered, That the respondent, Rockwood Corporation of St. Louis, shall, within 60 days after the service on it of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which it has complied with the above order to cease and desist.

IN THE MATTER OF

ROARING SPRING BLANK BOOK COMPANY

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

Docket 1594. Complaint, Apr. 12, 1929—Decision, Nov. 9, 1929

Where a corporation engaged in the manufacture and sale of school supplies, including composition books marked by it with such legends as "200 Page Composition Book", "A. S. D. Special 240 Page", and "A. S. D. Special 60" to indicate the page content thereof, sold certain other of its said books marked with such legends as "100 Special Composition Book", "144 Special Composition Book", and "200 Special Composition Book", notwithstanding the fact that said books last referred to, respectively, contained less than the number of pages thus variously indicated, with the capacity and tendency to mislead and deceive a substantial part of the purchasing public into the erroneous belief that the same contained more pages than was actually the case and to induce the purchase thereof in such belief:

Held, That such practice, under the circumstances set forth, constituted an unfair method of competition.

Mr. Robert H. Winn for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Pennsylvania corporation engaged in the manufacture of school supplies including composition books, and sale thereof among various States, and with principal or executive office in Roaring Spring, Pa., with misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that, while marking certain of its products as "200 Page Composition Book", "A. S. D. Special 240 Pages", and "A. S. D. Special 60", it marked other books, containing fewer than the pages indicated, "100 Special Composition Book", "144 Special Composition Book", and "200 Special Composition Book", with the effect of misleading and deceiving the purchasing public as to the actual content of the aforesaid product and with the intent and capacity and tendency so to do and the effect of inducing the purchase of said books by such public in said belief, to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Roaring Spring Blank Book Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondent having entered its appearance and filed its answer to said complaint, hearings were had before a trial examiner theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for decision and the Commission having duly considered the record and being now fully advised in the premises makes this its report stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Roaring Spring Blank Book Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania with its principal or executive office located at Roaring Spring in said State. For a period of more than one year prior to April 12, 1929, the respondent was engaged in the manufacture of school supplies, including composition books, and in the sale and distribution of its said products in commerce between and among various States of the United States, causing said products, when sold, to be shipped from its place of business located in the State of Pennsylvania to purchasers thereof located in States other than the State of Pennsylvania. In the course and conduct of its business said Roaring Spring Blank Book Co. was at all times in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of school supplies, including composition books.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof as a means of inducing the public to buy its products respondent has caused its composition books to be marked on the front cover with the legend indicating the number of pages which such books contain, as "200 Page Composition Book", "A. S. D. Special 240 Page", and "A. S. D. Special 60", but on the front covers of others of such books said respondent has placed legends reading: "100 Special Composition Book", "144 Special Composition Book", and "200 Special Composition Book"; when in truth

and in fact the said composition books on the front covers of which the three latter legends were placed contain, respectively, less than 100, 144, and 200 pages. The use of such legends as these on the front covers of composition books containing fewer pages than the number stated in the legend is false and misleading and is calculated and has the capacity and tendency to mislead and deceive a substantial part of the purchasing public into the erroneous belief that the said composition books contain more pages than they actually contain and to induce purchasers to purchase same in that belief.

CONCLUSION

The practice of said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and are unfair methods of competition in commerce and constitute a violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondent thereto, the testimony, evidence, and briefs of counsel, and the Commission having made its findings as to the facts and its conclusion that respondent has been and is now using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, Roaring Spring Blank Book Co., its agents and employees, cease and desist in connection with the sale or offering for sale of composition books in interstate commerce from placing any number on the front cover of a composition book so offered for sale or sold by it unless the number of pages contained in such composition book is also plainly indicated thereon in figures and/or words equally conspicuous in type and position.

It is further ordered, That the respondent, Roaring Spring Blank Book Co., within 60 days after the service upon it of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

DAVID B. CLARKSON COMPANY

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

Docket 1540. Complaint, Oct. 15, 1928—Decision, Dec. 7, 1929

Where a corporation engaged in the sale and distribution of books to purchasers in various States under a plan allowing the purchaser five days in which to examine the books, with return privilege; in its advertising circulars, circular letters, and other advertising literature offering books and publications dealt in by it as above set forth,

(*a*) Represented the regular price of the "New Pictorial Atlas of the World" as $8.50 and said atlas as offered at its "Special price of $2.98 (not $8.50)", the fact being that said publication had no regular price, was sold through canvassers and agents at prices ranging from $5 to $10 or $12, had been sold by it at prices ranging from $2.98 to $3.98, but for the two years last past had not been sold by it at prices other than those set forth in its pretended special offer, namely, $1.98 for cloth, and $2.98 for art kraft binding;

(*b*) Represented "the regular $5 flexible law binding edition of Clarkson's Law and Business Cyclopedia" as offered at its "special introductory price of $1.98 (not $5)", the fact being that the publication in question had never been sold by it or anyone else at $5, said price was fictitious, and said pretended special introductory price was its regular and only price; and

(*c*) Represented "Appleton's New Practical Cyclopedia", "publisher's price $42—our price $11.75", as offering a lifetime opportunity to save $30.25, offering many homes that had desired the work but did not feel they could spare the $42 for which it was sold, the opportunity to purchase said encyclopedia, "so highly spoken of by the highest educators at less than the actual cost of manufacture", and making such statements as "it is just like finding $30.25", "this card is worth $30.25 to you", the fact being that $42 was not and never had been the regular price or publisher's price of said encyclopedia, but that the same was sold by the publishers and through book stores at $30, and said price of $11.75 was not a special price or a limited offer, but the figure at which it had sold said encyclopedia for more than five years last past and did not save customers $30.25 as represented in its circular and order form;

With the effect of misleading and deceiving many of the purchasing public into buying said books in the erroneous belief that they were offered at a special and introductory price, that the regular prices thereof were greatly in excess of those at which it was selling them, and that the publisher's price of certain of said books was greatly in excess of its price, and with the capacity and tendency so to mislead and deceive;

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. G. Ed. Rowland for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the sale and distribution in interstate commerce of books of all kinds, at retail, and with principal office and place of business in Chicago, with advertising falsely or misleadingly as to prices and nature of product offered, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, and doing business on a plan involving the mailing of the book ordered to the purchaser, with five days in which to examine the book or books, to be then returned or paid for, in its advertising circulars, circular letters, and other advertising literature falsely represents certain of the books dealt in by it as offered at a special and introductory price, considerably lower than that at which the same are ordinarily and customarily sold, and sets forth fictitious prices represented as the regular and customary prices thereof, the fact being that it has never sold at any other than its so-called reduced price and that said price is not a special or introductory offer, and further in its said advertising circulars, etc., offers and represents "Appleton's New Practical Cyclopedia" as "fully revised and brought down to date," a new work, "not an old or obsolete work, but the very latest revision of a great modern educator," at present sold throughout the United States at the regular price of $42 for the six volumes but now being sold by it, under a special limited offer, of $11.75 and never before offered at such a price, the facts being that said work is obsolete, out of date, and out of print, is not at present sold at $42, and that the price of $11.75 represents the price at which it has sold said encyclopedia for more than five years last past, with the result that through the use of such false, deceptive, and misleading statements and representations many of the public were misled and induced into purchasing the books first referred to, in the belief that such books were being bought at prices considerably lower than those regularly charged therefor, and into purchasing said encyclopedia in reliance upon the aforesaid statements and representations.

Said alleged acts and things, as charged, are each and all of them to the prejudice of the public and respondent's competitors and con-

stitute unfair methods of competition in interstate commerce within the intent and meaning of section 5.

Upon the foregoing complaint the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, David B. Clarkson Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered its appearance herein and filed its answer to said complaint, a stipulation as to the facts (filed of record) was agreed upon by and between respondent and counsel for the Commission, wherein it was stipulated and agreed that the facts therein stated may be taken as the facts in the proceeding before the Federal Trade Commission, and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed further upon said statement to make its report in said proceeding, stating its findings as to the facts and conclusion, and entering its order disposing of the proceeding.

Thereupon, this proceeding came on for decision, and the Commission, having received said stipulation and duly considered the record, and now being fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, David B. Clarkson Co., is a corporation, organized and existing under the laws of the State of Illinois, with its principal office and place of business at 2535 South State Street, in the city of Chicago, State of Illinois, where it has been engaged for more than one year last past in the sale and distribution in interstate commerce of books of all kinds, at retail. The officers of respondent are T. F. Clarkson, president and treasurer, and A. B. Dolan, secretary. Respondent sells and distributes its books to purchasers located at points in various States of the United States, and District of Columbia, through the United States mails. Upon receipt of orders for a book or books respondent causes said book or books to be transported by mail from the said city of Chicago, in the State of Illinois, through and into other States of the United States, and District of Columbia, to the purchasers thereof at their respective locations. In the course and conduct of its said business re-

spondent is in competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. In the course and conduct of its business as aforesaid, respondent sends to its customers and prospective customers catalogues, advertising circulars, circular letters, and other advertising literature offering the books which it has to sell. Upon receipt of an order from a purchaser respondent mails the book or books ordered to the purchaser, and allows said purchaser five days in which to examine said book or books. At the end of five days the purchaser must either return the book or books to respondent or remit the purchase price. In the advertising circulars, circular letters, and other advertising literature distributed by respondent in offering for sale and selling its books, appear various statements, and representations regarding its said books, as set forth in the following paragraphs.

PAR. 3. Respondent, in its said advertising circulars, circular letters, and other advertising literature, represents that certain of the books which it sells are being offered at a special and introductory price, which price is considerably less than the regular price at which the books are ordinarily and customarily sold, and also sets forth therein prices which it claims are the regular prices at which said books are customarily sold. In connection with the "New Pictorial Atlas of the World", respondent represents that the regular price of the Atlas is $8.50, and that the price of $2.98 for the art kraft binding, and $1.98 for the cloth binding, is a "special offer" which it is making to its customers. On the advertising circular sent out by respondent appears the following statement:

If I feel the Atlas would be a bargain at the regular price of $8.50 I will send you your special price of $2.98 (not $8.50) in full payment, otherwise I will return it at your expense.

The fact is there is no regular price on the Atlas and that the principal sale other than through the respondent is through canvassers and agents who sell the Atlas at various prices, ranging from $5 to $10 or $12, each salesman setting his own price. The respondent has sold the Atlas at various prices ranging from $2.98 to $3.98, but has not for the last two years past sold it at prices other than $1.98 for the cloth binding and $2.98 for the art kraft binding.

In connection with "Clarkson's Law and Business Cyclopedia", respondent sends out advertising cards and circulars, containing the following statements and representations:

Less than ½ price.

* * * * * * *

Clarkson's Law and Business Cyclopedia.

* * * * * * *

Sign and mail the enclosed card to-day. We will send you the regular $5 flexible law binding edition of "Clarkson's Law and Business Cyclopedia." If at the end of five days you feel that this will be worth tens of dollars or hundreds of dollars yearly to you, send us our introductory price of only $1.98 in full payment. If for any reason you think you can afford to be without the Cyclopedia return it and owe us nothing. Send the card to-day before the introductory price is withdrawn.

Gentlemen: You may send me, all charges prepaid, for five days' examination, the "Clarkson's Law and Business Cyclopedia," containing 512 pages, 10,000 subjects, and covering nearly all there is to know about business, business law, finance, banking, civil service, mechanics, farming, etc., etc. If I find the Cyclopedia contains facts that will be of inestimable value to me in the daily transaction of my business, and I feel that it would be a bargain at $5, I will send you your special introductory price of $1.98 (not $5) in full payment, otherwise I will return it at your expense.

In fact, "Clarkson's Law and Business Cyclopedia" has never been sold at a price of $5 by this respondent or by anyone else, and said price of $5 is a fictitious price. Said price of $1.98 is not a special introductory price, but is the regular and only price at which respondent at present is selling said "Clarkson's Law and Business Cyclopedia."

PAR. 4. Respondent, in its advertising, circulars, circular letters, and other advertising literature, offers for sale "Appleton's New Practical Cyclopedia," and makes various representations and statements regarding said encyclopedia, among them being the following:

Publisher's price $42—Our price $11.75. Buy this for your own sake.

APPLETON'S NEW PRACTICAL CYCLOPEDIA

A new work, revised since the European War at great expense, fully revised and greatly enlarged.

* * * * * * *

This great work has been fully revised and brought to date. * * * They are being sold to-day throughout the country at the regular price.

Why you must act now.

This is a special offer—and it is limited. No such offer has ever before been given to encyclopedia buyers. * * *

Just once in a lifetime you get such an opportunity—$30.25 saved is $30.25 earned—and you will never earn it easier than by mailing the postcard *right now.*

Now the invaluable "Appleton's" will be in many homes that have wished for it, that have needed it, but that did not feel that they could spare the $42 for which it has been sold. Never again will these homes have the opportunity to purchase such a standard encyclopedia so highly spoken of by the highest educators, at less than the actual cost of manufacture. It is just like finding $30.25—just like giving the set away.

This card is worth $30.25 to you.

* * * * * * *

Special—It is understood that if I wish to send payment in full in 5 days, I may send you only $11.75, which you will accept as full settlement for the $42 set, thus saving me $30.25.

IN THE MATTER OF

CHERRY BLOSSOMS MANUFACTURING COMPANY

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

Docket 1542. Complaint, Dec. 3, 1928—Decision, Dec. 16, 1929

Where a corporation engaged in the manufacture of an artificially colored and flavored concentrate and in the sale thereof to bottlers, by whom the beverage made therefrom, containing neither product of the cherry nor cherry blossom, though with the taste and appearance of such a beverage, was sold to retailers.

(*a*) Sold said concentrate and beverage under the name "Cherry Blossoms";

(*b*) Advertised said beverage as "Cherry Blossoms" in trade journals and supplied to purchasers advertising matter for distribution by them throughout the United States, and, for display at soda fountains and soft drink stands particularly, blotters, placards, fans, and metallic signs featuring said name, together with representations of cherry blossoms, and such statements as "When you call for CHERRY BLOSSOMS you are asking to be served the Cherry that 1,200 bottlers * * * have passed upon as being the best cherry the market affords"; and

(*c*) Featured said name in the labels supplied to bottler purchasers, and depicted cherry blossoms thereon, together with the words, in relatively inconspicuous fashion, "Artificial Color and Flavor," and furnished to bottle crown manufacturers names of customers, for sale thereto of bottle crowns bearing the words "Cherry Blossoms," in large type, together with the words, in smaller type, "Artificial Color and Flavor";

With the capacity and tendency to deceive and mislead the purchasing public into believing said beverage to be made from the product of the cherry or the blossom thereof and with the effect of stifling and suppressing competition in the sale of truthfully marked concentrates and beverages, whether in fact so made, either in whole or in part, or from other fruits, or not so made, but artificially colored and flavored, and of diverting trade from the aforesaid classes of concentrates and beverages:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Edward L. Smith for the Commission.

Mr. Frank Y. Gladney, of St. Louis, Mo., for respondent.

SYNOPSIS OF COMPLAINT[1]

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Iowa corporation engaged in the manufacture of an artificially colored and flavored concentrate containing no product

[1] Amended.

of the cherry or cherry blossom, and in the sale thereof in gallon bottles and 75-gallon kegs to bottlers for use by them in the manufacture of a beverage with the taste and appearance of one made from the product of the cherry, and with place of business in St. Louis, with naming product misleadingly, using misleading corporate name, misbranding or mislabeling and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in the sale of its said concentrate under the name "Cherry Blossoms," advertises the beverage made therefrom, in trade journals, under the aforesaid name, affixes to the containers of its concentrate labels conspicuously designating said beverage as "Cherry Blossoms," together with the words, in smaller type "Imitation Cherry Concentrate" and in still smaller type "Artificial Color and Flavor,"[1] furnishes bottler purchasers of its concentrate labels for affixing by them to the bottles of the beverage made from the concentrate, featuring the word "Cherry Blossoms," together with the words, in relatively inconspicious type and fashion, "Artificial Color and Flavor" and/or "Imitation Cherry Soda,"[2] furnishes to manufacturers of bottle crowns names of its customers who purchase from said manufacturers and affix upon their bottles crowns designating the contents of the bottles as "CHERRY BLOSSOMS," with the words, in smaller type, "Artificial Color and Flavor," said crowns as a rule constituting the only marking on the bottles of the beverage sold to the consumer, due to failure of the far greater proportion of the bottles sold to retailers to contain any of the aforesaid labels,

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[1] Said label is described in the complaint as follows:

This label is approximately 5½" x 6" and contains in large type in a conspicuous red block the words "CHERRY BLOSSOMS"; and underneath the said block in smaller type are the words "Imitation Cherry Concentrate"; while underneath the said last quoted phrase and in still smaller type are the words "Artificial Color & Flavor," directions for manufacturing and the name and address of the company following.

[2] Said various labels, as described in the complaint, are also described in the findings (see par. 8, p. 128) with the exception of one of said labels, described in the complaint as follows:

A 2½" equilateral parallelogram with a general background in blue with a representation in pink coloring of cherry blossoms and with a large red block in which appear in white type the words—

IMITATION
CHERRY
BLOSSOMS
SODA

while underneath in the general blue background appear in white type the following:

Bottled Under Authority of the
Cherry Blossoms Mfg. Co. Newton, Iowa, U. S. A.

and furnishes to purchasers advertising matter for distribution generally throughout the United States and for particular display at soda-water fountains, soft-drink stands, and the like, through which the beverage called "Cherry Blossoms" by respondent, by its bottlers and by its retailers, reaches the consuming public, said advertising matter consisting of blotters, soda-fountain placards, fans and metallic signs featuring the name "Cherry Blossoms," together with representations of a Cherry Blossom and such statements as "When you call for CHERRY BLOSSOMS you are asking to be served the Cherry that 1200 bottlers * * * have passed upon as being the best cherry the market affords." [4]

The use by respondent of the name CHERRY BLOSSOMS for its product and the beverage made therefrom and its advertising of said product and beverage "have the capacity and the tendency to deceive and mislead the purchasing public into the belief that such beverage manufactured from the concentrate sold by respondent to its bottlers and resold by them to the retailers is a beverage made from the product of cherry or from the blossom of the cherry," and its use of the name "CHERRY BLOSSOMS" for its product, its advertising matter showing "CHERRY BLOSSOMS," as the name of the drink made from the concentrate sold by it to its bottlers, and its corporate name, Cherry Blossoms Manufacturing Co., each used independently, or in connection or conjunction with the other or others, as more particularly described herein, are calculated to and have the effect of stifling and suppressing competition in the sale of concentrates and beverages made in whole or in part from the product of the cherry or from other fruits and of diverting trade from truthfully marked concentrates and beverages made in whole or in part from the product of cherry, or of other fruits and truthfully marked; and are also calculated to and have the effect of stifling and suppressing competition in the sale of concentrates and beverages not made from the product of any fruit but artificially colored and artificially flavored and truthfully marked, and of diverting trade from truthfully marked concentrates and beverages made not from any fruit but artificially flavored and colored; all to the prejudice of the public and of respondent's competitors, of whom there are considerable numbers engaged in the manufacture and sale of such concentrates and beverages as above described and truthfully marked and advertised, and said acts and practices, as charged, constitute unfair methods of competition in commerce within the intent and meaning of section 5.

[4] Said various blotters, etc., as described in the complaint are also similarly described in the findings. (See par. 5, p. 129.)

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to define the powers and duties, and for other purposes," the Federal Trade Commission issued and served its amended complaint upon the respondent, Cherry Blossoms Manufacturing Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of the said act of Congress.

Thereupon the respondent entered its appearance and filed its answer to the said amended complaint, and a hearing was held before an examiner duly appointed and testimony, documentary evidence and exhibits were offered and received and duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for hearing before the Federal Trade Commission on such complaint and answer, and on the testimony, evidence and exhibits on file, and on the brief of counsel for the Commission (the respondent having waived the filing of the brief and the right to oral argument) and the Federal Trade Commission, having duly considered the same and being fully advised in the premises, now makes this its report and states its findings as to the facts, and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Cherry Blossoms Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business in Newton in said State, and with a place of business in St. Louis, Mo. It is engaged in the manufacture of a concentrate, artificially colored and artificially flavored, which it calls "Cherry Blossoms." This concentrate is not made from any product of cherry, nor from cherry blossoms. Respondent sells such concentrate in gallon bottles and 25-gallon kegs to various individuals, partnerships, and corporations located at points throughout the various States of the United States and ships such concentrate, when sold, from its factories in Missouri and in Iowa to the purchasers thereof located in various other States of the United States. The said purchasers are bottlers, who, from such concentrate purchased by them from respondent, manufacture the beverage called "Cherry Blossoms" by respondent, by such bottlers and by retailers to whom such bottlers sell in bottles usually of about 6 fluid ounces content the beverage manufactured by them from such concentrate. This beverage is not made from any product of cherry,

nor from cherry blossoms, although it has the taste and appearance of a beverage made from the product of the cherry.

In the course and conduct of its business respondent is in competition with other corporations and with individuals, and partnerships engaged in the manufacture of concentrates, and in the sale of such concentrates to bottlers in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business described in paragraph 1 hereof, respondent, Cherry Blossoms Manufacturing Co., has caused advertisements to be published in trade journals, advertising as "Cherry Blossoms" the beverage made from the concentrate manufactured by it. (Com. Ex. 1.)

PAR. 3. Respondent furnishes to the purchasers of said concentrate, labels which the said purchasers in selling the said beverage to retailers may affix to the bottles of the beverage. Said labels designate the beverage as "Cherry Blossoms," and are as follows:

1. An octagonal label (Com. Ex. 3) with the representation on three sides of cherry blossoms in pink coloring on a blue background and with the words "Cherry Blossoms" in large white type on a red background. Under this in much smaller type are the following:

(*a*) In small black type on the red background, the words "Trade Mark Registered";

(*b*) In white type on the red background, which type is smaller than the type of "Cherry Blossoms," the words "Carbonated Beverage";

(*c*) In blue type on a white and red striped background, which type is much smaller than the words "Cherry Blossoms," the words "Artificial Color and Flavor";

(*d*) In black type on the red background the words, "Contents 6½ Fluid Oz.";

(*e*) In white type on a blue background the words, "Bottled Under Authority of the Cherry Blossoms Mfg. Co. St. Louis, Mo., U. S. A."

2. A 2½-inch equilateral parallelogram (Com. Ex. 4) with a representation of cherry blossoms in pink coloring as its border and with the words "Cherry Blossoms" in large white type on a red block or background in which red block appear in small black type the words, "Min. Contents 6 Fl. Oz.," and with the words in small black type in the said red block—"Reg. U. S. Pat. Off." In much smaller type than the words "Cherry Blossoms," appearing in the said red block appear on the said label in white on a blue background the words, "Artificial Color and Flavor," while below the said red block appear in type smaller than the type of "Cherry Blossoms" these words—"Carbonated Beverage Bottled Under Authority of the Cherry Blossoms Mfg. Co. St. Louis, Mo., U. S. A."

These labels described in subparagraphs 1 and 2 of paragraph 3 hereof are used more than are those hereinafter described in subparagraph 3 of paragraph 3 hereof.

3. A 2½-inch equilateral parallelogram (Com. Ex. 5) on a general background of blue, containing as its most prominent words in large white type on a red background, "Cherry Blossoms" and with a representation of cherry blossoms in pink coloring on the general blue background. Above the said words "Cherry Blossoms" in said red background in white type, but in smaller type, on a general blue background is the following:

Artificial Color
Min. Contents 6 Fl. Oz.
Imitation
Cherry Soda

Underneath the said words "Cherry Blossoms" in said red background appear in smaller type than "Cherry Blossoms" the following:

A Carbonated Beverage
Bottled Under Authority of the
Cherry Blossoms Mfg. Co., St. Louis, Mo., U. S. A.

These labels described in subparagraph 3 of paragraph 3 hereto are furnished by respondent only to its purchasers who manufacture its beverage for sale in the State of New York or in the State of California.

PAR. 4. Respondent furnishes to manufacturers of bottle crowns the names of its customers, which said customers purchase from said bottle crown manufacturers and affix upon the bottles containing the beverage made from the said concentrate, bottle crowns (Com. Ex. 7) designating the contents of the bottles as "Cherry Blossoms." These bottle crowns contain the words "Cherry Blossoms" in large type, while in smaller type appear the words "Artificial Color and Flavor." These crowns are, as a rule, the only marking on bottles of the beverage sold to the ultimate consumer, because a far greater proportion of the bottles of the beverage sold by the bottlers to the retailers do not contain any of the labels described in subparagraphs 1, 2, and 3 of paragraph 3 hereof.

The beverage called by respondent, by its bottlers and by its retailers, "Cherry Blossoms," reaches the consuming public through soda-water fountains, soft-drink stands and the like.

PAR. 5. Respondent furnishes to its purchasers advertising matter, which is distributed generally throughout the United States and particularly displayed at soda-water fountains and soft-drink stands. Some of this advertising matter is as follows:

(*a*) Blotters containing the statement—"Ask for Cherry Blossoms; A Blooming Good Drink," and containing a representation of a bottle of the beverage with the label "Cherry Blossoms" appearing thereon and containing a representation of a glass of the beverage. (Com. Ex. 8)

(*b*) A soda-fountain placard containing, among other things, the following: (1) "Thirsty? Join Me"; (2) Underneath a representation of a bottle of the beverage, the words, "In Bottles Only"; (3) a representation of cherry blossoms; and (4) the words "A Blooming Good Drink" and "Cherry Blossoms." (Com. Ex. 9)

(*c*) Fans (Com. Ex. 10) for distribution by retailers of the beverage, on the back of which appears the following:

When you call for Cherry Blossoms you are asking to be served the Cherry that 1,200 bottlers of carbonated beverages have passed upon as being the best cherry the market affords.

Cherry Blossoms is manufactured under a special process of blending and mellowing, perfected by our firm eight years ago. To doubly insure this quality for you this bottling and all distribution is handled by bottlers under exclusive franchise.

The first time you find yourself tired and thirsty, try this "Blooming Good Drink," or better still, order a case for the home, where all may enjoy this deliciousness.

(*d*) A placard constructed to fit over bottle necks, which placard contains (1) the words "Cherry Blossoms"; (2) a representation of cherry blossoms; (3) the statements, "In Bottles Only" and "A Blooming Good Drink." (Com. Ex. 13)

(*e*) A placard for use on soda fountains, containing in large type the words "Cherry Blossoms" and representations of cherry blossoms, as well as the statement, "A blooming Good Drink." (Com. Ex. 16)

(*f*) Metallic signs for use at soda fountains, one of which reads as follows:

Simply Great
Cherry
Blossoms
Makes You Glad You're Thirsty
(Com. Ex. 14)

and another which contains on its left a bottle of the beverage called by respondent "Cherry Blossoms" and on the right a glass of the beverage and in the center the following:

Ice Cold
Cherry
Blossoms
Sold Here
A Blooming Good Drink
(Com. Ex. 15)

PAR. 6. The use by respondent as set out in paragraph 1, subparagraphs 1 and 2 of paragraph 3 and in paragraph 4 hereof, of the name "Cherry Blossoms" for its product and for the beverage made therefrom and its aforesaid advertising as set out in paragraphs 2 and 5 hereof, of said product and the beverage made therefrom have the capacity and tendency to deceive and mislead the purchasing public into the belief that such beverage manufactured from the concentrate sold by respondent to its bottlers and resold by them to the retailers is a beverage made from the product of the cherry or from the blossom of the cherry.

PAR. 7. There is a considerable number of competitors of respondent who are engaged in the mannfacture and sale in commerce between the various States of the United States of concentrates and beverages not composed in whole or in part of cherry or of other fruits but artificially colored and flavored, which are sold in competition with the product of respondent and which are truthfully marked and advertised; and there is a considerable number of competitors of respondent who are engaged in the manufacture and sale in commerce between various States of the United States of concentrates and beverages composed in whole or in part of cherry or of other fruits, which said products are sold in competition with the product of respondent and are truthfully marked and advertised.

PAR. 8. Respondent's use of the name "Cherry Blossoms" for its product as set out in paragraph 1, subparagraphs 1 and 2 of paragraph 3 and in paragraph 4 hereof, and its aforesaid advertising matter as set out in paragraphs 2 and 5 hereof, showing "Cherry Blossoms" as the name of the drink made from the concentrate sold by it to its bottlers, each used independently, or in connection or conjunction with the other, as more particularly described herein, are calculated to and have the effect of stifling and suppressing competition in the sale of concentrates and beverages made in whole or in part from the product of the cherry or from other fruits and of diverting trade from truthfully marked concentrates and beverages made in whole or in part from the product of cherry, or of other fruits and truthfully marked; and respondent's use of the name "Cherry Blossoms" for its product as set out in paragraph 1, subparagraphs 1 and 2 of paragraph 3 and in paragraph 4 hereof, and its aforesaid advertising matter as set out in paragraphs 2 and 5 hereof, showing "Cherry Blossoms" as the name of the drink made from the concentrate sold by it to its bottlers, each used independently or in connection or conjunction with the other as more particularly described herein, are calculated to and have the effect of stifling and suppressing competition in the sale of concentrates and

beverages not made from the product of any fruit but artificially colored and artificially flavored and truthfully marked, and of diverting trade from truthfully marked concentrates and beverages made not from any fruit but artificially flavored and colored

CONCLUSION

The practices of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of the respondent, and testimony and evidence submitted, and the Commission having made its findings as to the facts and entered its conclusion that the respondent has violated section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, that respondent, Cherry Blossoms Manufacturing Co., its representatives, agents, servants, employees, and successors forthwith cease and desist from:

(1) Using the words "Cherry Blossoms" or the word "Cherry" as a trade name, brand, label, or designation of a beverage or beverage concentrate sold or offered for sale in interstate commerce and not composed of the fruit or juice of the cherry nor composed of cherry blossoms, unless the said words "Cherry Blossoms" or the said word "Cherry" be immediately preceded by the word "Imitation" printed in type as conspicuous as that in which the said words "Cherry Blossoms" or the said word "Cherry" are printed, and unless the words "Artificially Colored" or "Artificial Color" appear conspicuously in said trade name, brand, label, or designation.

(2) Advertising as "Cherry Blossoms" or "Cherry" in magazines, trade publications and particularly in the form and substance described in paragraph 2 of the findings as to the facts hereunto annexed, and in every other form, its beverage and beverage concentrate not composed of the fruit or the juice of the cherry nor

composed of cherry blossoms, unless the said words "Cherry Blossoms" or the said word "Cherry" be immediately preceded by the word "Imitation," printed in type as conspicuous as that in which the said words "Cherry Blossoms" or the said word "Cherry" are printed and unless the words "Artificially Colored" or "Artificial Color" appear conspicuously in said advertisements.

(3) Furnishing or causing to be furnished to purchasers in interstate commerce of its beverage or beverage concentrate not composed of the fruit or juice of the cherry or composed of cherry blossoms, and/or to retailers of the beverage made from such product, bottle caps, bottle crowns, advertising matter and/or labels designating as "Cherry Blossoms" or as "Cherry" such beverage, unless the said words "Cherry Blossoms" or the said word "Cherry" be immediately preceded on such labels, bottle caps, bottle crowns, and advertising matter, by the word "Imitation" printed in type as conspicuous as that in which the said words "Cherry" or "Cherry Blossoms" are printed, and unless the words "Artificially Colored" or "Artificial Color" appear conspicuously on the said bottle caps, bottle crowns, advertising matter and/or labels.

(4) Using in connection with the sale in interstate commerce of its beverage or beverage concentrate not composed of the fruit or juice of the cherry nor composed of cherry blossoms the labels described in paragraph 2 and subparagraphs 1 and 2 of paragraph 3 of the findings as to the facts hereunto annexed.

(5) Furnishing or causing to be furnished to its purchasers in interstate commerce of its beverage or beverage concentrate not composed of the fruit or juice of the cherry nor composed of cherry blossoms, the bottle caps and bottle crowns such as are described in paragraph 4 of said findings as to the facts hereunto annexed.

(6) Furnishing or causing to be furnished to its purchasers in interstate commerce of its beverage or beverage concentrate not composed of the fruit or juice of the cherry nor composed of cherry blossoms, any of the advertising matter described in paragraph 5 of the said findings as to the facts hereunto annexed.

It is further ordered, That the respondent, Cherry Blossoms Manufacturing Co., shall, within 60 days from service upon it of a copy 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 by the Commission herein set forth.

IN THE MATTER OF

JOSEPH P. SEREDA, TRADING UNDER THE NAME AND STYLE OF HEALTH VIOLET PRODUCTS

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

Docket 1695. Complaint, Sept. 20, 1929—Decision, Dec. 16, 1929

Where an individual engaged in the sale to the public of a so-called violet-ray machine or instrument, in his advertisements thereof in newspapers, magazines, pamphlets, and other publications circulated generally throughout the different States and in circulars and other literature sent to prospective purchasers,

(*a*) Represented that he was offering the same at a reduced and special price of $15, thereby saving the purchaser $20 from the usual price, the fact being that he had never sold or attempted to sell said instrument at any price greater than $15; with the result that persons were induced to buy the same in the belief that they were obtaining the machine at a reduced and special price;

(*b*) Represented that said instrument would quickly cure pain and disease, that thousands suffering from chronic or acute diseases should receive immediate relief "from this wonderful healing method," and that "violet-ray should heal all other diseases and give relief almost instantly" and that "84 different diseases have been treated and healed with violet-ray," the facts being that said individual had made no test or experiments to determine the curative or healing value of said instrument, nor had such tests or experiments made, knew nothing about the curative value thereof or the rays therefrom, and ultilized, for the list of diseases specified, a list in a circular which had come into his possession, and that the violet color made by the instrument, when plugged into a house current, furnished merely a mild superficial stimulation to the part of the body to which applied, such as obtained by application of turpentine or ointment containing red pepper, that neither said machine, nor the rays therefrom, had any curative effect or value whatsoever, and that such rays were in no way similar to ultra-violet rays, or to machines or instruments producing them; with the result that persons bought said instrument in the belief that it would cure and heal many diseases:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Baldwin B. Bane for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the sale of so-called violet-ray machines and equipment to purchasers in other States

and with principal office and place of business in Chicago, with advertising falsely or misleadingly in violation of the provisions of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in advertising his said machines and equipment in newspapers, magazines, pamphlets, circulars, letters, and other publications circulated throughout the different States, and in letters, pamphlets, and circulars sent to prospective purchasers falsely represents the regular price of his said machines and equipment as $35, reduced to $20 to the particular person to whom the letter, circular, or advertisement is sent, such offer being for a limited time and subject to withdrawal, without notice, the fact being that the pretended reduced price is respondent's usual and regular price. The use by respondent of said false and misleading statements and representations, as alleged, "is calculated to and has the tendency and capacity to mislead and deceive the public and does mislead and deceive the public into purchasing said machines and equipment in the belief that it is obtaining said machines and equipment at a reduced and special price."

Respondent further, as charged, in his aforesaid advertisements falsely and misleadingly represents that his said product, when applied to the human body, will quickly cure pain and disease, mentioning some 80 different diseases, including alcoholic and drug addictions, Bright's disease, diabetes, diphtheria, epilepsy, heart disease, and smallpox, the fact being that respondent's said machines and equipment "have no curative effect whatsoever but merely produce a violet colored electrical discharge giving a mild superficial stimulation to the part of the body to which it is applied," and "have nothing in common with the product of the true ultraviolet ray." Said statements and representations as alleged, "are palpably false and deceptive" and the use thereof "is calculated to and has the tendency and capacity to mislead and deceive the public and does mislead and deceive the public into purchasing respondent's machines and equipment under the belief that said representations are true." [1]

[1] The false and misleading representations made by respondents, as set forth in the complaint, include the following:

"Thousands of men and women who suffer from chronic or acute diseases should receive immediate relief from this wonderful healing method. Violet ray should heal all other diseases and give relief almost immediately. Eighty-four different diseases, which are described below, have been treated and healed with violet ray."

"Thousands of men and women who are suffering chronic or acute diseases will get quick relief with this greatest curing method. Violet ray will cure all your ailments and will end your sufferings almost instantly. Eighty-six different ailments—which are described below, have been treated and cured with violet rays."

The above alleged acts and practices, as charged, "are each and all of them to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the respondent, Joseph P. Sereda, trading under the name and style of Health Violet Products, charging him with unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

The respondent entered his appearance, and an agreed stipulation as to the facts was entered into and filed in which it is stipulated that the facts therein recited shall be taken as the facts in this proceeding, and in lieu of testimony, and that the Commission may proceed upon said stipulation as to the facts to make its report in said proceeding, and its findings as to the facts, and its order disposing of the proceeding without briefs or oral argument.

Thereupon, this proceeding came on for decision, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Joseph P. Sereda, hereinafter referred to as respondent, is an individual doing business under the name and style of Health Violet Products, with his principal office and place of business in the city of Chicago in the State of Illinois. He is engaged in the business of selling to the public generally in various States of the United States an instrument or machine which he calls a violet-ray machine. The machine or instrument is operated by plugging it into a socket on the ordinary house electric current. Respondent causes the instruments or machines when so sold to be shipped from his place of business in Chicago, Ill., to purchasers located in various States of the United States, pursuant to such sales. In the conduct of such business he is in competition with other individuals, partnerships, and corporations.

PAR. 2. In order to induce the public to purchase said instrument or machine, respondent causes advertisements to be inserted in newspapers, magazines, pamphlets, and other publications circulated

generally throughout the different States of the United States offering his said instrument or machine for sale and soliciting the purchase thereof; and he sends from Chicago, Ill., to prospective purchasers located at points in various States of the United States letters, pamphlets, circulars, and other literature describing said machine or instrument and soliciting the purchase thereof.

PAR. 3. In the aforesaid advertisements and literature, respondent makes statements and representations to the effect that the usual, ordinary, and regular sales price of the said machine or instrument is $35, but that he, for a limited time and subject to withdrawal without notice, is offering to sell said machine or instrument at a reduced and special price of $15, which gives the purchaser a saving of $20 from the usual, ordinary, and regular price for said machine or instrument.

PAR. 4. The usual, ordinary, regular, and full price for said machine or instrument is and has been $15 and respondent has never sold or attempted to sell the said machine or instrument at any price greater than $15. As a result of the statements and representations set out in paragraph 3 above, persons in various States of the United States buy said machine or instrument in the belief that they are obtaining said machine or instrument at a reduced and special price.

PAR. 5. In the aforesaid advertisements and literature respondent makes the statements and representations that said machine or instrument, when plugged into the ordinary house electric current and applied to the human body, will quickly cure pain and disease, and that "thousands of men and women who suffer from chronic or acute diseases should receive immediate relief from this wonderful healing method. Violet ray should heal all other diseases and give relief almost immediately. Eighty-four different diseases which are described below have been treated and healed with violet ray", and that "thousands of men and women who are suffering from chronic or acute diseases will get quick relief with this greatest curing method. Violet ray will cure all your ailments and will end your sufferings almost instantly. Eighty-six different ailments, which are described below, have been treated and cured with violet rays", and "pain and disease quickly cured by violet ray". In the aforesaid advertisements and literature respondent lists as among the diseases that have been treated and cured with Violet-Ray the following:

Abscess,	Birthmarks,
Alcohol and drug addictions,	Bladder disease (cystitis),
Asthma,	Boils,
Ataxia,	Blackheads,
Barber's itch,	Brain fag,

Bright's disease,
Bronchitis,
Bruises,
Bunions,
Burns,
Callouses or corns,
Cancer (mild form),
Cankers,
Carbuncles,
Cataract,
Catarrh (nasal),
Chafe,
Chapped hands or face,
Chilblains,
Cold extremities,
Colds in head,
Colds in lungs,
Constipation,
Dandruff,
Deafness,
Earache and ear diseases,
Diabetes,
Diphtheria,
Dyspepsia,
Eczema,
Epilepsy,
Falling hair,
Felons,
Female troubles,
Fistula,
Freckles,
Frost bites,
Hay fever,
Headaches,
Heart disease,
Hives and rash,
Gleet,
Goitre,
Gonorrhea (male),
Gonorrhea (female),
Gout,
Grey hair,
Grippe (influenza),
Insomnia,
Leucorrhea,
Lumbago,
Mumps,
Nervousness,
Neuralgia,
Neuritis,
Obesity,
Paralysis,
Piles (hemorrhoids),
Pimples,
Pleurisy,
Pneumonia,
Poison ivy,
Prostatic diseases,
Pyorrhea,
Red nose,
Rheumatism,
Ringworm,
Scarlet fever,
Scars,
Skin diseases,
Smallpox,
Sore feet and stone bruises,
Sore throat,
Sprains,
Stiff neck or joints,
Tonsillitis,
Ulcers,
Whooping cough,
Writers cramp.

PAR. 6. Respondent has made no tests or experiments to determine the curative or healing value of the machine or instrument which he sells or the rays from such machine or instrument, and he has had no such tests or experiments made. He knows nothing about the curative value of said machine or instrument or the rays therefrom. The list of diseases set out in paragraph 5 above and appearing in the aforesaid advertisements and literature was copied by him from a list of diseases appearing upon a circular which came into his possession. Said machine or instrument, when plugged into an electric current, makes an electric discharge in a vacuum which gives a violet color and the application of it to any part of the body merely furnishes a mild superficial stimulation to the part to which it is applied, such as might be obtained by the appli-

cation of turpentine or and ointment contaning red pepper. The said machine or instrument or the rays therefrom have no curative effect or value whatsoever. The rays from said machine or instrument are in no way similar to ultra violet rays, and said machine or instrument is not like the machines producing ultra violet rays. As a result of the statements and representations described in paragraph 5 hereof persons in various States of the United States buy said machine or instrument in the belief that it will cure and heal many and various diseases.

PAR. 7. There are other concerns, competitors of respondent, selling machines or instruments similar to those sold by respondent and who do not, in connection with the sale thereof, make such statements and representations as those made by respondent and set out above.

CONCLUSION

The said practices of the respondent, under the conditions and circumstances set forth in the foregoing findings, are unfair methods of competition in interstate commerce, and constitute a violation of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the stipulation of facts agreed upon by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, Joseph P. Sereda, his agents, representatives, servants, and employees, cease and desist:

(1) Stating or representing in advertisements, circulars, correspondence, or otherwise that the usual and ordinary price of the machine or instrument which he sells is greater than the price at which such machine or instrument is actually sold by him; or that he is offering said machine or instrument at a less price than the price which he usually and ordinarily receives therefor, when such is not the fact; or in any manner misrepresenting the regular and usual price of such machine or instrument.

(2) Stating or representing that said machine or instrument or the rays from said machine or instrument will cure or heal pain or disease or any particular pain or disease; or that persons suffer-

ing from disease or any particular disease have been cured or healed by the use of said machine or instrument or the rays therefrom; or that said machine or instrument or the rays therefrom have been successfully used in the treatment of disease or any particular disease.

It is further ordered, That the respondent, Joseph P. Sereda, shall within 30 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF

CHARLES E. MORRIS

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

Docket 1702. Complaint, Oct. 12, 1929—Decision, Dec. 16, 1929

Where an individual engaged in the sale of fur coats and other fur garments to the wearers thereof at prices considerably in excess of wholesale prices, and neither selling to any store nor owning, operating, or interested in any wholesale house or business, nor a manufacturing furrier or furrier of any sort, nor owning or operating any factory or factory showroom, represented orally and through letters and other trade literature to prospective customers throughout the United States, that his prices were "strictly wholesale prices" and that he was a "reliable wholesale fur house backed by responsibility and confidence", selling to stores "from coast to coast", and was a "wholesale manufacturing furrier"; with the capacity and tendency to cause many of the purchasing public to buy said individual's garments, and with the effect of so doing to the prejudice of the public and competitors:

Held, That such practices, under the circumstances set forth, constitute unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in New York City in the sale of fur coats and other fur garments to wearers thereof throughout the United States, with misrepresenting business status and operations, orally and otherwise, and advertising falsely or misleadingly in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, orally, and through letters and other trade literature mailed to prospective customers throughout the United States, falsely and misleadingly represents that the prices of his garments are "strictly wholesale prices" that he is a "reliable wholesale fur house backed by responsibility and confidence", sells from "coast to coast" and is a "wholesale manufacturing furrier" with a factory showroom, the facts being that his said prices are considerably in excess of wholesale prices, that he sells to no store and neither owns, operates, nor has any

interest in any wholesale house or business, and is neither a manufacturing furrier nor furrier, and does not own or operate a factory or factory showroom; with the capacity and tendency to cause and with the effect of causing many of the purchasing public residing in various States to purchase garments sold by him in and on account of a belief in the truth of said representations; all to the prejudice of the public and of his competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint containing notice of hearing and a copy of the rules of practice adopted by the Commission with respect to failure to answer, against the respondent, Charles E. Morris, charging said respondent with the use of unfair methods of competition in interstate commerce in violation of the provisions of the said act.

Respondent having made no appearance herein, and the chief counsel of the Federal Trade Commission having moved that the allegations of the complaint be taken by the Commission as admitted, and that the Commission proceed to make this its findings of fact, and to issue a cease and desist order; and it appearing to the Commission that the said respondent was duly served with the complaint, together with notice of hearing and a copy of the rules of practice, adopted by the Commission, and that said respondent has failed to file any answer to the complaint within the time fixed by the rules of the Commission, or at all, and has failed to make any appearance whatever in this proceeding; and the Commission having duly considered the record and being fully advised in the premises, now makes this its report, stating its findings as to the fact and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Charles E. Morris, is now and for several years last past, has been engaged at the city of New York, with his principal place of business at 330 Seventh Avenue, in said city, in the sale of fur coats and other fur garments to the wearers thereof, and the distribution thereof from his principal place of business in New York City, State of New York, to the purchasers thereof throughout the United States.

In the course and conduct of his said business respondent is and has been in competition with other individuals, partnerships, and corporations engaged in the manufacture and/or sale and transportation of fur garments and garments made of material other than fur, in interstate commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his said business, respondent orally and by means of letters and other trade literature, mailed to prospective customers throughout the United States, makes the following false and misleading statements and representations:

(*a*) That the prices at which the garments are sold by him are "strictly wholesale prices"; when in truth and in fact said prices are not wholesale prices but considerably in excess of wholesale prices.

(*b*) That respondent is a "reliable wholesale fur house backed by responsibility and confidence", and that respondent sells to stores from coast to coast; when in truth and in fact respondent does not sell to any store and does not own, operate, or have any interest in any wholesale house or business.

(*c*) That respondent is a "wholesale manufacturing furrier", and has a factory showroom; when in truth and in fact respondent is not a manufacturing furrier or furrier of any sort and does not own or operate a factory or factory showroom.

PAR. 3. Each of the aforesaid false and misleading representations made by respondent, mentioned in paragraph 2 hereof, has the capacity and tendency to cause, and has caused many of the purchasing public, residing in various States of the United States, to purchase the garments sold by respondent, in and on account of a belief in the truth of such representation.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and to the competitors of respondent, and are unfair methods of competition in commerce, in violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard and considered by the Federal Trade Commission upon the record, and the Commission having made its findings as to the facts and its conclusion that the respondent

has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

Now, therefore, it is ordered, That the respondent, Charles E. Morris, cease and desist—

(*a*) From in any manner representing that garments sold by him in interstate commerce are sold at wholesale prices, unless such prices be wholesale prices.

(*b*) From representing in any manner in interstate commerce that the business of respondent is that of a wholesale fur house, unless and until respondent shall be engaged in the business of a wholesaler.

(*c*) From representing in any manner in interstate commerce that respondent is a wholesale manufacturing furrier or a manufacturing furrier of any kind, unless and until respondent shall be engaged in the business of manufacturing furs and garments sold by him.

It is further ordered, That the respondent, Charles E. Morris, shall within 30 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF

GIBBONS KNITTING CO., FORMERLY GIBBONS KNITTING MILLS, INC.

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

Docket 1434. Complaint, Dec. 10, 1926—Decision, Dec. 23, 1929

Where a corporation engaged in the sale of knitted garments at wholesale to retailers thereof in various States, and neither owning nor operating any knitting mill or factory manufacturing the garments dealt in by it, which it purchased from manufacturers thereof,

Featured successive corporate names, respectively including the words "knitting mills" and "knitting," on all garment labels, business stationery, literature, circulars, and other advertisements, including those in trade and other magazines circulating among the retail trade in the middle western and southwestern States:

With the capacity and tendency to mislead and deceive purchasers and prospective purchasers into believing it to be the manufacturer of the products sold them by it and the owner and operator of a knitting mill or manufacturing establishment making the same selling and distributing its said products directly from the manufacturer to the retailer and eliminating charges and profits of all middlemen, at a corresponding advantage and saving in price to said dealers, and to unfairly divert trade from competitors, and with the effect of so misleading and deceiving purchasers and prospective purchasers and of so diverting trade:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Everett F. Haycraft for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Missouri corporation engaged in the sale of knitted garments at wholesale to retailers in various States and with principal office and place of business in St. Louis, with using misleading corporate name and advertising falsely or misleadingly as to business status, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged, as above set forth, and neither owning, controlling, nor operating any mills, nor manufacturing the garments dealt in by it, but purchasing said garments from manufacturers thereof and reselling the same at a profit over and above their cost to it, for about five years last past has featured its afore-

said corporate name in its advertisements in trade publications of general circulation among the clothing, garment, and allied trades, and upon its letterheads, billheads, invoices, price lists, catalogues, and other trade stationery and literature.

Said acts and practices, as alleged, have the capacity and tendency to mislead and deceive, and the effect of misleading and deceiving many of its said retail dealer vendees into the belief that it owns, controls, and operates a mill or mills making the garments dealt in by it, and that persons dealing with it are purchasing such garments directly from the manufacturer thereof and eliminating thereby the profits of middlemen, and to cause many of such dealers to purchase such garments in that belief, and the further effect of diverting business from and otherwise injuring and prejudicing competitors, many of whom manufacture the garments sold by them and rightfully represent themselves as manufacturers thereof, and others of whom purchase such garments and resell the same to other dealers at a profit over and above the cost to them and without in anywise representing themselves as manufacturers thereof; all to the prejudice of the public and of its competitors.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent then known as Gibbons Knitting Mills, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of the said act.

Respondent having entered its appearance and filed its answer to said complaint, hearings were had before a trial examiner theretofore duly appointed and testimony was heard and evidence received in support of the charges stated in the complaint but none in opposition thereto, although opportunity to present the same was given respondent at the hearings. At the close of the last hearing held on May 28, 1929, respondent, having changed its corporate name to Gibbons Knitting Co., declined to submit testimony and indicated its willingness to comply with any order the Commission might issue in the case. Thereafter this proceeding came on regularly for decision, and the Commission having duly considered the record and being now fully advised in the premises makes this its report stating its findings as to the facts and conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Gibbons Knitting Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri with its office and place of business located in the city of St. Louis in said State. Said respondent was organized January 12, 1922, under the name of Gibbons Knitting Mills, Inc., and operated and conducted the business as hereinafter described until May 31, 1927, when its corporate name was duly changed to Gibbons Knitting Co. For a period of more than one year prior to February 10, 1927, the date the said complaint was issued, and since that date, the respondent was and now is engaged in the sale of knitted garments at wholesale to retailers of the same located in various States of the United States, transporting said products when sold from the State of Missouri to and through various other States of the United States to the purchasers thereof. In the course and conduct of its said business, said respondent did not, and does not now, own nor operate any knitting mill or factory where garments are knitted or manufactured, but always purchased, and now purchases supplies of knitted garments, in which it deals, from thirty or forty different manufacturers located in various States of the United States, and transports said garments to its warehouse or storeroom located in the city of St. Louis in the State of Missouri, where said articles are displayed for sale and from which deliveries are made. In some instances the knitted garments sold by the respondent are shipped to purchasers from this warehouse or storeroom in the city of St. Louis and in other instances from the respective factory from which respondent purchases the garments. Said respondent employs from seven to eight traveling salesmen, who call upon the retail trade regularly and its total volume of business amounts to approximately $500,000 annually. In the course and conduct of its said business said respondent was at all times herein mentioned in competition with other corporations, individuals, firms and partnerships engaged in the sale and transportation of knitted garments in interstate commerce.

PAR. 2. Said respondent in the course and conduct of its business, as described in paragraph 1 hereof, has prominently displayed its corporate name Gibbons Knitting Mills, Inc., and since May 31, 1927, its present corporate name Gibbons Knitting Co. on all its labels on garments sold by it, its business stationery, literature, circulars, and other advertisements which it circulates amongst the outer garment knitting trade and other allied trades in connection with the sale of said knitted garments. Also in advertisements inserted in trade and other magazines having circulation among the retail trade in the

middle western and southwestern States including particularly the "Drygoodsman & Southwestern Merchants Economist," a trade magazine, published in the city of St. Louis, in the State of Missouri, said respondent has prominently featured its said corporate name.

PAR. 3. The use by respondent of its corporate names containing the words "knitting" and "mills," under the circumstances described in paragraph 2 hereof, has had the capacity and tendency to and did mislead and deceive purchasers and prospective purchasers of the garments sold by said respondent into the erroneous belief—

(*a*) That respondent is the manufacturer of said products and is the owner and operator of a knitting mill or manufacturing establishment in which said garments are manufactured;

(*b*) That in selling and distributing said garments from itself to retail dealers respondent is thereby selling and distributing same direct from manufacturer to retail dealer and eliminating the charges and profits of all middlemen with a corresponding advantage and saving in the price to said dealers.

CONCLUSION

By reason of the aforesaid acts and practices of the respondent, as hereinabove set forth, it is concluded by the Commission that the acts and practices of said respondent have the tendency to and the effect of unfairly diverting trade from respondent's competitors and are to the prejudice and injury of the public and that such acts constitute unfair methods of competition in interstate commerce in violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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 thereto, the testimony, evidence, and briefs of counsel for the Commission and the consent of respondent that the Commission may make, enter, and serve upon it an order to cease and desist from the violation of the law as alleged in the complaint in this matter; and the Commission having made its findings as to the facts and its conclusion that respondent has been and is now using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

145 Order

It is now ordered, That respondent, Gibbons Knitting Co., formerly Gibbons Knitting Mills, Inc., its officers, directors, agents, representatives, servants, and employees cease and desist from using the words "knitting," "mill" or "mills" or words of like import in or as a corporate name or trade name for carrying on the business of selling and distributing knitted or woven products in interstate commerce unless and until the respondent actually owns or directly controls or operates a mill or mills in which said garments are manufactured or produced.

It is further ordered, That respondent Gibbons Knitting Co., formerly Gibbons Knitting Mills, Inc., shall within 60 days after the service upon it of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF

THE AMERICAN SCHOOL OF HOME ECONOMICS

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

Docket 1557. Complaint, Feb. 5, 1929—Decision, Jan. 25, 1930

Where a corporation organized under the not for profit laws, and engaged in giving courses of instruction in home economics and related subjects, by correspondence; in its advertisements in magazines and periodicals of general circulation throughout the United States and in advertising matter and letters to prospective pupils,

(*a*) Represented that it was an institution organized and incorporated to operate without profit, the facts being that while it had secured no profits for distribution as such, salaries of its "director" and its secretary depended upon its success in securing pupils and remuneration therefrom for tuition, textbooks and supplies, said director was and had been its practical owner, with full control over its business, policies and textbooks sold, and with royalty rights therein, and its said business was his business venture for profit in the same way that correspondence schools incorporated under the for profit laws are business ventures;

(*b*) Represented that it maintained a large staff of competent and well-known instructors and teachers who taught and supervised its courses and work of pupils therein, the facts being that only five or six were actually so engaged, and, mostly, on a part-time basis only, and that some of the more than 20 educators in the home-economics field listed by it as "officers of instruction" or supervisors, and authors, and identified by their educational connections, never gave instruction other than by the authorship of a textbook used in the courses, and others had long ceased through death or otherwise, to give actual instruction other than such authorship;

(*c*) Represented that through special classes, club rates, subscriptions, and otherwise and for a limited time only it offered and sold its courses at prices substantially lower than the regular prices usually and habitually commanded and secured by it therefor, the fact being that its pretended reduced prices were those at which it regularly sold its courses unconditionally and substantially to all persons alike;

(*d*) Represented that it gave free of charge to pupils textbooks and outfits of tools, appliances, and materials for use in study and pursuing its courses, the fact being that the price of said textbooks, etc., was included in the price demanded and received by it for its said courses;

(*e*) Represented that pupils taking and completing certain of its courses in cooking and catering would thereby be qualified and enabled to obtain employment at high and lucrative figures or to engage in catering at great profits, the facts being that the profits made or salaries secured by such persons were seldom if ever, comparable to the figures of $5,000, $10,000, or $12,000 mentioned;

(*f*) Depicted a large building in its advertising, on its certificate of matriculation, and upon letterheads, together with its corporate name and address and the words "Chartered by the State", etc., and in some cases, the words "in which are located the offices of 'A. S. H. E.'", the facts being that said building belonged to a corporation with which it was once affiliated and some pupils of which it still instructed, and that it occupied only four rooms therein; and

(*g*) Listed as its board of trustees, persons eminent in the home economics or women's club fields, the facts being that its aforesaid director was the entire board for all intents and purposes and had been since a few years after its organization, and that 4 of the 11 persons set forth, to give standing to the school, were listed as trustees after their deaths and that at the only meeting of the board, some 20 years before, the greater number appeared by proxy:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Eugene W. Burr for the Commission.

Synopsis of Complaint

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the business of giving courses of instruction in various arts, sciences, professions, and branches of learning to persons in various States, and with principal office and place of business in Chicago, with advertising falsely or misleading as to business status, size and personnel, prices, free goods or supplies, results to be anticipated or promised, and money back guarantee, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for about five years last past, in its advertisements, letters, and business literature, among other things, has—

Falsely represented itself as a nonprofit organization, conducting its business accordingly, and as having a large staff of competent and well-known instructors engaged in teaching and supervising its courses and the work of the pupils;

Represented that by means of special classes, club rates, etc., and for a limited time only it offers and sells the courses at prices substantially lower than those regularly charged by it, and that it gives its pupils free of charge textbooks, outfits, tools, etc., used by them in pursuing its courses, the fact being that the pretended reduced prices are its regular prices and that the price of the textbook, etc., is included in the price demanded and received by it for its said courses;

Represented that pupils completing its courses in cooking and food catering will thereby be enabled to obtain employment at high compensation or engage in the catering business at great profits, the fact being that the great majority of its pupils are not able to bring about such results;

Pretended to guarantee that pupils completing courses in cooking, catering, and candy making will, within 60 days following completion of such courses, profit from catering and sale of candy to an amount greatly in excess of that paid for tuition for the courses concerned and that tuition will be refunded to those not so profiting;

Falsely represented that pupils purchasing the course in candy making, represented as taught and supervised "by one Alice Bradley, whom respondent represents to be a nationally known authority in the art of cookery, will be granted the exclusive privilege of selling within certain territory, candy made by such pupils with the right to use in connection with such sales a signed statement by the said Alice Bradley to the effect that such candies are by her approved, recommended, and guaranteed for wholesomeness and purity";

Displayed on its letterheads, business literature, and diplomas the picture of a large building, "thereby importing and implying that respondent occupies said building in its entirety", the fact being that it occupies only two rooms thereof; and

Made "many other false, misleading, and deceptive statements and representations concerning its said school and its courses of instruction of like tenor and effect";

With the capacity and tendency to cause many of the public to purchase its courses in reliance upon the aforesaid statements and representations, and in preference to courses of competitors, many of whom do not misrepresent their courses, and with the tendency thereby to divert business from and otherwise injure and prejudice such competitors.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent corporation, charging it with unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance by its director and having duly filed its answer, requested that negotiations be entered

into looking toward a settlement of the facts. Thereupon negotiations were had and a stipulation made and approved, in so far as the facts were found to be susceptible of settlement.

A hearing was had upon such issues of fact as were not settled by stipulation before an examiner of the Commission theretofore duly appointed, and counsel for the Commission offered evidence in support of the charges of the complaint, and said respondent by its director offered evidence in its defense, all of which was recorded, duly certified, and transmitted to the Commission. Thereupon, oral argument having been waived, this proceeding came on for decision on the record, the examiners report and briefs in support of and in opposition to the complaint, and the Commission being fully advised in the premises, makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. That the respondent, American School of Home Economics, is a corporation organized June 24, 1905, under the laws of the State of Illinois, providing for the incorporation of organizations, not formed for pecuniary profits with its principal office and place of business in the city of Chicago of said State. Respondent was incorporated for the avowed purpose of providing instruction for home makers and mothers aiming to increase their efficiency, to the end that the measure of health and happiness may be increased and for the purpose of providing for courses of instruction by correspondence. It is engaged in the business of giving courses of instruction in arts, sciences, professions, and branches of learning in home economics and related subjects by correspondence. Since the organization of respondent, pupils have been enrolled to the number of forty to fifty thousand, and its graduates number about 2,000. There are 250 pupils at present taking its course in home economics; between 600 and 700 were enrolled in 1928 in its "candy making for profit" course, and 300 to 400 in its "cooking for profit" course. Previous enrollment in its home economics courses amounted to as many as 500 for several years. Respondent's income for 1927 was $47,428.25; for 1928, $52,555.61; in each year its disbursements and its bills payable amounted to something more than its income.

PAR. 2. In the course of its said business, for the purpose of securing pupils, respondent has caused and causes its advertisements offering its courses of instruction to be inserted in magazines and periodicals of general circulation throughout the United States and sends to prospective pupils advertising matter offering and describing its courses of instruction. Upon securing pupils, who are located

in all parts of the United States and in certain foreign countries, by said described means, for its courses of instruction, respondent sends by mail from its place of business in Chicago to pupils at their respective places of residence printed and mimeographed lessons, instructions, textbooks, and in one of its courses tools and equipment to be used by its pupils in pursuing and studying its courses of instruction. The pupils transmit to the respondent, and its agents and instructors, their written exercises and examination papers and, in some courses, samples of their cooking. In consideration of its instruction and other services respondent's pupils contract to pay and remit to respondent agreed sums of money. Respondent sells to such pupils as desire to purchase their supplies for use in its cooking and candy-making courses and it ships such supplies from Chicago to its pupils at their several points of residence. In the course and conduct of its business respondent is in competition with other individuals, partnerships, and corporations also engaged in the business of giving courses of instruction in various arts, sciences, professions, and branches of learning by correspondence through the mails, and having pupils who reside in various States of the United States to whom they send written lessons, instructions, and textbooks to be used by their pupils in pursuing and studying such courses of instruction. No other correspondence school has exactly parallel courses, but there are several correspondence schools one or more of which cover the same ground. Public educational institutions have similar courses. Textbooks in home economics published by the director of respondent have been in use by numerous schools and colleges in home economics courses in various parts of the United States.

PAR. 3. In its advertisements, letters and business literature hereinabove referred to, designed to secure pupils, respondent causes to be set forth certain false, misleading, and deceptive statements and representations, including the following:

(*a*) Respondent represents that it is an institution organized and incorporated to operate without profit. While respondent has not secured profits for the purpose of distribution as such, the salaries received by Director Le Bosquet, and by the secretary of respondent, Miss Jessie F. Beadle, depend upon the success of the school in securing pupils and in collecting from them remuneration for tuition and for textbooks and supplies. Director Le Bosquet is and has been practically the owner of respondent, having full control over its business and its policies and also of the sets of textbooks which are being sold by respondent in connection with the business of respondent corporation. When the school was first organized in

1903 it was part of the American School of Correspondence, with the name of the American School of Household Economics. By a contract of July 1, 1905, the American School of Household Economics turned over to respondent all rights, good will, office stationery and equipment, textbooks on hand and tuition accounts amounting to $1,390.20 for the sum of $2,240.56 with the condition that respondent should carry out the contracts of instruction which the American School of Household Economics had with 738 pupils at that time. It was also provided in this contract that respondent should purchase its textbooks and lessons from the Home Economics Association which undertook to complete a set of 12 textbooks and the necessary lessons for the course and to give respondent credit and financial backing such as to render respondent a self-sustaining concern. In January, 1907, this contract was abrogated by a new contract by which the Home Economics Association canceled a debt of respondent to it of $8,770.89 for notes of $3,000, and arranged with respondent to pay a royalty for the use of electrotypes, plates, etc., used in preparing the textbooks, amounting to $2,000 a year. Subsequently the Home Economics Association, which had been organized for the purpose of preparing and publishing textbooks and lessons for respondent and for sale to others than respondent, was dissolved as a corporation and its assets passed to Director Le Bosquet, so that the obligations which the Home Economics Association had undertaken are now undertaken by Director Le Bosquet, and the obligations to the Home Economics Association undertaken by respondent are said obligations of respondent to Director Le Bosquet personally. The royalties, however, have not been paid in full, for any year, to Director Le Bosquet. Respondent's business is virtually the business of Director Le Bosquet. It is his business venture for profit in the same way that correspondence schools incorporated under laws for the organization of corporations for profit are business ventures.

(*b*) Respondent represents that it maintains a large staff of competent and well-known instructors and teachers to teach and supervise and who actually do teach and supervise the respondent's courses of instruction and the work of the pupils in pursuing and taking such courses. In certain of its bulletins circulated to prospective pupils, under the heading "Officers of Instruction," respondent listed more than 20 names of educators in the home economics field identifying each by his or her educational connection and usually designating each person as a supervisor or instructor in one of respondent's courses. As a matter of fact, certain of these "supervisors" or "instructors" thus named never gave instruction other than by the

authorship of a textbook used in the courses and certain others had long ceased, by death or otherwise, to give actual instruction, other than such authorship. The respondent has but five or six persons actually engaged in its work of instruction and the greater number of these are engaged but part time. Hence it is misleading for respondent to advertise that it has the large force of supervisors or instructors named in its bulletin. In a later form of the bulletin sent to pupils, issued in 1928, the same list is given and the several persons listed under the caption "Officers of Instruction" are further described as authors of works. Instructors now actively engaged in the teaching work of respondent, either for whole or part time, are Miss Alice Bradley, of Boston; Mrs. Mary P. Washburne, Wauwatosa, Wis.; Fred C. Smith, of Storm Lake, Iowa; Miss Helen J. T. Phillips, of Chicago; Mrs. Laura Bradley, of Boston; and Miss Pearl Andrews, of Boston. The record indicates that respondent has sufficient teaching force to look after its courses of instruction in detail.

(*c*) Respondent represents that by means of special classes, club rates, scholarships and otherwise, and for a limited time only it offers and sells its respective courses of instruction at prices substantially less than the regular prices usually and habitually commanded and secured by respondent for such courses. In fact such purported reduced prices are the same prices at which respondent regularly gives and sells its said courses of instruction unconditionally and substantially to all persons alike.

(*d*) Respondent represents that it gives free of charge to pupils taking and purchasing respondent's courses of instruction textbooks, outfits of tools, appliances and materials to be used by the pupils in studying and pursuing such courses of instruction. In fact, such textbooks, tools, appliances, and materials are not given free of charge by respondent to its pupils, but the price thereof is included in the price demanded and received by respondent for such courses of instruction respectively. For approximately 10 years the prices of the home economics courses given by respondent have been uniform. The maximum price for time payments therein shown for full course is $70 and the cash payment for such course is $63. Other full courses are $60 on time and $54 for cash; limited courses are given as low as $36 for cash or $40 on time. These prices have been in effect for 10 years and have been uniform in the course of that time. The tuition fee for courses in candy making for profit and in cooking for a profit was advanced in October, 1927, from $35 payable $5 per month to $45 payable $5 per month with reductions in each case for cash.

(*e*) Respondent represents that pupils taking and completing certain of respondent's courses of instruction in the art of cooking and food catering will thereby be qualified and enabled to obtain employment at high and lucrative compensation or engage in business of catering foods at great profits. In fact the profits made by pupils of the school and the salaries attached to places secured by persons because of having qualified themselves by taking respondent's courses are seldom or never comparable with the figures of $5,000 or $10,000 or $12,000 mentioned in respondent's literature. Many of respondent's pupils do make some profits through activities carried on along lines for which they are qualified by the taking of respondent's courses and respondent, in many cases, when asked to do so, has secured positions for its pupils sufficiently satisfactory so as to be accepted by these pupils.

(*f*) In some of its advertising literature, on its certificate of matriculation, and upon its letterheads of correspondence sent to pupils and prospective pupils respondent sets forth a picture of a large building across either the face of which or below which is printed "American School of Home Economics, Chicago, U. S. A." Immediately beneath the building is the line "Chartered by the State of Illinois in 1905." Such picture imports and implies that the building is the property of respondent and is occupied chiefly or in its entirety by respondent. Respondent does not own the building so depicted upon its letterheads and other literature, and occupies but four rooms therein. In other printed matter respondent declares under such picture, "in which are located the offices of A. S. H. E." The building is the property of the American School of Correspondence with which respondent was once affiliated and some pupils of which respondent still instructs.

(*g*) In some of its pamphlet literature sent to pupils and prospective pupils respondent lists, under the headline "board of trustees" 11 persons, most of whom are now or formerly were eminent in the home economics or women's club fields. Eight or nine editions of these pamphlets have been issued in the course of the activities of respondent and have been circulated freely to its pupils and prospective pupils. In fact Director Le Bosquet is the entire board for all intents and purposes and has been since a few years after the respondent was organized. Respondent was incorporated by Ella W. Neville, Helen C. Kimberly, and Maurice Le Bosquet, and under its articles of incorporation these three were made its board of directors in whose hands the articles of incorporation had placed the management of the corporation. When respondent prepared its by-laws they were headed "By-laws of the board of trustees," and

article 3 of the by-laws provided for "members of the association who shall hereinafter be designated as the board of trustees shall consist of those persons who sign the certificate of incorporation, and such other persons as may be duly elected in accordance with the provisions of these by-laws. The members of this association shall not exceed 30 in number, at least one-half of whom shall eventually be graduates of the school. * * *" One meeting of the board of trustees was called in January, 1906, at which the greater number appeared by proxy. No other meeting of this "board of trustees" ever has been held. The names were carried in respondent's literature in order to give a standing to the school. Four of the trustees have died and in fact were dead at times that they were listed in literature of the respondent as such trustees.

PAR. 4. In its literature sent to pupils and prospective pupils respondent asserts that pupils completing certain of its courses of instruction in cooking, food catering, and candy making will, upon completion of such courses or within 60 days thereafter gain profits from catering foods and selling candies to an amount greatly in excess of the prices paid by such pupils for their courses and that all tuition fees will be refunded to pupils who do not so gain such profits. This representation is substantially correct. Where pupils failed to make profits in excess of the cost of their tuition respondent refunded their tuition. The average profits gained within 60 days, however, were not greatly in excess of the expense of the course of instruction. In its literature sent to its pupils and prospective pupils respondent further represents that pupils taking a certain course of instruction in candy making offered by respondent, which course is supervised by Miss Alice Bradley, of Boston, a nationally known authority in the art of cookery, would be granted exclusive privilege of selling within prescribed territory candy made by such pupils with the right to use in connection with such sales a signed statement by Miss Bradley to the effect that such candies have been approved by her as to quality and are recommended and guaranteed for wholesomeness and purity. This statement is substantially correct, the allegations of the complaint (par. 2, subpars. (*f*) and (*g*)) with reference to the representations in this paragraph described are not sustained by the proof.

PAR. 5. Respondent's false, misleading, and deceptive representations in its literature sent to the pupils and prospective pupils, as set forth in paragraph 3, subparagraphs (*a*) to (*g*), inclusive, have the capacity and tendency to mislead and deceive the public as to the benefits to be derived from such courses and to cause many of the public to subscribe for and to purchase respondent's courses in the belief that said statements and representations are true.

CONCLUSION

The acts and things done by respondent under the conditions and the circumstances described in the foregoing findings are to the injury and prejudice of the public and are unfair methods of competition in interstate commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been considered by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, a stipulation as to certain of the issues of fact and the oral and documentary evidence introduced both in support of the complaint and by way of defense, and the Commission having made its findings as to the facts, together with its conclusion that respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, American School of Home Economics, its officers, agents, and representatives, do cease and desist from the following methods of competition:

(*a*) Advertising or otherwise representing that respondent does not conduct its business for profit.

(*b*) Advertising, representing, or describing as "instructors" or "teachers", or by a like designation, persons, whether they were authors of textbooks used by respondent or not, who are not actually engaged in the giving of instruction by correspondence at the time such representation or description be made.

(*c*) Advertising or otherwise offering to the public or to prospective pupils special class rates, club rates, and/or tuition charges otherwise designated as reduced or special rates whether or not the same be advertised or otherwise offered as obtainable by pupils applying to respondent during a limited time only, when in fact, the said class rates, club rates, or allegedly special tuition rates, are charges not less than the regular rates or tuition of the respondent for the course or courses of study so advertised or offered.

(*d*) Advertising or in any way representing that any textbooks, tools, appliances, equipment and/or materials to be used by pupils in any course of study given by respondent are free, when in fact, the price of cost thereof is included in the charge or tuition for the respective course of instruction in which the same are to be used.

(*e*) Advertising or stating to the public or any part thereof or to prospective or actual pupils that, by virtue of the completion of any of respondent's courses, pupils will be qualified and enabled to obtain employment at high and lucrative compensation or to engage in the catering of foods at great profit.

(*f*) Including in its letterheads, advertising material, matriculation certificate and/or other matters issued by respondent a picture of the building in which the respondent has rooms, with the wording "American School of Home Economics," without using in the immediate context therewith the words, "In which the American School of Home Economics has quarters," or without using equivalent explanatory phraseology indicating clearly that the respondent does not own or occupy, save in a limited way, the building pictured, the said last described phraseology to be made in letters not less than one-half as high and one-half as wide as the lettering giving the name of the school, and to have, except as to the size of letters, the same coloring, clearness, conspicuousness, as the wording giving the name of respondent's school, and from including the picture of such building, although omitting the name of the respondent's school, without including the said described explanation.

(*g*) Advertising or stating in its printed or circular matter or in correspondence that respondent's school is conducted or supervised by officers and/or a board of trustees so long as the said supposed officers and/or board of trustees bear no active or supervisory relation to the affairs of respondent, and/or publishing or otherwise using the names of persons as officers and/or trustees of respondent who have ceased to act as officers or trustees of respondent and to bear any active or supervisory relation to respondent and the school conducted by respondent at the time such advertisement or statement be made.

It is further ordered, That the respondent, American School of Home Economics, shall within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

JACOB WOODNICK AND PHILIP WASSERMAN AS CO-PARTNERS, DOING BUSINESS UNDER THE TRADE NAMES AND STYLES, ENTERPRISE FURNITURE FACTORY, AND ENTERPRISE UPHOLSTERED FURNITURE COMPANY.

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

Docket 1569. Complaint, Feb. 21, 1929—Decision, Jan. 30, 1930

Where two partners engaged in selling to the public and to retailers furniture bought by them from the manufacturers in a completed state, excepting only certain three-piece living room suites of davenports and chairs, which still required to be and were by them upholstered; with the expectation that such false representations of material facts, made with the knowledge of their falsity and as an inducement to buy, would be relied upon by purchasers,

(*a*) Used in their said business a trade name including the words "furniture factory" and displayed and featured said name on large signs on their four-story building and in advertising dining room, bedroom, said living room, and other suites, and tables, chairs, springs, mattresses, etc., dealt in, together with depictions of said building and signs; and

(*b*) Represented themselves as furniture manufacturers offering their said products directly to the consumer, with consequent savings and advantages through direct purchase, and otherwise through direct dealings with the factory, making such statements in offering the different suites and articles as "Why not look over our factory and prices now?" "Our factory price for this beautiful suite now only $149. You save at least $125 on this purchase," "Enterprise Furniture Factory. Save 50 per cent. Factories—Reading—Harrisburg—New Brunswick, N. J. Enterprise makes (list of States) The country takes," "The greatest opportunity to refurnish your home with all new furniture at factory prices," "Are you getting most for your money? Make sure—See this factory first," "Bedroom and dining room suites at factory prices," "Come in and see how your furniture is built." "We are a factory by itself. We sell direct to the consumer." "New 1928 styles are here now for your selection. As manufacturers we get the styles ahead of the retail dealers. You can now select from the very newest styles * * * buy direct and save 50 per cent," "You save here on our low rent and one profit," "Our factory must be kept busy at all times," "Being equipped with a large factory we can absolutely guarantee the construction to be the best in the state * * *," "What Enterprise can do no retail store can";

With the tendency and capacity to mislead and deceive members of the public into believing its said place or places of business to be furniture factories and said partners to be manufacturers of the aforesaid davenports and chairs and other furniture dealt in, charging purchasers only the one manufacturer's profit, and saving said purchasers the profits of middle-

use of unfair methods of competition, in commerce, in violation of the provisions of said act.

The respondents having filed their answer herein, hearings were held and evidence was thereupon introduced on behalf of the Commission and of the respondents before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for a final hearing on the briefs and oral argument, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Jacob Woodnick resides in Wyomissing, in the State of Pennsylvania. Respondent Philip Wasserman resides in the city of Reading in Pennsylvania.

The respondents are copartners and, as such copartners, they have been at all times since on or about the year 1920, and they are now, engaged in business in the sale of household furniture, at No. 630 Court Street in the city of Reading, Pa.

For a period of about three years prior to and ending on or about December, 1928, respondents conducted a branch place of business in the sale of household furniture at No. 206 South Second Street in the city of Harrisburg, Pa.

Since 1928 respondents have had and now have a branch place of business at Schuylkill Haven, Pa.

For short periods of a few months each between the years 1921 and 1928 respondents also had branch places of business in Pottsville and Lansford, Pa.

PAR. 2. Respondents are now and have been continuously, during the times above mentioned and referred to, engaged in their said business in the sale of articles or pieces of furniture for use in furnishing homes, which respondents have sold, and now sell, separately, or in suites as dining-room, bedroom, library, parlor or living-room suites, both at retail to members of the public for their own use and to individuals, firms, and corporations, retail dealers, for resale, located in the District of Columbia and in various States of the United States other than the State of Pennsylvania, and respondents caused their furniture, when sold by them, to be transported in commerce from their said places of business in Pennsylvania to, into, and through said other States and the District of Columbia to the members of the public and to the said individuals, firms, and corporations, to whom respondents sold their furniture as aforesaid.

PAR. 3. During the times above mentioned and referred to, other individuals, firms, and corporations in the various States of the United States have been engaged in the sale and delivery of furniture for use in furnishing homes as above described, both to members of the public for their own use and to individuals, firms, and corporations for resale, located in the District of Columbia and in the various States of the United States other than the State of origin of the shipment.

The respondents during the aforesaid times were, and still are, in competition in commerce between the States above referred to and between said States and the District of Columbia in the sale of their furniture with said other individuals, firms, and corporations.

PAR. 4. Respondents, during the aforesaid times, bought from others, manufacturers thereof, all that part of their stock in trade of furniture consisting of bedroom suites of 4 to 11 pieces; dining-room suites of 7 to 14 pieces; and library suites composed of several pieces each and, in the regular course of their business, sold the furniture of which these suites consisted either in suites or as separate articles of furniture, and in the same condition in which the said furniture was when bought by respondents from the manufacturers.

The respondents, in addition to the bedroom, dining room, and library suites of furniture, bought from others, manufacturers thereof, during the aforesaid times, many other articles of furniture, including tables, chairs, box springs, mattresses, all-metal stands, floor lamps, bridge lamps, and rugs, which the respondents in the regular course of their business sold in the same condition that they were in when bought by them from the manufacturers.

The respondents employed no process of manufacture or finishing process whatever in the completion of any of the furniture, just above described, before selling the same to the purchasers.

PAR. 5. The only other furniture sold by respondents in the regular course of their business during the aforesaid times, consisted substantially of only three pieces or articles of furniture, a davenport and two chairs, usually described and referred to by respondents as living room furniture or living room suites.

Some of the furniture described or referred to as living room furniture the respondents bought from others, manufacturers thereof, completely made and ready for sale by respondents and for use by respondents' purchasers in furnishing their homes.

PAR. 6. Some, only, of the furniture sold by them in their said business, the respondents bought from others, manufacturers thereof,

in an unfinished condition, and respondents caused this furniture to be finished at their places of business in Reading and Harrisburg before its sale by them.

The part of the furniture which respondents so bought and caused to be finished before sale was and is confined solely to a part, only, of the living room furniture (living room suites consisting of three pieces, a davenport and two chairs). Some of their living room suites the respondents, as above stated, bought entirely completed and in exactly the same condition as it was when sold by them to purchasers for use in homes.

The living room furniture, a davenport and two chairs to a suite, which respondents bought incomplete and caused to be finished at their said places of business before selling the same, was, when bought by respondents, completed as to the woodwork or frames thereof by the manufacturers from whom respondents purchased it, and all that remained to be done to complete such furniture was its upholstering. Such furniture was, when delivered to respondents by the manufacturers thereof, in the lasting and permanent form of davenports and chairs.

Such furniture was in substantially the same condition, as such furniture is in, when after long usage in a home, the householder delivers it to an upholsterer to be reupholstered. In the reupholstering of such furniture substantially all is done that respondents cause and have caused to be done to complete said living room furniture at their places of business before selling it to the public.

In the upholstering of living room furniture the respondents employed at times in their place of business in Reading, Pa., as many as 12 workmen.

PAR. 7. Respondents' place of business in the city of Reading, Pa., is a large 4-story building and across the entire front of the building respondents maintained large signs with the words thereon:

ENTERPRISE FURNITURE FACTORY

and a large sign extending vertically from the top of the building to the ground floor which is illuminated by electric lights and on which is inscribed the words:

ENTERPRISE FURNITURE FACTORY

PAR. 8. In a newspaper, The Reading Eagle, published at Reading, Pa., respondents caused an advertisement to be published on June 10, 1927, in which appeared, among others, statements as follows:

Tomorrow—Dollar day—Saturday
$1 will buy the following items at this factory on Saturday:

Floor lamp complete—davenport table—box spring—Silk floss mattress—reed rocker—leather rocker—buffet mirror—overstuffed chair or rocker, with the purchase of a *living room, dining room, or bedroom suite.*

The above advertisement contained pictorial illustrations of a 3-piece living room suite consisting of a davenport and two chairs and also of a bedroom suite consisting of a bed and several other pieces of furniture. On the margins of the advertisement was the statement:

Economize at the Enterprise Furniture Factory, 630 Court Street.

and the advertisement was subscribed in large letters as follows:

THE ENTERPRISE FURNITURE FACTORY

The Largest Furniture Factory in Reading, 630 Court Street.

PAR. 9. In a newspaper, The Patriot, published at Harrisburg, Pa., respondents caused an advertisement to be published on June 10, 1927, in which appeared, among others, statements as follows:

Don't miss it—Now going on.

The greatest opportunity to refurnish your home with all new furniture at *factory prices.*

Trade in your old living room, bedroom or dining room suite and use the $25 as a deposit on a new suite.

Buy now and save. See our special living room suite for this trade-in sale built your way at factory prices.

BEDROOM AND DINING ROOM SUITES AT FACTORY PRICES

The said advertisement was subscribed in large letters as follows:

THE ENTERPRISE FURNITURE FACTORY

Our only factory in Harrisburg, 106–108 South Second Street, Harrisburg.

PAR. 10. In the said newspaper, The Reading Eagle, respondents caused an advertisement to be published on June 16, 1927, in which appeared, among others, statements as follows:

Style and quality are just as important as price.

You should see this factory before buying your furniture, and you will see the reason Enterprise customers are boosters of this factory.

$100 to save on your living room suites is as good to you as to anybody else.

Why not look over our factory and prices now?

Our factory price for this beautiful suite now only $149.

You save at least $125 on this purchase.

Dining room suites priced from $98 to $1,000.

Bedroom suites priced from $79 to $975.

Living room suites priced from $95 to $2,800.

ENTERPRISE FURNITURE FACTORY

SAVE 50 PER CENT SAVE 50 PER CENT

FACTORIES—READING—HARRISBURG—NEW BRUNSWICK, N. J

ENTERPRISE MAKES

Illinois
Michigan
Massachusetts
New York
New Jersey
Pennsylvania
Vermont

THE COUNTRY TAKES

PAR. 11. In the said newspaper, The Reading Eagle, the respondents caused an advertisement to be published on June 19, 1927, which contained, among others, statements as follows:

Are You Getting Most For Your Money?

Make sure—See this factory first.

You should see this factory before buying your furniture, and you will see the reason Enterprise customers are boosters of this factory.

$100 to save on your living room suite is as good to you as to anybody else.

Why not look over our furniture and prices now?

Our factory price for this beautiful suite is now only $119.

You save at least $100 on this purchase.

ENTERPRISE FURNITURE FACTORY

SAVE 50 PER CENT SAVE 50 PER CENT

FACTORIES—READING—HARRISBURG—NEW BRUNSWICK, N. J.

ENTERPRISE MAKES

Illinois
Michigan
Massachusetts
New York
New Jersey
Pennsylvania
Vermont

THE COUNTRY TAKES

PAR. 12. In The Reading Eagle aforesaid, the respondents caused an advertisement to be published on June 24, 1927, in which there were pictorially illustrated a 3-piece living room suite of furniture consisting of a davenport and two chairs, a 10-piece dining room

suite and a bedroom suite. The advertisement further contained, among others, statements as follows:

JULY CLEARANCE SALE

You save here on our low rent and one profit.
What Enterprise Factory can do no retail store can.

SAVE 50 PER CENT

Visit this factory now—Select your needs—Have it delivered when you are ready for it.
Everything sold during this sale is guaranteed 100 per cent.
You can select from our stock or have it made to your order.
Come in and see how furniture is built.
The advertisement was subscribed as follows:

ENTERPRISE FURNITURE FACTORY

The largest furniture factory in Reading, 630 Court Street.

PAR. 13. In a newspaper, The Evening News, published at Harrisburg, Pa., respondents caused an advertisement to be published on June 24, 1927, in which appeared, among others, statements as follows:

ENTERPRISE FURNITURE FACTORY

Saturday $1 will buy the following items at our factory on Saturday only:
Floor lamp complete, davenport, tables, box spring, silk floss mattress, buffet mirror, Windsor chair or rocker, console table or mirror,
With the purchase of a living room, dining room, or bedroom suite.

BEDROOM AND DINING ROOM SUITES AT FACTORY PRICES.

THE ENTERPRISE FURNITURE FACTORY

Our only factory in Harrisburg, 106-108 South Second Street, Harrisburg

PAR. 14. In The Reading Eagle aforesaid, the respondents caused an advertisement to be published on June 29, 1927, in which appeared, among others, statesments as follows:

JULY CLEARANCE SALE

What Enterprise Factory can do.
Treat yourself to the best.
Visit this factory now—Select your needs—Have it delivered when you are ready for it.
You save here on our low rent and one profit.

SAVE 50 PER CENT

Come in and see how your furniture is built.

ENTERPRISE FURNITURE FACTORY

SAVE 50 PER CENT SAVE 50 PER CENT

FACTORIES—READING—HARRISBURG—NEW BRUNSWICK, N. J.

ENTERPRISE MAKES

Illinois
Michigan
Massachusetts
New York
New Jersey
Pennsylvania
Vermont

THE COUNTRY TAKES

PAR. 15. The respondents caused to be published and circulated in the year 1928 a large 4-page advertisement of about 18 inches by 24 inches, approximately of the page size of the large metropolitan daily newspapers. In this advertisement there was a pictorial illustration of respondents' place of business on which were displayed the large signs, Enterprise Furniture Factory; and in connection with this illustration of respondents' place of business were the following statements:

Look for this large 4-story red building.
We have no show windows
Factory and salesroom, 630 Court Street.

SAVE 50 PER CENT

Our Reading factory is 1-minute walk from Sixth and Penn Streets.

Be sure when you come back on Court Street to look for this building with the red signs. Our building has no show windows, neither does it adjoin any furniture store that faces on Penn Street. We are absolutely not connected with any furniture store in Reading. We are a factory by itself. We sell direct to the consumer.

Look for 630–652 Court Street and save 50 per cent.

The advertisement contained, among others, pictorial illustrations of an 11-piece bedroom suite and a 14-piece dining room suite.

Among other statements that appeared in said advertisement are the following:

You come here because we manufacture our own furniture, our low rent and only one profit for you to pay.

August furniture sale and exhibition.

NEW 1928 STYLES ARE HERE NOW FOR YOUR SELECTION

As manufacturers, we get the styles ahead of the retail dealers. You can now select from the very newest styles of suites and patterns and cover-

ings—imported and domestic cloths, something entirely new, that the retail dealer has had no opportunity to get hold of—buy direct and save 50 per cent.

Our factory must be kept busy at all times.

Our prices are now at this slow season of the year reduced to the minimum.

To make this sale the most talked of in our entire history, we have gone through our stocks and cut prices right and left, absolutely regardless of original cost or present day replacement value.

It's your one big chance to improve your home with new furniture at the lowest prices of the year, so *act at once* for the best choice.

Living room, bedroom, and dining room at savings never heard of in this State, which you, the consumer, as well as the wholesale buyer, can take advantage of.

CONSTRUCTION.—Being equipped with a large factory we can absolutely guarantee the construction to be the best in the State. We invite the public to come in and examine our furniture while it is being made.

PRICE.—As manufacturers selling direct to the consumer, we are in a position to save you about 50 per cent on anything you buy here.

The above are our cardinal principles and to uphold them we faithfully pledge.

With no obligation on your part, you may phone or write to us, and our service car will call for you and bring you back to your home, if you desire to visit our factory and examine our furniture. The above service is extended to anywhere within 50 miles from Reading.

Carfare returned anywhere within 100 miles.

On the back page of this advertisement there were pictorially illustrated from the top to the bottom of the center of the page a living room suite showing a davenport and two chairs, a bedroom suite of 11 pieces and a dining room suite of furniture of 14 pieces. Above the illustrations of these three suites was the statement:

CHOICE OF THESE $400 FURNITURE SUITES $178

In connection with each of these living room, bedroom, and dining room suites the price was displayed as follows:

$178

WORTH $400

Other separate articles of furniture such as reed chairs and rockers, davenport tables, and lamps were displayed in said advertisement. The lamps were pictorially illustrated with their shades and statements made concerning the lamps were contained in a section of the advertisement blocked off from the rest of the page and

within this section containing the illustrations and advertisement of the lamps the following statements appeared:

BRIDGE LAMPS
As Low As $2.75

Floor lamps with beautiful silk shades are priced as low as $7.95 for this sale. Many different designs in bases and shades to select from. Also a choice offering of reading lamps, bridge lamps and table lamps.

Come and visit our factory.

The pages of the advertisement were subscribed:

THE ENTERPRISE FURNITURE FACTORY
The largest furniture factory in Reading
Look for the red signs, 630–652 Court Street

PAR. 16. The respondents caused an advertisement to be published in The Reading Eagle, above mentioned, on February 17, 1929, which contained pictorial illustrations of a living room suite and a bedroom suite of furniture and, among others, statements as follows:

February furniture sale and exhibition.

New line of 1929 models are here for your selection.

We have no show windows—look for the large 4-story building with the red signs.

Save about 50 per cent

We invite all our friends and dealers who for the past 8 years have been handling our custom built furniture, or bought for their own use, to visit our factory and inspect the latest models in the new modern and period designs, also the newest of imported and domestic coverings.

In appreciation of the public approval of this factory we have priced our *living room, dining room, and bedroom, suites at* savings never heard of in the State, which you the consumer, as well as the retail dealer, can take advantage of.

Where the finest furniture in the State is built
THE ENTERPRISE FURNITURE FACTORY
The largest furniture factory in Reading

PAR. 17. In 1929 the respondents caused to be published and circulated a 4-page double sheet advertisement similar to the advertisement described in paragraph 15 hereof and containing pictorial illustrations of bedroom and dining room suites of furniture and of single articles of furniture such as reed rockers, mirrors, end tables and console tables and kitchen cabinets.

The said advertisement contained, among others, statements as follows:

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FEBRUARY FURNITURE SALE AND EXHIBITION

This 1929 February sale surpasses any sale that we have ever held in greatness of values and in completeness of the exceptionally large assortment of living, dining, and bedroom suites.

Surprise after surprise will greet you when you visit our factory display rooms and see the extremely low prices. Quality and price talks, therefore if you see what we are offering you will be convinced that the Enterprise Furniture Factory sale is the greatest sale in the history of all sales. Take advantage of these sensational savings, tell your friends. Act while assortments are large. Don't hesitate but investigate and buy right now and Save! Save! Save! This is not a sale of odds and ends. Our complete stock of fine furniture has been gone over and reduced tremendously for this great sale.

Look for this large 4-story building with the red signs.

SAVE 50 PER CENT

5-YEAR GUARANTY BOND

This is to certify that any living room, dining room, or bedroom suite sold at this factory has been thoroughly inspected and tested and found to be up to the highest standard and is hereby guaranteed by us for a period of 5 years against defect of workmanship and construction. We also guarantee the cabinet work and the filling used in the construction of our living room suites to be of highest grade. Any part of construction proving defective during the above-mentioned period will be replaced free of charge.

ENTERPRISE FURNITURE FACTORY

630-652 Court Street Reading, Pa.

PAR. 18. In The Reading Eagle, above mentioned, the respondents caused an advertisement to be published on May 22, 1929, which contained a pictorial illustration of a 10-piece dining room suite of furniture and, among others, statements as follows:

TO JUNE BRIDES

and every buyer of a

LIVING ROOM, BED ROOM, or a DINING ROOM SUITE

Free—an attractive 9 by 12 rug—Free

THE ENTERPRISE FURNITURE FACTORY

The largest furniture factory in Reading

PAR. 19. In The Reading Eagle, above mentioned, respondents caused an advertisement to be published on May 24, 1929, in which a 10-piece dining room suite and a 4-piece bedroom suite of furniture were pictorially illustrated and in which lamps and foot stools were advertised.

The said advertisement contained, among others, statements as follows:

DOLLAR DAY AT THE

ENTERPRISE FURNITURE FACTORY

$1 will buy a 9 by 12 rug with a purchase of a living room, bedroom, or dining room suite.

***

The Enterprise Furniture Factory, the largest furniture factory in Reading.

PAR. 20. Respondent Woodnick learned the trade of an upholsterer before becoming a copartner with respondent Wasserman and worked at that trade for about eight or nine years.

To upholster is to provide with textile coverings, together with cushions, stuffing, springs, etc.

An upholsterer is one who upholsters or provides and puts in place textile coverings for furniture and the like.

PAR. 21. Respondents caused cambric, webbing, springs, burlap, moss, hair, carded cotton, denim, edging, and velour or tapestry coverings to be stitched together and fashioned into cushions for the seats and backs of the davenports and chairs comprising the living room suites bought by them in an unfinished condition, and the same materials excepting the springs were used by respondents in upholstering the arms of the chairs and the ends of the davenports, and such material constituted substantially all of the material used by respondents in the finishing or upholstering of living room furniture.

PAR. 22. The davenports and chairs, which respondents bought in an incomplete condition and upholstered or finished, as above set forth, were properly designated furniture before they were furnished with upholstering by respondents and such articles in said condition, before being upholstered, have been generally understood by the public to be furniture.

Those who have constructed such articles in the form of a davenport and chairs without upholstering them are manufacturers of them and are by such construction generally understood to be manufacturers of furniture, and their places of business as furniture factories. Their product, standing alone without upholstering, has the form and character of furniture. The upholstering applied to their product, apart from the objects to which it is applied, has not the form or character of furniture.

The thought of upholstering implies the prior existence of furniture.

The thought of furniture does not necessarily imply the existence of upholstering.

PAR. 23. After furniture has been upholstered, used, and worn, it is often sent to upholsterers to be reupholstered—to be refurnished with the same kind of materials and fashioned in the same way that respondents have furnished their said furniture.

Those who reupholster furniture and, in doing so, furnish it with the same kind of materials, fashioned in the same way that respondents employ and have employed in upholstering living room furniture are not, and have not been, considered by the public to be the manufacturers of the articles so upholstered by them, nor have their places of business been considered to be furniture factories.

Those who upholster or reupholster furniture are and have been designated and described as upholsterers of furniture or manufacturing upholsterers to distinguish the operations which they perform and the materials which they use from operations and materials of those manufacturers whose creations are in the lasting and permanent forms, before being upholstered, that gives them spontaneous recognition as specific articles of furniture.

PAR. 24. The living room furniture that respondents have upholstered and sold in their business was, in the condition in which it was sold by respondents, the joint product of the respondents and others who were the manufacturers of the articles upholstered by respondents.

Respondents have not been, and are not, the manufacturers of upholstered furniture or of any kind of furniture that they have sold in their said business and their place or places of business are not and have not been furniture factories.

PAR. 25. The statements or representations published in newspapers mentioned or referred to in paragraphs above mentioned, Nos. 10, 11, and 14, that the respondents had at the times referred to in said advertisements a furniture factory in New Brunswick, N. J., were false and misleading. The respondents, either as copartners or individually, have not at any time owned or operated a furniture factory in New Brunswick, N. J.

PAR. 26. The use by respondents of the word "factory" in the trade name, "Enterprise Furniture Factory," was and is false and misleading and it has the tendency and capacity to mislead and deceive members of the public into the belief that respondents' said place or places of business are furniture factories and that respond-

ents are and have been the manufacturers therein of the davenports and chairs which they offer for sale and have sold as living room furniture.

The said use of the word "factory" in respondents' trade name has the further tendency and capacity to mislead and deceive members of the public into the belief that respondents are and have been the manufacturers not only of the living room furniture but also of all the other furniture offered for sale and sold by them.

PAR. 27. The pictorial representations of dining-room and bedroom suites of furniture and other articles of furniture which respondents caused to be published in advertisements in newspapers and otherwise, subscribed with the name "Enterprise Furniture Factory" in large letters, and in connection with which the respondents stated that the furniture described in the advertisements was offered for sale and exhibition and would be sold at their said "factory"; and the statements in said advertisements that respondents were offering purchasers the opportunity to refurnish their homes with all new furniture at factory prices; that as manufacturers selling direct to the consumer respondents were in a position to save purchasers about 50 per cent on anything they bought at respondents' places of business; that as manufacturers respondents got the styles ahead of the retail dealers and that "What Enterprise Factory can do no retail store can," and that purchasers saved about 50 per cent by purchasing from respondents because of respondents' low rent and one profit, and other such statements made by respondents in said advertisements were each and all false and misleading statements and representations and each and all of said statements and representations have the tendency and capacity to mislead and deceive members of the public into the belief that the respondents' said place or places of business are furniture factories and that the respondents are and have been manufacturers therein of the furniture mentioned and referred to in respondents' said advertisements and the said representations and statements have the further tendency and capacity to mislead and deceive members of the public into the belief that as such manufacturers of furniture respondents were thereby in a position to save purchasers the profit which purchasers would be required to pay to retail dealers, competitors of respondents, if they bought furniture from such competitors, and which respondents were able to save to such purchasers by selling to them direct from their factory whereby purchasers from respondents paid only one profit, the manufacturer's, and saved the middleman's or retail dealer's profit; that respondents, by reason of their said factory and because they were

manufacturers, were in a better position to serve the purchasing public as to style and quality of furniture than retail dealers and that as to all of their furniture, respondents, being equipped with a large factory, could absolutely guarantee the construction of the furniture sold by respondents to be the best in the State of Pennsylvania.

PAR. 28. The aforesaid use by respondents of the word "factory" in connection with their said places of business and in connection with the aforesaid representations, is a false representation of a material fact, made by respondents in the sale of furniture, to purchasers as an inducement to them to purchase respondents' furniture and made by respondents in the expectation that such representation would be relied upon by said purchasers and with the knowledge on respondents' part of the falsity thereof and that purchasers and prospective purchasers were and are ignorant of its truth or falsity.

The statements and representations of respondents, above mentioned, that respondents were offering purchasers all new furniture at factory prices; that as manufacturers selling direct to the consumer respondents were in a position to save purchasers about 50 per cent on anything purchasers bought at respondents' places of business; that as manufacturers respondents' alleged "factory" could do what no retail store could do, were each and all false representations of material facts in the sale of furniture, made by respondents to purchasers and prospective purchasers of their furniture in the expectation that such statements would be relied upon by such purchasers and with the knowledge on respondents' part that such statements and representations were false and that said purchasers were ignorant of the truth or falsity of the same.

CONCLUSION

The practices of the respondents under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondents' competitors, and are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and upon the answer of the respondents filed herein, and the Commission having made

its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondents above named, Jacob Woodnick and Philip Wasserman, their agents and employees, do cease and desist:

1. From displaying or otherwise using in the business of selling furniture in commerce among the several States of the United States or between any of the said States and the District of Columbia, the word "factory" or any word or representation whatsoever, designed to promote or otherwise affect such commerce, indicating a place of manufacture, to designate or describe any building or place of business in which the sale of furniture manufactured by others is offered for sale and sold in such commerce by respondents or by either of them.

2. From displaying or using the word "factory" in a trade name or description of a business conducted by respondents or either of them or from displaying or using any other word or representation whatsoever, designed to promote or otherwise affect such commerce, in such trade name or description of a business, indicating that respondents or either of them are manufacturers of furniture, offered for sale and sold by respondents, in commerce as aforesaid, which has been manufactured completely by others; or, that respondents are the manufacturers of articles of furniture, such as davenports and chairs, which have been manufactured by others completely except as to the upholstering of such articles.

3. From representing directly or indirectly, in the sale of furniture in commerce as aforesaid, in advertising or otherwise, that respondents or either of them, are manufacturers of furniture made wholly by others or that they are manufacturers of articles of furniture, sold by respondents in commerce as aforesaid, such as davenports and chairs, which have been made by others complete, except as to the upholstering of such articles.

It is further ordered, That the respondents, Jacob Woodnick and Philip Wasserman, shall, within 30 days after the service upon them of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which they have complied with the above order to cease and desist.

IN THE MATTER OF

C. H. SELICK, INCORPORATED

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

Docket 1672. Complaint, May 23, 1929—Decision, Feb. 1, 1930

Where a domestic corporation engaged in the sale of perfumes made by it in the United States of the cheaper grades of essential oils produced in foreign countries and by it purchased from a New York concern,

(*a*) Labeled the bottles thereof "L'Are Narcisse—Jardeau—New York, Paris", "Lucienne—Paris, New York", and (at request of dealer customers) "Jay's Narcissus—Jay et Cie—Paris, New York", or "Bea Van et Cie—Paris, New York", together with the word "France" on the reverse side and in conspicuous letters on the bottle containers, in which displayed, offered and sold, thus labeled and designated, to the consuming public by dealer vendees; and

(*b*) Depicted said labels and bottles first above referred to, in circulars distributed to the trade;

With the capacity and tendency to mislead and deceive vendees and many of the consuming public into believing said products to be perfumes made in Paris or France, long widely popular with and in demand by the domestic trade and consuming public and considered by many thereof as more desirable in the matter of quality and other characteristics than the home product and by them bought in preference thereto, and into purchasing its said perfumes in such belief, and with the result of placing in the hands of its dealer and peddler vendees the instrument and means for committing a fraud upon a substantial portion of the consuming public by enabling them to represent, offer and sell the same as made in the aforesaid city or country, and tendency to divert business from and otherwise injure and prejudice competitors importing and dealing in perfumes in fact there made or compounded and rightfully and lawfully so represented by them, and competitors dealing in the domestic product without in any manner misrepresenting the same as above set forth:

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

Mr. Edward L. Smith for the Commission.
Santangelo & Lukas, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in compounding perfumes and other toilet preparations and in the sale thereof to retail dealers and peddlers, and with principal office and place of business

in New York City, with misbranding or mislabeling and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth in compounding its perfumes with the cheaper grades of essential oils to which are added alcohol and water in the proportion of 4 ounces of the oil to 1 gallon of alcohol, at its place of business in New York City, labels the 1-ounce bottles and vials in which it principally sells its product with one of the four following brand names, to wit—"L'Are Narcisse—Jardeau—New York, Paris"—and on the back "France"; "Lucienne—Paris, New York"—and on the back "France"; "Bea Van et Cie—Paris, New York"; "Jay's Narcisse—Jay et Cie—Paris, New York". Respondent, further, as charged, features the word "Paris" upon the containers in which it packs its said perfumes and distributes circulars carrying reproductions of the aforesaid bottles and containers.

Said acts and practices, as alleged, have the capacity and tendency to mislead and deceive its vendees and many of the consuming public into believing said perfumes to have been manufactured in Paris, France, and imported into the United States and into purchasing the same in such belief,[1] and the effect of placing in the hands of its dealer and peddler vendees the instrument and means of committing a fraud upon a substantial portion of the consuming public by enabling them to offer and sell its perfumes as and for products made in Paris, France, and have the further tendency to divert business from and otherwise injure and prejudice competitors who deal in perfumes in fact there made and imported therefrom and rightfully and lawfully represent the same as such, and those who deal in domestic perfumes without any such misrepresentation; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondent, C. H. Selick, Inc., a corporation, charging it with

[1] The complaint alleging that many of the trade and consuming public in the United States believe that French perfumes, long widely popular and in demand therein, are superior to the domestic perfumes and purchase the French imported product in preference to those made in the United States.

the use of unfair methods of competition in commerce, in violation of the provisions of section 5 of the said act of Congress.

Thereupon the said respondent entered its appearance and filed its answer to the said complaint, and hearings were had before an examiner of this Commission duly appointed, and testimony was offered and received in support of the charges of the complaint and testimony was offered and received in defense of the charges of the complaint, all of which said testimony was reduced to writing and filed in the office of said Commission; and thereafter the proceeding came on for final hearing on the record, briefs and oral arguments, and the Commission having duly considered the same and being fully advised in the premises, now makes this its report and states its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in the City of New York, in said State. Respondent is now and for more than fifty years has been engaged in the business of compounding perfumes and other toilet preparations and in the sale of said products chiefly to retail dealers and peddlers located in various States of the United States. Respondent causes said products, when so sold, to be transported from its place of business in the City of New York, State of New York, into and through other States of the United States to said vendees at their respective points of location. In the course and conduct of its said business, said respondent is in competition with other corporations and with partnerships and individuals engaged in the sale of perfume and other toilet preparations in commerce between and among the various States of the United States.

PAR. 2. All of respondent's products are manufactured in the United States. The body of its perfumes is alcohol, to which are added certain essential oils purchased by respondent from Norda Essential Oil & Chemical Co. of New York City. These essential oils are produced in a large number of foreign countries, including France. The respondent, in compounding its products, uses the cheaper grades of essential oils and the process of manufacture consists of adding to the essential oils alcohol and water in the approximate proportion of 4 ounces of the essential oil to 1 gallon of alcohol. The product is then filtered, bottled, labeled, and packed for shipment.

PAR. 3. The perfumes sold by respondent in interstate commerce, as in paragraph 1 hereof set out, are sold principally in 1-ounce bottles and vials, and principally under two brands. For more than two years such bottles have been labeled, and still are labeled: "L'Are Narcisse—Jardeau—New York, Paris" and "Lucienne—Paris, New York". From July, 1928, to November, 1928, bottles carrying the label "L'Are Narcisse—Jardeau—New York, Paris" bore on their reverse side the word "France" on a label.

Circulars carrying reproductions of such labels and bottles are distributed to the trade by respondent. Respondent packs said bottles of perfume so labeled, in certain containers upon which respondent causes to be set forth the word "Paris" printed in conspicuous letters. Respondent delivers said perfumes so bottled, labeled, designated, and packed as aforesaid, to its aforesaid vendees, and said perfumes still so bottled, labeled, designated, and packed are by said vendees displayed, offered for sale, and sold to the consuming public.

Respondent, prior to the issuance of the complaint herein, manufactured and still manufactures perfumes for one J. Cohen, of New York City, who resells such perfumes to retail stores, many of which are located outside of the State of New York, and respondent, for the account of said J. Cohen, ships such perfumes in bottles to such customers, and directly to said J. Cohen, which bottles carry the following described label furnished to respondent by said J. Cohen: "Jay's Narcissus—Jay et Cie—Paris, New York".

Respondent, prior to the issuance of the complaint herein, manufactured and still manufactures perfumes for Cosmetics & Drugs, Inc., of Boston, Mass., which perfumes said Cosmetics & Drugs, Inc., resells, chiefly to retail stores located outside of the State of New York, and respondent, for the account of said Cosmetics & Drugs, Inc., ships such perfumes in bottles to such customers of said Cosmetics & Drugs, Inc., and directly to said Cosmetics & Drugs, Inc., which bottles carry the following described label furnished to respondent by said Cosmetics & Drugs, Inc.: "Bea Van et Cie—Paris, New York".

The above are complete descriptions of the labeling on said four brands of perfume, except that bottles bearing the label "Bea Van et Cie—Paris, New York" carry an additional label reading, "Eau de Toilette". Nowhere on the labels or on the boxes containing the individual bottles of said four brands of perfumes does the name of respondent appear.

PAR. 4. Perfumes manufactured in France have for many years enjoyed widespread popularity, good will, and demand among the

trade and consuming public throughout the United States, many of whom believe and consider that perfumes manufactured in France are superior in quality to perfumes manufactured in the United States and that such perfumes manufactured in France have other characteristics more desirable than have perfumes manufactured in the United States, and many of the consuming public throughout the United States purchase perfumes manufactured in France and imported into the United States, in preference to purchasing perfumes manufactured in the United States.

PAR. 5. Respondent does no business of any kind whatsoever, and has never done any business, in Paris, France, or in France; about sixty days prior to August 19, 1929, and after the issuance of the complaint in this proceeding, respondent entered into an arrangement with a French firm not engaged in any branch of the perfumery business, whereby said firm undertook, for a stated sum, to send to respondent samples of French perfumes and samples of French bottles. All of the transactions between respondent and said French firm during the time such arrangement was in effect, up to August 19, 1929, consisted of a letter written by respondent to said firm, a letter sent by said firm to respondent, and a cablegram.

PAR. 6. Respondent's aforesaid labeling, advertising, and designating of its perfumes as set out herein have the capacity and tendency to mislead and deceive its vendees and many of the consuming public into the belief that its said perfumes are manufactured or compounded in Paris, France, or in France, and imported into the United States, and to purchase said perfumes in that belief, when in truth and in fact respondent's said perfumes are manufactured and compounded in the United States.

PAR. 7. Further, respondent's said labeling, advertising, and designating of its perfumes, as set out herein, places in the hands of aforesaid dealer and peddler vendees the instrument and means whereby said dealers and peddlers may commit fraud upon a substantial portion of the consuming public by enabling said dealers and peddlers to represent, offer for sale, and sell respondent's said perfumes as perfumes manufactured or compounded in Paris, France, or in France.

PAR. 8. There are among the competitors of respondent, referred to in paragraph 1 hereof, many who deal in and sell perfumes manufactured or compounded in Paris, France, or in France, and imported into the United States, and who rightfully and lawfully represent said perfumes to be such. There are others of said competitors who deal in and sell perfumes manufactured and compounded in the United States and who in no manner represent their

said perfumes to be manufactured or compounded in Paris, France, or in France. Respondent's acts and practices hereinbefore set out, tend to divert business from and otherwise injure and prejudice said competitors.

CONCLUSION

The practices of the respondent, under the conditions and circumstances set forth in the foregoing findings are all to the prejudice of the public and of respondent's competitors and are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and evidence submitted, briefs and arguments of counsel, and the Commission having made its findings as to the facts and entered its conclusion that the respondent has violated section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, C. H. Selick, Inc., its representatives, agents, servants, employees, and successors, forthwith cease and desist from using directly or indirectly the word "Paris" and/or the word "France" on the labels of bottles of perfumes manufactured or compounded by it and by it sold, offered for sale, or shipped in interstate commerce, and/or on the containers of said bottles of perfume unless such perfumes be manufactured or compounded in Paris, France, or in France, and from, in any other way, labeling, advertising and designating its perfumes sold, offered for sale, or shipped in interstate commerce, as being manufactured or compounded in Paris, France, or in France, unless such perfumes be manufactured or compounded in Paris, France, or in France.

And it is further ordered, That the respondent, C. H. Selick, Inc., shall, within 60 days from service upon it of a copy of this order, file with this Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order by this Commission herein set forth.

IN THE MATTER OF

THE ANITA INSTITUTE

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

Docket 1690. Complaint, Aug. 29, 1929—Decision, Feb. 1, 1930

Where a corporation engaged in the manufacture and sale of so-called "Nose Adjusters"; in advertising and describing the same in newspapers, magazines, periodicals and other publications of general circulation in the United States, and in catalogues, pamphlets, letters, circulars, and other forms of written, mimeographed or printed matter,

Stated, represented, and promised that said device would give the purchaser a perfect looking nose, correcting all defects excepting those resulting from injuries requiring surgical operations, the fact being that the device could not change the shape of any bone or bony structure, or make any changes in shape or appearance that can only thus be made;

With the tendency and capacity to mislead and deceive the public and prospective purchasers into believing that purchasers and users would receive the full benefits thus set forth and to injuriously affect the public, prospective purchasers, and competitors by inducing purchase of said article for the sake of benefits that can not be realized, and thereby divert purchasers from competitors; to their prejudice and that of the public:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Edward L. Smith for the Commission.

Herrigel, Lindabury & Herrigel, of Newark, N. J., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New Jersey corporation engaged in the manufacture of so-called Anita Nose Adjusters and in the sale of said devices to purchasers among the various States and Territories and with principal office and place of business in Newark, with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in advertising its said devices in newspapers, magazines, periodicals, and other publications of general circulation in the United States and in catalogues, pamphlets, letters, circulars, and other forms of written, mimeographed, or printed matter, falsely and misleadingly represents that the device in question, used in accordance with in-

structions, will, in the case of any purchaser, reshape the nose to beautiful proportions while the purchaser sleeps, is safe and comfortable, with speedy permanent results guaranteed, will transform a poorly shaped into a well-shaped nose in from one to six weeks, no matter how irregular the fleshly contour thereof, accomplishing its results by raising, compressing, or distributing the unshapely flesh, filling in the hollows, and thereby effecting a normal formation, and making prominent nasal bones unapparent or less prominent; that said device is a result of inspiration followed by years of study in physiological research, is recognized by medical authorities as being the simplest, most scientific, and most effective method of correcting almost any nasal irregularity, easily, painlessly, and with lasting result, and that until the invention of such device it was necessary to resort to expense and painful operations in order to overcome the slightest deformity of this character; the facts being that the utmost benefits which can possibly accrue from the the use thereof is some slight temporary change in appearance, for a very few out of any group of 100 users, and that for the vast majority of all users and for all except very small classes of mild forms of defects, "said statements, representations, and promises are false, deceptive and misleading, and the use of said devices can not cause and does not cause any real, substantial, or permanent improvement in the condition, appearance, or looks of the nose; and when in truth and in fact the use of the said devices will not bring about the correction of deformities without resort to operations."

The use of such trade practices and methods of competition, namely, the making and publication of such false, deceptive, and misleading statements, representations, and promises, as charged, has a tendency and capacity to and will probably mislead and deceive the public and prospective purchasers into the erroneous belief that such statements, etc., are true, that purchasers and users of the device will, through use thereof, permanently transform their defective noses into perfectly shaped noses with resulting great facial improvement, and that use of such devices will make resort to surgical operations to overcome nasal deformities, unnecessary for the purchasers and further, use of said trade practices and methods, as charged, has the tendency and capacity to and probably will injuriously affect the public, prospective purchasers and competitors by inducing purchase of said device on account of such false, deceptive, and misleading statements, etc., for the sake of the supposed benefits which can not in fact be realized, to induce purchase thereof in preference to competitive products in order to

receive such supposed benefits, and to divert from competitors, prospective purchasers through the making and publication of the aforesaid false, deceptive, and misleading statements, representations and promises; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

The above case coming on for consideration before the Commission on a written petition this day filed by respondent for leave to withdraw its answer heretofore filed to the complaint herein and for further leave to file in lieu thereof the certain amended answer to such complaint, and the Commission having inspected such petition and proposed amended answer, and having duly considered the same,

It is ordered, That said petition be, and hereby is, granted, and said answer heretofore filed to the complaint herein be, and hereby is, withdrawn.

It is further ordered, That respondent be permitted to file said proposed amended answer to such complaint and that the same be, and hereby is, noted as so filed.

And now the Commission having duly considered the said amended answer, together with the admissions of fact set forth therein, and also the express consent incorporated therein that the Commission may make, enter, issue, and serve upon respondent an order to cease and desist from the unfair methods of competition charged in the complaint herein; the Commission accepts such admissions and consent with all their force and effect under the rules of the Commission.

And now this case coming on for final determination before the Commission, upon the complaint herein, and the amended answer thereto, and the Commission being sufficiently advised in the premises, is of the opinion that the method of competition and the acts, policy, and practices of respondent, The Anita Institute, as alleged in the complaint and admitted by the amended answer to such complaint, are in violation of, and prohibited by, the Federal Trade Commission Act. Wherefore, the Commission now makes this its report in writing as to said respondent, stating herein its findings as to the facts and its conclusion thereon. The Commission finds the facts as so charged and admitted to be as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Anita Institute, is a corporation organized, existing, and doing business since February 7, 1923, under the laws of the State of New Jersey, with its principal office and place of business in Newark in said State. The name under which the company was organized, viz, The Anita Company, was changed on June 19, 1928, to the present name of the company, to wit, The Anita Institute. It now is and ever since its organization has been engaged in the business of manufacturing and selling between and among the various States and Territories of the United States and the District of Columbia certain devices which it calls Anita Nose Adjusters, causing the said devices, when so sold, to be transported from its place of business in Newark, N. J., to purchasers located in States other than the State of New Jersey. In the course and conduct of its business respondent has been and now is in competition with other corporations and with partnerships and individuals engaged in the manufacture and sale of competitive articles manufactured for the same or similar purposes and uses as those for which the said devices of the respondent are manufactured and sold.

PAR. 2. In its said business and for the purpose of inducing prospective purchasers to enter into contracts for the purchase of said devices offered for sale and sold by respondent and to pay the purchase price thereof, respondent causes advertisements and descriptions of such device to be inserted and made accessible to the public and to prospective purchasers, in newspapers, magazines, periodicals, and other publications of general circulation in the United States and in catalogues, pamphlets, letters, circulars, and other forms of written, mimeographed, or printed matter.

In such advertisements and descriptions, respondent makes the following statements, representations, and promises, to wit:

That the said patented so-called orthopedic device so being offered for sale and sold by respondent, the same being referred to and known by and under the name of "Anita Nose Adjuster", is, and by use in accordance with instructions given by respondent may and will in the case of any purchaser become effective to give to such purchaser a perfect-looking nose; that such device when so used, corrects all ill-shaped noses, except such as may result from injury and necessitating surgical operations.

When in truth and in fact the said orthopedic device produced and offered for sale and sold by respondent, to wit: The "Anita Nose Adjuster", can not be effectively used to change the shape of any bone or bony structure of the nose or to make any change or

changes in the shape or appearance of the nose that can be made only by changing the shape of a bone or bony structure thereof.

PAR. 3. The use by respondent of said trade practice and method of competition, to wit: The making and publication of said false, deceptive, and misleading statements, representations, and promises, as above set forth, has the tendency and capacity to mislead and deceive the public and prospective purchasers, and will probably mislead and deceive the public and prospective purchasers, into the erroneous belief:

1. That such statements, representations, and promises are true.

2. That purchasers and users of said nose-shapers will be enabled thereby to, and thereby will, receive the full benefits so set forth in such extravagant, inaccurate, false, and misleading statements and representations.

PAR. 4. The use by respondent of said trade practice or method of competition, to wit: The making and publication of said extravagant, deceptive, and misleading statements, representations, and promises as above set forth, has the tendency and capacity to, and probably will, injuriously affect the public, prospective purchasers and the competitors of respondent in the particulars as follows:

1. To induce the public and prospective purchasers to purchase and pay for said article or articles solely on account of said extravagant, deceptive, and misleading statements, representations, and promises, and for the sake of the said pretended benefits that can not in fact be realized by such purchasers.

2. To divert from competitors of respondent prospective purchasers, solely by the making and publication of such extravagant, deceptive, and misleading statements, representations, and promises.

PAR. 5. Such acts and practices of the respondent are all to the prejudice of the public and of competitors of respondent, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

CONCLUSION

The respondent, The Anita Institute, by reason of the facts set out in the foregoing findings, has been and is using unfair methods of competition in commerce in violation of the provisions contained in section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the amended answer of respondent, and the admissions of fact incorporated in such amended answer, together with the consent therein set forth for the issuance and service of an order to cease and desist, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", therefore,

It is now ordered, That respondent, The Anita Institute, its agents, representatives, and employees, cease and desist from stating or representing by written or printed statements or representations, with or without pictorial representations accompanying the same, published in newspapers or other publications, or upon labels, cartons, letterheads, or other literature, by oral statements, or otherwise, in aid of offering for sale or selling in interstate or foreign commerce, that its certain orthopedic device produced and offered for sale and sold by respondent, to wit: A certain "nose-shaper" called the Anita Nose Adjuster can be effectively used to change the shape of any bone or bony structure of the nose or to make any change or changes in the shape or appearance of the nose that can be made only by changing the shape of a bone or bony structure thereof.

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

IN THE MATTER OF

MARGARET HILGERS, DOING BUSINESS UNDER THE TRADE NAME OF M. TRILETY

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

Docket 1572. Complaint, Feb. 25, 1929—Decision, Feb. 3, 1930

Where an individual engaged in the sale of nose shapers, ear shapers, and other orthopedic devices, together with certain soaps, and other toilet articles; in advertising and describing the same, together with pictorial representations, in newspapers and magazines, periodicals and other publications of general circulation in the United States and in the several parts thereof, and in order and other blanks, catalogues, pamphlets, letters, circulars, and other forms of written, mimeographed, or printed matter,

(*a*) Stated, represented, and promised that a certain patented "nose-shaper" would give the purchaser a perfect-looking nose, correcting all ill-shaped noses except such as resulted from injury and required surgical operations, the fact being that said device could not be used effectively to change the shape of any bone or bony structure, or to make any changes in shape or or appearance that can only thus be made;

(*b*) Stated, represented, and promised that its "Universal Earshaping treatment for correcting prominent or outstanding ears", would, without slightest pain or inconvenience, cause such "cauliflower or outstanding" ears permanently to assume a position close to the head and completely and permanently correct the defect, the fact being that said treatment could not be effectively used to cause outstanding ears continually to assume a position near the head otherwise than by the continuous application and use of its so-called "Oro";

With the tendency and capacity to mislead and deceive the public and prospective purchasers into believing that buyers and users of said device and treatment would receive the full benefits set forth, and to injuriously affect the public, prospective purchasers and competitors through thereby inducing purchase thereof and thus diverting purchasers from competitors; to their prejudice and that of the public:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Martin A. Morrison for the Commission.

Green, Blakeslee & Anderson, of Binghamton, N. Y., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an individual engaged in the sale of certain nose-shapers and other orthopedic devices, and ear-shapers, together with certain

soaps, cold cream, and other toilet articles, with office and principal place of business in Binghamton, N. Y., with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, represents in her advertisements that the patented so-called orthopedic device, referred to as a "nose-shaper" will be effective in the case of any purchaser in giving such purchaser a perfect-looking nose, that such device "corrects all ill-shaped noses, quickly, painlessly, permanently, and comfortably at the home of such purchaser; and that a purchaser who has a hump, hook, low, flat, broad, or pug nose, or a long, pointed, crushed, or broken nose, may and will by the use of said device, to wit, said nose-shaper, according to such directions so given by respondent, permanently transform such nose in such way and to such degree as to have thereafter great facial improvement and a perfect-looking nose"; the facts being that the most that can be claimed is slight temporary change of appearance of the nose in relatively very few cases and that in the case of a vast majority of users of the device and in relation to most defects, the statements are false, deceptive, and misleading, and that the use of the device can cause no substantial or permanent improvement in the condition or appearance thereof.

Respondent further, as charged, in advertising her "Universal Earshaping treatment for correcting prominent or outstanding ears", alleged to be caused by the lack of a certain "fold" found in perfectly formed ears, said treatment involving the use of a material named "Oro", falsely represents that through the use of said "Oro", the ingredients of which will not irritate the most sensitive skin, "cauliflower or outstanding ears" will be caused permanently to assume a position close to the head and the defect will be completely and permanently cured.

The making and publication of such false and deceptive and misleading statements, representations, and promises by respondent, as alleged, has the tendency and capacity to and probably will mislead and deceive the public and prospective purchasers into believing the aforesaid statements, etc., to be true, and injuriously affect said public and purchasers and respondent's competitors through inducing the purchase of said articles in reliance upon the truth of such statements, etc., and in preference to competitive articles by reason of said false statements, etc., and thereby to divert prospective purchasers from respondent's competitors; all to the prejudice of the public and of such competitors.

Upon the foregoing complaint the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

The above case coming on for consideration before the Commission on a written petition this day filed by respondent for leave to withdraw its answer heretofore filed to the complaint herein and for further leave to file in lieu thereof the certain amended answer to such complaint, and the Commission having inspected such petition and proposed amended answer, and having duly considered the same,

It is ordered, That said petition be, and hereby is, granted, and said answer heretofore filed to the complaint herein be, and hereby is, withdrawn.

It is further ordered, That respondent be permitted to file said proposed amended answer to such complaint and that the same be, and hereby is, noted as so filed.

And now the Commission having duly considered the said amended answer, together with the admissions of fact set forth therein, and also the express consent incorporated therein that the Commission may make, enter, issue, and serve upon respondent an order to cease and desist from the unfair methods of competition charged in the complaint herein; the Commission accepts such admissions and consent with all their force and effect under the rules of the Commission.

And now this case coming on for final determination before the Commission, upon the complaint herein, and the amended answer thereto, and the Commission being sufficiently advised in the premises, is of the opinion that the method of competition and the acts, policy, and practices of respondent, Margaret Hilgers, doing business under the trade name of "M. Trilety", as alleged in the complaint and admitted by the amended answer to such complaint, are in violation of, and prohibited by, the Federal Trade Commission Act. Wherefore, the Commission now makes this its report in writing as to said respondent, stating herein its findings as to the facts and its conclusion thereon. The Commission finds the facts as so charged and admitted to be as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Margaret Hilgers, is engaged in the certain commercial enterprise and business that is hereinafter set forth, having and maintaining her office and principal place of business in the city of Binghamton, in the State of New York. Respond-

ent carries on her said business under the trade name of "M. Trilety", and is known to the public and to her patrons and prospective patrons by that name.

PAR. 2. Respondent, Margaret Hilgers, so doing business under said trade name of "M. Trilety", at her said office and principal place of business is engaged in the business of offering for sale and selling, and furnishing and delivering to purchasers thereof, certain nose-shapers and other orthopedic devices and certain ear-shapers, together with certain soaps, cold cream, and other toilet articles, to persons hereinafter referred to as purchasers, such purchasers residing and being and remaining at various places in the several States of the United States.

PAR. 3. Respondent, when a purchaser enters into a contract for the purchase of any article or articles, undertakes to sell and deliver such article or thing to such purchaser, through the United States mails, or otherwise.

Thereafter, in pursuance of such contract, respondent furnishes and causes to be transported from her said place of business, or from some other place of business maintained by respondent for that purpose, through the United States mails, or otherwise, into and through the several States of the United States, and to be delivered to such purchaser at the place of residence of such purchaser the article or articles so sold to such purchaser.

PAR. 4. In all of her said business, and in the several parts thereof, and in the procurement of purchasers of said articles so being offered for sale and sold by respondent, respondent is in competition with other persons, firms, associations, and corporations who are engaged in offering for sale and selling to the public like or competitive articles for the same or similar purposes and uses, and in advertising for and procuring purchasers thereof, and agreeing to transport and deliver such competitive or similar articles to the several purchasers thereof by the United States mails, or otherwise, into and through the several States of the United States to the respective places of residence of such several purchasers, such purchasers residing, being and remaining at various places in and throughout the several States of the United States.

PAR. 5. At various points in and throughout the several States of the United States the competitors of respondent referred to in paragraph 4 of these findings, have been and are engaged in said competitive activities and business, as described in said paragraph 4, and are offering for sale and selling, furnishing, transporting through the United States mails, or otherwise, and delivering such articles from their respective places of business in the several States of the United States into and through the several States of the United

States to the respective places of residence of the several purchasers of such articles in and throughout the several States of the United States.

PAR. 6. In all her said business and for the purpose of inducing prospective purchasers to enter into contracts for the purchase of such article or articles so being offered for sale and sold by respondent, and to pay the purchase price thereof, respondent causes advertisements and descriptions of such articles to be inserted and made accessible to the public and to prospective purchasers, in newspapers, magazines, periodicals, and other publications of general circulation in the United States and in the several parts thereof, and in order blanks and other blanks, in catalogues, pamphlets, letters, circulars, and other forms of written, mimeographed, or printed matter.

In all such advertisements and descriptions and in all said written, mimeographed, or printed matter, together with pictorial representations incorporated therein, respondent makes the statements, representations, and promises thereinafter referred to, as follows:

1. That a certain patented so-called orthopedic device, which is one of the said articles so being offered for sale, and sold by respondent, the same being referred to and known by and under the name of nose-shaper, is, and by use in accordance with instructions given by respondent may and will in the case of any purchaser become effective to give to such purchaser a perfect-looking nose; that such device when so used, corrects all ill-shaped noses, except such as may result from injury and necessitating surgical operations.

In truth and in fact the certain orthopedic device produced and offered for sale and sold by respondent, to wit: A certain nose-shaper can not be effectively used to change the shape of any bone or bony structure of the nose or to make any change or changes in the shape or appearance of the nose that can be made only by changing the shape of a bone or bony structure thereof.

2. That one of the articles so being offered for sale and sold by respondent is the Universal Earshaping treatment for correcting prominent or outstanding ears; that such defect of ear, commonly known as cauliflower or outstanding ear, is caused by the lack in such ears of a certain "fold" which is found in perfectly formed ears and which is a continuation of the large ear cartilage; that such treatment involves the use of a certain material sold under the name of Oro, the ingredients of which will not irritate the most delicate skin, and by the use of which, without the slightest pain or inconvenience, cauliflower or outstanding ears, may and will be caused permanently to assume a position close to the head, and such defect of said ears to be completely and permanently corrected.

In truth and in fact the certain Universal Earshaping treatment for correcting prominent or outstanding ears or cauliflower or outstanding ears, offered for sale and sold by the respondent under the name of Oro, can not be effectively used to cause ears that are outstanding from the head continuously to assume a position near to the head of the user of said treatment, otherwise than by the continuous application and use of said Oro for that purpose.

PAR. 7. The use by respondent of said trade practice and method of competition, to wit: The making and publication of said false, deceptive, and misleading statements, representations, and promises, as above set forth, has the tendency and capacity to mislead and deceive the public and prospective purchasers, and will probably mislead and deceive the public and prospective purchasers, into the erroneous belief—

1. That such statements, representations, and promises are true.

2. That purchasers and users of said nose-shapers will be enabled thereby to, and thereby will, receive the full benefits so set forth in such extravagant, inaccurate, false, and misleading statements and representations.

3. That purchasers and users of said Universal Earshaping treatment for correcting prominent or outstanding ears and of said material, designated as Oro, will be enabled thereby to, and thereby will, correct said alleged defect in their prominent or outstanding ears, to wit: The absence of said fold found in normal or well-shaped ears, and will cause such prominent or outstanding ears permanently to assume a position close to the head, and such quality or feature of being prominent or outstanding to be completely and permanently eradicated from such ears.

PAR. 8. The use by respondent of said trade practice or method of competition, to wit: The making and publication of said extravagant, deceptive, and misleading statements, representations, and promises as above set forth, has the tendency and capacity to, and probably will, injuriously affect the public, prospective purchasers and the competitors of respondent in the particulars as follows:

1. To induce the public and prospective purchasers to purchase and pay for said article or articles solely on account of said extravagant, deceptive, and misleading statements, representations, and promises, and for the sake of the said pretended benefits that can not in fact be realized by such purchasers.

2. To divert from competitors of respondent prospective purchasers, solely by the making and publication of such extravagant, deceptive, and misleading statements, representations, and promises.

PAR. 9. Such acts and practices of the respondent are all to the prejudice of the public and of competitors of respondent, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

CONCLUSION

The respondent, Margaret Hilgers, doing business under the trade name of "M. Trilety", by reason of the facts set out in the foregoing findings, has been and is using unfair methods of competition in commerce in violation of the provisions contained in section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the amended answer of respondent, and the admissions of fact incorporated in such amended answer, together with the consent therein set forth for the issuance and service of an order to cease and desist, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", therefore,

It is now ordered, That respondent, Margaret Hilgers doing business under the trade name of "M. Trilety", her agents, representatives, and employees, cease and desist from stating or representing by written or printed statements or representations, with or without pictorial representations accompanying the same, published in newspapers or other publications, or upon labels, cartons, letterheads, or other literature, by oral statements, or otherwise, in aid of offering for sale or selling in interstate or foreign commerce, the products hereinafter designated or referred to:

1. That the certain orthopedic device produced and offered for sale and sold by respondent, to wit: A certain nose-shaper can be effectively used to change the shape of any bone or bony structure of the nose or to make any change or changes in the shape or appearance of the nose that can be made only by changing the shape of a bone or bony structure thereof.

2. That the certain Universal Earshaping treatment for correcting prominent or outstanding ears or cauliflower or outstanding ears, offered for sale and sold by the respondent under the name of Oro, can be effectively used to cause ears that are outstanding from the head continuously to assume a position near to the head of the user of said treatment, otherwise than by the continuous application and use of said Oro for that purpose.

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

IN THE MATTER OF

UNIVERSAL LOCK-TIP CO., A CORPORATION, AND KATHERINE GAY, DOING BUSINESS UNDER THE TRADE NAME AND STYLE, UNIVERSAL LOCK-TIP CO., AND EMILE W. S. GAY, OTHERWISE KNOWN AS WILLIAM S. GAY, EACH INDIVIDUALLY AND AS AN OFFICER OF UNIVERSAL LOCK-TIP CO., A CORPORATION

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

Docket 1578. Complaint, Mar. 9, 1929—Decision, Feb. 4, 1930

Where a corporation with neither assets of any practical value, nor business, organized to exploit a patented shoe-lace fastener; the organizer of said corporation, president thereof, and owner of the patent concerned; and said organizer's wife, acting as dummy director of the corporation; in soliciting through letters, circulars, etc., sale of shoes, laces, and/or other merchandise, and certificates of stock or interest in the corporation and their individual businesses, and with intent to defraud and deceive members of the public,

(*a*) Represented that the purchaser of a pair of shoes or other merchandise at certain assigned prices would be given free a certain number of shares of preferred and common stock in the corporation, the fact being that consideration for the stock was included in the price of the shoes or other merchandise;

(*b*) Falsely represented that the corporation was engaged in the manufacture of the patented shoe laces concerned, had no indebtedness, owned free and clear assembling machinery with a capacity of 300 gross per day, and that there were orders on hand "for over 3,000,000 gross of lock tip laces", and represented that said corporation had been assigned the patent rights covering said fastener, for 51 per cent of its common stock, the fact being that its aforesaid president and organizer had assigned to it only a non-exclusive license to use the patent involved;

(*c*) Set forth upon their letterheads depictions of a 2-story building as the factory of said corporation, represented as owned by it free and clear, and the words "Reference any bank in Boston or any mercantile agency", the facts being that the building at the address given, that of said corporation and the aforesaid individuals, was a 4-story structure in which they occupied only 3 to 5 rooms and that neither said corporation nor said president and organizer ever owned any building in Boston or elsewhere, and that the corporation had no financial standing or reputation which would permit a reputable bank or mercantile agency to recommend it in answer to inquiries and that its aforesaid president and organizer refused to give pertinent information on behalf of the public, to the state department of public utilities and to representatives of local mercantile agencies;

(*d*) Falsely stated that they had been successful in solving every financial problem to date, that they had "the money assured for the automatic

tipping machines" and "orders on hand right now that will make the common shares worth several hundred dollars each the minute production is started on a scale", that dividend checks would come to purchasers by reason of the acquisition of the stock offered, that the shares would be listed on the Boston and New York stock exchanges, and that the offer of the stock, along with the shoes or other merchandise, presented "an opportunity to make $20,000 within the next few months without the investment of a single penny", by reason of the alleged glowing prospects for the patented shoe lace, represented as bound to become a bigger success than any other industry founded upon a patented idea; and

Where said individuals,

(c) Filed certificates and did business under the same trade name as that of said corporation and at the same address, in connection with the sale of shoes, shoe laces, and/or other merchandise, and purported certificates of stock or interest in said corporation, and/or patent, or similarly entitled corporation (no longer in existence) through false statements and representations such as above set forth;

With the tendency and capacity to mislead and deceive members of the public into purchasing shoes and shoe laces and other merchandise from them in reliance on such statements and with the effect of so doing:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors in the sale of shoes, shoe laces, and other merchandise, and constituted unfair methods of competition.

Mr. Edward E. Reardon for the Commission.

Mr. Joel Eastman, of Boston, Mass., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Universal Lock-Tip Co., a Massachusetts corporation with principal place of business in Boston, respondent Katherine Gay, a married woman, doing business on her separate account as Universal Lock-Tip Co. and also a director of respondent corporation, and respondent Emile W. S. Gay, president and treasurer of said corporation, with offering false and deceptive inducements to purchase products dealt in, in combination and cooperation with one another, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, engaged in the sale of shoes with "Lock-Tip Shoe Laces", i. e., shoes laces equipped with a patented fastener covered by patent owned by respondent Emile Gay, at a price of $6.50 per pair, with which respondents include 25 shares of the preferred stock and 250 shares of the common stock of the aforesaid corporation (without good will and substantially without assets and with the

sales of its share certificates enjoined in several States), as charged, make and have made extravagant and fraudulent statements, representations, and promises concerning the aforesaid shares, some of which statements, etc., "are false in fact and others of which are known by respondents at the time they are made to be impossible of fulfillment, as inducements to the public to purchase the shoes and shoe laces".

Among the statements and representations thus referred to, made to the public through circulars and circular letters and verbally through agents and employees to purchasers and prospective purchasers throughout the various States, as set forth in the complaint, "are statements that the respondents have on hand orders for shoe laces supplied with the patented string fastener, that will make the common shares of respondent corporation worth several hundred dollars each the minute production is started on a scale; that one of the leading department stores in Boston has sold over 100 gross of the said shoe laces; that the said shares will be listed on the Boston and New York stock exchanges, when there is no apparent or reasonable ground or basis for such representation; that the said shares of stock, alleged to be given free with the purchase of each pair of shoes, represent shares in the patent above mentioned, which representation is false in that the said respondent corporation is not the owner of the patent or any part thereof; that a large chain store corporation will sell 10,000,000 pair a year; and the following: Reference: Any bank in Boston or any mercantile agency"; the fact being that no banking institution in Boston and no mercantile agency in the United States could reasonably since on or about March, 1925, when respondents commenced their operations herein concerned, to the "date hereof, on an inquiry, recommend said corporation, as to its financial soundness or standing, to anyone desiring to enter into business relations with said corporation"; and also made similar other such statements as: "I offer you an opportunity to make $20,000 within the next few months without investing a single penny".

The use, as alleged, "by respondents in combination and in cooperation with each other of the above-mentioned statements and representations concerning the shares of the respondent corporation and concerning the shoes and shoe laces sold by them as above, and the sale of said shoes in the manner above described, has the tendency and capacity to mislead and deceive purchasers thereof into the belief that the said statements and representations are true; among others that the said shares of respondent corporation are shares in the said patent and that they are given free with the purchase of the

shoes and shoe laces, when in fact the price of $6.50 which is paid by members of the public for each pair of the shoes includes more than a reasonable profit to the respondents in the sale thereof, and includes a consideration for the said shares; and, relying upon that belief, into purchasing shoes from respondents in preference to shoes fairly represented and sold at a reasonable profit by respondents' competitors"; all to the injury and prejudice of the public and of said competitors, engaged in the sale and delivery of shoes and shoe laces to members of the public.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondents, Universal Lock-Tip Co., a corporation, and Katherine Gay and Emile W. S. Gay, otherwise known as William S. Gay, charging the said corporation and the said Katherine and Emile W. S. Gay, each individually and as an officer of the said corporation with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondents having filed their answers herein hearings were held and evidence was thereupon introduced on behalf of the Commission and of the respondents before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for a final hearing on the briefs and oral argument, and briefs having been filed on the part of the Commission and counsel for the Commission having been heard on oral argument, and no one appearing for the respondents, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Universal Lock-Tip Co., is a corporation, organized on or about January, 1924, under the laws of the Commonwealth of Massachusetts, having at all times since its organization a principal place of business in Boston, in said Commonwealth.

PAR. 2. Respondent, Emile W. S. Gay, sometimes known as William S. Gay, is the president and treasurer of respondent corporation. Respondents William S. Gay and Katherine Gay are directors of respondent corporation.

PAR. 3. On February 10, 1920, respondent William S. Gay was granted Letters Patent No. 1,330,256 by the United States Patent Office for a string fastener, and he has been ever since and is now the owner and holder of said patent.

The said string fastener is adapted for use as a tip on the ends of shoe laces to keep the ends in a fixed point.

PAR. 4. Since on or about February, 1920, respondent William S. Gay has made various efforts to utilize said patent and the rights thereunder, so that it would be profitable in use on shoe laces tipped with said fastener, when sold in competition with laces sold otherwise tipped that are now and have been in satisfactory use since many years prior to and since said respondent's patent was granted. All of said respondent's said efforts have been unsuccessful.

PAR. 5. Respondent, William S. Gay, caused the respondent corporation to be organized in January, 1924, for the purpose of exploiting his said invention as a shoe-lace fastener and he assigned to the said corporation a license to use his said patent for the consideration to him of 51 per cent of its common stock. No other shares of the capital stock of the corporation were sold for cash except $100 worth, and this money was later refunded to the purchaser of the stock. The corporation has never done any business.

PAR. 6. Each year since its organization the respondent corporation has filed in the office of the secretary of the Commonwealth of Massachusetts, as required by the laws of that State, a certificate of its condition, signed by its officers. Each year the said certificate has been a duplicate of the one filed the previous year.

PAR. 7. In the certificate of the condition of respondent corporation filed as above, March 2, 1929, the only assets of the corporation are stated to be: Claim, $2,000; good will, $20,400; profit and loss, $2,700. The liabilities are stated as, capital stock, $25,000 for shares of capital stock with par value; 13,572 shares without par value and $100 received for stock subscription.

PAR. 8. The respondent corporation has never done business and has no such asset of value as good will. The above-mentioned claim for $2,000 has been abandoned as to collection for at least approximately four years or more and the said claim is conceded by respondent, William S. Gay, to be practically worthless. The license above mentioned, assigned to the corporation to use the said patent, is not an exclusive license and is practically of no value as an asset.

The respondent corporation has not had since its organization and has not now any assets of any substantial value.

PAR. 9. The only officers of respondent corporation are the respondent, William S. Gay, and his wife and daughter. His wife and

daughter are what are known as dummy directors of respondent corporation and they have never known anything of the corporation or of its affairs.

PAR. 10. November 5, 1924, respondent William S. Gay filed in the office of the city clerk of Boston, Mass., a married woman's certificate, purporting to be signed by respondent, Katherine Gay, to do business on her separate account at No. 168 Dartmouth Street in said Boston, the proposed business to be that of a mail order business (shoes) under the name Good Heart Shoe & Last Manufacturing Co.

May 26, 1925, respondent, William S. Gay, filed in the office of the said city clerk another married woman's certificate purporting to be signed by respondent Katherine Gay to do business on her separate account at No. 168 Dartmouth Street, Boston, the proposed business to be that of mail order, shoes and shoe laces, under the name of Universal Lock-Tip Co.

Respondent, William S. Gay, also filed on October 2, 1926, in the office of the said city clerk, a certificate to do business as an individual under the name, Universal Lock-Tip Co., at said No. 168 Dartmouth Street. April 24, 1929, the last-mentioned certificate was still in force.

No. 168 Dartmouth Street in said Boston is also the address of the principal place of business of respondent corporation, Universal Lock-Tip Co.

On April 8, 1929, subsequent to the service of the complaint and answer herein, respondent, William S. Gay, filed in the office of said city clerk certificates purporting to be signed by respondent Katherine Gay withdrawing the above-mentioned married woman's certificates.

PAR. 11. Respondent, Katherine Gay, wife of respondent, William S. Gay, testified as a witness in this proceeding and stated that she was accustomed to sign whatever papers respondent William S. Gay presented to her for signature and that she never asked or knew what the contents of the papers were that she so signed; that she did not know whether or not she had signed the above married woman's certificates or any of respondent corporation papers and that she did not know whether or not she was an officer of respondent corporation; that she might have heard of respondent corporation but that she did not know that she had heard of it; that she never had anything to do with the sale of or delivery of shoes or shoe laces from No. 168 Dartmouth Street, in said Boston, and knew nothing about any such business in the sale of shoes and shoe laces.

PAR. 12. At all times since November 5, 1924, the respondent William S. Gay has been and now is engaged in the business of the sale of

shoes and shoe laces, both as a business purporting to be conducted in the name of respondent Katherine Gay under the above-mentioned married woman's certificates and on his own account under the same name as respondent corporation and all at the same address in said Boston.

PAR. 13. In the course of respondent William S. Gay's said business he has sent letters to members of the public throughout the United States offering to sell shoes in connection with the sale of which he offered to give with each pair of shoes, sold at $6.50, 25 shares of the preferred capital stock and 250 shares of the common stock of respondent corporation. The said letters were written on printed letterheads carrying the name, Universal Lock-Tip Co., 168 Dartmouth Street, Boston, Mass., and the statement thereunder "*Reference any bank in Boston or any mercantile agency*" and were signed "William S. Gay, President."

PAR. 14. Among the statements made to members of the public in the letters above referred to were the following, in a letter sent by mail, dated, May 22, 1926:

I offer you an opportunity to make $20,000 within the next few months without investing a single penny.

I have invented and obtained a very valuable United States patent for a new shoe lace. Examine the tip of the attached sample and see what you think of the new invention.

This patent will make more millions in the long run than Henry Ford did with the automobile—and you have a chance to share in this money without it costing you a cent. You can't begin to imagine how readily tremendous large orders for these improved shoe laces can be secured from shoe manufacturers (*Five and ten thousand gross at a time*) at from three to four hundred per cent profit.

To increase production and market this invention on a large scale requires just about $2,500. To raise this amount without losing control of the business I am selling 1,000 pairs of high grade men's shoes, which I pay for with the patented laces instead of money. To those that send me an order for a pair of shoes I give, *absolutely free, 275 shares in my patent,* that is, in the *company,* to which I have assigned the patent rights for 51 per cent of its common stock.

It is the profit on the sale of the shoes that supplies the capital, which is fast being raised thanks to the unanimous response to the few letters I sent out. *The shares given are 25 eight per cent preferred and 250 common shares. The par value of the preferred shares is $10 each*—the shares will be listed in the Boston and New York stock exchanges.—*Then watch them jump in value.* I have orders on hand right now that will make the common shares worth several hundred dollars each the minute production is started on a scale. I am putting within your reach a businesslike opportunity to make $20,000 within the next few months, *that-much-sure,* possibly a great deal more. *Nothing-can-stop-it. It is the small, used every day, inexpensive article that makes the biggest fortune, and this improved shoe lace is such a positive success that they will never be made fast enough.*

The minute your order gets here you become one of the fortunate shareholders in an enterprise that is bound to become one of the biggest successes America has ever seen. *Yes—bigger than Gillette safety razor or Eastman kodak, or any other industry founded upon a patented idea.* It is very important that you send in the order immediately, as the number of letters sent out is limited.

I strongly urge you to make it at least two pairs—more if you can—but get at least 550 shares and you will have a real worth-while investment. Just think of the income—at least several hundred dollars a month, based on facts, figures, and thousands of orders that I have on hand. I am so sure of it that I positively guarantee big dividends within three months of starting production.

This is the one big chance of your life * * * it means a beautiful home, a first-class automobile, trips to Europe with your family and best of all an income that will make you independent of the whole world. *But-you-must-act-now* * * * to-morrow may be too late, and for you to participate in this extraordinary opportunity your order can't arrive too soon. For your convenience an envelope already addressed is inclosed. If you use it—*right away—this instant* * * * you will never worry again for the future. Come in on this patent for all you can and make a fortune—*But-you-must-mail-your-order in-to-day.*

Sincerely yours,

(Signed) WILLIAM S. GAY, *President.*

PAR. 15. The said respondent William S. Gay sent out with the letters, referred to above, circulars containing statements, among others, as follows:

UNIVERSAL LOCK-TIP CO.

(Incorporated under the laws of the State of Massachusetts)

Capital Stock, $250,000

DIVIDED AS FOLLOWS

25,000 shares 8 per cent preferred of the par value of $10 each and 500,000 *common shares.* The company reserves the right to purchase back the preferred shares on any interest day, paying for same at the rate of $12 per share.

The Universal Lock-Tip Co. is engaged in the manufacture of the patented Lock-Tip Shoe Laces, the only adjustable shoe laces in the world and conceded to be the best tip known.

The said circular contained also a letter signed, William S. Gay, president in which, among others, were the following statements:

The Universal Lock-Tip Co. is engaged in the manufacture of Lock-Tip Shoe Laces, the only adjustable and wear proof laces on the market.

There are over 3,000 traveling shoe salesmen waiting for samples and ready to give us a countrywide distribution, they are more than glad to carry the Lock-Tip as a side line on a straight commission basis.

The company has no indebtedness and owns free and clear assembling machinery of a capacity of 300 gross per day.

PAR. 16. The letters containing the circular referred to and the above-mentioned statements were sent out to the general public from

on or about May 22, 1926, in very large number until July 14, 1928. After June 14, 1928, other forms of letters were sent out in large number to the general public, including letters such as those referred to below.

PAR. 17. Among the letters sent out to the general public by respondent William S. Gay was a letter dated January 26, 1929, containing, among others, statements as follows:

MY DEAR FRIEND MR. (——— ———):

You are indeed to be congratulated on your good judgment in backing the Lock-Tip patent. *We have been successful* in solving every financial problem to date. We *now* have the money assured for the automatic tipping machines.

We are obliged, however, to delay for a little while the carrying out of the plans, but I assure you that this is done to protect your interest. *I respectfully call your attention as a shareholder to the following:* We are still obliged to have the Tips turned out by two outside firms, and we must at once become independent of them. One is the United Shoe Machinery Corporation, here in Boston, that turns out for us the little sleeve or tube that goes on the lace. It is made on the same machine that makes eyelets for shoes. The other is the Hartford Machine Screw Co., of Hartford, Conn., which makes the tips with the threaded part. The reason that we must delay starting volume operations until we are independent of these corporations is that they can arbitrarily raise the price and so increase the cost as to render us unable to produce the lace in competition with other laces.

There are two courses open to us: One is to go ahead and take the risk of making a misstep after having surmounted almost unsurmountable obstacles. The other, and it is the course it has been decided upon, is to purchase two Browne & Sharpe automatic screw machines, costing $3,100, and also one eyelet-making machine to make the tube part, involving a cash payment of $1,400—making a total of $4,500 necessary to assure us of an unlimited production of tips and independence of increased cost for all times.

We are at present making a little money by filling a few orders for Lock-Tips, but at this rate it would take too long to accumulate $4,500. Following the urging of a substantial number of shareholders who have called here at the factory of late, it has been decided as a last recourse, to submit the situation to the shareholders and make one more and final appeal to their loyalty for immediate action.

To obtain quicker results, I have added to the number of articles that you may purchase as follows:

Shoes	$6.50
A carton of 50 pairs Lock-Tip laces, assorted	5.00
Two beautiful white broadcloth shirts, your size	5.50
Six pairs gents' silk stockings	5.00
Three pairs ladies' silk stockings	5.00

You will receive 275 shares, common and preferred as before, and in the same proportions.

PAR. 18. The above letter dated January 26, 1929, and signed, William S. Gay, was on a printed letterhead carrying the name and address, Universal Lock-Tip Co., 168 Dartmouth Street, Boston,

Mass., and the statement thereunder, "Reference, any bank in Boston or any mercantile agency." To the left of the corporation name on the said letterhead was a picture of a 2-story building, on the roof of which extending across the entire top of the building was a large sign with the words "Universal Lock-Tip Company" and underneath the picture of the said building was the statement: This modern factory owned free and clear by the Universal Lock-Tip Co.

PAR. 19. Among the letters sent out by respondent William S. Gay on letterheads of the respondent corporation and having thereon the picture of a factory with the sign Universal Lock-Tip Co. thereon and the statement underneath the picture, This modern factory owned free and clear by the Universal Lock-Tip Co., were letters sent by mail to members of the public in the form of a letter sent dated February 9, 1929, signed William S. Gay and containing, among others, the following statements:

MY DEAR MR. (——):

It would give me the greatest of pleasure if I could inclose a dividend check with this letter, the dividend checks that are coming to you, and that in my enthusiasm I promised a little too soon, just because I felt at the time that I had my hand on them. I assure you, however, that I will send you dividend checks, many and many of them, and big ones, soon.

We have made wonderful progress (we now own a modern factory, free and clear, fully equipped—have orders on hand for over 3,000,000 gross of Lock-Tip laces—and are about to engage in such intensive distribution that will put Lock-Tip laces in every pair of shoes in America). *But we must first finance the payment of six power automatic double-speed tip-attaching machines now being built.* The cost of this absolutely necessary equipment is $3,800. Rather than run the risk of losing everything, of mortgaging the factory and patents, as a last step, I have secured authorization to double our capitalization and have started to sell the present shareholders another 1,000 pair of shoes on the same basis as before.

More than ever, I can positively state that *we will make millions and millions of dollars and I am right glad to know that you are going to share in this wealth.*

Loyal shareholders, and their friends, that send in an order *now* for a pair of shoes will receive, as before, *absolutely free* 275 shares, consisting of 25 eight per cent preferred and 250 common. *I take full personal responsibility for guaranteeing that they will be listed on the Boston and New York Stock Exchanges.*

Send in your order *now.* You relied on your judgment before when you backed this wonderful little patent. So much more reason why you should do so now that we are sure of success. I appeal to you as an intelligent man not to postpone a decision that involves the welfare of the rest of your life. *Not to postpone! Not to delay! But for your own sake. To send in your order this very minute. Do so now.*

Yours for the biggest industrial success of this generation.

(Signed) WILLIAM S. GAY.

PAR. 20. The Department of Public Utilities of the Commonwealth of Massachusetts received the above-mentioned letter, dated February 9, 1929, signed, William S. Gay, inclosed in a letter from the addresses in California dated February 12, 1929. The letter of the said addressee was directed to the Finance Department, State of Massachusetts, and was as follows:

Please give me some information in regards to a company under the name of the Universay Lock-Tip Co., 168 Dartmouth Street, Boston, Mass. What I would like to know if that company is a legitimate firm and if it is not, why are they allowed to sell stock in the manner that they do. If your department is not prejudiced against the firm that I have named above, I would like to know if I should put any more money into that scheme. I am inclosing a letter that I just received from Mr. William S. Gay treasurer and president of the Universal Lock-Tip Co. Please give me your opinion the way you see that proposition. My name and address:

(—— ——.)

Any information that you can give me will be appreciated very much. Do they really have a plant of some kind and are they really producing what the advertisement calls for. Hoping to hear from you in the near future I am

Yours truly,

(—— ——.)

The Department of Public Utilities of Massachusetts has received by mail many letters, or complaints, similar to the above letter of February 12, 1919, from California, the Middle West, the South, and from practically the entire country during the last four or five years and the Department of Public Utilities has investigated the financial standing and method of the respondent corporation in disposing of its shares of stock and has been refused pertinent information respecting the subject of its inquiry by William S. Gay, its president and respondent herein.

PAR. 21. In response to orders received from addressees of letters located in States other than Massachusetts, such as those described in paragraphs 13, 14, 15, 16, 17, 18, and 19 hereof, respondents through said William S. Gay have sent to said addressees from Boston, Mass., by mail or express shoes ordered by them and have delivered therewith certificates for shares of the preferred and common stock of the respondent corporation purporting to be under the seal of the respondent corporation and purporting to be signed by its president and treasurer, William S. Gay.

Some of these stock certificates when so delivered by respondents had the word "incorporated" deleted from the seal impressed on them and had the additional statement printed on their face: "Which shares of capital stock represent undivided shares in United States Patent No. 1,330,356 and in all earnings present and future of said

patent." In some instances certificates of shares of capital stock signed "E. Wm. S. Gay, president and treasurer", in another corporation, a corporation organized under the laws of the State of Maine, called Universal Lace Co., which is now dissolved and has ceased to exist, were sent to purchasers of shoes by said William S. Gay.

PAR. 22. The filing of the certificates mentioned in paragraph 10 hereof, under which the individuals Gay, referred to therein, were represented to be doing business at No. 168 Dartmouth Street, Boston, under the same name as the respondent corporation, was fraudulent and done with the intent to confuse and deceive members of the public regarding the identity of the person or corporation with whom they were corresponding and dealing in connection with the sale of shoes or other merchandise and the shares of stock delivered therewith.

PAR. 23. The statements in letters such as referred to in paragraphs 14 to 19 hereof, "Reference any bank in Boston or any mercantile agency", constituted the representation that the respondent corporation was engaged in business and had a financial ability and standing on account of which it would be recommended by banks or mercantile agencies in Boston as a proper and reliable concern for members of the public to enter into business relations with. Such representation was untrue. The respondent corporation was not engaged in business. It had no financial standing or reputation which would permit a reputable bank or mercantile agency to recommend it in answer to any inquiries made of them concerning the respondent corporation. Its president, said William S. Gay, refused to give information on behalf of the public to the Department of Public Utilities of Massachusetts and to representatives of mercantile agencies in Boston, which were pertinent to such representations by respondent. Such representations were made with the fraudulent intent to deceive members of the public and to cause them to believe that respondent corporation was of such financial standing and ability with regard to the representations and with regard to respondents, their integrity and financial standing that the members of the public to whom the said letters were addressed would believe the statements and have confidence in the integrity and financial standing of respondents and, relying thereon, to become purchasers of the merchandise and shares of stock in connection therewith offered in said letters.

PAR. 24. The statements in letters to members of the public referred to in paragraph 14 hereof, "I offer you an opportunity to make $20,000 within the next few months without investing a single

penny," were representations of a material fact, made by respondent corporation and respondent William S. Gay with reasonable cause to know that they were untrue and that they were false representations of a material fact and with the intent to defraud and deceive members of the public. The statements in such letters that the shares of capital stock of the respondent corporation which were represented to be given "free" were false. The consideration for such shares was included in the price charged for the shoes with which said shares were delivered, and the shares were not given free.

PAR. 25. The statements in such letters that the shares of capital stock represented to be given free with the purchase of shoes were in a company to which respondent William S. Gay had assigned patent rights for 51 per cent of the company's common stock were false and made with the intent to deceive members of the public. The respondent William S. Gay at no time assigned the patent rights in his said patent to the respondent corporation. He assigned to said corporation and it had only a nonexclusive license to use the said patent in the manufacture and sale of shoe laces.

PAR. 26. The statements in such letters that the shares of capital stock referred to therein of the respondent corporation would be listed in the Boston and New York stock exchanges were false and were made with the intent to deceive and defraud members of the public. The respondent William S. Gay made such statements in the name of respondent corporation with knowledge that there was no reasonable basis for believing that the said shares would be so listed, but, on the contrary, well knowing that it was reasonable to believe that such shares would not be listed at any time by said stock exchanges.

PAR. 27. The statements made in letters and circulars referred to in paragraph 15 hereof, that the Universal Lock-Tip Co. was engaged in the manufacture of the said shoe laces were false and were made with knowledge of their falsity, in that the said respondent corporation was never engaged in business of any kind and the statement in letters and circulars referred to in paragraph 15 hereof, that the respondent corporation had no indebtedness and owned free and clear assembling machinery were false and made with fraudulent intent in that the said company did have indebtedness and did not own any machinery.

PAR. 28. The statements made in letters such as those described in paragraph 17 hereof, on letterheads purporting to be of the respondent corporation that, "We have been successful in solving every financial problem to date. We now have the money assured for the automatic-tipping machines," were false and were made with knowl-

edge of their falsity on the part of the respondent corporation and respondent William S. Gay. The said statements were contrary to fact.

PAR. 29. The representations on letterheads, purporting to be of the respondent corporation, of a 2-story building as the factory of the respondent corporation which it was represented to own free and clear were false and made with fraudulent intent to deceive the public in that the building which it purported to represent was a 4-story building at No. 168 Dartmouth Street, Boston, and was the business address of the respondent corporation and of respondent William S. Gay who occupied only three to five rooms in said building. Neither respondent corporation nor respondent William S. Gay ever owned any factory building in Boston or elsewhere.

PAR. 30. The representations made in the letters referred to in paragraph 19 hereof, that dividend checks are coming to members of the public referred to in said letters because of their acquisition of capital stock in respondent corporation, in connection with shoes which they had purchased, were false representations of material facts in that the respondent corporation was not doing business, had never done business, had no reasonable prospect of doing business, and had never earned dividends on its capital stock.

PAR. 31. The statements made by respondents in the letters above referred to in paragraphs 14 and 19 hereof, that the respondents "Have orders on hand right now that will make the common shares worth several hundred dollars each the minute production is started on a scale", and "We * * * have orders on hand for over 3,000,000 gross of Lock-Tip laces" were untrue and were false representations of a material fact affecting the purchase of the shoes and affecting the value of the shares of capital stock of the respondent corporation which were offered to the public and sold and delivered in interstate commerce from the place of business of the respondents in Boston, Mass., to addressees of the said letters, purchasers of the said shoes and shares of stock, located in various States of the United States other than the State of Massachusetts.

PAR. 32. The use by respondents of the above false and fraudulent statements in letters to members of the public in connection with the sale of shoes and shoe laces and shares of capital stock of respondent corporation delivered in connection therewith by respondents had the tendency and capacity to mislead and deceive members of the public as aforesaid and members of the public were misled and deceived thereby into purchasing shoes and shoe laces and other merchandise from the respondents in reliance thereon.

CONCLUSION

The practices of the respondents under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondents' competitors in the sale of shoes, shoe laces, and such other merchandise and are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and upon the answer of the respondents filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is now ordered, That the respondent corporation, Universal Lock-Tip Co., and respondents Katherine Gay and Emile W. S. Gay, do cease and desist from representing, in commerce between the various States of the United States or between any of the States and the District of Columbia, to the members of the public in letters or circulars sent through the United States mail or otherwise or in any other manner:

1. That the respondent corporation is engaged in the business of selling shoes or shoe laces or other merchandise or that the said corporation has any asset, as good will, by reason thereof, unless and until such is the fact.

2. That, in connection with such business aforesaid, the respondent corporation is the assignee of the patent rights of respondent William S. Gay for a patented string fastener or shoe lace tip, unless and until such is the fact.

It is further ordered, That respondents William S. Gay and Katherine Gay, in commerce between the various States of the United States or between any of the States and the District of Columbia, do cease and desist from:

1. Doing business on their separate individual accounts under the name Universal Lock-Tip Company or Universal Lock-Tip Co. while the respondent corporation is in existence under said name.

2. Making statements in letters or circulars addressed to members of the public, or otherwise, concerning the respondents or any of

them in connection with such business aforesaid, in which banks or mercantile agencies are given as references unless and until such bank or agency has given, in writing, to said respondents, its consent to the use of such statement.

3. Using the certificates of stock of respondent corporation or other corporation in connection with such business aforesaid and falsely representing that such shares represent an undivided or other interest in, or under any patent rights not belonging to such corporation.

4. Making and publishing statements or representations in letters to members of the public, or otherwise in connection with such business, that the shares of capital stock of respondent corporation will be or may be listed on the New York, Boston, or other stock exchanges unless and until such statements or representations are duly authorized by the officials thereof.

5. Representing in statements published in letters or otherwise that respondent corporation has, in connection with such business, orders on hand for the sale of shoes or other merchandise or that dividends have been earned by it on its shares of capital stock unless and until such statements or representations are true, and from making any other such false or misleading statement as a statement of fact or as to the happening of any future event concerning such business of the respondent corporation or its said capital shares or of the said business of the respondents Gay or either of them unless and until the said statement of fact is true, or the happening of such future event is reasonably based upon facts set forth by respondents in connection therewith and such future event is clearly and unmistakably shown not to be an already accomplished fact.

It is further ordered, That the respondent corporation, Universal Lock-Tip Co., Katherine Gay and Emile W. S. Gay, shall, within 30 days after the service upon them of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which they have complied with the above order to cease and desist.

Syllabus

IN THE MATTER OF

NOAH ROARK, FRED VEST, AND T. ARNOLD, KNOWN AND DOING BUSINESS AS THE MERCHANTS' COOPERATIVE ADVERTISING SERVICE, AND W. M. MASON, AND F. E. PHILLIPS, EMPLOYEES OF SAID COPARTNERSHIP

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

Docket 1534. Complaint, Apr. 25, 1929[1]*—Decision, Feb. 6, 1930*

Where a firm engaged in the sale to merchants of silverware, and coupons for redemption by it, in articles thereof, for said merchants' customers, under a plan in accordance with which the merchants were to give customers coupons in proportion to purchases made; and said firm's salesman; in soliciting the sale of said coupons and silverware,

(*a*) Falsely represented the firm as connected with a certain manufacturer of silverware, and operating an advertising campaign therefor in lieu of previous advertising conducted through high-priced magazines, in the expectation that introduction of high-grade silverware in the homes would increase greatly public appreciation thereof and the market therefor, and their silverware as "1847 Rogers" and of high quality and like that displayed, the facts being that its goods, made by a concern with the name "Rogers", were greatly inferior in value and public esteem, and in quality, to said "1847" ware, and also to samples exhibited;

(*b*) Represented price of coupons to retailers as merely sufficient to cover cost of printing retailer's name, and the silverware as donated by the manufacturer, and that retailers purchasing as many as 10,000 coupons would be furnished with a 26-piece set for exhibition, and for their personal property, the facts being that said cost was much less than the charges made, sums thus received exceeded the retail price of comparable ware, and there was furnished such purchasers only a 6-piece set of inferior quality, in a pasteboard box unfit for exhibition;

(*c*) Represented retailers' customers as entitled to select any desired piece covered by necessary coupons, and that 1,000 would secure a full set of silverware, the facts being that delivered coupons showed reservation by the company of right of substitution and that several thousand coupons were necessary for the set referred to;

(*d*) Represented that advertising matter would be furnished and that redemption of coupons would be absolutely "free", the facts being that quantity and quality of advertising matter furnished was not as represented and that charges were made to those desiring to redeem coupons, in accordance with a specification upon a portion thereof not displayed to retailers at time of sale, and, while represented as merely to cover costs of package and delivery, equaled or approximated cost of silverware actually delivered;

[1] Supplemental complaint.

(e) Represented that silverware supplied in redemption would be sent to retailer of particular customer for delivery to customer in retailer's store, and that inspection of coupons and of said display set would be permitted before payment of balance due on coupons, the facts being that redemption was made at the firm's own office only, and that coupons and silverware were sent C. O. D., with no inspection permitted; and

(f) Falsely represented certain retailers as purchasers of coupons in accordance with plan herein, and that use of coupons and subsequent delivery of premiums would be a sales asset to the retailer purchasers and reflect credit upon them;

With the intent and result of bringing about purchase by numerous retailers in various States of said coupons in reliance upon said false representations, or a part thereof; and

(g) Refused to deliver coupons after full payment therefor, in some cases, and in others refused, neglected or omitted either to deliver premiums upon receipt of coupons or to respond to correspondence demanding the same;

With the result that certain retailers who had given out said coupons with goods sold, were injured in the confidence and good will of their customers and suffered financial losses, as did others who decided not to distribute the same, customers were induced to buy goods in the hope of obtaining the premiums in question and suffered loss through failure and refusal to deliver the same or through delivery of premiums of much less worth than they had been led to believe would be given to them, and with the direct tendency to lessen and destroy the confidence of the purchasing public in the giving of premiums in connection with the competitive distribution of goods and to prevent and hinder concerns doing a legitimate coupon and premium business and their agencies, from securing distribution and sales by employing said method of competition in business; and

Where an individual engaged as The Merchants' Cooperative Premium Association in the furnishing of coupons to retail merchants, to be given to their customers with purchases made, as a means of building and stimulating the merchants' trade through subsequent redemption, by such merchants, of coupons for cash, or for silverware purchased from said individual; and thereafter the aforesaid firm, a competitor,

(h) Adopted the trade name The Merchants' Cooperative Advertising Service, with the result that the close resemblance in sight, sound and meaning, and character of business, caused, and was calculated to cause, confusion in the minds of customers and prospective customers of both concerns; and

(i) Represented to prospective purchasers that its firm was consolidated or affiliated with or identical with the aforesaid older concern, and in other respects confused the identity of the two organizations or falsely alleged the discontinuance of the older;

With the capacity and tendency to create confusion in the minds of retail merchants, customers or prospective customers of said firm, and in the minds of such portion of the public as purchased of such merchants, and with the unfair intent and effect of misleading and deceiving such merchants and customers into the mistaken belief that in dealing with said firm they were dealing with the aforesaid older concern; in derogation of the public interest:

Held, That such acts and practices unfairly diverted trade from competitors, to their prejudice and that of the public and constituted unfair methods of competition.

Mr. Henry Miller for the Commission.
Mr. Noah Roark, of Dallas, Tex., for respondents.

SYNOPSIS OF COMPLAINT [1]

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents Noah Roark, T. Arnold, and Fred Vest, partners, competitively engaged as the Merchants' Cooperative Advertising Service, at Dallas, for upwards of two years last past, in the sale to retail merchants of coupons to be given by them to their customers, and to be redeemed by said partnership in certain articles of silverware, and respondents W. M. Mason and F. E. Phillips, with misrepresenting business connections and nature of operations, and source or origin and quality of products dealt in, offering deceptive inducements to purchase through misrepresenting nature, terms and value of premiums, claiming indorsements or successes not secured, declining unfairly performance of its undertakings, simulating trade name of competitor, and misrepresenting own business as competitor's, and misrepresenting competitor's business, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, engaged as above set forth, selling their coupons for from $3 to $4 a thousand, to be redeemed in articles as specified, "absolutely free," after distribution to the customers of respondents' merchant vendees, at the rate of one coupon to each 25-cent purchase, knowingly misrepresent their business connections, operations and premiums, with intent and effect of inducing retailers to purchase their coupons in reliance upon their said false representations, as follows:

(*a*) Alleged connection with a specified manufacturer;

(*b*) Their plan being that of said manufacturer;

(*c*) Their silverware as of high quality and as "1847 Rogers" silverware;

(*d*) Price of coupons covers merely cost of printing with name of retailer, and silver donated by the manufacturer;

(*e*) Retailer to receive, after purchase of 10,000 coupons or more, 26-piece set of silverware for exhibition and his personal property;

[1] Supplemental.

(*f*) Silverware given in redemption of same quality as that displayed to retailers by respondents;

(*g*) Retailer's customers entitled, within number of coupons necessary, to any piece of silverware selected;

(*h*) 1,000 coupons suffice to secure a full set of silverware;

(*i*) Certain specified retailers had purchased coupons in accordance with respondents' offer;

(*j*) Respondent to supply advertising matter;

(*k*) Redemption of coupons to be "absolutely free";

(*l*) Charges of 7 cents for 50 coupons and 1 cent per coupon merely to cover package and delivery cost of premiums to persons redeeming.

(*m*) Silverware supplied in redemption to be sent to the retailer from whom coupons received by the customer;

(*n*) Inspection of coupons and of set of silverware for display purposes to be permitted after initial cash payment and before payment of balance due;

(*o*) Use of coupons and subsequent delivery of premiums to be a sales asset to retailers buying same; and

(*p*) Other false and misleading statements not otherwise specified.[8]

Respondents further, as charged, in certain cases refused to deliver coupons after full payment had been made therefor, and in other cases refused delivery of premiums upon receipt of coupons or neglected or omitted either to deliver premiums or to respond to correspondence demanding same. As a result of such failure of respondents to fulfill their obligations and honor their representations retailers who had given out the coupons were injured in the confidence and good will of their customers and, further, suffered financial losses, as did other retailers who decided not to distribute the coupons, and as did customers of retailers concerned, who were induced to buy goods at certain stores in the hope of obtaining the premiums offered, and either failed to receive the same or received premiums of far less worth than they had been induced "by the representations of respondents and by those of retail dealers made in reliance upon respondents' representations, to believe would be given to them."

The acts and practices of respondents, as alleged, "as hereinabove set out had a direct tendency to, and in part did, lessen and destroy the confidence of the purchasing public in methods of competing

[8] Full and substantially identical statement of the allegations contained in paragraphs (*a*) to (*o*) inclusive may be found in the findings at page 223, statement of facts having been stipulated.

in the distribution of goods by the giving of premiums and to prevent and hinder concerns doing a legitimate coupon and premium business and their agencies from securing distribution and sales by employing the said method of competition in business."

Respondents further, as charged, in adopting their said trade name of the Merchants' Cooperative Advertising Service adopted a name resembling that of a senior concern, a competitor, the Merchants' Cooperative Premium Association, trade name of one W. F. Sims, theretofore engaged in a coupon and premium business. The close resemblance of the name of the junior organization to that of the senior concern "in sight, sound, and meaning * * * together with the circumstance that both concerns deal in coupons represented as a means of stimulating trade" of retail merchant customers or prospective customers of said concerns, and the further fact that "the premiums receivable by the customers of said retail merchants are articles of silverware exclusively in the case of customers of said Sims, and in the case of customers of respondents are silverware in the main, are calculated to cause and have caused confusion in the minds of customers and prospective customers of both concerns in this paragraph named."

"Moreover," as charged, "respondents through their salesmen have untruthfully represented to merchants at points in Texas, Oklahoma, and New Mexico, prospective purchasers of redeemable coupons, that the said respondents are consolidated or affiliated with, or were the same concern as, the said so-called Merchants' Cooperative Premium Association," sometimes stating, furthermore, that the silverware was to be shipped from the Dallas office to the retail merchants' customers instead of being shipped from the office at Hillsboro to the retail merchant direct; and have at times declared that the said Merchants' Cooperative Premium Association had discontinued business.

"The acts of respondents and the similarity of the trade name of respondents to that of the aforesaid Sims", as alleged, "have the capacity and tendency and have been done and adopted with the intent, to create for the benefit of respondents a confusion in the minds of retail merchants, customers or prospective customers of respondents, and in the minds of such portion of the public as buy from said retail merchants, to the end that said retail merchants and their said customers shall be misled and deceived, and substantial numbers of the same have been misled and deceived, into the mistaken belief that they have been dealing with the aforesaid so-called Merchants' Cooperative Premium Association, whereas as a matter of fact they have been dealing with respondents. These said aims, results and ends

are unfair and contrary to the interests of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following:

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 24th day of September, 1928, issued and thereupon served its complaint herein, and thereafter on April 25, 1929, issued its supplemental complaint against, and caused same to be served as required by law upon, Noah Roark, Fred Vest, T. Arnold, W. M. Mason, and F. E. Phillips, respondents above named, in which supplemental complaint it is charged that respondents have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearances herein and filed answers to said complaint and supplemental complaint, hearings were had at which testimony was taken and evidence introduced by counsel for the Commission in support of the allegations of said supplemental complaint. At said hearings and before completion of the taking of such testimony and evidence, respondents entered of record herein their stipulation and agreement whereby, in lieu of further testimony and evidence in the proceeding and for the purpose of expediting the final disposition of the case, respondents admit all the allegations of said supplemental complaint and agree that said allegations may be accepted as true and that the Commission may so find them to be true and issue its order against respondents requiring them to cease and desist from the practices charged in the supplemental complaint. Respondents then waived their privilege of filing briefs and submitting argument to the Commission, and expressed their desire to have the Commission proceed to final disposition of the matter without further hearings; whereupon hearings for the taking of testimony and evidence were closed. The testimony and evidence received and said stipulation and agreement of respondents were reduced to writing and filed of record in the office of the Commission.

Thereupon this proceeding came on for decision upon the entire record, including the pleadings, testimony, evidence, and said stipulation and agreement of respondent; and the Federal Trade Commis-

sion, having duly considered the same, and being now fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Noah Roark, Fred Vest, T. Arnold, W. M. Mason, and F. E. Phillips, are persons who are, or respectively have been as hereinafter set forth, engaged in carrying on jointly, and with their office and place of business in the city of Dallas, State of Texas, the business of selling and distributing, in commerce among the States to members of the consuming public and to merchants in various lines of trade, silverware and coupons, the latter to be given by such merchants to their customers upon making purchases and to be redeemed by respondents at specified values in certain articles of silverware. In the course and conduct of said business respondents Vest and Roark cause, and all respondents at all times while connected with said business, as set forth below, have caused, said silverware and coupons, including advertising placards and leaflets, to be offered for sale and sold through traveling representatives or agents and by means of interstate correspondence with customers, to numerous purchasers located at divers points throughout various States; and in completing such sales cause and have caused said silverware and coupons, including said advertising placards and leaflets, to be shipped and transported from their place of business in Dallas, Tex., through and into other States of the United States to the respective purchasers thereof in such other States. In and while so carrying on said business all respondents have been, and respondents Vest and Roark still are, engaged in interstate commerce and in direct, active competition with many other persons, partnerships, and corporations also engaged in the sale and distribution of silverware and similar coupons and advertising matter between and among various States of the United States. Said business of respondents was conducted in and under the trade name "Merchants' Cooperative Advertising Service" from March, 1925, until May 7, 1929, when the trade name for said business was changed by respondents Vest and Roark to "Southwestern Sales Service", under which name said business is now and, since May 7, 1929, has been conducted. From March, 1925, to November 15, 1928, respondents Mason, Vest, Arnold, and Roark were copartners owning and operating said business under said trade name "Merchants' Cooperative Advertising Service", and respondent Phillips was during said time employed by said copartners as salesman in said business, and was

actively engaged therein as such salesman. On or about November 15, 1928, said partnership of respondents Mason, Vest, Arnold, and Roark was dissolved; whereupon a new partnership of respondents Vest and Roark was formed to take over and carry on said business, which new partnership is and, since on or about November 15, 1928, has been engaged in managing and operating said business in and under the name "Merchants' Cooperative Advertising Service", used until May 7, 1929, and thereafter in and under the name "Southwestern Sales Service", as hereinabove set forth. Since the inception of said partnership of respondents Vest and Roark and until March 1, 1929, respondent Arnold continued to be actively engaged in the operation of said business as a clerical employee of the new partnership. Respondent Phillips continued as a salesman actively engaged in carrying on aforesaid business and in offering for sale and selling said silverware and coupons, including advertising matter, until April, 1929, he being employed as such salesman by respondents Vest and Roark from the inception of their partnership until April, 1929. Throughout his connection with the business hereinabove described it was the duty of respondent Phillips and within the scope of his employment as salesman of both partnerships, to advertise, describe, represent, offer for sale, and sell said products for and on behalf of the respective partnerships conducting the business.

PAR. 2. The plan under which the above-described business is operated has been adhered to in principle since March, 1925, and is as follows: The respondents sell their said coupons to retail dealers at prices ranging from $3 to $4 per thousand, according to the number of said coupons purchased, upon terms of a substantial cash payment and the balance on delivery of the coupons, and contract with the said retail dealers to redeem said coupons "absolutely free," after the same have been distributed to customers with each cash purchase in the regular course of the retail dealer's business at the rate of one coupon to each 25-cent purchase, respondents promising to give, by way of redemption, certain specified articles of silverware or other specified articles, in return for specified numbers of coupons respectively. Respondents purchase their silverware, with a few exceptions, from jobbers located at Dallas, Tex., and from St. Louis, Mo., and purchase other goods for premium purposes from jobbers in avrious parts of the United States.

PAR. 3. In the solicitation of trade and for the purpose of selling said coupons and silverware certain representations were made by and on behalf of respondents, among which representations, made in part by written and printed matter including their form of contract, and in part by the oral statements of their representatives,

agents, and employees at various times, particularly during the course and conduct of the business prior to November 15, 1928, and to various retailers who were customers or prospective customers, were the following:

(*a*) That respondents were connected with a specified concern manufacturing silverware, sometimes informing retail dealers that the connection was that of the advertising department, and sometimes that the connection was that of advertising agency, whereas in truth they were and are wholly unconnected with any business house manufacturing silverware.

(*b*) That the plan offered by respondents was one adopted by the said silverware manufacturing concern strictly as an advertising campaign for the purpose of advertising its silverware in lieu of advertising theretofore conducted through high-priced magazines, and in the expectation that, by introducing high-grade silverware into homes, the public appreciation and the market therefor would be greatly increased. This representation was wholly untrue.

(*c*) That the said silverware was of a high quality and was "1847 Rogers" silverware, whereas in truth the silverware delivered was of low quality and made by a concern having in its corporate title the name "Rogers" but manufacturing goods greatly inferior to and having far less value and public recognition and esteem than "1847 Rogers" silverware.

(*d*) That the price of the coupons to the retail dealers was merely sufficient to cover the cost of having the coupons printed with the name of the individual retailer thereon and that the silverware was donated by the manufacturer, whereas the cost of printing the coupons was far less than the charge made therefor, and the sums received by respondents under their said plan exceeded the retail price of the same grade of silverware.

(*e*) That the individual retail dealers would be furnished free by respondents with a 26-piece set of silverware in case they severally bought 10,000 coupons or more, which sets of silverware were to be used for exhibition purposes and then become the property of the said respective retail dealers, whereas in truth only a 6-piece set of inferior quality in a pasteboard box unfit for exhibition was delivered to retail dealers purchasing 10,000 coupons and upward.

(*f*) That the silverware to be given in redemption of coupons and as special premiums to the retail dealers was of the quality displayed by respondent or their agents, whereas the quality of silverware delivered by the company to retail dealers and their customers was of far inferior quality to the sample displayed.

(*g*) That the customers of the retailers were entitled to any piece of silverware they might select within the number of coupons necessary for its redemption, whereas the coupons when delivered showed that the company reserved the right to substitute other articles for the one ordered by the customer.

(*h*) That 1,000 coupons would suffice to secure to a person redeeming a full set of silverware, whereas several thousand such coupons were necessary for such purpose.

(*i*) That certain specified retail dealers had purchased coupons in accordance with respondent's offer, whereas many of said specified dealers had not so purchased.

(*j*) That advertising matter would be furnished by respondents which as a matter of fact was not furnished in the quantity and quality represented.

(*k*) That the redemption of the coupons would be "absolutely free" by respondents, whereas a charge of 7 cents per 50 coupons was and is made by respondents to some persons desiring to redeem and a charge of 1 cent per coupon has been made to other persons desiring to redeem. These respective charges were and are specified upon a portion of the coupons not displayed to certain retail dealers when said coupons were sold to them by respondents.

(*l*) That the said charges of 7 cents per 50 coupons and of 1 cent per coupon were merely to cover the costs of package and delivery of the premiums to the persons redeeming, whereas the said charges were equal to or approximated the cost of the silverware as actually delivered by respondents.

(*m*) That the silverware to be supplied by the company in redemption of its coupons was to be sent to the retailer from whom the coupons had been received by the respective customers and that the delivery thereof to the customers was to be performed in the retailer's own store, whereas redemption was made only at the respondent's home office.

(*n*) That inspection of the coupons and of the aforesaid set of silverware for display purposes by the retail dealer purchasing same would be permitted before payment of the balance due upon the coupons, whereas the said coupons and silverware in truth were sent by respondents C. O. D., and no inspection thereof permitted.

(*o*) That the use of the coupons and the subsequent delivery of the premiums would be a sales asset to the retail dealers buying the said coupons and reflect credit upon them, which was in fact untrue.

PAR. 4. All of the representations specified in paragraph 3 hereof were made with the purpose and intent of inducing retailers to pur-

chase said coupons in reliance thereupon, and numerous retailers located in various States of the country actually purchased said coupons in reliance upon said representations, or part of them, which representations were in fact false and were known by respondents to be false.

PAR. 5. Respondents in certain cases refused to deliver coupons after full payment had been made therefor, and in other cases refused to deliver premiums upon receipt of coupons, or neglected or omitted either to deliver the premiums or to respond to carrespondence demanding the same.

PAR. 6. Certain retail dealers gave out the said coupons with goods sold and by reason of the failure or refusal of respondents to fulfill their obligations and to honor their representations, as hereinabove set forth, were injured in the confidence and good will sustained toward them by their customers, and suffered moreover, financial losses. Other retail dealers decided not to distribute the said coupons and also suffered financial loss thereby. Customers of retail dealers were induced to buy goods at certain stores in the hope of obtaining the premiums so offered by respondents and suffered loss by the failure and refusal in certain instances of respondents to deliver the premiums, and in other instances by a delivery of premiums of far less worth than said customers had been induced, by the representations of respondents and by those of retail dealers made in reliance upon respondents' representations, to believe would be given to them. The acts and practices of respondents as hereinabove set out had a direct tendency to, and in part did, lessen and destroy the confidence of the purchasing public in methods of competing in the distribution of goods by the giving of premiums and to prevent and hinder concerns doing a legitimate coupon and premium business and their agencies from securing distribution and sales by employing the said method of competition in business.

PAR. 7. Respondents began their business under the said name of Merchants' Cooperative Advertising Service in March, 1925. Prior thereto, to wit, in the spring of 1923, one W. F. Sims organized, at Hillsboro, Tex., a business under the name and style of Merchants' Cooperative Premium Association, whereby said Sims furnished coupons to retail merchants to be given to the customers of said merchants with purchases made by said customers, as a means of building and stimulating trade of the said retail merchants, the said coupons to be redeemed by the said merchants for cash or for silverware which said merchants purchased from the said Sims trading as aforesaid. Said Sims, since the summer of 1923, has been

continuously engaged in said described business under the said name of Merchants' Cooperative Premium Association, and the said business has necessitated and has resulted in the shipment of coupons, display and advertising matter and silverware from Hillsboro, Tex., to retail merchants located at points in the States of Oklahoma and New Mexico, as well as to various points in the State of Texas. At various points in all the said States the said Sims competes with the respondents. The aforesaid trade name of respondents, the junior concern, closely resembles the said Merchants' Cooperative Premium Association, the senior concern, in sight, sound, and meaning, and this together with the circumstance that both concerns deal in coupons represented as a means of stimulating trade of retail merchants, customers, or prospective customers of either or both of said concerns, and that the premiums receivable by the customers of said retail merchants are articles of silverware exclusively in the case of customers of said Sims, and in the case of customers of respondents are silverware in the main, are calculated to cause and have caused confusion in the minds of customers and prospective customers of both concerns in this paragraph named. Moreover, respondents through their salesmen have untruthfully represented to merchants at points in Texas, Oklahoma, and New Mexico, prospective purchasers of redeemable coupons, that the said respondents are consolidated or affiliated with, or were the same concern as, the said so-called Merchants' Cooperative Premium Association, sometimes stating, furthermore, that the silverware was not to be shipped from the Dallas office to the retail merchants' customers instead of being shipped from the office at Hillsboro to the retail merchant direct; and have at times declared that the said Merchants' Cooperative Premium Association had discontinued business.

PAR. 8. The acts of respondents and the similarity of the trade name of respondents to that of the aforesaid Sims, as in paragraph 7 hereof alleged, have the capacity and tendency, and have been done and adopted with the intent, to create for the benefit of respondents a confusion in the minds of retail merchants, customers or prospective customers of respondents, and in the minds of such portion of the public as buy from said retail merchants, to the end that said retail merchants and their said customers shall be misled and deceived, and substantial numbers of the same have been misled and deceived, into the mistaken belief that they have been dealing with the aforesaid so-called Merchants' Cooperative Premium Association, whereas as a matter of fact they have been dealing with respondents. Those said aims, results and ends are unfair and contrary to the interest of the public.

CONCLUSION

The false, misleading and deceptive acts and practices of respondents and the use by them of said trade name "Merchants' Cooperative Advertising Service" in simulation of the said trade name "Merchants' Cooperative Premium Association" of said Sims, all as and under the conditions and circumstances set forth in the foregoing findings as to the facts, unfairly divert trade from respondents' competitiors, are to the prejudice and injury of said competitors and of the public, and constitute unfair methods of competition in violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the entire record including the pleadings, testimony, and evidence taken, and the stipulation and admission of respondents of all the allegations of the supplemental complaint; and the Commission having made its findings as to the facts with its conclusion that respondents have violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondents Noah Roark, Fred Vest, T. Arnold, W. M. Mason, and F. E. Phillips, their agents, representatives, servants, and employees, cease and desist in connection with the sale and distribution in interstate commerce of silverware or coupons or similar products—

1. From making or causing to be made any false, misleading, or deceptive representation, statement or assertion, in any manner whatsoever, to the effect (*a*) that respondents, or their business, are connected or affiliated in any particular with a manufacturer of silverware; (*b*) that respondents plan of sale and distribution has been adopted, approved or recommended by the manufacturer of such silverware for advertising purposes or for any other purpose; (*c*) that said silverware is "1847 Rogers" silverware; (*d*) that the price of said coupons to the purchaser is merely sufficient to cover the cost of having the coupons printed with the name of the individual retailer-purchaser thereon, or that the silverware to be supplied in connection with said coupons is donated by the manufacturer thereof; (*e*) that the purchaser of said coupons will be furnished free any certain specified set of silverware for display or other purposes; (*f*)

that said silverware is of a certain specified quality or standard; (*g*) that the selection of silverware made by those returning said coupons for redemption is not subject to change by respondents; (*h*) that a specified number of coupons will suffice to secure a certain set or certain specified pieces of silverware to the person returning same for redemption; (*i*) that certain specified retail dealers have purchased coupons in accordance with respondents' plan or offer; (*j*) that a specified quantity or quality of advertising matter will be furnished by respondents to the purchaser of said coupons; (*k*) that respondents will redeem said coupons absolutely free or without any additional sums of money to be paid by the person returning said coupons for redemption; (*l*) that any sums of money required to be paid by the persons returning said coupons for redemption is merely to cover the costs of package and delivery of the premiums to such persons; (*m*) that delivery of the premiums to the persons returning said coupons for redemption will be made in the store of the retailer who purchased said coupons from respondents; (*n*) that inspection of the silverware to be delivered to the retailer-purchaser for display purposes will be permitted before such retailer will be called upon to make payment of the balance due upon said coupons; or (*o*) that said coupons or premiums to be supplied by respondents will be a sales asset to and reflect credit upon said retailer-purchaser.

2. From making or causing to be made any other false, misleading, or deceptive statement, representation, or assertion of or concerning said products, the plan or the methods used by respondents in the sale and distribution of said silverware and coupons and in the redemption of said coupons.

3. From making or causing to be made any false, misleading, or deceptive representation, statement or assertion, by means of the simulation of trade name or by any other means, to the effect that said business of respondents is connected or affiliated with the silverware and coupon business of W. F. Sims of Hillsboro, Tex., known by and conducted under the trade name "Merchants' Cooperative Premium Association".

It is further ordered, That respondents Noah Roark, Fred Vest, T. Arnold, W. M. Mason, and F. E. Phillips, shall within 30 days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF

NATHANIEL ABRAHAM, AN INDIVIDUAL, TRADING UNDER THE NAMES AND STYLES N. ABRAHAM COMPANY AND WAREHOUSE

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

Docket 1707. Complaint, Oct. 21, 1929—Decision, Feb. 12, 1930

Where an individual engaged in his own behalf in the sale of paint and other articles of merchandise to dealers and to the consuming public in various States, advertised certain paints, automobile oils, and varnishes under the captions "Army and Navy Surplus Supplies" and as "offered for sale at warehouse", notwithstanding the fact that said paints, etc., were not Army and Navy merchandise but ordinary commercial products purchased by him from manufacturers in the ordinary course of business; with the effect of misleading many dealers and many of the consuming public into believing that in dealing with him they were dealing directly with and purchasing said paints, etc., directly from the Government and/or that the merchandise was the property of the Government, made in conformity with its specifications and requirements and declared and sold by it as surplus property, and with the capacity and tendency so to mislead dealers and the consuming public and into purchasing said paints, etc., in that belief; all to the prejudice of the public and competitors:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. A. T. Lundquist for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in San Francisco under the trade names and styles "N. Abraham Company" and "Warehouse" in the sale of paint and other articles of merchandise to dealers and to the consuming public, with using misleading trade name and advertising falsely or misleadingly as to business status or advantages, and soure of products dealt in, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, falsely advertises certain paints as Army and Navy surplus supplies, together with the words, at the bottom thereof "This merchandise is now offered for sale at warehouse, 701 Battery Street, Corner Pacific."

The use, as charged, "by the respondent of the word 'warehouse' in connection with the phrase 'Army and Navy surplus supplies' or similar phrases has the capacity and tendency to and does mislead many dealers and many of the consuming public into the belief that in dealing with the respondent they are dealing directly with and purchasing said paints and other merchandise directly from the United States Government, and/or that the said merchandise is the property of the United States Government made in accordance and conformity with the specifications and requirements of said Government and declared and sold as surplus property by it, and to purchase respondent's said paint and other merchandise in that belief"; the fact being the paint in question "is not and never has been the property of the United States Government but is purchased by respondent from others and in the ordinary course of trade, and the respondent in offering for sale and selling the other merchandise is acting in his individual capacity and not for or on behalf of the United States Government"; to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon Nathaniel Abraham, an individual, trading under the names and styles N. Abraham Company and Warehouse, hereinafter referred to as respondent, charging him with unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Thereupon the respondent entered his appearance herein and an agreed statement of facts was made, executed, and filed in this proceeding in which it is stipulated and agreed by and between respondent and counsel for the Commission that the Federal Trade Commission may take such agreed statement of facts as the facts in this proceeding before the Commission and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto; and that said Commission may proceed upon said statement of facts and make its report in said proceeding, stating its findings as to the facts (including inferences which it may draw from said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs, and the Federal Trade Commission having duly considered the same makes this its report stating its findings as to the facts and conclusions as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Nathaniel Abraham, an individual, trading under the names and styles "N. Abraham Company" and "Warehouse," with his place of business in the city of San Francisco, State of California, is engaged in selling paint and other articles of merchandise to dealers and to the consuming public located and residing at points in various States of the United States. He causes the said paint and other merchandise, when so sold, to be transported from his said place of business in the city of San Francisco, State of California, into and through other States of the United States to purchasers thereof located in the States of Nevada, Oregon, Washington, and other States, and has been doing same for more than one year last past. In the course and conduct of his said business respondent is in competition with other individuals, partnerships, firms, and corporations also engaged in the sale, distribution, and transportation of like merchandise in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 thereof, respondent in soliciting the sale and offering the same for sale, has caused to be inserted in the San Francisco Examiner, a daily newspaper, and in the Pacific Rural Press, a farmers' periodical, publications having general circulation between and among various States of the United States, certain advertisements offering certain supplies for sale as Army and Navy surplus supplies. At the heading of said advertisements in large type appear the words

ARMY & NAVY SURPLUS SUPPLIES

At the bottom of said advertisements appear such notices as the following:

THIS MERCHANDISE IS NOW OFFERED FOR SALE AT
WAREHOUSE
701 BATTERY STREET, CORNER PACIFIC

WAREHOUSE
701 BATTERY STREET, SAN FRANCISCO
MAIL ORDERS PROMPTLY ATTENDED TO

Among the merchandise or supplies so offered for sale as Army and Navy surplus supplies are certain paints, automobile oils, varnishes, and other merchandise which in truth and in fact are not Army and Navy paints, automobile oils, and varnishes, or Army and Navy merchandise or supplies, but are ordinary commercial

paints, automobile oils, varnishes, merchandise, and supplies purchased by respondent from manufacturers in the ordinary course of business. As a result of such advertising and the use of the words "Army and Navy Surplus Supplies" and the word "Warehouse" in connection with the words "Army and Navy Supplies" in said advertising, respondent has received from customers and prospective customers located and residing at points in various States of the United States, a considerable number of orders for said products, which have been filled and transported from said place of business in the city of San Francisco, Calif., into and through other States of the United States to said vendees at their respective points of location.

PAR. 3. On or about October 10, 1928, a questionnaire by the Federal Trade Commission was directed to purchasers of respondent's goods, inquiring whether or not they thought they were dealing directly with a Government warehouse in making their purchases. Replies were received from a number of said purchasers answering in the affirmative.

PAR. 4. The use by the respondent of the words "Army and Navy Surplus Supplies", and the word "Warehouse" in connection with the words "Army and Navy Supplies" has the capacity and tendency to and does mislead many dealers and many of the consuming public into the belief that in dealing with the respondent they are dealing directly with and purchasing said paints and other merchandise directly from the United States Government, and/or that the merchandise is the property of the United States Government, made in accordance and conformity with the specifications and requirements of said Government, and declared and sold as surplus property by it, and to purchase respondent's said paint and other merchandise in that belief. In truth and in fact the paint so offered for sale by respondent is not and never has been the property of the United States Government, but is purchased by respondent from others and in the ordinary course of business, and the respondent, in offering for sale and selling the other merchandise, is acting in his individual capacity and not for or on behalf of the United States Government.

PAR. 5. The acts and practices of respondent, as described in paragraphs 2 and 3 hereof, are to the prejudice of the public and respondent's competitors.

CONCLUSION

The practices of respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation of

section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and the statement of facts agreed upon by respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent Nathaniel Abraham, individually, and trading under the names and styles N. Abraham Company and Warehouse, his agents, servants, and employees cease and desist:

From employing or using or displaying in newspaper or other advertising matter or on circulars, billheads, labels, or containers, or otherwise, the words "Army and Navy Surplus Supplies" or the word "Army" or the word "Navy" standing alone or in conjunction or in connection with the word "Warehouse" or with any other word or words, unless in truth and in fact paints, automobile oils, varnishes, and other merchandise advertised, offered for sale and sold by respondent in interstate commerce was purchased from the United States Government or manufactured by or for the United States Government.

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

IN THE MATTER OF

DIXIE PECAN GROWERS EXCHANGE, INC.

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

Docket 1548. Complaint, Nov. 8, 1928—Decision, Feb. 15, 1930

Where a corporation engaged as an ordinary commercial enterprise in the purchase of pecans from the growers and in the sale thereof direct to consumers and to wholesale and retail dealers, and, excepting a negligible quantity, neither growing nor producing said nuts directly nor through officers or stockholders but purchasing same from independent growers in due course of trade and commerce, and conducting its said business in competition with (1) those similarly engaged, without using the words "grower" or "exchange" as a part of their trade names, or any other words or pictorial arrangements importing that they were growers or cooperative associations thereof, and (2) cooperative grower associations engaged under State law in the sale of pecan nuts to wholesalers and jobbers and through the mails, under trade names including the aforesaid words, known to the industry and a substantial part of the consuming public as meaning such organizations;

(*a*) Used the words "growers' exchange" as a part of its corporate name and displayed the same on letters, and, in connection with advertising conducted by it at large expense, on circulars, advertising matter, and other literature soliciting sale of its said pecans, and upon the bag containers in which it shipped the same; and

(*b*) Used and displayed such slogans in its trade literature, blotters, and other advertising matter as "direct from the groves", and/or "direct from the growers", together, in some cases, with a panoramic view of a large pecan orchard;

With the tendency and capacity to deceive the purchasing public by inducing purchase of nuts from it as and from a cooperative association of pecan growers, selling the same at prices below those at which comparable products would sell to the public after passing through usual course of trade from grower to wholesaler to retailer to public, and saving the public the wholesaler's and retailer's profits, and to injure growers selling direct to the public and dealers reselling to the public nuts purchased from growers:

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

Mr. E. J. Hornibrook for the Commission.

Watkins, Asbill & Watkins, of Atlanta, Ga., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged

respondent, a Georgia corporation engaged in the sale of pecans purchased by it through personal calls and mail order solicitation from growers in the various States, and with principal place of business at Barnesville, Ga., and neither itself a grower of pecans nor with stockholder growers, with using misleading corporate name and advertising falsely or misleadingly as to business status or advantages, in violation of the provisions of section 5 of such act prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, engaged as above set forth, employs, as charged, the words "growers' exchange" as a part of its corporate name, in order to take advantage of the widespread belief that growers through a so-called exchange are able to make the public better prices for a given quality and freshness of product than can competitors obliged to meet full jobbing costs and to sustain the delay believed by the public to be incidental to distribution through middlemen, and, for the said purpose, also uses in its advertising the slogans "Direct from the growers" and "Fresh from the groves" and adopts various other phraseology and means.

Said methods, as alleged, have a direct tendency to deceive the buying public into dealing with it as and for "an organization of actual growers possessing the advantages in distribution, cost, and in the freshness of the pecans offered by it", as above set forth, and thus to aid it in marketing its product in competition with others and particularly with legitimate growers' exchanges, and also have a direct tendency to lessen and destroy the confidence of growers and consumers of pecans in such exchanges and that of the general buying public in mail order transactions, to the detriment and prejudice of persons and corporations doing a legitimate mail order business and particularly of those doing such a business in pecans [1]; all to the prejudice of the public and of respondent's competitors.

[1] Paragraph 2 of the complaint contains the following allegations relative to the foregoing:

PAR. 2. There are many organizations of growers of various horticultural products in the United States, including certain organizations of pecan growers, competitors of respondent, which use the term "exchange" or the term "growers' exchange" in their organization names, so that the use of said terms has come to signify, both to the consumers and to the producers of nuts and fruits, that an organization so using either of said terms as part of its name, is in truth and in fact composed of members who are actual growers, engaged cooperatively in the sale of their products without the intervention of jobbers. In the competitive sale and distribution of pecans, it is an advantage to cause the consuming public to believe that the seller offers his article after having eliminated jobber's profits and part of the jobbing costs and delay.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent above named, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having entered its appearance and having filed its answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and on behalf of the respondent before an examiner of the Federal Trade Commission, duly appointed.

Thereupon this proceeding came on for final hearing on the briefs submitted by counsel for the Commission and counsel for the respondent, and the Commission, having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Dixie Pecan Growers Exchange, Inc., is an ordinary commercial corporation, organized and incorporated under the laws of the State of Georgia in 1921. Its office and place of business is located in the city of Barnesville in said State. It is now and for more than five years last past has been engaged in the business of buying pecan nuts from the growers thereof and selling and shipping same to wholesale and retail dealers and to ultimate consumers residing throughout the several States of the United States.

Approximately one-half of respondent's sales of pecans are made direct to ultimate consumers. The balance is made to wholesale and retail dealers. Shipments of said pecans to said purchasers located throughout the different States of the United States are made pursuant to orders previously received. Said pecans are packed and shipped in bag containers upon which appear the words "Dixie Pecan Growers Exchange, Incorporated." Sales of said pecans are solicited by means of letters, circulars, advertising matter, and other literature, all of which bear respondent's said corporate name and usually said literature and advertising matter also bear the words "*Direct from the groves*" or "*Direct from the Grower.*" Respondent has spent approximately $150,000 in advertising in soliciting the sale of its pecans, as aforesaid. Respondent has some

15,000 customers, ultimate consumers of pecans, whom it solicits and has solicited by means of letters and other literature upon which is printed respondent's corporate name and one or both of the above-mentioned slogans. It also caused to be mailed to its customers and prospective customers some 4,000 blotters upon which was printed the slogan "*Direct from the growers*," and on some of the literature sent to customers and prospective customers appeared a panoramic view of a large pecan orchard.

PAR. 2. The pecans offered for sale and sold by respondent, as set forth above, with the exception of a negligible amount, are purchased by respondent from independent growers of said nuts. The respondent owns or controls less than 5 acres of pecan trees capable of bearing nuts. These trees produce in a good season not to exceed 2,000 pounds. With the exception of this negligible quantity, neither the respondent or its officers or stockholders grew or produced the pecans sold by respondent, at the time of the taking of the testimony herein, or prior thereto, but the pecans sold by respondent were purchased from the growers thereof and resold by it in due course of trade and commerce among the several States of the United States.

PAR. 3 There are among the competitors of respondent in several States of the United States many individuals, copartnerships, corporations, and voluntary associations engaged in the business of buying and selling pecan nuts and shipping the same to their customers in other States, who do not use in such business the word "*Grower*" or the word "*Exchange*" as a part of their trade names, or any other words, phrases, slogans or pictorial arrangement importing or implying that they are growers of pecan nuts or that they are cooperative associations of growers of the same.

The statutes of many States of the United States provide for the organization of cooperative associations on a nonprofit sharing basis for the purpose of marketing horticultural and agricultural crops, and many farmers and growers who sell such crops outside of such States have organized such cooperative associations and market their crops as such cooperative associations, and these include several engaged in the selling of pecan nuts in interstate commerce, and include the National Pecan Growers Exchange of Albany, Georgia, organized eleven years ago, or about five years before the organization of respondent—which cooperative organization has a membership of 1,300 actual growers of pecans who reside in Georgia, Alabama, Florida, and Mississippi—and which includes the Southern Pecan Growers Cooperative Association of said Albany. Both of these sell to wholesalers and jobbers and the Southern also sells

pecans through the mails. Their members are all growers. These cooperative associations are competitors of respondent.

There have been instances where respondent's use of the trade name "*Dixie Pecan Growers' Exchange, Incorporated*" has been confused with the trade name "National Pecan Growers' Exchange".

PAR. 4. There are some 762 cooperative associations composed of farmers located in the various States of the United States using the word "*Exchange*" as a part of their trade name. There are cooperative associations of nut growers located in several States of the United States, some of which use the term "*Exchange*" and the majority of which use the term "*Growers*" as a part of their trade names. In the pecan industry the words "*Growers Exchange*" has come to mean a cooperative association of pecan growers and such meaning is given to such term by a substantial part of the consuming public.

PAR. 5. The use by the respondent of the words "*Growers Exchange*" in the corporate name under which respondent carries on business and the use by it of the phrases "*Direct from the Groves*" and "*Direct from the Grower*" under the circumstances above set out have the tendency and capacity to deceive the purchasing public by inducing persons to purchase the pecan nuts from respondent upon the erroneous belief that respondent is a cooperative association of growers of pecan nuts and is selling pecan nuts at prices below those at which pecan nuts of like grade and quality would sell to the public after passing through the usual course of trade from the grower to the wholesaler, from the wholesaler to the retailer, from the retailer to the public, and that the public by dealing with the respondent saves in the purchase price a sum representing the profits of the wholesaler and retailer; that such practices had the capacity and tendency to injure growers of pecan nuts who did in fact sell their product direct to the public as well as dealers who purchase pecan nuts from the growers and who resell same to the public.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors and are unfair methods of competition in interstate commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST [1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent thereto, the testimony, evidence, the brief of the Commission and the brief of respondent; and the Commission having made its findings as to the facts and its conclusion that the respondent has been and is using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, Dixie Pecan Growers Exchange, Inc., its officers, representatives, agents, and employees, in connection with the advertising, offering for sale, and sale of pecan nuts in interstate commerce cease and desist:

From using in advertising matter, circulars, correspondence stationery, or in any manner whatsoever the word "growers" as a part of its trade name or otherwise and the phrases or slogans "Direct from the groves" and "Direct from the growers", or any other words of like import or any statement, representations or pictorial arrangements importing or implying that pecan nuts sold by it come direct from the growers to purchaser or that respondent is a grower of pecan nuts, or that it is a cooperative or other association composed of pecan growers.

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

[1] As modified June 17, 1930.

IN THE MATTER OF

B. D. RITHOLZ, M. I. RITHOLZ, S. J. RITHOLZ, F. RITHOLZ, ANTE RITHOLZ, COPARTNERS, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF CLEAR SIGHT SPECTACLE COMPANY

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

Docket 1554. Complaint, Jan. 2, 1929—Decision, Feb. 15, 1930

Where a firm engaged in the manufacture of spectacles and in the sale thereof directly to the purchasing public, in advertising their said product in circulars and other advertising matter included such statements as "Special ten-day offer," "Get your spectacles free without cost," "Special big advertising offer—100 people—only one in a community to receive our wonderful spectacles free without cost," the facts being that the so-called special or free offer was not limited as to time or to a particular number of persons or to one person in a community and that the pretended opportunity to get said spectacles "Free" or "Free without cost" or "Free without a cent of cost," consisted, in effect, of an offer by said firm to pay the particular purchaser a commission for cash orders secured for two or more pairs from other customers:

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

Mr. Richard P. Whiteley for the Commission.

Mr. John A. Nash, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individuals, partners engaged in the manufacture of spectacles and in the sale and distribution thereof directly to the purchasing public, in various States, generally by mail, and with principal place of business in Chicago, with advertising falsely or misleadingly as to prices and free goods in violation of the provisions of section 5 of such act prohibiting the use of unfair methods of competion in interstate commerce.

Respondents, engaged as above set forth, made such statements in letters or circulars sent to prospective purchasers in the various States as "We'll send you spectacles on trial and give you a chance to get yours *free without a cent of cost*," "To ward off the simply

curious and insincere people who would order spectacles and keep them without paying for them if sent free, it is necessary that our $15 value spectacles at only $3.98 be sent C. O. D.", "Special ten-day offer" "Get your spectacles free without cost", "Special big advertising offer—100 people—Only one in a community to receive our wonderful spectacles free without cost. We have decided that we must have a person in your community wearing our spectacles for the large advertising benefits we will obtain from it. For that reason we are going to give a pair free without a cent of cost." "Only one free pair of spectacles will be sent into a community." "You simply can't and won't miss this chance to get your glasses free"; it appearing from other parts of the advertising that the prospective purchaser was merely offered an opportunity to apply commissions earned on orders secured by him from others for the purchase of said concern's spectacles against the price of a pair for himself.[1]

In truth and in fact the spectacles so offered and represented to be given free to those persons answering said letters are not given free by respondents but the persons to whom the respondents' letters are addressed, acting upon said offers and representations, by accepting the offers contained therein, are required by respondents to solicit and to induce others to purchase from respondents a certain number of spectacles at a price to the purchasers which covers the cost of the spectacles thus sold and of the spectacles offered and represented to be given free, and the spectacles offered, to be given free are, in fact, given as payment for the work and services required by respondents

[1] The matter referred to reads as follows:

"As a special offer to you, we will make it possible for you to get your own spectacles free. Take the scientific self-tester you now have to your friends. Ask them to make a test of their eyes as you have done. They too should have the benefit of our expert service and low price. Tell them you are going to order a pair for yourself and that they might as well send their orders with yours. Collect $1 deposit from them and they can pay the balance to the mailman upon delivery. They will receive the same, strong ironclad guarantee of satisfaction for 5 years to come. You may keep the $1 deposit you collect as your pay. Take only four orders and you will earn more than enough to pay for your own glasses. Take as many orders as you can. You make $1 on each."

"Do you want to save $11 or more on your glasses?"

"Make the test to-day if you have not already done so, then hurry in your order. Call on your friends if you wish them to receive the same benefits. Make $1 on each of their orders by collecting $1 deposit and keeping it as your pay. In this way you can, no doubt, get your own glasses without cost."

"Now, here's the way to get your own glasses free. Take the 'Scientific self-tester' to two of your friends. Ask them to make the scientific test as explained in the direction sheet. Take their orders, collect a deposit of $1 on each, send the two orders to us with the $2 you collect. Send along your own order on the special order coupon, the top one in the book, at the same time, marked 'free.' We'll ship the spectacles to you without a cent of cost, Guaranteed to please you in every respect. We'll also ship the two orders for your friends direct to them, C. O. D. for the balance due, containing the strong guarantee you will receive. Remember, you don't send a penny for your own glasses. They're free to you for sending in two orders with the $2 deposit you collect."

to be performed, and actually performed by the persons receiving said spectacles, as aforesaid; and it further being the fact that the offers in question, which were contrary, confusing, and misleading, were not limited to a ten-day period, were not special but regular, and were not restricted to 100 persons, and to one person in a community.

Said acts and practices, as alleged, have the tendency and capacity to mislead and deceive the recipients into believing the spectacles in question to be given free, under limited and special offers as above indicated, and to confuse and mislead the purchasing public into believing said products to be in fact given free or as a gratuity, acquired without consideration; all to the prejudice of the public and respondents' competitors who sell and offer spectacles at reasonable prices to the purchasing public without offering, in connection therewith, to give such articles or other merchandise free.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondents, B. D. Ritholz, M. I. Ritholz, S. J. Ritholz, F. Ritholz, and Ante Ritholz, copartners, doing business under the trade name and style of Clear Sight Spectacle Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having filed answer herein, a hearing was had and evidence was thereupon introduced on behalf of the Commission and the respondents before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for a final hearing on the briefs and oral argument, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

Findings as to the Facts

Paragraph 1. Respondents, B. D. Ritholz, M. I. Ritholz, S. J. Ritholz, F. Ritholz, and Ante Ritholz, are, and have been for more than two years last past, copartners, doing business until August, 1928, under the trade name and style of Clear Sight Spectacle Co. and, since August, 1928, under the trade name and style of Self-

Test Optical Co., having at all said times their principal place of business in the city of Chicago, State of Illinois.

PAR. 2. Respondents are and have been for some years engaged in the manufacture of spectacles and in the sale of said spectacles to various individuals located in the several States of the United States other than in the State of Illinois, and have caused and still cause the said spectacles when so sold by them to be transported, in commerce, from respondents' principal place of business in the city of Chicago, State of Illinois, to, into, and through said other States and the District of Columbia to the said individuals to whom said spectacles were sold by respondents.

PAR. 3. During the times above mentioned and referred to, other partnerships, individuals, and corporations, located in the various States of the United States have been engaged in the manufacture and in the sale of spectacles, which they have sold and still sell to individuals located in the various States of the United States and in the District of Columbia. Respondents, during the aforesaid times, were and still are in competition in commerce in the sale of their spectacles with said other partnerships, individuals, and corporations likewise engaged in the manufacture and sale of spectacles.

PAR. 4. Respondents in the course and conduct of their business sell and distribute their spectacles directly to the purchasing public, generally by means of the United States mail. Customers are secured through advertising inserted in various magazines having a circulation throughout the United States. Respondents also use for the purpose of obtaining customers, mailing lists which they compile, and which mailing lists contain many thousands of names of persons located throughout various localities in the United States and from which lists letters are sent out by respondents to prospective customers from names appearing on said lists. In addition to letters which respondents mail out to their prospective customers said customers are mailed also circulars and other advertising matter containing among others the following statements:

CLEAR SIGHT SPECTACLE COMPANY

Largest Mail Order Spectacle House in the World

We'll send you spectacles on trial and give you a chance to get yours

FREE WITHOUT A CENT OF COST

SPECIAL TEN DAY OFFER

GET YOUR SPECTACLES FREE WITHOUT COST

As a special offer to you, we will make it possible for you to get your own spectacles free. Take the scientific self-tester you now have to your friends. Ask them to make a test of their eyes as you have done. They too should have the benefit of our expert service and low price. Tell them you are going to order a pair for yourself and that they might as well send their orders with yours. Collect $1 deposit from them and they can pay the balance to the mailman upon delivery. They will receive the same, strong iron-clad guarantee of satisfaction for 5 years to come. You may keep the $1 deposit you collect as your pay. Take only four orders and you will earn more than enough to pay for your own glasses. Take as many orders as you can. You make $1 on each.

Do you want to save $11 or more on your glasses?

Make the test to-day if you have not already done so, then hurry in your order. Call on your friends if you wish them to receive the same benefits. Make $1 on each of their orders by collecting $1 deposit and keeping it as your pay. In this way you can, no doubt, get your own glasses without cost.

Special big advertising offer—100 people—Only one in a community to receive our wonderful spectacles free without cost.

We have decided that we must have a person in your community wearing our spectacles for the large advertising benefits we will obtain from it. For that reason we are going to give a pair free without a cent of cost.

Now, here's the way to get your own glasses free. Take the Scientific Self-Tester to two of your friends. Ask them to make the scientific test as explained in the direction sheet. Take their orders, collect a deposit of $1 on each, send the two orders to us with the $2 you collect. Send along your own order on the Special Order Coupon, the top one in the book, at the same time, marked "free." We'll ship the spectacles to you without a cent of cost. Guaranteed to please you in every respect. We'll also ship the two orders for your friends direct to them, C. O. D. for the balance due, containing the strong guarantee you will receive. Remember, you don't send a penny for your own glasses. They're free to you for sending in two orders with the $2 deposit you collect.

Only one free pair of spectacles will be sent into a community.

You simply can't and won't miss this chance to get your glasses free.

PAR. 5. Despite the statements contained in respondents' advertisements as set out in paragraph 4 hereof to the effect that the special offers giving special benefits were limited to ten days, or to a particular number of persons, such as a hundred persons altogether or one person only, in a community, the said restrictions as to time and number of persons were not carried into effect by respondents. The business of respondents in the sale of spectacles direct to the public has been quite extensive, amounting to several hundred thousand dollars annually.

CONCLUSION

The practices of the respondents under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a violation of section 5

of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes ".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and upon the answer of the respondents filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes ",

It is now ordered, That the respondents above named, B. D. Ritholz, M. I. Ritholz, S. J. Ritholz, F. Ritholz, Ante Ritholz, copartners, formerly doing business under the trade name and style of Clear Sight Spectacle Co., and now doing business under the trade name and style of Self-Test Optical Co., their officers, agents, representatives, and employees in connection with the sale or distribution in interstate commerce of spectacles, do cease and desist—

(*a*) From representing directly or indirectly, by advertisements, by circular letters or otherwise, that the spectacles sold by them direct to the purchasing public can be obtained at the prices stated for a limited period of time only, or that said spectacles can be purchased by a limited or restricted number of persons only.

(*b*) From representing directly or indirectly, by advertisements, by circular letters or otherwise, that the spectacles sold by them direct to the purchasing public can be obtained " free ", or " free without cost ", or " free without a cent of cost ", when in fact said spectacles are not given free or as a gratuity but are given in consideration of personal services rendered or performed by certain customers in securing for respondent cash orders for two or more pairs of its spectacles from other customers.

It is further ordered, That the respondents, B. D. Ritholz, M. I. Ritholz, S. J. Ritholz, F. Ritholz, and Ante Ritholz, copartners, formerly doing business under the trade name and style of Clear Sight Spectacle Co., and now doing business under the trade name and style of Self-Test Optical Co., shall, within 60 days after the service on them of this order, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which they have complied with the above order to cease and desist.

IN THE MATTER OF

PHILIP SHLANSKY & CO., INC.

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

Docket 1748. Complaint, Dec. 21, 1929—Decision, Mar. 3, 1930

Where a corporation engaged in the manufacture and sale of women's coats made entirely of material other than the pelt or skin of the lamb, represented and designated the same as "Silverlamb" and featured said word in its advertisements thereof and upon the labels attached thereto, with the capacity and tendency to mislead, deceive, and confuse the purchasing public as to the composition thereof:

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

Mr. Robert H. Winn for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the manufacture and sale of women's coats, and with principal place of business in New York City, with naming product misleadingly, advertising falsely or misleadingly, and misbranding or mislabeling in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, represented, designated, and described its said women's coats as "Silverlamb," featured said word in the advertisements thereof, and so branded and labeled the same, notwithstanding the fact that the product in question was not made in whole or in part of wool or of the pelt or skin of the sheep but entirely of other material.

The use by respondent, as alleged, "of the word 'Silverlamb' to represent, designate, describe, and refer to its products in the manner hereinbefore set out has the capacity and tendency to mislead and deceive and to confuse the purchasing public into the belief that its said products so represented, designated, described, and referred to are made in whole or in part of the wool or of the pelt or skin of sheep"; to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent Philip Shlansky & Co., Inc., a corporation, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondent having entered its appearance and filed its written return and answer to the complaint herein, admitted therein substantially all allegations of such complaint and alleged the cessation of the methods of competition charged in said complaint. In said answer respondent consented that the Commission should proceed upon such complaint and respondent's said written return and answer to make its findings as to the facts and such order as it may deem proper to enter therein, without the introduction of testimony or the presentation of argument in support of same. And the Federal Trade Commission being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located in the city of New York, in the State of New York. It is now and for more than one year last past has been engaged in the manufacture of women's coats and in the sale and distribution of same in commerce between and among various States of the United States. It causes its products, when sold, to be shipped or transported from its place of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York. In the course and conduct of its business respondent was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling in interstate commerce women's coats, represented, designated, described, and referred to the same as "Silverlamb," and caused advertisements to be circulated in various States of the United States,

in which advertisements the word "Silverlamb" was featured and prominently displayed as descriptive of the said women's coats. It attached a ticket to each of such garments made by it, which ticket bore the brand or label "Silverlamb," and, so branded and labeled, respondent sold and distributed such garments in interstate commerce; when in truth and in fact respondent's products so advertised, labeled, sold and distributed in interstate commerce under the trade name or brand "Silverlamb," were not made of the pelt or skin of the lamb, but were made entirely of other material.

PAR. 3. The use by respondent of the word "Silverlamb" to represent, designate, describe, and refer to its said products in the manner hereinbefore set out, has the capacity and tendency to mislead and deceive and to confuse the purchasing public into the belief that its said products so represented, designated, described, and referred to are made of the pelt or skin of the lamb.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard and considered by the Federal Trade Commission, upon complaint of the Commission and the record, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is now ordered, That the respondent, Philip Shlansky & Co., Inc., a corporation, its officers, agents, and employees, do cease and desist from the use of the word "Silverlamb" in the designation of, or in the advertising, branding, or labeling of women's coats sold and distributed by it in interstate commerce, unless said women's coats be manufactured or fabricated from the pelt or skin of the lamb.

It is further ordered, That the respondent shall, within 60 days after the service upon it of a copy 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.

Syllabus

IN THE MATTER OF

TEMPLE ANTHRACITE COAL CO.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 1537. Complaint, Oct. 11, 1928—Decision, Mar. 8, 1930

Where a corporation, shortly following its organization,

(a) Acquired all the outstanding capital stock of a corporation theretofore engaged in commerce in anthracite coal between and among various States, which (1) was one of the largest anthracite coal mining companies, having theretofore acquired physical assets of various other anthracite coal-mining companies and all or a majority of the stock of two other similar companies, and had physical properties, including modern completely equipped collieries, necessary buildings and railroad connections, worth more than twelve and a half million dollars, and an annual output of about 1,250,000 tons of anthracite coal, (2) was, along with said acquired companies, in sound financial condition and free from funded debt, and (3) sold all but a small part of its output through or to a distributor with offices in Philadelphia, Buffalo, Chicago, Baltimore, and New York, and thus to customers in Canada, the District of Columbia, and some 22 eastern, southern, and western States; and

(b) Acquired 98 per cent of the outstanding capital stock of a corporation theretofore engaged in commerce in anthracite coal between and among various States, which (1) had coal lands with a total recoverable tonnage of 4,700,000 tons, along with improvements and developments not susceptible of duplication for $1,500,000, ample rail facilities, and a colliery completely and modernly equipped, with breaker capacity of 1,200 tons per day, (2) was in sound financial condition and free from funded debt, and (3) sold its output to or through a distributor with offices in Philadelphia, New York, Boston, and Washington, and thus to customers in Canada, the District of Columbia, and 15 eastern, southern, and western States, included, as to all but one, among those served by said first named distributor, and in competition therewith, through solicitation and filling of orders not only in the same territory and cities, but from and for the same dealers; and

(c) Selected the officers and directors of the aforesaid various companies and controlled and dominated the management and operation of their properties and finances;

With the result that effect of said acquisition of stock of said two companies and use thereof by voting or granting of proxies or otherwise had been and was to substantially lessen competition in interstate commerce between said companies:

Held, That such acquisition and continued ownership of the stock of said companies, under the conditions and circumstances above set forth, constituted a violation of section 7 of the Clayton Act.

Mr. Edward L. Smith for the Commission.

Mr. John R. Wilson, and *Mr. John P. Kelly* of Kelly, Balentine, Fitzgerald & Kelly, of Scranton, Pa., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its reason to believe in a violation of section 7 of the Clayton Act by respondent, a Delaware corporation with 60,000 shares of stock of no par value and with principal office and place of business in Scranton, Pa., the Commission charged said respondent with acquisitions of stock in competitors on or about October 11, 1924, namely, all the outstanding stock of the Temple Coal Co., and 98 per cent of that of the East Bear Ridge Colliery Co., Pennsylvania corporations with principal offices and places of business in Scranton, in violation of the provisions of the aforesaid section and act.

Said Temple Coal Co., as alleged, the stock of which was thus acquired (10,000 shares of common, of a par value of $100, authorized, issued, and outstanding at the time in question), has been and is engaged in the mining and sale of anthracite coal to purchasers in Pennsylvania and various other States, Territories thereof, and the District of Columbia in competition with other concerns and persons similarly engaged, including, prior to the aforesaid stock acquisitions, said East Bear Ridge Colliery Co. Said company, further, owns and for more than five years last past has owned the entire capital stock of the Mt. Lookout Coal Co., and 80 per cent of that of the Lackawanna Coal Co., Ltd., two Pennsylvania corporations likewise similarly engaged in the mining and sale of anthracite coal.

Said East Bear Ridge Colliery Co., as alleged, the stock of which was thus acquired (25,000 shares of common stock of a par value of $25 each, authorized, issued, and outstanding at the time in question) similarly has been and is engaged in the mining and sale of anthracite coal to purchasers in Pennsylvania and other States, Territories thereof, and the District of Columbia, in competition with other concerns and persons similarly engaged, including, prior to the aforesaid stock acquisitions, said Temple Coal Co.

The effect, as alleged, "of the acquisition by respondent of said capital stocks of Temple Coal Co. and of East Bear Ridge Colliery Co., or the use of such stocks by the voting or granting of proxies

or otherwise, may be and is to substantially lessen competition between said Temple Coal Co. and East Bear Ridge Colliery Co."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDERS

Pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", the Federal Trade Commission issued and served its complaint upon Temple Anthracite Coal Co., respondent herein, charging it with violating section 7 of said act.

Thereupon the said respondent entered its appearance and filed its answer to the said complaint, and hearings were had before an examiner of the Commission duly appointed, and testimony was offered and received in support of the charges of the complaint and testimony was offered and received in defense of the charges of the complaint, all of which said testimony was reduced to writing and filed in the office of said Commission; and thereafter the proceeding came on for final hearing on the record, briefs and oral arguments and the Commission being fully advised in the premises, now makes this its report and states its findings as to the facts, and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Temple Anthracite Coal Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware. It was organized on August 25, 1924, with an authorized capital of 60,000 shares of stock of no par value, all of which shares have been issued. Its registered office is in the city of Dover, in the State of Delaware, and it maintains an office in the city of Scranton, in the State of Pennsylvania.

PAR. 2. Temple Coal Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business in the city of Scranton, in said State of Pennsylvania. Its authorized capital is 10,000 shares of common stock of a par value of $100 each, all of which is issued and outstanding and all of which was issued and outstanding on October 11, 1924. It is now and ever since its organization has been engaged in the business of mining anthracite coal in the State of Pennsylvania and in the sale of such anthracite

coal to purchasers located in the State of Pennsylvania and in various other States of the United States, the Territories thereof, and the District of Columbia, and it causes such anthracite coal, when sold by it, to be shipped and transported from its mines in the State of Pennsylvania, to purchasers in the State of Pennsylvania and to purchasers in other States of the United States, the Territories thereof, and the District of Columbia, and there is now and has been at all times hereinafter mentioned, a constant current of trade and commerce in such anthracite coal between and among the various States of the United States, the Territories thereof, and the District of Columbia. It is one of the largest anthracite coal mining companies and prior to 1924 had acquired the physical assets of the following mentioned anthracite coal mining and in the sale thereof, to wit: Northwest Coal Co., Edgerton Coal Co., Sterrick Creek Coal Co., Babylon Coal Co., and Forty Fort Coal Co. In the course and conduct of its business said Temple Coal Co. is in competition with other corporations and with firms and persons engaged in the mining and sale of anthracite coal between and among the various States of the United States, the Territories thereof, and the District of Columbia. Among such competitors, prior to the acquisitions by respondent, Temple Anthracite Coal Co., of the capital stock of said Temple Coal Co. and of East Bear Ridge Colliery Co., as hereinafter set out, was said East Bear Ridge Colliery Co.

Said Temple Coal Co. now owns and for more than six years last past has owned, all of the capital stock of the Mt. Lookout Coal Co., a Pennsylvania corporation, engaged in the mining of anthracite coal in Pennsylvania and in the sale of such coal between and among the various States and Territories of the United States, and the District of Columbia.

Said Temple Coal Co. now owns and for more than six years last past has owned 80 per cent of the capital stock of shares of the Lackawanna Coal Co., Ltd., a limited partnership, organized and exitsing under the laws of the State of Pennsylvania and engaged in the mining of anthracite coal in Pennsylvania and in the sale of such coal between and among the various States and Territories of the United States and the District of Columbia.

PAR. 3. At the time said respondent, Temple Anthracite Coal Co., acquired all of the capital stock of said Temple Coal Co., as hereinafter described, the said Temple Coal Co. was in sound financial condition, free from mortgage or funded debt, and directly and

through said Mt. Lookout Coal Co. and said Lackawanna Coal Co., Ltd. (both in sound financial condition and free from mortgage or funded debt), operated six collieries in the northern anthracite field of Pennsylvania, and produced about 1,250,000 tons of anthracite coal per year. The said collieries were Northwest, Lackawanna, Sterrick Creek, Mt. Lookout, Forty Fort, and Harry E. All of said collieries were completely equipped with modern machinery and equipment and had all necessary buildings for the operation of the plants.

The said Northwest Colliery is situated in Vandling Borough, Lackawanna County, Pa., about three miles north of Carbondale. At the time of the said stock acquistion by respondent, said Temple Coal Co. at this colliery controlled by ownership and lease 566.25 acres of coal land and had railroad connections with the New York, Ontario & Western and Erie Railroads. The breaker had a capacity of 1,000 tons per day. At this colliery Temple Coal Co. owned 125.26 acres and leased 82.90 acres of surface.

The said Lackawanna Colliery, owned by said Lackawanna Coal Co., Ltd., is situated in Blakely Borough, Lackawanna County, Pa., about six miles north of Scranton. At the time of the aforesaid stock acquisition by respondent, said Lackawanna Coal Co., Ltd., controlled, by ownership and lease, 1,082.65 acres of coal land and this colliery had railroad connections with the D. L. & W. Railroad Co. and Erie Railroad Co. The breaker had a capacity of 1,200 tons per day. And the said Lackawanna Coal Co., Ltd., owned 156.82 acres and leased 166.90 acres of surface.

The said Sterrick Creek Colliery is situated in Winton Borough, Lackawanna County, Pa., about six and one-half miles north of Scranton, controlling by ownership and lease 748.33 acres of coal land and having railroad connections with the Erie Railroad. The breaker had a capacity of about 2,000 tons per day. Said Temple Coal Co., at the aforesaid time, owned 13.67 acres surface at said Sterrick Creek Colliery.

Said Mt. Lookout Colliery, owned by said Mt. Lookout Coal Co., is situated in Exeter Borough, Luzerne County, Pa., being located between Wilkes-Barre and Pittston. At the time respondent acquired all of the capital stock of said Temple Coal Co., as hereinafter set forth, said Mt. Lookout Coal Co. at this colliery controlled, by ownership and lease, 632.80 acres of coal land and had railroad connections with the Lehigh Valley and D. L. & W. Railroads. The breaker had a capacity of 1,500 tons per day. Said Mt. Lookout Coal Co. owned 33.05 acres and leased 99.91 acres of surface.

The said Harry E. and Forty Fort Collieries are situated in Luzerne County, Pa., between Wilkes-Barre and Pittston, about three miles distant from the aforesaid Mt. Lookout Colliery. Said Temple Coal Co., at the time of the aforesaid stock acquisition by respondent, controlled at these collieries, by ownership and lease, 1,074.30 acres of coal land, and these collieries had railroad connections with the Lehigh Valley Railroad. The capacity of the Forty Fort breaker was 1,000 tons per day, while the Harry E. breaker had a capacity of 1,500 tons per day. These breakers were located within a mile of each other and in October, 1924, Temple Coal Co. contemplated abandoning the Forty Fort breaker and inasmuch as connections underground were then made, said Temple Coal Co., planned to transport the coal underground from Forty Fort to Harry E. for preparation. In connection with these collieries, said Temple Coal Co., owned 44.78 acres and leased 284.22 acres of surface.

In addition to the properties hereinabove described, said Temple Coal Co., at the time of the aforesaid stock acquisition owned thirty-one buildings in the borough of Duryea located about seven miles from Scranton, Pa., and controlled undeveloped territory consisting of 319 acres of coal land and leased 251.25 acres of coal land in the village of Jermyn, Lackawanna County, Pa., in which territory the amount of unmined coal in August, 1924, was 480,871 tons. In August, 1924, the total coal in place in all of the properties owned, controlled and leased by said Temple Coal Co., said Lackawanna Coal Co., Ltd., and said Mt. Lookout Coal Co., was approximately 66,730,205 tons, of which amount approximately 51,565,409 tons could be mined from the solid and pillars.

The total acreage owned or leased by said Temple Coal Co., said Mt. Lookout Coal Co. and said Lackawanna Coal Co., Ltd., aggregated, in September 1924, 4,213 acres of anthracite coal lands and 1,576 acres of surface land and the value of the physical properties of said companies on September 20, 1924, was in excess of the following figures:

Company	Coal	Property
Temple Coal Co. and Mount Lookout Coal Co	$7,620,451.00	$2,775,000.00
Lackawanna Coal Co	1,572,299.00	675,000.00
	9,192,750.00	3,450,000.00

All of the aforesaid physical properties owned by Temple Coal Co., Lackawanna Coal Co., and Mt. Lookout Coal Co., are still owned and operated by such companies, excepting for the ordinary depletion of coal from the coal lands due to mining and excepting that in November, 1928, the said Mt. Lookout Colliery ceased operating, at which time said Mt. Lookout Coal Co. surrendered its rights to certain leases of coal lands.

PAR. 4. Continuously since 1914 the coal mined by said Temple Coal Co., said Lackawanna Coal Co., Ltd., and said Mt. Lookout Coal Co., excepting for a small amount sold in the vicinity of the mines, has been sold through Thorne, Neale & Co., Inc., which is engaged in the business of buying and selling antracite and bituminous coal. Said Thorne, Neale & Co., Inc., maintains offices in Philadelphia, Buffalo, Chicago, Baltimore, and New York, from which offices sales of coal are solicited throughout a large territory traveled by representatives of such offices. The Buffalo office solicits and makes sales in Canada also. Said Thorne, Neale & Co., Inc., secures orders for coal mined by said Temple Coal Co., said Lackawanna Coal Co., Ltd., and said Mt. Lookout Coal Co., which orders are transmitted to said Temple Coal Co. by said Thorne, Neale & Co., Inc. These orders give the name of the consignee, destination, route of shipment, the equipment of the cars containing the coal, the mine from which the coal is to be shipped, the quantities and kinds of coal ordered and the price of the coal, f. o. b. mine. If the price mentioned in the order is satisfactory to said Temple Coal Co., the coal is shipped by said Temple Coal Co. to the customer at the said price, said Thorne, Neal & Co., Inc., paying to said Temple Coal Co. the said selling price of the coal, less a commission of 4 per cent for making such sale. Said Thorne, Neale & Co., Inc., collects from the purchaser the selling price of the coal. In the event that the price on the order given by said Thorne, Neale & Co., Inc., is said Temple Coal Co. for the coal to be shipped is not satisfactory to said Temple Coal Co., the order is not filled. Such has been the method of sale employed by said Temple Coal Co., said Mt. Lookout Coal Co. and said Lackawanna Coal Co., Ltd., with said Thorne, Neale & Co., Inc., at least since 1914.

In addition to shipping coal to customers secured by said Thorne, Neale & Co., Inc., said Temple Coal Co. in the usual course of its business, ships coal directly to said Thorne, Neale & Co., Inc. Typi-

cal of that nature and places of shipments by said Temple Coal Co. to said Thorne, Neale & Co., Inc., is the following statement of shipments made in 1925 and 1926:

Temple Coal Co. to Thorne, Neale & Co., Inc., agents

	1925	1926
	Tons	*Tons*
Perth Amboy, N. J.	17,423.09	25,648.01
Edgewater, N. J.	85,901.11	74,578.15
Cadosia, N. Y.	5,686.00	10,711.04
Buffalo, N. Y., for lake shipment	25,990.00	25,016.08
	135,001.11	135,954.08

When such shipments of coal are made directly by said Temple Coal Co. to said Thorne, Neale & Co., Inc., the coal is billed to said Thorne, Neale & Co., Inc., at a price agreed upon between it and said Temple Coal Co., which price is paid to said Temple Coal Co. by said Thorne, Neale & Co., Inc., irrespective of the price received by said Thorne, Neale & Co., Inc., from the ultimate purchaser.

In 1924, said Temple Coal Co., said Mt. Lookout Coal Co., and said Lackawanna Coal Co., Ltd., on orders furnished by said Thorne, Neale & Co., Inc., shipped 1,075,097.10 gross tons of coal, of which 783,304.06 gross tons were shipped to purchasers located outside of the State of Pennsylvania; in 1925, of 668,138.12 gross tons of coal shipped on orders furnished by said Thorne, Neale & Co., Inc., 485,468.17 gross tons were shipped to purchasers outside of the State of Pennsylvania; while in 1926, of a total of 976,865 gross tons shipped on orders secured by said Thorne, Neale & Co., Inc., 767,887.02 gross tons were shipped to purchasers located outside of the State of Pennsylvania. The customers outside of the State of Pennsylvania to whom the shipments of coal were made in 1924 by said Temple Coal Co. f. o. b. mine, on orders secured by said Thorne, Neale & Co., Inc., were located in various cities in Canada, in the District of Columbia, and in various cities in the State of Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Rhode Island, Virginia, and Wisconsin. These shipments of coal by said Temple Coal Co., said Mt. Lookout Coal Co., said Lackawanna Coal Co., Ltd., in 1924, 1925, and 1926 to purchasers located outside of the State of Pennsylvania on orders secured by said Thorne, Neale & Co., Inc., in those years are typical of the territory to which the said companies shipped coal from their mines, at least since 1914 to the present time.

PAR. 5. Said East Bear Ridge Colliery Co. is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business in said city of Scranton, State of Pennsylvania. Its authorized capital is 25,000 shares of common stock of a par value of $25 each, all of which is issued and outstanding and all of which was issued and outstanding on October 11, 1924. It is now, and ever since its organization has been, engaged in the business of mining anthracite coal in the State of Pennsylvania and in the sale of such anthracite coal to purchasers located in the State of Pennsylvania, and in various other States of the United States, the Territories thereof, and the District of Columbia, and it causes such anthracite coal, when sold by it, to be shipped and transported from its mines in the State of Pennsylvania to purchasers in the State of Pennsylvania and to purchasers in other States of the United States, the Territories thereof, and the District of Columbia, and there is now and has been at all times hereinafter mentioned, a constant current of trade and commerce in such anthracite coal in and among the various States of the United States, the Territories thereof, and the District of Columbia. In the course and conduct of its business, said East Bear Ridge Colliery Co. is in competition with other corporations and with firms and persons engaged in the mining and sale of anthracite coal between and among the various States of the United States, the Territories thereof, and the District of Columbia. Among such competitors, prior to the acquisition by respondent Temple Anthracite Coal Co. of the capital stock of said Temple Coal Co. and of the said East Bear Ridge Colliery Co., as hereinafter set out, was said Temple Coal Co.

PAR. 6. At the time said respondent, Temple Anthracite Coal Co., acquired all of the capital stock of said East Bear Ridge Colliery Co., as hereinafter described, the said East Bear Ridge Colliery Co. was in sound financial condition, free from mortgage or funded debt and operated a colliery at Mahanoy Plane, in the borough of Gilberton, near Frackville, Pa., in the Schuylkill anthracite field of Pennsylvania, where said East Bear Ridge Colliery Co. leased at the time aforesaid, and still leases, 266 acres of coal lands. The said colliery was completely equipped with modern machinery and equipment and had all necessary buildings for the operation of the plant. Its breaker capacity was 1,200 tons per day.

The said East Bear Ridge Colliery Co., at the time aforesaid, had, and still has, ample rail facilities which are furnished by the Philadelphia & Reading Railroad Co. In September, 1924, the total

tonnage of coal recoverable from its lands was 4,700,700 tons. The improvements and developments on the property could not have been duplicated in September, 1924, for $1,500,000. The value of the following items of physical property of said East Bear Ridge Colliery Co. in September, 1924, was conservatively as follows:

Breaker and outside improvements	$566,286.74
Inside improvements and development	327,205.68
Total improvements and development	893,492.42
Lease on coal in ground at 10 cents per ton	470,070.00
Total	1,363,562.42

All of the aforesaid physical properties owned by said East Bear Ridge Colliery Co. are still owned and operated by said company, excepting for the ordinary depletion of coal from the coal lands due to mining.

PAR. 7. Continuously since 1914, the coal mined by said East Bear Ridge Colliery Co. has been sold through Madeira, Hill & Co., which is engaged in the business of buying and selling anthracite and bituminous coal. Said Madeira, Hill & Co. maintains offices in Philadelphia, New York, Boston, and Washington, from which offices sales of coal are solicited throughout a large territory traveled by the representatives of such offices. Said Madeira, Hill & Co. secures orders for coal mined by said East Bear Ridge Colliery Co., which orders are transmitted to said East Bear Ridge Colliery Co. by said Madeira, Hill & Co. These orders give the name of the consignee, destination, route of shipment, the equipment of the cars containing the coal, the quantities and kinds of coal ordered and the price of the coal, f. o. b. mine. If the price mentioned in the order is satisfactory to said East Bear Ridge Colliery Co., the coal is shipped by said East Bear Ridge Colliery Co. to the customer at the said price, said Madeira, Hill & Co. paying to said East Bear Ridge Colliery Co. the selling price of the coal, less a commission of 4 per cent for making such sale. Said Madeira, Hill & Co. collects from the purchaser the selling price of the coal. In the event that the price on the order given by said Madeira, Hill & Co. to said East Bear Ridge Colliery Co. for the coal to be shipped is not satisfactory to said East Bear Ridge Colliery Co., the order is not filled. Such has been the method of sale employed by said East Bear Ridge Colliery Co. with said Madeira, Hill & Co. at least since 1914.

In addition to shipping coal to customers secured by said Madeira, Hill & Co., said East Bear Ridge Colliery Co., in the usual course of its business, ships coal directly to said Madeira, Hill & Co. Typical of that nature of shipments is the following statement of shipments made in 1925 and 1926:

East Bear Bridge Colliery Co. to Madeira, Hill & Co.

	1925	1926
Port Reading Piers, N. J.	*Tons* 4,869.18	*Tons* 9,593.15

When such shipments of coal are made directly by said East Bear Ridge Colliery Co. to said Madeira, Hill & Co., the coal is billed to said Madeira, Hill & Co. at a price agreed upon between it and said East Bear Ridge Colliery Co., which price is paid to said East Bear Ridge Colliery Co. by said Madeira, Hill & Co., irrespectively of the price received by said Madeira, Hill & Co. from the ultimate purchaser.

In 1924, said East Bear Ridge Colliery Co. on orders furnished by said Madeira, Hill & Co. shipped 235,620.12 gross tons of coal, of which 85,692.11 gross tons were shipped to purchasers located outside of the State of Pennsylvania; in 1925, of 153,295.09 gross tons of coal shipped on orders furnished by said Madeira, Hill & Co., 52,933.19 gross tons were shipped to purchasers outside of the State of Pennsylvania; while in 1926, of a total of 233,753.13 gross tons shipped on orders secured by said Madeira, Hill & Co. 97,682.09 gross tons were shipped by said East Bear Ridge Colliery Co. to purchasers located outside of the State of Pennsylvania. The customers outside of the State of Pennsylvania to whom the shipments of coal were made in 1924 by said East Bear Ridge Colliery Co. f. o. b. mine on orders secured by Madeira, Hill & Co. were located in various cities in Canada, in the District of Columbia, and in various cities in the States of Connecticut, Delaware, Illinois, Indiana, Kansas, Maryland, Massachusetts, Michigan, Maine, New Jersey, New York, Ohio, Rhode Island, Virginia, and West Virginia. These shipments of coal by said East Bear Ridge Colliery Co. in 1924, 1925, and 1926 to purchasers located outside of the State of Pennsylvania on orders secured by said Madeira, Hill & Co. in those years are typical of the territory to which said East Bear Ridge Colliery Co. shipped coal from its mine, at least since 1914 to the present time.

PAR. 8. Said Temple Coal Co., said Mt. Lookout Coal Co., said Lackawanna Coal Co., Ltd., and said East Bear Ridge Colliery Co. sold coal of the same kinds and sizes, and said Thorne, Neale & Co.,

Inc., and said Madeira, Hill & Co. were in competition in securing orders for coal, orders for coal mined by said Temple Coal Co., said Mt. Lookout Coal Co. and said Lackawanna Coal Co., Ltd., being solicited, obtained and filled through said Thorne, Neale & Co., Inc., in the same territory, in the same cities and, in many instances, from the same dealers from whom orders for coal mined by said East Bear Ridge Colliery Co. were solicited, obtained and filled through said Madeira, Hill & Co.

PAR. 9. On or about October 11, 1924, said respondent Temple Anthracite Coal Co. acquired, directly by purchase, and ever since such acquisition has owned, all of the outstanding capital stock of said Temple Coal Co., a corporation engaged, as hereinbefore described, in commerce in anthracite coal between and among the various States and Territories of the United States, and the District of Columbia.

On or about October 11, 1924, said respondent Temple Anthracite Coal Co. acquired directly by purchase, and ever since such acquisition has owned, 98 per cent of the outstanding capital stock of said East Bear Ridge Colliery Co., a corporation engaged, as hereinbefore described, in commerce in anthracite coal between and among the various States and Territories of the United States, and the District of Columbia. Ever since the said stock acquisitions hereinbefore mentioned in this paragraph, said Temple Coal Co., and said Mt. Lookout Coal Co., and said Lackawanna Coal Co., Ltd., in each of which said Temple Coal Co. has a controlling interest, and said East Bear Ridge Colliery Co. have been dominated by said respondent Temple Anthracite Coal Co., which has chosen the officers and directors of said Temple Coal Co., said Mt. Lookout Coal Co., said Lackawanna Coal Co., Ltd., and said East Bear Ridge Colliery Co., and which has controlled the management and operation of the properties and finances of said Temple Coal Co., said Mt. Lookout Coal Co., said Lackawanna Coal Co., Ltd., and said East Bear Ridge Colliery Co.

PAR. 10. The effect of the acquisition by respondent Temple Anthracite Coal Co. of the said capital stocks of said Temple Coal Co. and of said East Bear Ridge Colliery Co., and the use of such stocks by the voting or granting of proxies, or otherwise, has been and is to substantially lessen competition in interstate commerce between said Temple Coal Co. and said East Bear Ridge Colliery Co.

CONCLUSION

The acquisition and the continued ownership by the respondent, the Temple Anthracite Coal Co., of all of the outstanding capital stock of said Temple Coal Co. and of 98 per cent of the outstanding capital stock of said East Bear Ridge Colliery Co., under the condi-

tions and circumstances described in the foregoing findings constitute a violation of section 7 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, the testimony and evidence, briefs and arguments of counsel, and the Commission having made a report in writing in which it stated its findings as to the facts, with its conclusion that the respondent has violated the provisions of section 7 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,"

Now, therefore, it is ordered, That the respondent, Temple Anthracite Coal Co., forthwith cease and desist from violating the provisions of section 7 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," and within 90 days from the day of the date of service upon it of this order divest itself in good faith of all the capital stock of the Temple Coal Co. owned by it and all of its interest in the capital stock of said Temple Coal Co., such divestment of stock to carry with it all of the property and assets of all kinds whatsoever of said Temple Coal Co.; or within 90 days from the day of the date of service upon it of this order divest itself in good faith of all the capital stock of the East Bear Ridge Colliery Co. owned by it and all of its interest in the capital stock of said East Bear Ridge Colliery Co., such divestment of stock to carry with it all of the property and assets of all kinds whatsoever of said East Bear Ridge Colliery Co.

And it is hereby further ordered, That such divestment of the capital stock and interest in the capital stock of said Temple Coal Co. sall not be made directly or indirectly to East Bear Ridge Colliery Co. or to any stockholder, officer, director, employee or agent of, or to anyone otherwise directly or indirectly connected with or under the control of said East Bear Ridge Colliery Co. or to any stockholder, officer, director, employee or agent of, or to anyone directly or indirectly connected with or under the control of respondent, Temple Anthracite Coal Co.

And it is hereby further ordered, That such divestment of the capital stock and interest in the capital stock of said East Bear Ridge Colliery Co. shall not be made directly or indirectly to Lackawanna

Coal Co., Ltd., Mt. Lookout Coal Co., Temple Coal Co. or to any stockholder, officer, director, employee or agent of, or to anyone otherwise directly or indirectly connected with or under the control of any of such companies or to any stockholder, officer, director, employee or agent of, or to anyone directly or indirectly connected with or under the control of respondent, Temple Anthracite Coal Co.

And it is hereby further ordered, That respondent, Temple Anthracite Coal Co., within 4 months from the day of the date of 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 this order has been conformed to.

Dissent by Commissioner Humphrey

I find myself compelled to dissent to the action of the majority in issuing an order to cease and desist in this case.

This case rests entirely upon the proposition that if one corporation acquires the stock of two or more competing corporations it is under any circumstances a violation of the Clayton Act. The complaint is drawn upon this theory. I do not think that it states a cause of action. It is not alleged that the acquisition of the stock referred to by the respondent in any way tended to restrain commerce, tended to create a monopoly, or was or may be injurious to the public.

Under the decision of the United States Supreme Court in the recent case of the International Shoe Co.,[1] an order to cease and desist made by the Federal Trade Commission, based on the statute involved, can not be sustained until it is alleged and proven, and found by the Commission as a fact, that by the acts complained of competition will probably be lessened to "such a degree as will injuriously affect the public". In the instant case the complaint was purposely so drafted as to omit such allegation. The findings of fact follow strictly the complaint.

The Clayton Act especially recognizes the fact that in certain instances it is lawful for one corporation to acquire the stock of two or more competing corporations. What may be lawfully done is presumed to have been done lawfully. By every rule of construction a complaint or findings to be sufficient in law must contain specific facts sufficient to overcome such presumptions of legality. The United States Supreme Court, in the *Gratz case* (253 U. S. 421, 429) held that a complaint to be sufficient in law must allege the facts

[1] 280 U. S. 291.

constituting the unfair method of competition charged in the complaint. The findings to be sufficient to sustain the order must include such facts. The complaint in the instant case clearly omits such allegation of fact, and the findings are limited to the facts charged in the complaint.

It must be kept in mind that the right of one corporation to acquire or hold the capital stock of another corporation is solely a question of State laws. Presumably the right of a corporation to acquire or hold stock of another corporation is recognized by the laws of the State under which the corporations are organized. The power of Congress is derived solely from its power to control interstate commerce for the protection of the public. It can not make the acquiring of the stock of one corporation by another unlawful per se. Such acquisition must injuriously affect interstate commerce—and this is the heart of the International Shoe Co. decision.

I can not believe that the mere acquisition by one corporation of the stock of two or more competing corporations is a violation of the law, even if the competition between the competing corporations is thereby eliminated. I think the test is whether such acquisition results in restraining commerce. There may be and undoubtedly are many circumstances under which such acquisition is lawful, in addition to those specifically mentioned in the Clayton Act, because it may be done so that it will not substantially lessen competition but on the contrary may increase it and have a tendency to prevent monopoly.

To illustrate: Suppose that three corporations, A, B, and C, are engaged in commerce within the same territory. A is strong and is gradually driving the two weaker corporations, B and C, out of business, and thereby destroying competition—and unless some action is taken A will soon have a complete monopoly of the market in that vicinity. D, another corporation, acquires the stock of B and C, the two weaker corporations, and thereby becomes a strong competitor of A, increasing competition in that territory and preventing A from having a complete monopoly. Is such acquisition unlawful?

I know that it is argued that Congress has decided that the acquisition of the stock of one corporation by a competing corporation is in itself injurious to the public and a violation of the statute. The answer is that Congress has no authority to legislate unless the act complained of injuriously affects interstate commerce, and whether such acquisition does tend to restrain commerce is a question of fact and not of law, to be determined in each particular instance. A more conclusive answer to this contention is that the Supreme Court of the United States, in the International Shoe Co. case, distinctly

held that Congress had decided quite to the contrary. That case squarely holds that Congress meant that it must be such a suppression of competition as "will be injurious to the public", and this fact must be alleged and proven and found as a fact, or an order by the Commission is improvidently issued.

In the same sentence, it is stated that it is unlawful for one corporation to acquire "the whole or any part" of the stock or share capital of two or more competing corporations engaged in commerce where the effect of such acquisition "may be to substantially lessen competition between such corporations or any of them".

This is a use of words without meaning. To contend that Congress meant what the words say is to attribute to it lack of ordinary understanding. The acquisition of stock under such circumstances must not only lessen such competition substantially but practically wipe it out. If Congress intended that the acquisition by one corporation of the stock of two competing corporations was in itself unlawful, it would have stopped there. It would not have added the meaningless and contradictory phrase "where the effect * * * may be to substantially lessen competition between such corporations or any of them." But what Congress meant by the words "to substantially lessen competition" has been settled by the only power that could settle it. The Supreme Court of the United States has said in the International Shoe Co. case that what Congress meant by that phrase was that the acquisition, whatever effect it might have on the competition existing between the corporations whose stock was acquired, must tend to lessen competition in "such a degree as will injuriously affect the public." In other words, as the Supreme Court interprets the statute, Congress meant that the word "or" as used in this section of the Clayton Act, should be changed to "and", so that it would read, "Where the effect of such acquisition may be to substantially lessen competition between such corporations and to restrain such commerce in any section or community, or tend to create a monopoly in any line of commerce."

It is a part of the legislative history of section 7 of the Clayton Act that Congress doubted its power to base the provisions of this section on mere lessening of competition, and sought to bring it within the power of Congress under the Interstate Commerce clause of the Constitution by the use of the additional word "substantial", which it left undefined. The Supreme Court of the United States now says that the word "substantial" as used in the statute is as follows: "That is to say, to such a degree as will injuriously affect the public."

I re-state what I said in my dissenting opinion in the International Shoe Co. case,[1] that the vital question in these cases is always, was the public injured by such transaction? The complaint alleges no such injury and the findings of fact show none. Will it be in the interest of the public to issue an order in this case? We have no evidence tending to show that this will be the result.

Memorandum by Commissioner McCulloch

I am in entire accord with the majority in issuing an order against respondent, but I think that respondent should be required to divest itself of the acquired stock of each of the corporations instead of only one of them.

Respondent is a holding corporation and it acquired the stock of two competitive corporations engaged in interstate commerce. The acquisitions occurred on the same day—the two transactions were simultaneous and were each unlawful. The taint of illegality pervaded them both. The statute (Clayton Act, sec. 7, second paragraph) declares to be unlawful the acquisition by any corporation of the " whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock, by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or share capital is so acquired ". Section 11 of the same statute provides that in case of violation the Federal Trade Commission shall issue complaint and after hearing " shall issue an order requiring such person to cease and desist from such violations and divest itself of the stock held ".

In the present case the two acquisitions were simultaneous and each was in violation of the statute, hence the only way to " desist from such violations " is by divestiture of all of the shares of stock unlawfully acquired. Such is the plain letter of the statute and there is no reason to conclude, from the language used, that the lawmakers considered a lesser measure of divestiture sufficient to completely restore competition. In the face of the emphatic language of the statute, we need not search for the spirit of it to reach a conclusion not in accord with the precise terms.

Of course, if the two acquisitions had been wholly separate in point of time the first would not have been unlawful and a divestiture of stock by the second acquisition—the unlawful one—could only be required.

[1] 9 F. T. C. 463.

IN THE MATTER OF

L. J. HOUZE CONVEX GLASS CO.

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

Docket 1674. Complaint, Sept. 20, 1929[1]*—Decision, Mar. 31, 1930*

Where a corporation engaged in the manufacture and sale of gear shift balls resembling onyx in appearance, represented the same on the containers of the extension levers to which they pertained, as "Marblex Onyx", the fact being that said balls were made entirely of glass; with the tendency and capacity to mislead and deceive the purchasing public in respect of the composition thereof and induce their purchase in such belief:

Held, That such practice, under the conditions and circumstances set forth, was all to the prejudice of the public and competitors and constituted an unfair method of competition.

Mr. Alfred M. Craven for the Commission.
Christy, Christy & Wharton, of Pittsburgh, Pa., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Pennsylvania corporation engaged in the manufacture and sale of lamps and lamp bases and breaks simulating onyx in appearance, and of gear-shift balls for automobiles, and with principal place of business at Point Marion, Pa., with advertising falsely or misleadingly and misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, describes its said lamps, lamp bases, and breaks in advertisements, leaflets, and on the containers as "Onxglass" and/or "On-X-Glass" and its gear-shift balls as "Marblex Onyx", with tendency and capacity to mislead and deceive the purchasing public into believing said articles to be composed of onyx and into purchasing the same in such belief; all to the injury and prejudice of the public and of respondent's competitors.

[1] Amended.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its amended complaint upon the respondent, L. J. Houze Convex Glass Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act of Congress.

The respondent having entered its appearance and filed its answer herein hearing was had and evidence was thereupon introduced on behalf of the Commission and also on behalf of the respondent before an examiner of the Federal Trade Commission theretofore duly appointed. Thereafter this proceeding came on regularly for decision and the Commission having duly considered the record and being now fully advised in the premises makes this its report stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Pennsylvania with its factory and principal place of business at Point Marion in said State. It is and has been for many years last past engaged in the manufacture and sale, among other things, of gear-shift balls for automobiles. It causes said articles when so sold to be transported in interstate commerce from its factory into and through numerous States of the United States other than the State of Pennsylvania to the purchasers thereof consisting to a large extent of persons conducting retail stores at their respective points of location in the various States of the United States.

In the course and conduct of its business respondent is and has been in competition with other individuals, partnerships, and corporations located and doing business in the United States engaged in the sale and distribution of gear-shift balls in interstate commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its said business respondent sells and delivers said gear-shift balls to its customers in connection with an article called an extension lever. On the carton or container of said extension lever respondent has advertised and represented, and now advertises and represents, said gear-shift balls to be made

of "Marblex Onyx," when in truth and in fact said gear-shift balls are made entirely from glass, but resemble onyx in appearance.

PAR. 3. The description of the gear-shift balls made by the respondent as mentioned in paragraph 2 hereof is false and misleading and has the tendency and capacity to mislead and deceive the purchasing public and to lead them into the belief that the said gear-shift balls are made of onyx and to purchase the said articles in that belief.

CONCLUSION

The practices of respondent under the conditions and circumstances set forth in the foregoing findings are all to the prejudice of the public and of respondent's competitors and are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record and the Commission having made its findings as to the facts and conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, L. J. Houze Convex Glass Co., its officers, agents, and employees do cease and desist from advertising or representing gear-shift balls or any other article sold by it in interstate commerce to be made of marblex onyx, or onyx, unless said articles be actually made from onyx.

It is further ordered, That respondent shall, within 30 days after the receipt of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

Syllabus

IN THE MATTER OF

WILLIAM H. JOHNSON, AN INDIVIDUAL, DOING BUSINESS UNDER THE NAME AND STYLE OF ETHYLENE SALES COMPANY AND HATHAWAY & HAMILTON—J. MERRELL REDDING, AN INDIVIDUAL, DOING BUSINESS AS ETHYL GAS COMPANY[1]—J. H. HATHAWAY, AN INDIVIDUAL, DOING BUSINESS AS THE AMERICAN CHEMICAL COMPANY[1]

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

Docket 1720. Complaint, Nov. 5, 1929—Decision, Mar. 31, 1930

Where a corporation engaged under the name Ethyl Gasoline Corporation of New York in the sale of an antiknock fluid or motor fuel in interstate commerce, and in the use of the term "Ethyl" in connection therewith; and thereafter an individual engaged in the sale of a fluid for treating motor fuel, with no relation to "Ethylene", an anæsthesia gas,

(*a*) Described, advertised, branded, and sold his said fuel as "Ethylene Fluid", "Ethylene Fluid—Anti-Knock Gasoline", "New and Super Ethylene Fluid and Hyco", "Nox-It" and "Nox-out-Nox", "Anti-knock Ethylene Gas" (or fluid), and falsely represented the name of the product as registered in the Patent Office through the designation "Reg. U. S. Pat Off.";

(*b*) Falsely advertised and represented said product as producing an effective motor fuel with antiknock properties, when mixed with gasoline, and as similar to and giving the same results as Ethyl fluid, product of the aforesaid Ethyl Gasoline Corporation of New York;

(*c*) Falsely represented that its manufacturing plant was located at Passaic, N. J., through depiction on letterheads, stationery, and advertising matter of a large manufacturing plant and/or the printed words "Works at Passaic, N. J.";

(*d*) Furnished customers with globes for gasoline pumps similar to those used by and furnished to dealers in the product of the aforesaid Ethyl Gasoline Corporation of New York, so as to mislead and deceive the consuming public into believing its product to be that of the aforesaid corporation;

(*e*) So colored his product that when mixed with gasoline the resulting mixture was similar in coloring to and undistinguishable from that of the aforesaid Ethyl Gasoline Corporation, with the result of deceiving and misleading the purchasing public into believing its said product to be that of the aforesaid corporation; and

(*f*) Simulated advertising information and instruction publications and booklets of competitors, and competitors' phrases and statements;

With the capacity and tendency to cause and with the effect of causing retail distributors and the consuming public to purchase its said product as and for one with antiknock properties when used as a motor fuel, and to confuse said product with that of its several competitors:

[1] Proceedings against respondents Redding and Hathaway dismissed.

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

Mr. Henry C. Lank for the Commission.

Clark & Clark and *Mr. Frederick A. Jones*, of Dallas, Tex., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent William H. Johnson, doing business under the name of Ethylene Sales Co. and Hathaway & Hamilton, respondent J. Merrell Redding, an individual doing business as Ethyl Gas Co., and respondent J. H. Hathaway, an individual doing business as the American Chemical Co., all engaged at Dallas, Tex., in the sale of a fluid for treating motor fuel, alleged to give such fuel antiknock properties, with misrepresenting qualities and composition of product claiming registration of name thereof falsely, misrepresenting business status, advertising falsely or misleadingly and misbranding or mislabeling in regard thereto, passing off product as and for competitor and simulating advertising of competitors, color of their products and their phrases and statements, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, in the sale of said fluid mixture variously described as " Ethylene Fluid," "Ethylene Fluid Anti-Knock Gasoline," " New and Super Ethylene Fluid—Hyco," " Ethyl Gas," " Ethyl Gas Anti-Knock," " Nox-It," " Nox-It Gasoline " to persons, firms, or corporations located in various States and dealing in motor fuels, falsely and fraudulently represented that said Ethylene fluid, mixed in gasoline, improved the antiknock properties thereof, produced an effective antiknock motor fuel, was similar to Ethyl fluid, sold by the Ethyl Gasoline Corporation of New York, to persons and concerns throughout the several States, that Ethylene gasoline was similar to and gave the same results as Ethyl gasoline, a motor fuel containing said Ethyl fluid, a product of the aforesaid corporation, well known to the purchasing public as containing such Ethyl fluid and having high antiknock properties, that Ethylene gas or fluid, or " Nox-It," or "Nox-out-Nox," as the case might be, was a treater of gasoline and mixed or dissolved therein produced an effective antiknock motor fuel, that the name of their product was registered in the Patent Office, by the false designation,

"Reg. U. S. Pat. Off.", that their manufacturing plant is located at Passaic, N. J., through having on their letterheads, stationery and advertising material picture of a large plant and/or of the printed words "Works at Passaic, N. J.", that they maintain an export department, through having on their advertising matter, etc., the expression "Export Department, 230 Fifth Avenue, New York City," and [they have branches] through having on their advertising material and stationery the expression "Branches: Los Angeles, California; Chicago, Illinois".

Respondents further, as charged, misbranded their products in that they branded the same as antiknock ethylene gas or antiknock ethylene fluid, as the case might be, when in fact the mixture, compound, or product concerned was not an effective antiknock gas motor fuel or fluid for motor fuels, and had no relation to ethylene, a true chemical compound often used in anæsthesia, and as "Reg. U. S. Pat. Off.," meaning thereby that the label or name was registered in the Patent Office, when in fact not so registered.

The respondents further, as charged in the sale and distribution of their products have simulated the advertising of competitors in various States and passed off their products as that of competitors or similar thereto in that they have simulated (1) signs of competitors, furnishing customers with such signs to be placed on pumps, (2) coloring of competitor's motor fuels, known to the public as having antiknock properties, (3) advertising information and/or instruction publications including booklets prepared, distributed and circulated by competitors and (4) phrases and statements of competitors.

Said alleged acts and practices of respondents, as alleged, have the capacity and tendency to and do (1) cause retail distributors and the consuming public to purchase respondents said products in the belief that said products do have antiknock properties, (2) cause retail distributors and the consuming public to confuse respondent's said products with the products of competitors, (3) injure the value of effective antiknock fuels, possessing a utility to the consuming public, in the mind of and to the detriment of said public, through the sale by respondents of their said spurious and noneffective antiknock fluids and/or gasolines, (4) divert business from and otherwise injure and prejudice said competitors, many of whom in nowise represent the composition, nature and character and effect of the products dealt in by them, and (5) deceive the purchasing public, and said acts and practices are all to the prejudice of the public and of

respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDING AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the said respondent, William H. Johnson, an individual doing business under the name and style of Ethylene Sales Co. and Hathaway & Hamilton, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The said respondent, having entered his appearance and filed his answer herein, stating that he refrained from contesting said proceedings and consenting that this Commission may make, enter and serve upon him an order to cease and desist from the violations of the law alleged in the complaint;

Thereupon this proceeding came on for decision and the Federal Trade Commission, having duly considered the record and having been fully advised in the premises, now makes this report in writing and states its findings as to the facts as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The said respondent, William H. Johnson, also known as William H. Johnsen, is an individual with his place of business in the city of Dallas, State of Texas. The said respondent for more than two years last past has been doing business under the name and style of Ethylene Sales Co. and also under the name and style of Hathaway & Hamilton. The said respondent during all of said time has been engaged in the sale of a fluid for treating motor fuel alleged to give said motor fuel antiknock properties. The said respondent has caused the said fluid when so sold to be transported in interstate commerce from the city of Dallas in the State of Texas to the purchasers thereof at various points in the States of the United States other than the State of Texas. In the course and conduct of his business the said respondent has been in competition with other individuals, partnerships and corporations engaged in the sale of fluids for treating motor fuel so as to give said motor fuel antiknock properties.

PAR. 2. The said respondent for more than two years last past has been selling in interstate commerce the aforementioned fluid and

variously describing the same as ethylene fluid. Ethylene fluid—Antiknock gasoline, New and super Ethylene fluid and hyco, and advertising the same as a motor fuel having antiknock properties when mixed with gasoline when in fact the said fluid when mixed with gasoline does not produce a motor fuel having antiknock properties.

At the time or times the said respondent, William H. Johnson, adopted the trade name Ethylene, Ethylene fluid, Ethylene fluid—Antiknock gasoline, the Ethyl Gasoline Corporation of New York was and has been using the term "Ethyl" in the sale in interstate commerce of an antiknock fluid or motor fuel.

PAR. 3. The said respondent in the sale of his said product has made numerous statements and representations to the effect:

(*a*) That Ethylene fluid is a treater of gasoline and when mixed with or dissolved in gasoline improved the antiknock properties of the gasoline and produced an effective antiknock motor fuel.

(*b*) That Ethylene fluid was similar to Ethyl fluid, a product of the Ethyl Gasoline Corporation of New York.

(*c*) That Ethylene gasoline was similar to and gave the same results as Ethyl gasoline.

(*d*) That Ethylene gas or fluid was a treater of gasoline and when mixed or dissolved in gasoline produced an effective antiknock motor fuel.

(*e*) That "Nox-It" was a treater of gasoline and when mixed or dissolved in gasoline produced an effective antiknock motor fuel.

(*f*) That "Nox-out-Nox" was a treater of gasoline and when mixed or dissolved in gasoline produced an effective antiknock motor fuel.

(*g*) That the name of said respondent's product was registered in the United States Patent Office by the designation "Reg. U. S. Pat. Off."

(*h*) That said respondent's manufacturing plant was located at Passaic, N. J., by having on his letterheads and stationery and advertising material a picture of a large manufacturing plant and/or the printed words "Works at Passaic, N. J."

All of the above-mentioned statements and representations were in fact false, deceptive, and untrue.

PAR. 4. Said respondent for more than two years last past has branded his product:

(*a*) "Anti Knock Ethylene Gas", when in fact the mixture or compound was not an effective antiknock gas or motor fuel.

(*b*) "Anti Knock Ethylene Fluid", when in fact the product was not an effective antiknock fluid or motor fuel.

(*c*) "Ethylene Gas" and/or "Ethylene Fluid", when in fact the product had no relation to "Ethylene", an anæsthesia gas.

(*d*) "Reg. U. S. Pat. Off.", meaning thereby that their label or name was registered in the United States Patent Office, when in fact it was not so registered.

PAR. 5. In the sale and distribution of his product the said respondent has simulated the advertising of his competitors located in the various States of the United States and has sold his product as and for the product of the Ethyl Gasoline Corporation of New York and numerous and various other distributors and dealers located throughout the United States, the particular acts in this connection being:

(*a*) The furnishing by said respondent to his customers of globes for gasoline pumps similar to the globes used by and furnished to the dealers in the product of the Ethyl Gasoline Corporation of New York so as to mislead and deceive the consuming public into the belief that the said respondent's product was the product of the Ethyl Gasoline Corporation of New York.

(*b*) Said respondent has so colored his product that when mixed with gasoline the ultimate product is similar in coloring and can not be distinguished from the product of the said Ethyl Gasoline Corporation of New York, thereby deceiving and misleading the purchasing public into the belief that said respondent's product is the product of the Ethyl Gasoline Corporation of New York.

(*c*) Said respondent has simulated advertising information and instruction publications, including booklets prepared, distributed, and circulated by competitors.

(*d*) Said respondent has simulated phrases and statements of competitors.

PAR. 6. The acts and practices of the said respondent as set forth above have the capacity and tendency to and do cause retail distributors and the consuming public to purchase respondent's product in the belief that said product has antiknock properties when used as a motor fuel.

The acts and practices of respondent as set forth above have the capacity and tendency to and do cause retail distributors and the consuming public to confuse respondent's said product with the product of respondent's several competitors.

CONCLUSION

The practices of said respondent, William H. Johnson or William H. Johnsen, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respond-

ent's competitors and are unfair methods of competition in interstate commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and upon the consent of the respondent, William H. Johnson, that the Commission may make, enter, and serve upon him an order to cease and desist from the violations of law as alleged in said complaint, as fully appears from the record herein; and the Commission having made its findings as to the facts with the conclusion that the respondent, William H. Johnson, has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, William H. Johnson, also known as William H. Johnsen, doing business as the Ethylene Sales Co., his agents, servants, and employees, in connection with the advertising, offering for sale, or sale in interstate commerce of a product variously described and designated as "Ethylene Fluid", "Ethylene Fluid Anti-Knock Gasoline", "New and Super Ethylene Fluid and Hyco" for use in treating motor fuel and gasoline, do cease and desist:

(1) From using the word "Ethylene" alone or in combination or connection with any other word or words.

(2) From using the words "Anti-Knock" or the words "Nox It" or the words "Nox Out Nox" or any word or words or representation of like import unless and until respondent's said product actually contains properties which when mixed with motor fuel or gasoline give to said motor fuel or gasoline antiknock properties.

(3) From using the designation "Reg. U. S. Pat. Off." or words of like import unless and until a trade-mark for said product has been registered in the United States Patent Office.

(4) From using or displaying the words "Works at Passaic, New Jersey" and from using or displaying a pictorial representation indicating a manufacturing plant at Passaic, N. J., unless and until respondent actually owns or operates a manufacturing plant at Passaic, N. J., in which said product sold by him is made.

(5) From selling, leasing, or otherwise furnishing to dealers, globes for gasoline pumps similar in color, dress, or general appearance to the globes for gasoline pumps furnished dealers by distributors or sellers of motor fuel or gasoline.

(6) From simulating, copying, or imitating in dress or general appearance the signs, placards, circulars, booklets, or other advertising or literature of distributors or sellers of motor fuel or gasoline.

It is further ordered, That the respondent, William H. Johnson, also known as William H. Johnsen, doing business as Ethylene Sales Co., shall within 60 days after the service upon him of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

ORDER OF DISMISSAL AS TO CERTAIN RESPONDENTS

This matter coming on for consideration before the Commission and the Commission having duly considered the matter and being fully advised in the premises,

It is ordered, That the complaint in this case be, and the same is hereby, dismissed without prejudice as to the respondents J. Merrell Redding, doing business as Ethyl Gas Co., and J. H. Hathaway, doing business as the American Chemical Co.

Syllabus

IN THE MATTER OF

UNITED REMEDIES, INC.

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

Docket 1593. Complaint, Apr. 12, 1929—Decision, Apr. 7, 1930

Where a corporation engaged in the sale of a hair preparation named "Kolor-Bak", which (1) neither restored nor promoted recovery of the original color except possibly, in some instances, accidentally through action as a dye, to be then preserved, if at all, only by repeated applications, (2) possessed no value as a general hair tonic or as a cleanser or remover of dandruff, (3) ordinarily stained the hands and scalp, and (4) contained acetate of lead, an unsafe ingredient for the scalp and an injurious one, in some cases,

(*a*) Falsely represented through labels, cartons, containers, wrappers, advertising and printed matter that said preparation restored and brought back the original color of gray hair, always got the same perfect result, was neither a dye nor harmful, was valuable as a remedy for dandruff, falling hair, etc., and as general hair tonic, stained neither scalp nor hands, and was free from nitrate of silver, para and mercury and composed of beneficial ingredients;

With capacity and tendency to mislead the purchasing public or a substantial portion thereof into believing that use of said preparation caused gray hair through normal processes to recover its former natural color and to induce its purchase in reliance on such belief and also on the erroneous belief that said preparation had the merits and qualities otherwise attributed to it as above set forth; and, following discontinuance of said false representations, theretofore made by itself, and its predecessors in the sale of said preparation.

(*b*) Described and designated its said dye as "Kolor-Bak", without qualification, and represented that the same imparted color to gray hair, and that through use thereof such hair might be colored its original shade;

With capacity and tendency to mislead and deceive the public or a substantial portion thereof, by reason of the phonetic significance, meaning, and effect of the name, into purchasing the preparation in reliance on the erroneous belief that it restored the original natural color of gray hair instead of imparting an artificial color or shade thereto, and with the material and probable effect of so misleading and deceiving:

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

Mr. James M. Brinson for the Commission.

Mr. Stephen A. Day, of Chicago, Ill., and *Mr. Eugene L. Culver*, of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the sale of a certain preparation or compound for the hair, to purchasers in various States, and with principal office and place of business at Chicago, with naming product misleadingly, and misrepresenting and advertising falsely or misleadingly in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, names its aforesaid product Kolor-Bak and represents that the same will restore the original color of gray hair, that it "always gets the same perfect result", is neither a hair dye nor harmful, but is valuable as a general hair tonic and as a remedy for dandruff, falling hair and itching scalp, and that it will neither stain the scalp or hands and is free from nitrate of silver, "para" or mercury, and that its ingredients are beneficial to hair and scalp, the facts being that the product in question contains acetate of lead which is injurious in some cases and is not a safe or legitimate ingredient, that the product in question is a hair dye and does not have the results claimed, nor any uniform or other result, except such as is ordinarily produced by hair dye and is not of value as a dandruff remedy or hair tonic nor for falling hair or itching scalp and does not clean the hair of dandruff and does stain hands and scalp.

According to the complaint "the designation and description by respondent of its said product as Kolor-Bak, a word which has the same phonetic significance, meaning, and effect as the words "color back", has had and has the capacity and tendency to mislead and deceive the public into the belief that such product will restore or bring back the original color to hair, and the false representations used by respondent * * * and each and all of them has and have had, and has and have the capacity and tendency to mislead and deceive the public into the purchase of said product in the erroneous belief that said representations or one or more of them is or are true"; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September, 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes", the Federal

Trade Commission issued and served a complaint upon respondent, United Remedies Inc., charging it with unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having entered appearance and filed its answer, and having entered into a stipulation as to the facts in lieu of testimony and evidence in course of hearing before an examiner theretofore duly appointed for such purpose, thereupon this proceeding came on regularly for decision before the Federal Trade Commission and upon such complaint, answer, stipulation as to the facts, briefs and arguments of counsel for the Commission and respondent, and the Commission having duly considered the record and being now fully advised in the premises makes this its report in writing, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent United Remedies, Inc., is now, and for more than a year prior to the issuance of complaint has been, a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business at Chicago in said State. It has been and is offering for sale and selling, and when sold, causing to be transported, from its said place of business, to purchasers in the various other States of the United States, a preparation or compound, described and designated as Kolor-Bak, in competition with individuals, partnerships and corporations engaged in selling hair dyes in interstate commerce.

The name Kolor-Bak was first adopted by the Kolor-Bak Products Co., also a corporation organized and existing under and by virtue of the laws of the State of Illinois, and on August 1, 1916, it was duly registered in the United States Patent Office as a trademark, to distinguish certain products manufactured and sold by it, namely, amongst other certain products, hair dyes and hair tonics, from similar products offered for sale or sold by its competitors. The Kolor-Bak Products Co. later changed its corporate name to Hygienic Laboratories, and continued the sale of its said preparation for the hair until on or about February 28, 1927, when the business together with the trade name, and the formulae used by it for, and in the manufacture of, hair dyes under said trade name, was sold to certain individuals acting as trustees for respondent United Remedies, Inc. These individuals transferred said business, formulae, and trade name to respondent on or about May 1, 1927, together with the good will of said Hygienic Laboratories, particularly with respect to its hair dye Kolor-Bak, and containers, cartons,

wrappers, advertising and printed matter, which Hygienic Laboratories and Kolor-Bak Products Co. had theretofore used in connection with the advertisement and sale of said hair dye. The good will so acquired by respondent United Remedies, Inc., represented or reflected the attitude of the purchasing public toward Kolor-Bak based on or due to statements on labels on bottles or containers in which Kolor-Bak had been marketed, or on cartons or wrappers enclosing the bottles or containers of Kolor-Bak sold in the course of commerce among the various States of the United States, or in printed directions for the use of Kolor-Bak, or in advertisements or other printed matter theretofore utilized by Hygienic Laboratories and Kolor-Bak Products Co. to present the merits of Kolor-Bak to the purchasing public.

Respondent United Remedies, Inc., thereupon adopted the representations and statements which its said predecessors had used as inducements to the purchase of Kolor-Bak, and began to use and did use said cartons, containers, wrappers, and other advertising and printed matter containing such representations and statements in offering for sale and selling Kolor-Bak in commerce among and between various States of the United States until October 25, 1928. Respondent was notified during the month of March, 1928, that its methods and practices including use of said cartons, containers, wrappers, and advertising matter were under investigation by the Federal Trade Commission.

PAR. 2. Respondent United Remedies, Inc., has falsely represented to the public by means of and through such labels, cartons, containers, wrappers, advertising and printed matter, just as had been done by its predecessors in establishing its reputation for Kolor-Bak, that such preparation can restore and bring back the original color of gray hair, that it always gets the same perfect results, that it is neither a hair dye nor harmful, that it is valuable for use as a general hair tonic, as a remedy for dandruff, falling hair and itching scalp, that it neither stains the scalp nor the hands, that it is free from nitrate of silver, para and mercury, and that its ingredients are beneficial to the hair and scalp.

In truth and in fact the product Kolor-Bak neither restores nor brings back the original or former color of gray hair, nor directly or indirectly promotes recovery or restoration of the original color. It may, in some instances, so color the hair that it has the general appearance of such original color, but if the hair does acquire from the use of Kolor-Bak its natural shade it is accidental, and it can be preserved, if at all, only by repeated application of the product. Such color or shade disappears whenever use of Kolor-Bak is discontin-

ued. It is a hair dye and neither always gets the same perfect result nor any uniform result except as ordinarily accomplished by dyeing the hair and repeatedly and continuously dyeing it from time to time. It is neither valuable nor effective as a remedy for dandruff, falling hair, or itching scalp, or as a general hair tonic. It neither cleans nor frees the hair from dandruff and ordinarily will stain the hands and scalp. It contains, among other ingredients, a substance known as acetate of lead, which may be, and in some instances is, injurious, depending on individual susceptibility or the extent of its use. This substance is neither a safe nor legitimate ingredient of a product to be rubbed into the scalp indiscriminately or without consideration of the state of health or condition of the scalp of the user.

On or about October 25, 1928, respondent United Remedies, Inc., discontinued representations in labels, containers, wrappers, cartons, or in advertisements to the effect that Kolor-Bak would restore the original color of gray hair, or that it was or is not a hair dye. It has continued, however, to describe and designate its hair dye as Kolor-Bak without any qualification whatever, and has represented and now represents that such preparation imparts color to gray hair accompanied by the statement that through use of Kolor-Bak gray hair may be colored to its original shade.

PAR. 3. The representation by respondent that use of Kolor-Bak can or will restore or bring back the original color of gray hair, together with the representation that it is not a hair dye, has had the capacity and tendency to mislead and deceive, and the representation that it imparts color to gray hair, accompanied by the statement that by its use such gray hair may be colored to its original shade, has had and now has the capacity and tendency to mislead and deceive the purchasing public or a substantial portion of it into the belief that use of Kolor-Bak would cause gray hair, through normal processes, to recover the natural color it had before turning gray, and to induce its purchase in reliance on such erroneous belief.

The representations by respondent that Kolor-Bak always gets the same perfect results, that it is neither a hair dye nor harmful, that it is valuable for use as a hair tonic, or as a remedy for dandruff, falling hair, and itching scalp, that it will neither stain the scalp nor the hands, and that its ingredients are beneficial to the hair and scalp, have had the capacity and tendency to mislead and deceive the purchasing public or substantial portion of it into the purchase of Kolor-Bak in reliance on the erroneous belief that such preparation has the merits or qualities so attributed to it.

The description or designation by respondent of its preparation for dyeing or changing the color of gray hair by the trade name Kolor-Bak, which has the same phonetic significance, meaning and effect as the words "color back", and which has been used by respondent and its predecessors since 1916 for a hair dye represented to the public by advertisements and otherwise as an effective means for restoring, without dyeing, the original color of gray hair, has had and has the capacity and tendency to mislead and deceive, and the natural and probable effect thereof will be to mislead and deceive the public or a substantial portion of it into the purchase of Kolor-Bak in reliance on the erroneous belief that its use instead of imparting an artificial color or shade, will restore the original, natural color of gray hair.

CONCLUSION

The practices of said respondent United Remedies, Inc., under the conditions and circumstances described in the foregoing findings as to the facts are all to the injury and prejudice of the public and respondent's competitors, and are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

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 in lieu of testimony and evidence, and the Commission having filed its report stating its findings as to the facts and its conclusion that the respondent United Remedies, Inc., has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, United Remedies, Inc., its officers, agents, and employees, do cease and desist directly or indirectly:

(1) From representing, in connection with offering for sale or selling in interstate commerce, by advertisements, or on labels, cartons, containers, wrappers, directions for use, or in any other written or printed matter, that use of its preparation designated Kolor-Bak, offered for sale or sold in interstate commerce, for dyeing, or changing the color of gray hair, can or will restore, bring back, impart,

produce, or cause to have, the original, natural or former color or shade; or that Kolor-Bak is neither a hair dye nor harmful, or that it is valuable for use as a hair tonic, or as a remedy for dandruff, falling hair, or itching scalp, or that it will neither stain the scalp nor the hands, or that its ingredients are beneficial to hair and scalp, or that it may safely be rubbed into the scalp indiscriminately without consideration of the state of health, or condition of the scalp of the user.

(2) From advertising, describing or designating its preparation offered for sale or sold in interstate commerce for dyeing or changing the color of gray hair, as Kolor-Bak, unless accompanied by apt and adequate words equally conspicuous and in immediate conjunction therewith clearly indicating that it is a hair dye, or imparts an artificial color or shade.

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

IN THE MATTER OF

JAMES KELLEY

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

Docket 1610. Complaint, Apr. 24, 1929—Decision, Apr. 7, 1930

Where an individual conducting a mail-order jobbing business in fountain pens, pencils, and specialties, purchased from manufacturers and resold to street fakers and peddlers, doing no manufacturing, though assembling certain of the pens dealt in, and with only a few employees, and a trade of about $50,000 a year,

(*a*) Falsely represented himself as a manufacturer and a large mail-order concern, with factory in Providence, and that persons should patronize him because of the saving of the middleman's profit thereby secured;

(*b*) Sold pens with clip and lever branded "Iridium," with intent and effect of causing prospective purchasers and ultimate consumers to infer falsely that the points were tipped with said substance;

(*c*) Supplied customers with fictitious price ring tags for said pens, bearing such figures as $2.50, $7, $8, $10, and others, and furnished customers with coupons advertising pens at a large reduction, for a short time only, from a so-called much larger "regular price," in supposed partial consideration of surrender of the coupons, with intent and effect of causing prospective customers or customers of his vendees to believe they were buying a high-grade pen at a greatly reduced price, the facts being that the pens were of poor quality and low cost, sold by him at $60, $72, and $78 per gross, and that the implied price reductions were fictitious;

(*d*) Represented his pen points as "Warranted 14K" and as "Warranted," and sold the higher priced pens with the mountings stamped "14K Waterson," the facts being that said points were not gold, but brass, thinly gold plated, and mountings were of "goldine," or brass, thinly coated with gold wash; and

(*e*) Simulated barrel levers and cap clips of the L. E. Waterman Co., and stamped levers and cap clips of his pens and/or pen points "Waterson," with intent and effect of misleading the buyer and ultimate consumer into believing said inferior articles to be the "Waterman pens" made and sold by the L. E. Waterman Co., New York City;

With intent, capacity, and direct tendency to mislead customers and/or the buying public and with the effect in many instances of so misleading and deceiving such customers and public:

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

Mr. Edward L. Smith for the Commission.

Koenig, Bachner & Koenig, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an individual engaged in a mail order jobbing business in fountain pens, pencils, and novelties with misrepresenting business status or advantages, misbranding or mislabeling, misrepresenting prices and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in the sale of fountain pens of poor quality and low cost, with barrel levers and/or cap clips simulating those of the L. E. Waterman Co., and with pen points composed of brass thinly gold plated, and mountings of the higher cost pen made of brass thinly coated with gold wash, and not manufacturing any of the articles sold by him, though assembling and setting in place certain parts of the fountain pens dealt in by him, employing very few persons and with a trade approximating $50,000 in sales annually, represented himself in his advertisements as a manufacturer of the articles sold by him, with a factory at Providence, and as a large mail order concern and that persons desiring articles dealt in by him should deal with him for the reason, among others, of saving the middleman's profit on the articles concerned.

Respondent further, as charged, stamped on the levers of the fountain pens sold by him and/or on the pen points of those sold at the higher prices, the name "Waterson", with the purpose and effect of misleading the buyer and ultimate consumer into believing that said pens, as a matter of fact of inferior construction as compared with the "Waterman" pens, i. e., those made by the L. E. Waterman Co., with which concern respondent has no relation, were those of that organization, represented his pen points and stamped certain mountings, respectively, made of brass thinly gold plated or coated with gold wash, as "Warranted 14K", "Warranted" and "14K Waterson", respectively, and stamped the brand "Iridium" on the clip and/or the lever of said fountain pens, with the intent and effect of implying and causing the prospective buyer and ultimate consumer of such pens to infer that the pen points thereof, tipped with no element, compound or solution whatever, were tipped with iridium.

Respondent further, as charged, with the purpose and effect of causing prospective customers of his pens, or their vendees, sold to them at $60, $72, and $78 per gross, to believe that they were buying a high-grade pen at a greatly reduced price from the usual price,

supplied customers with fictitious price tags in the shape of a ring, to encircle said pens, bearing the amounts $2.50, $7, $8, $10, and others; assisting and advising the resale of said pens to consumers by the use of such price tags and fictitious prices placed thereon, and furnishing customers, for the aforesaid purpose and with the aforesaid effect, with coupons advertising that immediate purchasers would obtain fountain pens at a large reduction, for a short time, from a so-called " regular price ", stated as of a much greater amount than the prices at which offered, " in supposed partial consideration of the surrender of the said coupons ", the fact being that the implied price reductions are fictitious.

According to the complaint, the aforesaid acts, practices, and methods " are all intended to mislead the customers of respondent and/or the buying public to whom respondent's customers resell the goods purchased from respondent ", and " the said acts, practices, and methods of competition have the capacity and the direct tendency to mislead and deceive the trade and the public, and in many instances have so misled and deceived the aforesaid " and " are unfair to competitors of respondent and to the public within the intent and true meaning of the aforesaid Federal Trade Commission Act."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint upon the respondent, James Kelley, charging him with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act of Congress.

Thereupon the said respondent entered his appearance and filed his answer to the complaint, and thereafter a stipulation of facts regarding certain of the issues raised between the said complaint and the said answer was made between Messrs. Koenig, Bachner & Koenig, attorneys for the said respondent, and W. T. Kelley, assistant chief counsel of the Federal Trade Commission, and Eugene W. Burr, attorney for the Commission, subject to the approval of the Commission, which said stipulation is hereby approved by the Commission, and thereafter a hearing on the other issues raised between the said complaint and answer and not so stipulated was held before an examiner of the Commission duly appointed, and testimony, docu-

mentary evidence, and exhibits were offered and received and duly filed in the office of the Commission; thereafter the said proceeding came on for final hearing before the Federal Trade Commission on such complaint and answer, on such stipulation and on the testimony, evidence, and exhibits on file and on the brief of counsel for the Commission (the respondent having failed and neglected to file a brief), and the Federal Trade Commission having duly considered the said stipulation of facts, testimony, and exhibits on file and the brief of counsel for the Commission, and being fully advised in the premises now makes this its report and states its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is engaged in New York City, N. Y., in a mail order jobbing business in fountain pens, pencils, and specialties, buying the same from manufacturers and reselling to street fakers and peddlers, causing his said goods to be transported from New York City, N. Y., by mail and express to customers who are located in various States and sections of the United States. Respondent advertises, in order to secure the said customers, in that certain weekly magazine known as the Billboard. In selling his said commodities, respondent is in competition with manufacturers and others likewise engaged in transporting their products, competing with the products of respondent, from their respective places of business to customers located in States other than the respective States in which said competing concerns have their principal places of business and manufacture.

PAR. 2. At various and numerous times during the period of five years and upwards, prior to April 24, 1929, respondent has engaged in certain practices hereinafter set forth in paragraphs 3, 4, 5, 6, and 7 hereof.

PAR. 3. Respondent has represented that he is a manufacturer of the pens, pencils, and specialties which he sells, and has represented that he has a factory at Providence, R. I., whereas in truth and in fact he is not a manufacturer of any article, but is engaged in selling goods purchased from others. Respondent has, however, assembled and set into place certain parts belonging to the fountain pens in which he deals. Respondent also represents that his is a large mail-order concern, whereas, in truth and in fact he employs very few persons, and his trade approximates $50,000 in sales annually. The respondent also has falsely and in a misleading manner represented that persons desiring articles belonging to respondent's lines should deal with respondent for the reason, among others, that

the buyer would thereby save the middleman's profit on these articles, whereas respondent himself is but a middleman or jobber of the products he sells.

PAR. 4. Respondent has sold pens under the brand "Iridium" stamped on the clip and the lever of the fountain pens sold by him for the purpose and with the effect of implying and causing the prospective buyer and the ultimate consumer of the fountain pens sold by him to infer that the pen point of respondent's pens are tipped with iridium, whereas in truth and in fact said pen points are not tipped with iridium or any other element, compound or solution whatever.

PAR. 5. The fountain pens sold by respondent are of a poor quality and low cost. The respondent sells them at $60, $72, and $78 per gross. For the purpose and with the effect of causing prospective customers of the said fountain pens or those to whom the respondent has sold the said fountain pens to believe that the said customers are buying a high-grade fountain pen at a price greatly reduced from the usual price thereof, the respondent supplies his customers with fictitious price tags in the shape of a ring to encircle said fountain pens bearing the amount $2.50, $7, $8, $10, and others. Respondent has assisted, abetted and advised the resale of the fountain pens sold by him as aforesaid to customers thereof by the use of the said price tags and fictitious prices placed thereon. Moreover, for the said described purpose and with the said described effect respondent has furnished his customers with coupons advertising that immediate purchasers would obtain fountain pens at a large reduction for a short time only, from a so-called regular price stated to be of a much greater amount than the prices offered in supposed partial consideration of the surrender of the said coupons. Said implied price reductions are fictitious.

PAR. 6. Respondent has represented his pen point as "Warranted 14K", and as "Warranted", whereas in truth and in fact said pen points are not gold, but are brass thinly gold plated. Moreover, the mounting of the pens sold by respondent at the said higher prices made by respondent have been stamped "14K Waterson", whereas in truth and in fact said mountings are of so-called "goldine" or brass thinly coated with gold wash.

PAR. 7. Respondent has caused to be stamped on the lever and cap clips of the fountain pens sold by him, and/or on the pen points on certain of the said pens the name "Waterson", with the purpose and with the effect of misleading the buyer and the ultimate consumer into the impression or belief that said fountain pens are of that brand of fountain pens known and sold as "Waterman" foun-

tain pens manufactured and sold by that certain concern manufacturing and selling fountain pens known as the L. E. Waterman Co., New York City; whereas in truth and in fact the said L. E. Waterman Co. is not the maker of any of the pens sold by respondent, which latter are of inferior construction as compared with the "Waterman" fountain pens, nor has respondent any connection with, or relation to the said L. E. Waterman Co., nor has respondent ever sustained any such connection or relation. Moreover, respondent, in the barrel lever and/or cap clips of the pens sold by him in other ways simulates the barrel levers and cap clips of the said L. E. Waterman Co.

PAR. 8. The acts, practices, and methods of competition of respondent described in paragraphs 3, 4, 5, 6, and 7 hereof, are all intended to mislead the customers of respondent and/or the buying public to whom respondent's customers resell the goods purchased by them from respondent. The said acts, practices, and methods of competition have the capacity and the direct tendency to mislead and deceive the customers of respondent and the buying public to whom respondent's customers resell, and in many instances have so mislead and deceived respondent's customers and the buying public.

CONCLUSION

The said acts and practices of the respondent under the conditions and circumstances set forth in the foregoing findings are unfair to, and to the prejudice of, the public and respondent's competitors, and are unfair methods of competition in commerce and constitute violations of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, a stipulation of certain facts entered into between the respondent through his attorneys, Koenig, Bachner & Koenig, and the Commission through its assistant chief counsel, W. T. Kelley, and Eugene W. Burr, attorney for the Commission, and testimony and evidence submitted, and the Commission having made its findings as to the facts and entered its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, James Kelley, his representatives, agents, servants, and employees forthwith cease and desist from—

(1) Representing that he is a manufacturer of fountain pens, pencils, and specialties, until and unless said James Kelley engages in the actual manufacturing of fountain pens, pencils, and specialties;

(2) Representing that the business of the said James Kelley is that of a large mail order concern, unless and until the volume of business done by the said James Kelley is such as is usually done by a large mail order concern;

(3) Representing that purchasers from the said James Kelley save the "middleman's profit", until and unless said James Kelley manufactures and sells directly to his customers such articles manufactured entirely by him;

(4) Using the name "iridium" on any part of fountain pens sold by him, until and unless the pen points of such fountain pens are tipped with iridium;

(5) Supplying his customers with fictitious price tags, in the shape of rings to encircle said fountain pens, bearing the figures $2.50, $7, $8, $10, or any other sum, and supplying his customers with fictitious price tags in any other form.

(6) Assisting, abetting, and advising by the use of fictitious price tags and fictitious prices the resale by his customers of fountain pens sold by him to them;

(7) Furnishing his customers with coupons advertising that ultimate purchasers of fountain pens from such customers may obtain such fountain pens at a large reduction for a short time only from a so-called "regular price", stated in such coupons to be of a much greater amount than the price asked in pretended partial consideration of the surrender of said coupons;

(8) Representing the pen points of his fountain pens as being "Warranted 14K", "Warranted", or "14K", until and unless said pen points are 14 carat gold.

(9) Using as a trade name for his fountain pens the name "Waterson" or any other name in sound or appearance simulating the name "Waterman".

(10) Simulating barrel levers and/or cap clips or any other parts of fountain pens manufactured by L. E. Waterman Co.

And it is hereby further ordered, That said respondent, James Kelley, shall within 60 days from service upon him of this order, file with this Commission a report in writing setting forth in detail the manner and form in which he has complied with the order by this Commission herein set forth.

Syllabus

IN THE MATTER OF

ALBANY BILLIARD BALL COMPANY, F. GROTE & HUBBELL COMPANY, INC., AND PORTLAND BILLIARD BALL COMPANY

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

Docket 1530. Complaint, June 9, 1928—Decision, April 12, 1930

Where a corporation engaged as second largest manufacturer and distributor in the sale of composition billiard and pool balls; the exclusive distributor of such corporation; and a third company, newcomer in the field, engaged in keen competition with said corporation and distributor;

(*a*) Entered into and abided by an agreement whereby (1) said company and newcomer should furnish said distributor with its requirements of less than regulation size balls and discontinue manufacture and sale of the regulation size in the United States, (2) said corporation should discontinue manufacture and sale of other than the regulation size and license said company to manufacture under said corporation's patent, secure from suit for any possible infringement, and (3) said distributor should pay to said company a commission of $2.11 on each set of regulation size balls made by said corporation and sold for the domestic trade exclusively by and through said distributor; to the end that "all concerns interested, might make a fair profit rather than to continue the cutthroat competition that has been going on for the past three years"; and

(*b*) Entered into and abided by an agreement whereby (1) said company agreed to discontinue sale of regulation size balls in export trade, and (2) said corporation agreed to pay to said company a sum equal to 25 per cent of the profits realized by it, said corporation, on its export business in the products in question, all for the purpose of arriving "at some method of eliminating competition in England", in which country and its colonies the two were particularly engaged in active export competition with one another;

With the result that competition theretofore existing between and among said various concerns in the products involved in the United States and abroad was eliminated, customers were deprived of the benefits thereof, theretofore enjoyed by them, and compelled to pay higher prices than theretofore paid and than they would have paid in the absence of said agreement first above set forth and in the event of the continuance by said concerns of manufacture, sale, and distribution as theretofore carried on, flow of commerce in such products in the channels of interstate and foreign trade was substantially and unduly hindered, and wholesale and retail distributors of composition billiard or pool balls, competitors of the aforesaid various concerns, and the general public were injured:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition in interstate commerce.

Mr. Everett F. Haycraft and *Mr. William A. Sweet* for the Commission.

Merrill, Rogers, Gifford & Woody, of New York City, for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Albany Billiard Ball Co., a New York corporation engaged since 1875 in the manufacture and sale of composition pool balls, with principal office and factory at Albany, respondent F. Grote & Hubbell Co., Inc., a New York corporation engaged in the sale of the aforesaid product to wholesalers and jobbers thereof throughout the United States and in foreign countries, for many years exclusive distributor for aforesaid respondent manufacturer, with principal office and place of business in New York City, and respondent Portland Billiard Ball Co., a Maine corporation, likewise and since about 1914, engaged in the manufacture of composition pool balls and sale thereof to said last-named respondent, manufacturers of small pool tables, wholesale dealers and jobbers and purchasers in England, with principal offices and factory at Portland, with cooperating together and entering into agreements with intent and effect of suppressing competition in interstate and foreign commerce, through apportionment of output, in violation of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, during the year 1917 or thereabouts entered into and abided by an agreement, "with the common purpose of suppressing and restraining and restricting competition in the sale and distribution of composition pool balls throughout the United States whereby the said Portland Billiard Ball Co. agreed to cease and refrain in the future from making regulation size (2¼ inches in diameter) composition pool balls and as a part of such agreement agreed to furnish the said F. Grote & Hubbell Co., Inc., all of its requirements of composition pool balls of less than regulation size at a price 15 per cent less than it charged any other purchaser; and in consideration therefor, said Albany Billiard Ball Co. agreed to cease and refrain from making composition pool balls of less than the regulation size, and said F. Grote & Hubbell Co., Inc., agreed to pay to said Portland Billiard Ball Co. a commission amounting to approximately $2.16 per set on all sales of composition pool balls of regulation size by said F. Grote & Hubbell Co., Inc., in the United States."

Respondent Albany Billiard Ball Co. and Portland Billiard Ball Co., further, as charged, entered into and abided by an agreement "with the common purpose of suppressing, restraining, and restricting competition" in the sale and distribution of the aforesaid articles in foreign commerce "whereby said respondent Portland Billiard Ball Co. for a consideration based upon the amount of composition pool balls it then annually exported to England agreed to discontinue making and selling composition pool balls for export to England", and "respondent Albany Billiard Ball Co. has paid continuously since said time and now pays to respondent Portland Billiard Ball Co. sums of money each year based upon the amount of composition pool balls said Portland Billiard Ball Co. exported to England annually at the time of said agreement as aforementioned."

The result and effect, as alleged, "of the foregoing agreements, practices, and acts has been and now is substantially to lessen and restrict competition in the sale and distribution of composition pool balls in commerce between the various States of the United States and in foreign commerce between the United States and England; to enhance the wholesale prices of said composition pool balls above the prices which would prevail therefor, and to hinder the natural flow of commerce in said commodity in the channels of interstate and foreign trade and commerce, with injury to the competitors of respondents and the public", and said "agreements, practices, and things done by respondents and each of them", as further alleged, "have a dangerous tendency unduly to hinder competition in the sale and distribution of composition pool balls in the United States and in foreign trade and commerce between the United States and England and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define it powers and duties, and for other purposes" (38 Stat. 717), the Federal Trade Commission on June 9, 1928, issued and thereupon served, as required by law, upon Albany Billiard Ball Co., F. Grote & Hubbell Co., Inc., and Portland Billiard Ball Co., respondents above named, in which said complaint it is charged that respondents have been and are now using unfair methods of Competition in interstate commerce in violation of the provisions of section 5 of said act.

The said respondents having filed their answers and amended answers herein, hearings were held and evidence was thereupon introduced on behalf of the Commission and of the respondents before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for a final hearing on the briefs and oral argument, the briefs having been filed on the part of the Commission and the respondent, and counsel for Commission and the respondent having been heard on oral argument, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Albany Billiard Ball Co. is a corporation organized about the year 1872 under the laws of the State of New York, having its principal place of business and factory located in the city of Albany in said State. Since its organization this said respondent has been and now is engaged in the business of manufacturing and selling, among other articles, composition billiard or pool balls, and for a number of years all of its output, which is distributed in the United States, has been sold to its exclusive sales distributor, respondent F. Grote & Hubbell Co., Inc. In October, 1917, said respondent owned certain patents, one of which, No. 807437, was granted in December, 1905, and was esential to the manufacture of composition billiard or pool balls.

Said respondent, Albany Billiard Ball Co. sells its products f. o. b. Albany, but ships them from its plant in Albany to the places of business of the said F. Grote & Hubbell Co., Inc., located in New York State and in States other than the State of New York upon instructions from the latter company. Prior to October, 1917, said respondent Albany Billiard Ball Co. manufactured all sizes of composition billiard or pool balls including the regulation size 2¼ inches in diameter and its output of said regulation size billiard or pool balls now constitutes approximately 40 per cent of the regulation size composition billiard or pool balls manufactured in the United States, the remaining 60 per cent being manufactured and sold by the Brunswick-Balke-Collender Co., the only other manufacturer of such sized billiard or pool balls in the United States.

The number of sets and manufacturers' prices of composition billiard or pool balls of regulation size sold by the Albany Co. in the United States during the period, 1911 to 1927, are as follows:

Year	Sets	Per set	Extension	Year total	Year	Sets	Per set	Extension	Year total
1911	6,621	$7.70	$50,981.70	$50,981.70	1920	4,414	$6.68	$83,698.92	
1912	8,107	6.50	52,695.50	52,695.50	1920	8,829	9.48	29,485.52	$113,184.44
1913	9,629	6.50	62,588.50	62,588.50	1921	12,619	9.48	119,628.12	119,628.12
1914	11,812	3.50	41,342.00	41,342.00	1922	14,069	8.96	126,058.24	126,058.24
1915	8,408	3.50	29,638.00	29,638.00	1923	13,719	8.96	122,922.24	
1916	8,089	3.50	28,311.50		1923	7,525	9.00	67,725.00	190,647.24
1916	2,696	5.70	15,367.20	43,678.70	1924	12,657	8.96	113,332.72	
1917	11,548	5.70	66,823.60	65,825.60	1924	1,600	9.00	14,400.00	127,732.72
1918	5,838	5.70	33,276.60	33,276.60	1925	12,089	8.96	108,317.44	108,317.44
1919	7,317	5.70	41,706.90		1926	12,751	8.96	114,248.96	114,248.96
1919	2,438	5.94	14,481.72	56,188.62	1927	13,447	8.96	120,485.12	120,485.12

PAR. 2. Respondent F. Grote & Hubbell Co., Inc., is a corporation organized on or about July 1, 1917, under the laws of the State of New York with its principal place of business located at New York City in said State, with a branch office located in the city of Chicago in the State of Illinois. Said respondent reorganized, took over and succeeded to the business formerly conducted by McConihie & Hubbell Manufacturing Co. Since July 1, 1917, said respondent has been and now is engaged in the business of selling billiard room supplies, including composition billiard or pool balls, manufactured by the respondent Albany Billiard Ball Co. to approximately 250 manufacturers of and dealers in billiard and pool room supplies, located in towns and cities throughout the United States who resell said products to approximately 30,000 billiard and pool rooms located in towns and cities in the various States of the United States. Said respondent causes said products when so sold to be transported to the purchasers thereof, either from its place of business in the city of New York or its branch office at Chicago, Ill., or direct from the factory of the said Albany Billiard Ball Co. at Albany, N. Y., into and through various other States of the United States. This said respondent has been since its organization and now is, in active competition with various other corporations, partnerships, and individuals also engaged in the business of selling billiard and pool room supplies, including particularly composition billiard or pool balls, to the users thereof in interstate commerce. Between January, 1914, and October, 1917, one of respondent's competitors was the respondent Portland Billiard Ball Co. The president and principal stockholder of the said respondent, F. Grote & Hubbell Co., Inc., is Vincent B. Hubbell, who also owns or controls 40 per cent of the capital stock of the respondent Albany Billiard Ball Co. and for more than 20 years last past this said respondent F. Grote & Hubbell Co., Inc., and its predecessor, McConihie & Hubbell Co. have been the exclusive sales agents of the said respondent Albany Billiard Ball Co. in the sale and distribution of composition billiard or pool balls in the

United States. Said respondent F. Grote & Hubbell Co. sells annually approximately 13,000 sets (consisting of 16 balls) of composition billiard or pool balls, having an approximate valuation of $200,000.

PAR. 3. Respondent Portland Billiard Ball Co. is a corporation organized under the laws of the State of Maine in 1913, with its principal office and factory located in the city of Portland in said State. Since about August 1, 1913, said respondent has been and now is engaged in the manufacture of composition billiard or pool balls and the sale thereof to manufacturers of billiard and pool tables and wholesale dealers and jobbers of such products, including the respondent, F. Grote & Hubbell Co., Inc., causing its said product when so sold to be transported to the purchasers thereof from its factory located in Portland in the State of Maine into and through various other States of the United States. During that time but prior to October, 1917, the respondent Portland Billiard Ball Co. was engaged in the manufacture and sale in interstate commerce of composition billiard or pool balls of regulation size and also of less than regulation size, which said balls were sold and distributed as aforesaid in competition with said respondent Albany Billiard Ball Co. and its exclusive sales agent, F. Grote & Hubbell Co., Inc., and which said balls were manufactured by means of a secret process covered by said patent No. 807437, then owned by said respondent Albany Billiard Ball Co. Since October, 1917, said respondent, Portland Billiard Ball Co., has manufactured and sold in interstate commerce as aforesaid, composition billiard or pool balls of less than regulation size only. Since January 1914, but prior to June, 1919, said respondent Portland Billiard Ball Co. was in active competition with the said respondent Albany Billiard Ball Co. in the sale and distribution of composition billiard or pool balls in foreign commerce, particularly in the sale of said products to customers located in Great Britain and its colonies.

PAR. 4. For a number of years prior to 1914 the said respondent Albany Billiard Ball Co. was the second largest manufacturer and distributor of competition billiard or pool balls of various sizes in the United States, its only competitor at that time being the Brunswick-Balke-Collender Co., which is the largest manufacturer and distributor of said product. At the time the said respondent, Portland Billiard Ball Co., began to manufacture and sell composition billiard or pool balls, as described in paragraph 3 hereof, on or about August 1, 1913, it placed on the market a standard regulation size billiard or pool ball under the trade name "Casco", which it attempted to sell and distribute to the wholesale trade at the same price

quoted and received by the said respondent Albany Billiard Ball Co. for its standard regulation size composition billiard and pool balls sold under the trade name "Hyatt", namely $11.25 per set of 16 balls. Said respondent Albany Billiard Ball Co. thereupon began to manufacture and sell in competition with said respondent Portland Billiard Ball Co. a special brand of composition billiard or pool balls known and designated as "Peerless", which said balls were sold and distributed either directly or through its exclusive sales agent to the wholesale trade at $3.50 and $4 per set of 16 balls, which said balls were in turn sold at retail for approximately $6 per set. Thereupon the said respondent Portland Billiard Ball Co., to meet the competition thus created by the said respondent Albany Billiard Ball Co. and its exclusive sales agent, began to manufacture and sell to the wholesale trade a special brand of composition billiard or pool balls designated as "Fearless", at approximately the same wholesale price then being received by the said respondent Albany Billiard Ball Co. and its exclusive sales agent for the special brand "Peerless". The keen competition thus created between the said respondents Albany Billiard Ball Co. and Portland Billiard Ball Co. in the sale and distribution of the composition billiard or pool balls in the United States continued throughout the years 1914, 1915, 1916, and most of the year 1917.

PAR. 5. On or about October 17, 1917, a meeting was held by the representatives of the respondent Albany Billiard Ball Co. and its exclusive sales agent, respondent F. Grote & Hubbell Co., Inc., and the respondent Portland Billiard Ball Co. in New York City, for the purpose of stopping the so-called "cutthroat" competition. "To make some kind of a reasonable arrangement whereby both concerns, really all concerns interested, might make a fair profit rather than to continue the "cutthroat" competition that has been going on for the past three years". The result of this meeting was that the said respondents entered into a verbal mutual triparty agreement whereby after that date the said respondent Albany Billiard Ball Co. agreed that it would manufacture and sell only composition billiard or pool balls of regulation size and would cease to manufacture and sell composition billiard or pool balls of less than regulation size, and thereafter would sell its entire output of regulation size composition billiard or pool balls for the domestic trade to the said respondent F. Grote & Hubbell Co., Inc., which in turn agreed to pay to the respondent Portland Billiard Ball Co. a commission of $2.11 on each set of regulation size composition billiard or pool balls manufactured by the said respondent Albany Billiard Ball Co. and sold by the said F. Grote & Hubbell Co., Inc., in the United States, and the

said respondent Portland Billiard Ball Co. agreed that it would thereafter cease to manufacture and sell composition billiard or pool balls of regulation size and would manufacture and sell in the United States only the less-than-regulation size composition billiard or pool balls and would furnish the said respondent F. Grote & Hubbell Co., Inc., with the latter's requirements of composition billiard or pool balls of less than regulation size. At that time the said respondent Albany Billiard Ball Co. also agreed not to prosecute the said Portland Billiard Ball Co. for any possible infringement it might make of patents owned by said respondent Albany Billiard Ball Co., and granted to said Portland Billiard Ball Co. the privilege of using the secret process covered by said patent No. 807437 for an indefinite period of time, although said patent was to expire, and did expire, in December, 1922.

PAR. 6. Pursuant to said agreement described in paragraph 5 hereof, the respondents named herein have performed as follows:

Since October, 1917, the respondent Albany Billiard Ball Co. has continuously ceased to, and now does not, manufacture and sell composition billiard or pool balls of less than regulation size and has since that date manufactured and sold only composition billiard or pool balls of regulation size, selling its entire output of said balls for domestic use to respondent F. Grote & Hubbell Co., Inc.; the said respondent Albany Billiard Ball Co. also discontinued the manufacture and sale of its said "Peerless" brand of billiard or pool balls on or about October 17, 1917, and has not since resumed the same, but has continued the manufacture and sale of its said "Hyatt" brand. Said respondent F. Grote & Hubbell Co., Inc., since October, 1917, has continued to act as the exclusive sales agent of respondent Albany Billiard Ball Co. in the sale and distribution of billiard or pool balls of regulation size in the United States, and since that date has continuously and regularly paid, and now pays, the respondent Portland Billiard Ball Co. a commission of $2.11 per set on all composition billiard or pool balls of regulation size sold by it in the United States. The total amount of commissions thus paid since October, 1917, is approximately $272,848. The said respondent F. Grote & Hubbell Co., Inc., now pays said respondent Albany Billiard Ball Co. $8.96 per set for regulation size billiard or pool balls and after adding the said commission of $2.11 per set, sells said balls to its customers at $14.55 per set, the retail price at which said balls are thereafter sold to the users thereof now being $20 per set. Since October, 1917, the said respondent Portland Billiard Ball Co. has continuously ceased to manufacture and sell composition billiard or pool balls of regulation size, including its standard

brand "Casco" and its special brand "Fearless", and has manufactured and sold only composition billiard or pool balls of less than regulation size. It has also continuously and regularly supplied and now supplies the respondent F. Grote & Hubbell Co., Inc., with the latter's requirements of composition billiard or pool balls of less than regulation size.

PAR. 7. Prior to June, 1919, the respondent Albany Billiard Ball Co. and the respondent Portland Billiard Ball Co. sold composition billiard or pool balls in active competition each with the other in export trade, particularly in Great Britain and its colonies. In June, 1919, representatives of the respondent Portland Billiard Ball Co. met representatives of said respondent Albany Billiard Ball Co. "to arrive at some method of eliminating competition in England" and at that time entered into an agreement, each with the other, whereby the respondent Portland Billiard Ball Co. agreed to discontinue the sale of composition billiard or pool balls of regulation size in export trade, and as a consideration for such action the said respondent Albany Billiard Ball Co. agreed to pay to the respondent Portland Billiard Ball Co. a sum of money equal to 25 per cent of the profits realized by the said respondent Albany Billiard Ball Co. on its entire export business of composition billiard or pool balls. Said agreement has been, since June, 1919, and now is being observed and carried out by the said respondent Albany Billiard Ball Co. and the said respondent Portland Billiard Ball Co., and the sums of money paid by the said Albany Billiard Ball Co. to the said Portland Billiard Ball Co. under this agreement since June, 1919, amounts to approximately $28,000.

PAR. 8. The agreements and other acts of the respondents, as described herein, have resulted in the elimination of all competition which had existed between and among the said respondents prior to October, 1917, in the sale and distribution of composition billiard or pool balls in the United States, and prior to June, 1919, in the sale and distribution of composition billiard or pool balls in foreign trade and commerce; and customers of the said respondents, who had theretofore enjoyed the benefits of competition between and among the said respondents, have since October, 1917, been deprived of the benefits of such competition and have been compelled to pay higher prices for composition billiard or pool balls than they had paid prior to October, 1917, and that they would have paid if said respondents had not entered into and carried out the agreement, described in paragraph 5 hereof, and said respondents had continued the manufacture, sale and distribution of composition billiard or pool balls in competition with each other, as they had been doing prior to October,

1917; and the flow of commerce in composition billiard or pool balls has been substantially and unduly hindered in the channels of interstate and foreign trade and commerce, with injury to wholesale and retail distributors of composition billiard or pool balls, and the competitors of said respondents, and the general public.

CONCLUSION

The respondents, Albany Billiard Ball Co., Portland Billiard Ball Co., and F. Grote & Hubbell Co., Inc., by reason of the facts set forth in the foregoing findings, have been and are now using unfair methods of competition in commerce in violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers and amended answers of the respondents, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondents, Albany Billiard Ball Co., Portland Billiard Ball Co., and F. Grote & Hubbell Co., Inc., their agents, representatives, and employees, cease and desist making, entering into, or carrying out or observing, either directly or indirectly, any agreement with each other to suppress, restrict, or restrain in any manner the competition existing, or which might exist, between or among said respondents, in the sale and distribution of composition pool balls in interstate and foreign commerce, and more particularly cease and desist the following:

1. The said respondent Albany Billiard Ball Co., agreeing with the other respondents, that it will manufacture and sell only composition pool balls of regulation size, and will cease to manufacture and sell composition pool balls of less than regulation size; and also being a party to an agreement whereby said respondent F. Grote & Hubbell Co., Inc., agrees to pay, or pays to said respondent Portland Billiard Ball Co. a commission on composition pool balls sold by the said respondent F. Grote & Hubbell Co., Inc., in the United States, as exclusive sales agent or distributor for said respondent Albany Billiard Ball Co. in said commerce;

2. The said respondent, F. Grote & Hubbell Co., Inc., paying or agreeing to pay, directly or indirectly, any commission or sum of money to the said respondent Portland Billiard Ball Co. on the sale of composition pool balls sold by said respondent, F. Grote & Hubbell Co., Inc., in the United States, as exclusive sales agent or distributor for said respondent Albany Billiard Ball Co., in said interstate commerce;

3. The said respondent Portland Billiard Ball Co. agreeing to manufacture and sell composition pool balls of less than regulation size only, and to cease the manufacture and sale of composition pool balls of regulation size in the United States; or agreeing to discontinue the sale and distribution of composition pool balls in foreign commerce or export trade; and also from accepting, or agreeing to accept, as a consideration for such agreements, or for any other purpose, commissions or sums of money from either the respondent F. Grote & Hubbell Co., Inc., or the respondent Albany Billiard Ball Co. on sales made in said commerce.

It is further ordered, That the respondents, Albany Billiard Ball Co., Portland Billiard Ball Co., and F. Grote & Hubbell Co., Inc., shall individually and separately within 60 days after the service upon them of copies of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF

KNIT-FIRM, INCORPORATED

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

Docket 1592. Complaint, Apr. 10, 1929—Decision, Apr. 12, 1930

Where a corporation engaged in the sale to retailers of infants' and children's knitted outerwear, made for it under contract, with its material, by individuals, and by knitting mills to which it furnished machines, and made from material at times purchased by it from or through importers, along with finished articles; in its advertisements in trade publications,

(*a*) Falsely represented itself as a manufacturer, the fact being that it neither operated nor controlled any mill or factories where said products were made under its supervision and direction or by workmen employed by it or subject to its control or direction; and

(*b*) Falsely represented itself as an importer of said knitted outerwear, the fact being that none of the material was directly imported by it from foreign countries;

With the capacity and tendency to mislead and deceive purchasers into believing that said outerwear was manufactured in a mill or mills operated or controlled by it, or was by it directly imported from one or more foreign countries, and into purchasing the same in reliance on such erroneous beliefs:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. James M. Brinson for the Commission.

Mr. Robert L. Turk, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the sale of domestic knitted outerwear for infants and children, to purchasers in the various States, and with office and principal place of business in New York City, with misrepresenting business status or advertising falsely or misleadingly in regard thereto, in violation of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent, engaged, as above set forth, and neither owning, controlling, nor operating any mills for the manufacture of the products dealt in by it, has represented by advertisements and otherwise, that it manufactures or imports the same, with the capacity and tendency to mislead and deceive the public, including retailers and consumers, into believing that in

purchasing from respondent, they are purchasing direct from the manufacturer, or that the commodities involved have been manufactured in a foreign country and imported by respondent into the United States, and to divert business from and otherwise injure competitors manufacturing or importing products and selling the same directly to retailers or consumers or both, and wholesalers and jobbers selling as such, domestic or imported commodities, to the prejudice of the public and said competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission duly issued and served a complaint upon Knit-Firm, Inc., a corporation hereinafter called respondent, charging that it has been for several years last past and is violating the provisions of said act of Congress. Thereupon respondent entered its appearance and filed its answer to the complaint, and formal hearings were had thereon before an examiner of the Commission theretofore duly appointed, and testimony and evidence were offered and received and duly recorded and filed in the office of the Commission; thereafter the proceeding came on for final hearing on the record, briefs and oral arguments, and the Commission having duly considered the same, now makes this its report in writing stating its findings as to the facts:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Knit-Firm, Inc., is now, and since January, 1922, has been, 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 in the city of New York in the State aforesaid. It has been, during said period, and now is, offering for sale and selling in commerce among or between the various States of the United States, to retail dealers, for resale, to the consuming public, knitted outerwear for infants and children 1 to 6 years of age, in competition with individuals, partnerships, and corporations offering for sale or selling such or similar commodities in like commerce.

PAR. 2. In the course and conduct of such business, and as inducement for the purchase of its said products, respondent has offered for sale and sold them, in commerce, in the various States of the United States by and through advertisements in publications circulated in

the trade to which it sells, in which respondent has falsely represented itself as manufacturer and importer of such knitted outerwear for infants and children.

PAR. 3. The word "manufacturer" signifies and means, and is understood to signify and mean, in the knitted goods industry and trade, including dealers, an individual, partnership, or corporation operating or controlling the mill, factory or other establishment in which are manufactured knitted goods offered for sale as products of such manufacturer, and among dealers in such commodities there is a preference for products so manufactured.

PAR. 4. It has been and is the practice of respondent to cause its products to be manufactured for it by various individuals under contracts, in pursuance of which respondent has furnished and furnishes the necessary material for the manufacture of such products. It has been and is its practice, under such contracts, for respondent to pay a specified price per dozen to such manufacturers of its products. Respondent causes about 25 per cent of them to be manufactured by approximately 1,200 individuals in their own homes, and between 40 per cent and 50 per cent to be manufactured by the Bee Emm Knitting Mills of Brooklyn in the State of New York, to which respondent furnishes machines as well as material for the manufacture of its products.

None of respondent's products has at any time been manufactured in a mill or mills, factory or factories, or other place operated, conducted, or controlled by the respondent or under its supervision and direction, or by workmen employed by it, or subject to its control or direction.

PAR. 5. Respondent, Knit-Firm, Inc., has, at various times, purchased from, or through importers, materials for the manufacture of its products, and occasionally finished articles, but it has at no time directly imported from foreign countries into the United States any of the knitted outerwear for infants and children offered for sale or sold by it, or the material or any of it, used in the manufacture of such products.

PAR. 6. The representation of respondent by, or through its advertisements, that is the manufacturer and importer of knitted outerwear for infants and children offered for sale by it, has had, and has, the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the belief, either that such outerwear for infants and children so offered for sale by it has been, or is, manufactured in a mill or in mills operated or controlled by respondent, or that it has been, or is, directly imported by respondent from one or

more foreign countries into the United States, and into the purchase of such outerwear for infants and children in reliance on such erroneous belief.

CONCLUSION

The practices and methods of respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commisison upon the complaint of the Commission, the answer of respondent, the testimony and evidence submitted, and briefs and argument of counsel, and the Commission having made its report stating its findings as to the facts with its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commision, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent Knit-Firm, Inc., its officers, agents, and employees, cease and desist directly or indirectly:

(1) From representing by advertisement or otherwise that it is the manufacturer of knitted outerwear for infants and children in connection with offering for sale or selling it in interstate commerce, unless that advertised or offered as such has been, or is, manufactured in a mill, or in mills operated or controlled by respondent.

(2) From representing by advertisements, or otherwise, that it is the importer of outerwear for infants and children in connection with offering for sale or selling it in interstate commerce, unless that advertised or offered as such has been, or is, directly imported by respondent from one or more foreign countries into the United States.

It is further ordered, That respondent, Knit-Firm, Inc., within 60 days from and after the service of this order, shall file with the Federal Trade Commission a written report setting forth in detail the manner and form of its compliance with such order.

IN THE MATTER OF

V. VIVAUDOU, INCORPORATED

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 1464. Complaint, May 27, 1927—Decision Apr. 28, 1930

Where a corporation engaged in the manufacture and sale of perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles, with factories in New York City, Paris, and Canada, and with principal office and place of business in New York, and branch offices in Chicago and Los Angeles; selling throughout the United States to the retail and jobbing trade, department stores, and syndicate stores, under extensively advertised and known trade names, complete lines of toilet articles made in its aforesaid New York factory and in its aforesaid subsidiary operated Paris and Canadian factories, as well as products made by a Spanish company, and distributed by it therefor; and doing an annual business of several millions, and an important factor in the industry concerned.

(*a*) Acquired the stock of a concern similarly engaged, in substantial competition with it, in the sale of complete lines of corresponding competitive toilet articles sold throughout the United States under extensively advertised and known trade names, of the same price class and similarly sold to and through jobbers and retailers, etc., as above set forth, made in said competitor's New York Factory and also by a French company for which it distributed, with a highly profitable business, running into millions, and in a prosperous and strong financial condition, free from funded debt, and thereafter chose the officers and directors of said concern, made use of the equipment and other assets thereof, and dominated and controlled it; with the result that the effect of such acquisition might be and was to substantially lessen competition between the two, restrain commerce throughout the United States, and tend to create a monopoly in it in the business concerned; and

(*b*) Acquired the stock of a company which it created and which, under a prior contract made by it, took over and carried on the domestic and foreign business of an organization, theretofore similarly engaged, in substantial competition with it, in the sale of complete lines of corresponding competitive toilet articles, sold throughout the United States, under extensively advertised and known trade names, of the same price class and similarly sold to and through the retail and jobbing trade, etc., as above set forth, made in the Chicago factory of said organization and abroad by it and its foreign subsidiaries, doing an annual domestic business of about $2,000,000, and theretofore constituting an important factor in the industry involved, but obligated by the contract concerned, along with officers and stockholders, not to engage again in the business concerned for a ten-year period, and thereafter chose the officers and directors of said company, made use of the equipment and other assets thereof, and dominated and controlled it; with the result that the effect of such acquisition might be and was to substantially lessen competition between

it and said company, to restrain the commerce involved throughout the United States, and to tend to create in it a monopoly in the business concerned:

Held, That said acquisitions and continued ownership by such corporation of the capital stock of said concerns or companies, under the circumstances set forth, constituted violations of section 7.

Mr. Edward L. Smith for the Commission.
Olvany, Eisner & Donnelly, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

The Commission charged respondent V. Vivaudou, Inc., a Delaware corporation, engaged in the manufacture and sale of perfumes, toilet water, face powder, cosmetics and other toilet articles, sold under well known trade names, and also engaged as exclusive distributor in America, under long-term contracts, for cosmetics and toilet articles made by others, and sold under well-known trade names, and with principal office and place of business in New York City, with acquiring stock in competitors, namely, on or about December 31, 1925, all the stock of the Alfred H. Smith Co., and on or about December 17, 1926, all of the stock of Parfumerie Melba, Inc.; in violation of the provisions of section 7 of the Clayton Act.

Said Alfred H. Smith Co., a New York corporation with principal office and place of business in New York City, organized in 1904, and until about December 31, 1925, a competitor of respondent corporation, was similarly engaged in the manufacture and sale of perfumes, toilet water, face powder, cosmetics, and other toilet articles, sold under well-known trade names, and in the exclusive distribution, under long-term contracts, of cosmetics and toilet articles made by others, and also sold under well-known trade names. Effect of the aforesaid acquisition of said company's stock, by respondent, on or about December 31, 1925, as alleged, has been and is (1) to substantially lessen competition between said V. Vivaudou, Inc., and said Alfred H. Smith Co.; (2) to restrain commerce in the sale of perfumes, toilet waters, face powders, cosmetics, and other toilet articles in certain sections and communities; (3) to tend to create a monopoly in said V. Vivaudou, Inc., of perfumes, toilet waters, face powders, cosmetics and other toilet articles.

Said Parfumerie Melba, Inc., a New York corporation with principal office and place of business in New York City, organized by respondent, owner of all its capital stock since its organization (on or about Nov. 17, 1926), on or about December 1, of said year

purchased as a going concern from the Melba Manufacturing Co., its business, and, among other things, trade-marks, good will, merchandise, machinery, trade names and formulas, land and buildings, and automobiles and trucks, and carried on said business. Said Melba Manufacturing Co., an Illinois corporation, with principal office and place of business in Chicago, organized in 1912, prior to said purchase was also similarly engaged in the manufacture and sale of perfumes and other articles above set forth, sold under well-known trade names, and in acting as exclusive distributor, under long-term contracts, for cosmetics and toilet articles made by others, likewise sold under well-known trade names, and was, until on or about December 1, 1926, in competition with respondent. Effect of the acquisition by respondent of the stock of Parfumerie Melba, Inc., which respondent put into commerce in a way forever preventing Parfumerie Melba, Inc., from competing with it, as alleged, has been and is (1) to substantially lessen competition between said V. Vivaudou, Inc., and Parfumerie Melba, Inc.; (2) to restrain commerce in the sale of perfumes, toilet waters, face powders, cosmetics, and other toilet articles in certain sections and communities; (3) to tend to create a monopoly in said V. Vivaudou, Inc., of perfumes, toilet waters, face powders, cosmetics and other toilet articles.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", the Federal Trade Commission issued and served its complaint upon V. Vivaudou, Inc., respondent herein, charging it with violating section 7 of said act.

Thereupon the said respondent entered its appearance and filed its answer to the said complaint, and hearings were had before an examiner of the Commission duly appointed, and testimony was offered and received in support of the charges of the complaint and testimony was offered and received in defense of the charges of the complaint, all of which said testimony was reduced to writing and filed in the office of said Commission; and thereafter the proceeding came on for final hearing on the record, briefs and oral arguments and the Commission being fully advised in the premises, now makes this its report and states its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, V. Vivaudou, Inc., is a corporation organized in 1919 under the laws of the State of Delaware, with its principal office and place of business in the city of New York, State of New York, and with two branch offices, one in the city of Los Angeles, State of California, where such branch office has been maintained since prior to 1925, and the other in the city of Chicago, State of Illinois, where said last-mentioned branch office has been maintained since January, 1927. Its authorized capital consists of 500,000 shares of common stock of no par value, of which 382,000 shares are issued and outstanding, and 30,000 shares of 7 per cent preferred stock of a par value of $100 each, of which 28,200 shares are issued and outstanding.

Respondent is now and ever since its organization has been engaged in the business of manufactuing and selling perfumes, talcum powders, toilet waters, face powders, cosmetics and other toilet articles. Respondent's factory is located in the city of New York and has been located there since 1919. Since prior to 1925, respondent, through a subsidiary, Parfumerie Du Monde Elegant, has operated a factory at Paris, France, and through another subsidiary, V. Vivaudou, Canada, Ltd., has operated a factory in Canada. Both of its said subsidiaries are engaged in the business of manufacturing and selling perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles under well-known trade names. In addition to selling the products manufactured by it, respondent since prior to 1925 has acted and still acts as distributor in the United States for a line of perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles manufactured by another company in Spain and sold in America under the trade name "Myrurgia," and respondent since prior to 1925 has acted and still acts as distributor in the United States of the products of its said subsidiary, Parfumerie Du Monde Elegant.

The products of the respondent and the products which it distributes for said Parfumerie Du Monde Elegant and for the said Spanish company are now, and have been since prior to 1925, extensively advertised, known and sold throughout the entire United States under trade names, each of which said trade names signifies a separate and complete line of perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles, each differing from the other lines chiefly in odor or scent. The names of the more important of the said lines, in addition to "Myrurgia," hereinabove

mentioned are and have been since prior to 1925 the following: "Mavis," "Narcisse de Chine," "La Boheme," "Jasmine Arly," "Lilas Arly," and "Mai D'or."

Respondent's products and the products of those companies for which it acts and has acted as distributor, as hereinabove stated, are now sold and have been sold by said respondent, since prior to 1925, throughout the entire United States to the retail and jobbing trade, department stores, and syndicate stores. Through such outlets said products eventually reach the purchasing public. The respondent causes its products and those which it distributes, when sold, to be transported from its factory in New York City or from its warehouses located in New York City, Los Angeles, Calif., and Chicago, Ill., to purchasers in those States, and to purchasers in other States of the United States, the Territories thereof, and the District of Columbia, and there is now and has been, since prior to 1925, a constant current of trade and commerce in such products between and among the various States and Territories of the United States and the District of Columbia. Since its organization respondent has been and still is one of the important factors in the industry in which it is engaged. In the years 1925 and 1926 the volume of business done by the respondent in the United States was as follows:

	1925	1926
Extracts	$311,398.53	$235,284.84
Talcums	2,682,194.15	2,562,899.38
Rouges	136,668.06	155,560.12
Creams	126,118.54	101,031.86
Nail preparations	11,166.73	8,257.13
Miscellaneous	214,819.54	207,960.16
Total	3,482,365.55	3,270,993.49
Less discounts, allowances, returns, etc	347,580.27	373,646.58
Net sales	3,134,785.28	2,897,346.91

The business of the respondent, ever since its organization has been conducted among the several States of the United States, the Territories thereof, and the District of Columbia in competition with other corporations and with persons firms and partnerships. Among such competitors until December 31, 1925, or thereabouts, as hereinafter set forth, was Alfred H. Smith Co., between which company and respondent there was substantial competition.

PAR. 2. Said Alfred H. Smith Co. is a corporation organized in 1904, under and by virtue of the laws of the State of New York, with its principal office and place of business in the city of New York in said State. Its authorized capital consists of 1,250 shares of common stock of a par value of $100 each, all of which is issued

and outstanding and all of which was issued and outstanding when, on December 9, 1925, David A. Schulte, an officer of the respondent, entered into a contract to purchase said capital stock from the then owners thereof.

Said Alfred H. Smith Co. is now, and at the time of the acquisition of all of its capital stock by the respondent, as hereinafter set forth, was engaged in the business of manufacturing and selling perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles. Said Alfred H. Smith Co. has manufactured its products in the city of New York since 1904. In addition to selling products manufactured by it, said Alfred H. Smith Co. for a number of years prior to 1925 has acted and still acts as distributor in the United States for a line of perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles manufactured in France by Jean M. G. Darthiailh, trading as Darthiailh Fils, which said line of perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles have been sold throughout the entire United States under a well-known trade name.

The products of said Alfred H. Smith Co. and the products which it distributes and has distributed since prior to 1925 for Darthiailh Fils are now, and have been since prior to 1925, extensively advertised, known and sold throughout the entire United States under trade names, each of which said trade names signifies a separate and complete line of perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles, each differing from the other lines chiefly in odor or scent. The names of the more important of the said lines are, and since prior to 1925 have been, "Djer-Kiss" and "Kadorys."

The products of said Alfred H. Smith Co. and the products of Darthiailh Fils, for which it acts and has acted as distributor as hereinabove stated, are now sold and have been sold by said Alfred H. Smith Co. since prior to 1925, throughout the entire United States, to the retail and jobbing trade, department stores, and syndicate stores. Through such outlets said products eventually reach the purchasing public. Said Alfred H. Smith Co. now causes, and since its organization has caused, its own products and those which it distributes in this country for Darthiailh Fils, when sold, to be transported from its factory or warehouse in New York City to purchasers in said State, and to purchasers in other States of the United States, the Territories thereof, and the District of Columbia, and there is now, and has been since prior to 1925, a constant current of trade and commerce in such products between and among the various States and Territories of the United States and the

District of Columbia. Since its organization said Alfred H. Smith Co. has been and still is one of the important factors in the industry in which it is engaged. In the years 1925 and 1926 the volume of business done by said Alfred H. Smith Co. in the United States was as follows:

	1925	1926
Extracts	$852, 280. 75	$743, 529. 27
Talcums	662, 684. 50	919, 682. 19
Rouges	932, 299. 80	727, 493. 66
Creams	49, 240. 50	50, 113. 75
Nail preparations, miscellaneous	333, 066. 00	426, 205. 45
Total	2, 829, 571. 55	2, 867, 024. 32
Less discounts, allowances, returns, etc	337, 442. 55	365, 644. 80
Net sales	2, 492, 129. 00	2, 501, 379. 52

The business of said Alfred H. Smith Co., ever since its organization, has been conducted among the several States of the United States, the Territories thereof and the District of Columbia in competition with other corporations and with persons, firms, and partnerships. Among such competitors until December 31, 1925, or thereabouts, was respondent, V. Vivaudou, Inc. At the time and long prior thereto that respondent acquired all of the capital stock of said Alfred H. Smith Co., as hereinafter set forth, respondent and said Alfred H. Smith Co. manufactured and sold in interstate commerce competitive corresponding products in the same price class to the same class of trade in the same general territory, to wit, throughout the entire United States. Between respondent and said Alfred H. Smith Co. at the time of the said capital stock acquisition there was substantial competition in interstate commerce.

PAR. 3. On December 9, 1925, David A Schulte, an officer of respondent, entered into a contract with the then owners of all of the capital stock of said Alfred H. Smith Co., to purchase said capital stock for—

(*a*) The sum of $1,500,000.

(*b*) The value of the merchandise of said Alfred H. Smith Co. as of the 31st day of December, 1925.

(*c*) The book value of the same date, to wit, December 31, 1925, of all of the furniture, fixtures, equipment, auto trucks, and other personal property of said Alfred H. Smith Co. used in connection with its business, less depreciation to and including December 31, 1925.

(*d*) $75,000 representing a loan made by said Alfred H. Smith Co. to Darthiailh Fils.

(*e*) An amount equal to all prepayments made by said Alfred H. Smith Co. for taxes, insurance, rent, and advertising for any period subsequent to December 31, 1925.

On December 15, 1925, said David A. Schulte, for certain considerations, specified by him, offered in writing to assign to respondent his rights under the said contract, entered into between him and the stockholders of said Alfred H. Smith Co. on December 9, 1925. Said offer of said David A. Schulte was accepted by the board of directors of the respondent on December 19, 1925, and thereafter, to wit, on February 14, 1926, by virtue of the said contract and the assignment to respondent by said David A. Schulte of his rights under his said contract with the stockholders of said Alfred H. Smith Co., repondent, for the considerations specified in the said contract, acquired all of the outstanding capital stock of said Alfred H. Smith Co., all of which said capital stock is still owned by respondent. Said stock acquisition, although consummated on February 14, 1926, was effective as of December 31, 1925.

At the time all of its issued and outstanding capital stock was acquired by respondent, said Alfred H. Smith Co. was a prosperous company in strong financial condition and free from any mortgage or funded debt and its business was highly profitable. Upon the acquisition by respondent of all of the capital stock of said Alfred H. Smith Co., the furniture, equipment, stock of raw materials, and stock of finished materials owned by said Alfred H. Smith Co., were moved from its factory at 304 Hudson Street, New York City, to the factory of respondent then located at 418 West 25th Street, New York City, where said furniture, equipment, and stock of raw materials were used indiscriminately by said respondent and by said Alfred H. Smith Co.; in June, 1927, respondent and said Alfred H. Smith Co., each moved its equipment, machinery, and stock of raw materials to a factory located at 233 Spring Street, New York City, since which time the said equipment, machinery, and stock or raw materials have been used indiscriminately by said Alfred H. Smith Co., by respondent and by Parfumerie Melba, Inc., as hereinafter set forth. The assets owned by said Alfred H. Smith Co. at the time its capital stock was acquired by respondent as hereinabove described, which said assets consisted, among other things, of leases, patents, copywrights, trade-marks, finished merchandise and merchandise in process of being manufactured, raw materials, furniture, fixtures, equipment, cash, accounts receivable, formulas, and contracts with foreign companies, are still owned by said Alfred H. Smith Co., except that the cash on hand possessed by said Alfred H. Smith Co., its accounts receivable, and the merchandise which it owned at the time its capital stock was acquired, have been diminished in the ordinary course of business.

Since the acquisition by respondent of the capital stock of said Alfred H. Smith Co., the said company has been dominated by

respondent, V. Vivaudou, Inc., which has chosen the officers and directors of said Alfred H. Smith Co. and which has controlled the business of said Alfred H. Smith Co.

PAR. 4. The effect of the acquisition by respondent, a corporation engaged in interstate commerce, of all of the issued and outstanding capital stock of the said Alfred H. Smith Co., a corporation also engaged in interstate commerce, may be and is:

(1) To substantially lessen competition between Alfred H. Smith Co. and respondent.

(2) To restrain such commerce throughout the United States.

(3) To tend to create a monopoly in said V. Vivaudou, Inc., of perfumes, toilet waters, face powders, cosmetics, and other toilet articles.

II

PARAGRAPH 1. Respondent, V. Vivaudou, Inc., is a corporation organized in 1919, under the laws of the State of Delaware, with its principal office and place of business in the city of New York, State of New York, and with two branch offices, one in the city of Los Angeles, State of California, where such branch office has been maintained prior to 1925, and the other in the city of Chicago, State of Illinois, where said last mentioned branch office has been maintained since January, 1927. Its authorized capital consists of 500,000 shares of common stock of no par value, of which 382,000 shares are issued and outstanding, and 30,000 shares of 7 per cent preferred stock of a par value of $100 each, of which 28,200 shares are issued and outstanding.

Respondent is now and ever since its organization has been engaged in the business of manufacturing and selling perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles. Respondent's factory is located in the city of New York and has been located there since 1919. Since prior to 1925, respondent, through a subsidiary, Parfumerie Du Monde Elegant, has operated a factory at Paris, France, and through another subsidiary, V. Vivaudou, Canada, Ltd., has operated a factory in Canada. Both of its subsidiaries are engaged in the business of manufacturing and selling perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles under well-known trade names. In addition to selling the products manufactured by it, respondent since prior to 1925 has acted and still acts as distributor in the United States for a line of perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles manufactured by another company in Spain and sold in America under the trade name "Myrurgia", and respondent since prior to 1925 has acted and still acts as distrib-

utor in the United States of the products of its said subsidiary, Parfumerie Du Monde Elegant.

The products of the respondent and the products which its distributes for said Parfumerie Du Monde Elegant and for the said Spanish company are now, and have been since prior to 1925, extensively advertised, known and sold throughout the entire United States under trade names, each of which said trade names signifies a separate and a complete line of perfumes, talcum powders, toilet waters, face powders, cosmetics and other toilet articles, each differing from the other lines chiefly in odor or scent. The names of the more important of the said lines, in addition to "Myrurgia", hereinbefore mentioned, are and have been since prior to 1925, the following: "Mavis", "Narcisse de Chine", "La Boheme", "Jasmine Arly", "Lilas Arly", and "Mai D'or".

Respondent's products and the products of those companies for which it acts and has acted as distributor, as hereinabove stated, are now sold and have been sold by said respondent, since prior to 1925, throughout the entire United States to the retail and jobbing trade, department stores, and syndicate stores. Through such outlets said products eventually reach the purchasing public. The respondent causes its products and those which it distributes, when sold, to be transported from its factory in New York City or from its warehouses located in New York City, Los Angeles, Calif., and Chicago, Ill., to purchasers in those States, and to purchasers in other States of the United States, the Territories thereof, and the District of Columbia, and there is now and has been, since prior to 1925, a constant current of trade and commerce in such products between and among the various States and Territories of the United States and the District of Columbia. Since its organization respondent has been and still is one of the important factors in the industry in which it is engaged. In the years 1925 and 1926 the volume of business done by the respondent in the United States was as follows:

	1925	1926
Extracts	$311,398.53	$235,284.84
Talcums	2,682,194.15	2,562,899.38
Rouges	136,668.06	155,560.12
Creams	126,118.54	101,031.86
Nail preparations	11,166.73	8,257.13
Miscellaneous	214,819.54	207,960.16
Total	3,482,365.55	3,270,993.49
Less discounts, allowances, returns, etc	347,580.27	373,646.58
Net sales	3,134,785.28	2,897,346.91

The business of the respondent, ever since its organization has been conducted among the several States of the United States, the

Territories thereof, and the District of Columbia in competition with other corporations and with persons, firms and partnerships. Among such competitors until December 1, 1926, or thereabouts, as hereinafter set forth, was Melba Manufacturing Co., between which company and respondent there was substantial competition.

PAR. 2. Said Melba Manufacturing Co., a corporation organized and doing business since 1912 under and by virtue of the laws of the State of Illinois, with its principal office and place of business in Chicago in said State was, until December 1, 1926, or thereabouts, engaged in the business of manufacturing and selling perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles. Its factory was located in Chicago, Ill. Prior to December 1, 1926, or thereabouts, said Melba Manufacturing Co. through foreign subsidiaries manufactured and sold similar products in foreign countries.

The products of said Melba Manufacturing Co. were, prior to December 1, 1926, or thereabouts, extensively advertised, known and sold throughout the entire United States under trade names, and since the acquisition by Parfumerie Melba, Inc., of the assets of Melba Manufacturing Co., as hereinafter described, have continued to be advertised, known and sold throughout the entire United States under trade names, each of which said trade names signifies a separate and complete line of perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles, each differing from the other lines chiefly in odor or scent. The names of the more important of the said lines were prior to the said acquisition, and still are, the following: Lov'me ", " Boquet ", " Fleurs ", " Adore'e " formerly " Ador' Me ", and " Melba ".

The products of said Melba Manufacturing Co. were, prior to the said acquisition, sold by said Melba Manufacturing Co. and since the said acquisition by Parfumerie Melba, Inc., have been sold throughout the entire United States to the retail and jobbing trade, department stores, and syndicate stores. Through such outlets said products reach the purchasing public. Said Melba Manufacturing Co., until the acquisition hereinafter described, caused its products, when sold, to be transported from its factory in Chicago to purchasers in that State and to purchasers in other States of the United States, the Territories thereof and the District of Columbia, and there was from the time of the organization of said Melba Manufacturing Co. until such acquisition a constant current of trade and commerce in such products between and among the various States and Territories of the United States and the District of Columbia. From the time of its organization said Melba Manufac-

turing Co. was one of the important factors in the industry in which it was engaged. In the year 1926 the volume of business done by said Melba Manufacturing Co. in the United States was as follows:

	1926
Extracts	$169,692.60
Talcums	654,031.00
Rouges	501,684.40
Creams	448,421.33
Nail preparations	83,240.00
Miscellaneous	15,072.00
Total	1,872,141.33
Less discounts, allowances, returns, etc	
Net sales	1,872,141.33

The business of said Melba Manufacturing Co. ever since its organization was conducted among the several States of the United States, the Territories thereof and the District of Columbia in competition with other corporations, and with persons, firms and partnerships. Among such competitors until December 1, 1926, or thereabouts was respondent, V. Vivaudou, Inc. At the time and long prior thereto when Parfumerie Melba, Inc., acquired all of the assets of the said Melba Manufacturing Co. devoted to the cosmetic and perfumery business, and at the time respondent acquired all of the capital stock of Parfumerie Melba, Inc., as hereinafter set forth, respondent and said Melba Manufacturing Co. manufactured and sold in interstate commerce competitive correspondent products in the same price class to the same class of trade in the same general territory, to wit, throughout the entire United States. Between respondent and said Melba Manufacturing Co. at the time of the said asset acquisition and capital stock acquisition there was substantial competition in interstate commerce.

PAR. 3. On November 10, 1926, said Melba Manufacturing Co. and respondent entered into a contract by which said Melba Manufacturing Co. agreed to sell to respondent for a price not to exceed $1,500,000, subject to certain readjustments specifically mentioned in said contract, certain of its real property used in the perfumery and cosmetic business and located in Chicago, Ill., its accounts receivable, its notes receivable, its stock of materials on hand in America and abroad, its machinery, equipment, and its intangibles, consisting of trade-marks, trade-names, copyrights, formulas, good will and the like. The said contract provided that respondent might assign its rights thereunder to a subsidiary company or companies then existing or to be organized by it, in which event said Melba Manufacturing Co. agreed to make to such company or companies all conveyances

required under said contract to be made by it; and the said contract provided that all obligations of respondent thereunder should be assumed and performed by said subsidiary or subsidiaries. By the said contract said Melba Manufacturing Co., its officers and stockholders, agreed that none of the officers or stockholders of said company, as then constituted, should thereafter and for a period of ten years next ensuing, after the consummation of the contract, engage in the United States or elsewhere in a business similar to that of Melba Manufacturing Co., sold under the said contract.

Between November 10, 1926, and November 23, 1926, respondent caused to be organized, under the laws of the State of New York, Parfumerie Melba, Inc., a corporation with its principal office and place of business in the city of New York in said State, with an authorized capitalization of 1,000 shares of no par common stock, all of which was issued upon the organization of the company to respondent, which still owns all of the said stock. By virtue of a resolution of its board of directors adopted November 23, 1926, respondent, on that date, assigned its said contract of November 10, 1926, with Melba Manufacturing Co., to said Parfumerie Melba, Inc., which thereupon with the sum of $1,135,000 furnished to it by respondent, carried out on December 1, 1926, with said Melba Manufacturing Co. the said contract of November 10, 1926, between respondent and Melba Manufacturing Co., and immediately continued the operation of the aforesaid business previously thereto conducted by Melba Manufacturing Co., without any interruption in the conduct of the said business and said Parfumerie Melba, Inc., has since continued the business theretofore conducted by said Melba Manufacturing Co. In connection with the acquisition by Parfumerie Melba, Inc., of the business of Melba Manufacturing Co. said Parfumerie Melba, Inc., took over the selling organization of said Melba Manufacturing Co. Having purchased trade upon which to start and having started upon the trade it had purchased, the new corporation, Parfumerie Melba, Inc., was engaged in commerce at the time its capital stock was acquired by respondent. Said respondent put the new corporation, Parfumerie Melba, Inc., into commerce in a way which forever prevented said Parfumerie Melba, Inc., from competing with respondent.

In connection with and as a part of the said transaction between said Melba Manufacturing Co. and Parfumerie Melba, Inc., said Parfumerie Melba, Inc., acquired the business theretofore done in foreign countries by said Melba Manufacturing Co. directly and through subsidiaries, and said Parfumerie Melba, Inc., directly and through subsidiaries which it organized, has continued to operate

such business theretofore conducted in foreign countries by Melba Manufacturing Co. directly and through subsidiaries. Upon the acquisition by said Parfumerie Melba, Inc., of said business of the said Melba Manufacturing Co. the corporate name of Melba Manufacturing Co. was changed to the corporate name, Jones, O'Neill & Coons. The said corporation, Jones, O'Neill & Coons, is still in existence, but it has not since the aforesaid acquisition by Parfumerie Melba, Inc., engaged in the business in which, as Melba Manufacturing Co., it was engaged prior to December 1, 1926.

Said Parfumerie Melba, Inc., since its organization, has caused its products, when sold, to be transported from its factory in New York or its warehouse in Chicago to purchasers in those States and to purchasers in other States of the United States, the Territories thereof and the District of Columbia, and there is now and has been since the organization of said Parfumerie Melba, Inc., a constant current of trade and commerce in such products between and among the various States and Territories of the United States and the District of Columbia.

Upon the acquisition by Parfumerie Melba, Inc., of the said assets of Melba Manufacturing Co., its stock of machinery, equipment, and raw merchandise in this country acquired from Melba Manufacturing Co. was moved from the property in Chicago, acquired by Parfumerie Melba, Inc., from Melba Manufacturing Co., to the factory of respondent, V. Vivaudou, Inc., located at 418 West Twenty-Fifth Street, New York City, together with said equipment and machinery, and there was indiscriminately used by respondent, V. Vivaudou, Inc., by the said Alfred H. Smith Co. and by said Parfumerie Melba, Inc. In June, 1927, respondent and said Parfumerie Melba, Inc., and said Alfred H. Smith Co. each moved its equipment, machinery, and stock of raw materials to a factory located at 233 Spring Street, New York City, since which time the said equipment, machinery, and stock of raw materials have been used indiscriminately by said Parfumerie Melba, Inc., said Alfred H. Smith Co. and by respondent, V. Vivaudou, Inc.

Said Parfumerie Melba, Inc., still owns the assets which it acquired from Melba Manufacturing Co., consisting chiefly of real estate, accounts receivable, notes receivable, stock of merchandise finished and in process of being finished, raw materials, equipment, machinery, trade-names, copyrights, formulas, leases, and good will; excepting that of the real estate acquired, a portion thereof was sold by Parfumerie Melba, Inc., prior to June, 1927, to interest with which neither V. Vivaudou, Inc., or Alfred H. Smith Co. had any relation, and excepting further that the said accounts receivable,

notes receivable, stock of finished merchandise and raw merchandise have been diminished in the ordinary course of business. A part of the real estate acquired by Parfumerie Melba, Inc., from Melba Manufacturing Co. was used and occupied by the former as a warehouse and sales office until December 31, 1928, at which time said Parfumerie Melba, Inc., abandoned the use of said property, retaining title thereto.

Since the acquisition by respondent of the capital stock of said Parfumerie Melba, Inc., the said company has been dominated by respondent, V. Vivaudou, Inc., which has chosen the officers and directors of said Parfumerie Melba, Inc., and which has controlled the business of said Parfumerie Melba, Inc.

PAR. 4. The effect of the acquisition by respondent, a corporation engaged in interstate commerce, of all of the issued and outstanding capital stock of the said Parfumerie Melba, Inc., a corporation also engaged in interstate commerce, may be and is:

(1) To substantially lessen competition between said Parfumerie Melba, Inc., and respondent.

(2) To restrain such commerce throughout the United States.

(3) To tend to create a monopoly in said Parfumerie Melba, Inc., of perfumes, toilet waters, face powders, cosmetics, and other toilet articles.

CONCLUSION

The acquisition and continued ownership by respondent, V. Vivaudou, Inc., of all of the outstanding capital stock of said Alfred H. Smith Co., under the conditions and circumstances described in the foregoing findings, constitute a violation of section 7 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"; and the acquisition and continued ownership by the respondent, V. Vivaudou, Inc., of all of the outstanding capital stock of said Parfumerie Melba, Inc., under the conditions and circumstances described in the foregoing findings, constitute a violation of section 7 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, the testimony and evidence, briefs and arguments of counsel, and the Commission having made a report in writing in

which it stated its findings as to the facts, with its conclusion that the respondent has violated the provisions of section 7 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."

Now, therefore, it is ordered, That the respondent, V. Vivaudou, Inc., forthwith cease and desist from violating the provisions of section 7 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," and within 90 days from the day of the date of service upon it of this order divest itself in good faith of all the capital stock of Alfred H. Smith Co. owned by it, such divestment of stock to carry with it all of the property and assets of all kinds whatsoever of said Alfred H. Smith Co.

And it is hereby further ordered, That such divestment of the capital stock of said Alfred H. Smith Co. shall not be made directly or indirectly to any stockholder, officer, director, employee or agent, or to anyone otherwise directly or indirectly connected with or under the control of respondent, V. Vivaudou, Inc.

And it is hereby further ordered, That the respondent V. Vivaudou, Inc., forthwith cease and desist from violating the provisions of section 7 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," and within 90 days from the day of the date of service upon it of this order divest itself in good faith of all the capital stock of Parfumerie Melba, Inc., owned by it, such divestment of stock to carry with it all of the property and assets of all kinds whatsoever of said Parfumerie Melba, Inc.

And it is hereby further ordered, That such divestment of the capital stock of said Parfumerie Melba, Inc., shall not be made directly or indirectly to any stockholder, officer, director, employee or agent, or to anyone otherwise directly or indirectly connected with or under the control of respondent, V. Vivaudou, Inc.

And it is hereby further ordered, That respondent, V. Vivaudou, Inc., within 4 months from the day of the date of the service upon it of this order file with this Commission a report in writing setting forth in detail the manner and form in which this order has been conformed to.

Dissent by Commissioner Humphrey

I must dissent to the action of the majority in issuing an order to cease and desist in this case, for reasons already fully set out by me in my dissent to the action of the Commission in the International

Shoe Co. case [1] and more recently in the matter of the Temple Anthracite Coal Co.[2] Under the decision of the United States Supreme Court in the International Shoe Co. case,[3] an order to cease and desist made by the Federal Trade Commission under section 7 of the Clayton Act can not be sustained unless it appear that by reason of the acts complained of, competition will probably be lessened to "such a degree as will injuriously affect the public."

The record in the instant case fails to disclose such a suppression of competition and the Commission's order is therefore improvidently issued.

There is another reason why the acquisition of the assets of the Melba Manufacturing Co. by the respondent in this case does not violate section 7 of the Clayton Act. Paragraph 3 of the section contains the following provision:

> Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

In this case the respondent company was already engaged in the manufacture and sale of cosmetics in interstate commerce at the time it determined to purchase the assets of the Melba company and it chose to create a subsidiary for the purpose of so doing and to carry forward the business purchased. In so doing, respondent company was plainly providing for a natural and legitimate branch or extension of its business and this acquisition falls directly within the saving clause just mentioned. For this reason also I dissent to the issuance of the order in this case.

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[1] *See* 9 F. T. C. 441. [2] *See* 13 F. T. C. 249. [3] 280 U. S. 291.

ORDERS OF DISMISSAL

THE ANDERSON CO., Complaint, April 26, 1928, Order, June 12, 1929. (Docket 1512.)

Charge: Maintaining resale prices; in connection with the sale of Ford timers and of an electric windshield wiper.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. James M. Brinson* for the Commission.

E. R. MARSHALL, trading as Crescent Calendar Co., Complaint, July 17, 1925. Order, June 29, 1929. (Docket 1334.)

Charge: Advertising falsely or misleadingly; in connection with the production and sale of printed matter, including commencement announcements, invitations, folders, and cards for schools, colleges, and universities.

Dismissed, after trial, without assignment of reasons.

Appearances: *Mr. Richard P. Whiteley* for the Commission; *Barnes, Chamberlain, Hanzlik & Thompson*, of Cedar Rapids, Iowa, for respondent.

LIONEL STRONGFORT INSTITUTE, Complaint, May 19, 1928. Order, July 8, 1929. (Docket 1528.)

Charge: Misrepresenting prices, misrepresenting product or service, offering falsely articles as free, and advertising falsely or misleadingly; in connection with the sale of courses by mail in physical culture.

Dismissed, after answer, stipulation, and trial, by the following order:

The above-entitled proceeding coming on for consideration by the Commission, and it appearing that the subject matter of the complaint had been disposed of satisfactorily to the Commission by stipulation, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and the same hereby is dismissed.

Appearances: *Mr. Martin A. Morrison* for the Commission; *Herrigel, Lindabury & Herrigel*, of Newark, N. J., for respondent.

THEONETT & CO., INC., Complaint, Feb. 1, 1929. Order, July 8, 1929. (Docket 1556.)

Charge: Advertising falsely or misleadingly; in connection with the manufacture and sale of artificially flavored and/or colored flavors and concentrates.

Dismissed, after answer, stipulation and trial, without assignment of reasons.

Appearances: *Mr. Edward L. Smith* for the Commission; *Mr. W. Parker Jones*, of Washington, D. C., and *Lannen & Hickey*, of Chicago, Ill., for respondent.

PEPSODENT CO., Complaint, May 19, 1927. Order, September 23, 1929. (Docket 1462.)

Charge: Maintaining resale prices; in connection with the sale of dentifrices.

Dismissed, after answer and stipulation, by the following order:

The above-entitled proceeding coming on for consideration on the complaint of the Commission, answer of respondent, and stipulation as to the facts, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed.

Appearances: *Mr. William A. Sweet* for the Commission; *Fisher, Boyden, Kales & Bell*, of Chicago, Ill., for respondent.

B. Z. B. KNITTING CO., Complaint, November 5, 1924. Order, September 30, 1929. (Docket 1245.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling; in connection with the manufacture, sale and distribution of hosiery.

Dismissed, after answer, by the following order:

The above entitled proceeding coming on for consideration upon the complaint of the Commission, answer of respondent and stipulation of facts, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed.

Appearances: *Mr. G. Ed. Rowland* for the Commission; *Mr. Edward P. Lathrop*, of Rockford, Ill., and *Greene & Hurd* of New York City, for respondent.

WIRZ & WAIDMANN, INC., trading under the name and style of United Provision Co., Complaint, April 29, 1929. Order, December 9, 1929. (Docket 1613.)

Charge: Misbranding or mislabeling or simulating labels and wrappers of competitor; in connection with the manufacture and sale of sausage, sausage meat, and other pork products.

Dismissed, after answer, without assignment of reasons.

Appearances: *Mr. William A. Sweet* for the Commission; *Mr. Bernard G. Ostmann* and *Mr. Chester A. Bennett*, of Washington, D. C., for respondent.

REIFSCHNEIDER PAINT & GLASS CO., Complaint, October 29, 1929. Order, December 9, 1929. (Docket 1716.)

Charge: Disparaging competitive products and impeding or cutting off competitive access to market through purchase, and sale below cost; in connection with the purchase and sale of paint.

Dismissed, after answer, without assignment of reasons.

Appearances: *Mr. Henry C. Lank* for the Commission.

HENRY MYER THREAD MANUFACTURING Co., Complaint, February 20, 1929. Order, December 16, 1929. (Dock. 1568.)

Charge: Naming and representing product misleadingly, misbranding or mislabeling and advertising falsely or misleadingly in regard thereto; in connection with the manufacture, sale and distribution of sewing thread.

Dismissed, after answer and stipulation, without assignment of reasons.

Appearances: *Mr. Henry Miller* for the Commission; *Schuyler, Weinfeld & Parker*, of Chicago, Ill., for repondent.

BLANKE-BAER EXTRACT & PRESERVING Co., Complaint, May 14, 1929. Order, December 16, 1929. (Docket 1619.)

Charge: Misrepresenting product, misbranding or mislabeling and advertising falsely or misleadingly; in connection with the manufacture and sale of flavoring extracts and concentrates for use in the compounding of soft drinks.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. G. Ed. Rowland* for the Commission; *Leahy, Saunders & Walther*, of St. Louis, Mo., for respondent.

LINCOLN AUTO AND TRACTOR SCHOOL, doing business under the trade name and style of Lincoln Engineering School. Complaint, October 13, 1928. Order, December 23, 1929. (Docket 1539.)

Charge: Advertising falsely or misleadingly as to business advantages or size, results accomplished and to be anticipated, money back guarantee, pretended special reduced prices, and offer free of products, in fact charged for; in connection with the sale of a course in automotive repairing by mail.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Alfred M. Craven* for the Commission.

PHILIP LIPSITZ, trading under the name and style American Smelting & Refining Works. Complaint, February 11, 1929. Order, January 7, 1930. (Docket 1560.)

Charge: Appropriating trade or corporate name of competitor and advertising falsely or misleadingly; in connection with the manufacture and sale of solder, babbits, type metals, pig lead, bar lead, ingot lead, red lead, white lead, antimonial lead, lead head nails and other metal products, and treating, smelting, and refining of metals, minerals, and ores and in the sale of said products treated, smelted, and refined.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Henry Miller* for the Commission; *Saner, Saner & Jack* of Dallas, Tex., for respondent.

RADIO ASSOCIATION OF AMERICA, INC. Complaint, January 17, 1929. Order, January 13, 1930. (Docket 1555.)

Charge: Using misleading corporate name and advertising falsely or misleadingly as to business status, free services or products, and nature, results and need of service offered, prices, and "money back" guarantee; in connection with the business of conducting a course of instruction in the art of radio, electricity, and other mechanics incidental thereto, by correspondence through the United States mail, and in the business of dealing and trading in radio receiving sets, accessories, parts, equipment, and electrical supplies incident to the course of instruction in the aforesaid art.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Richard P. Whiteley* for the Commission; *Mr. Stephen A. Day* of Evanston, Ill., for respondent.

AMERICAN ASSOCIATION OF ADVERTISING AGENCIES, its officers, executive board, and members, et al. Complaint,[1] January 20, 1926. Order, January 22, 1930. (Docket 1251.)

Charge: Combining or conspiring to control channels of distribution and to enforce a standard differential; in connection with the placing of national advertising, more specifically, to compel "national advertisers to employ respondent agencies or other advertising agencies in the placing of national advertising in newspapers throughout the United States, to prevent said advertisers from advertising directly in said newspapers at net rates and to compel said advertisers to pay for direct advertising at gross rates" and in connection with the enforcement of a standard differential of 15 per cent on the regular or gross advertising rates of the periodicals as minimum compensation for the advertising agencies.[2]

Dismissed, after answer and trial, without assignment of reasons.

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[1] Amended.

[2] As set forth in the Commission's brief, respondents were charged with seeking, through cooperatively bringing pressure to bear and otherwise—

"*First*, to prevent direct advertisers from obtaining national advertising at net rates and that, to avoid the resulting increased cost, they be restrained to employ advertising agencies;

"*Second*, to prevent publishers from selling advertising space to direct advertisers at less than their gross or card rates; and

"*Third*, to eliminate from business agencies which do not receive the full differential as their minimum remuneration or which share the differential with an advertiser."

Respondents joined in this case, included, in addition to American Association of Advertising Agencies, the American Press Association, Inc., the Six Point League, the American Newspaper Publishers Association, the Southern Newspaper Publishers Association, and certain individuals, joined in their individual capacity and as directors and officers of the foregoing respondents.

Appearances: *Mr. Eugene W. Burr* and *Mr. Henry Miller* for the Commission; *McKercher & Link* and *Breed, Abbott & Morgan*, of New York City, for American Association of Advertising Agencies, its officers, executive board, and members; *McKercher & Link*, of New York City, for James O'Shaughnessy, individually and as executive secretary of said association; *Brodek, Raphael & Eisner*, of New York City, for American Press Association; *Morris, Plante & Saxe*, of New York City, and *Hanson, Lovett & Dale*, of Washington, D. C., for the Six Point League, its officers, executive committee, and members; and the American Newspaper Publishers' Association; *Finlay & Campbell*, of Chattanooga, Tenn., for Southern Newspaper Publishers' Association, its officers, directors, and members.

CONSOLIDATED CIGAR CORPORATION. Complaint, April 5, 1927. Order, January 22, 1930. (Docket 1451.)

Charge: Acquisition of the stock of competitors in violation of Section 7 of the Clayton Act; in connection with the manufacture and sale of cigars.

Dismissed, after answer and trial, without assignment of reasons, Commissioner McCulloch filing dissenting opinion.

Appearances: *Mr. William T. Chantland* for the Commission; *Mr. Herbert H. Maass*, of New York City, and *Mr. Vernon W. Van Fleet* and *Mr. Charles S. Moore*, of Washington, D. C., for respondent.

Dissent by Commissioner McCulloch

I am unwilling to join in the dismissal of the complaint, for it seems clear to me that the respondent has violated the first paragraph of section 7 of the Clayton Act, which reads as follows:

> That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

The material facts in the case are undisputed. Respondent acquired, by purchase, all of the capital stock of the G. H. P. Cigar Co., Inc., both being Delaware corporations with principal places of business in New York City, both engaged in the manufacture and sale of cigars, each operating several factories and selling throughout most of the United States. All of the voting stock of the G. H. P. Co., 4,775 shares, was purchased by respondent at the total price of $8,833,750, and the stock was transferred directly to respondent. At the time of the acquisition respondent's capital stock, preferred and common, together with surplus, aggregated in value the sum of $13,731,076.76, and its annual sale of cigars dur-

ing the year preceding aggregated, in round numbers, the sum of $15,000,000. Gross sales of the G. H. P. Co. during the same period aggregated, in round numbers, the sum of $12,000,000.

The two corporations were in direct competition with each other—substantially so. This statement is advisedly made, for according to undisputed testimony the sales of cigars of the grade and price by the two corporations ran to the sum of more than $8,000,000, about equally divided between the two concerns—approximately 30 per cent of the gross sales.

It is true that the sales of the two corporations constituted only a small percentage of the gross sales of cigars in the territory. But it will be seen that the statute does not deal with the question of total competition in the given territory. It prohibits acquisition of stock "where the effect of such acquisition may be to substantially lessen *competition between the corporation whose stock is so acquired and the corporation making the acquisition.*" Nor does the statute make any mention of the effect upon the public interest of such lessening of competition. We know, from consideration of the history of the times and from the debates in Congress preceding the enactment of the statute that the protection of the public interest was the sole purpose of the legislation; but the Congress determined for itself what would militate against the public, without delegating to any tribunal authority to decide that question, and it declared in unmistakable language that the acquisition by one corporation of the stock of another, "where the effect of such acquisition may be to substantially lessen competition" is hurtful to the public interest and is unlawful.

It is futile to argue that the acquisition by one corporation of all the stock of a competitor *may not* eliminate the competition. Unified control of two or more corporations necessarily and unavoidably eliminates whatever competition theretofore existed—all motive for competition is dispelled. A corporation can not be in competition with itself. The maintenance of separate operating organizations does not mean actual competition for the ultimate control of both springs from the same source. At any rate, competition *may*, under those circumstances, be lessened or entirely eliminated and that is what the lawmakers intended to arrest in its incipiency. On this subject see:

U. S. v. *United States Shoe Mac. Co.*, 234 Fed. 127.

Swift & Co. v. *Federal Trade Commission*, 8 F. (2d) 595.

Western Meat Co. v. *Federal Trade Commission*, 1 F. (2d) 95; 272 U. S. 554.

Northern Securities Co. v. *U. S.*, 193 U. S. 197.

U. S. v. *Union Pacific Co.*, 226 U. S. 61.

U. S. v. *Southern Pacific Co.*, 259 U. S. 214.

It is contended that the acquisition of stock is justified, as an investment, under the third paragraph of section 7, which reads, in part, as follows:

> This section shall not apply to corporations purchasing stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition.

The first and all-sufficient answer to this contention is that there is no evidence to sustain it save the bare statement of a sole intention to make an investment, unaccompanied by any overt act or transaction evincing such intention. It is said that respondent borrowed $10,000,000 for use in making the purchase of stock, but that transaction was as much attributable to other designs in making the purchase as to a purpose merely to invest. The word investment means very little, when standing alone, in considering this feature of the statute. It is, however, coupled with a very specific qualification that the investment in stock must not be used "by voting or otherwise to bring about or attempting to bring about the substantial lessening of competition." Respondent can not claim under the exemption for the reason that immediately after the acquisition of stock it was voted to place control of the business under a board of directors of respondent's own selection. Respondent placed three of its own directors on the board of the G. H. P. Co.—constituting a majority of the board—and also elected the other two directors of the G. H. P. Co. as directors on respondent's own board. The control of the two corporations was and is unified. Competition was completely eliminated, so under no construction of this feature of the statute can it be said that this acquisition of stock is exempt from the operation of the first paragraph of section 7.

Moreover, it seems clear to me that under proper interpretation of the statute it altogether forbids the acquisition of stock as an investment "where the effect of such acquisition *may be* to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition."

It is an elemental rule of construction that the language of all parts of a statute should be harmonized, as far as possible, so as to obviate conflict and give some effect to each, unless there are irreconcilable conflicts.

Black on Interpretation of Laws, p. 322 et seq.

Now it is already seen that the first paragraph of section 7 unmistakably declares to be unlawful any acquisition of stock when the effect "*may be*" to lessen competition, so it places this declaration in irreconcilable conflict with the third paragraph if the latter be construed to exempt an acquisition when the effect may lessen competition. Therefore, the plain duty is to give a different construction to the third paragraph so as to obviate the conflict and give

effect to the first paragraph. This can readily be done and still give some effect to the third paragraph. It serves its purpose as a negative statement that an acquisition of stock which may not lessen competition is excluded from the condemnation of the statute. This is emphasized by the language stating further that the formation of a subsidiary corporation, when the effect thereof is "not to substantially lessen competition," is excluded from the ban. The exemption expressed in this paragraph may also be application in case of acquisition of less than a controlling part of the stock of a corporation—when it may or may not, according to the circumstances of a given case, have the effect of lessening competition. As was well said by the Court of Appeals in *Swift & Co.* v. *Federal Trade Commission*, supra: "It would be difficult to conceive of any case where one corporation purchased all of the stock of its competitor solely for investment."

It must be remembered that the courts have announced and adhered to the conclusion that since the Clayton Act is supplementary to the Sherman Act, it "sought to reach the agreements embraced within its sphere in their incipiency."

Standard Fashion Co. v. *Magrane-Houston Co.*, 258 U. S. 346.
Standard Oil Co. v. *Federal Trade Commission*, 282 Fed. 81.
Standard Oil Co. v. *Federal Trade Commission*, 273 Fed. 478.
U. S. v. *United States Shoe Co.*, supra.

In the last case cited the court said: "Evidently, Congress was not satisfied to only prohibit actual lessening of competition, or monopolizing, but to make it unlawful for any person to do those acts which may put it in his power to do so." It, therefore, inevitably follows, that if some overt act must occur after the acquisition of stock in the lessening of competition or the creation of a monopoly, in order to render the acquisition unlawful under section 7 of the Clayton Act, then that section serves no useful purpose, for such acts are unlawful under the previously enacted Sherman Law.

It does violence to the manifest intention of the lawmakers to say that section 7 permits an acquisition of stock for investment, which may lessen competition or which tends to create a monopoly.

THE IONA CO., Complaint, November 19, 1927. Order, January 28, 1930. (Docket 1487.)

Charge: Advertising falsely or misleadingly, misrepresenting product and claiming indorsements and patents not secured; in connection with the manufacture and sale of an electro-magnetic device purporting to have curative and therapeutic value and action when applied to the human body.

Dismissed, after answer, by the following order:

The above-entitled proceeding coming on for consideration by the Commission, and it appearing that no further action herein is required since through

the action of the Post Office Department the sale of the products mentioned in the complaint herein was stopped early in the year 1929, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed.

Appearances: *Mr. Alfred M. Craven* for the Commission; *Derthick & Hull*, of Los Angeles, Calif., for respondent.

HAROLD C. BROOKS, ELLEN J. BROOKS, AND LEWIS E. BROOKS, COPARTNERS TRADING UNDER THE NAMES AND STYLES OF BROOKS RUPTURE APPLIANCE CO. AND BROOKS APPLIANCE CO. Complaint, February 19, 1929. Order, February 26, 1930. (Docket 1563.)

Charge: Advertising falsely or misleadingly as to the characteristics or qualities of product; in connection with the manufacture and sale of trusses.

Dismissed, after answer and stipulation, by the following order:

The above-entitled proceeding coming on for consideration by the Commission and it appearing that the subject matter of the complaint had been disposed of satisfactorily to the Commission by stipulation, whereby the respondents agree to cease and desist from the practices alleged in the complaint and not to resume the same, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and the same hereby is dismissed.

Appearances: *Mr. E. J. Hornibrook* for the Commission; *Mr. James W. Mackey*, of Marshall, Mich., and *Mr. Stephen A. Day* and *Mr. Eugene L. Culver*, of Washington, D. C., for respondents.

CALIFORNIA INK CO., INC. Complaint, December 10, 1929. Order, March 4, 1930. (Docket 1729.)

Charge: Acquisition of stock in competitor in violation of section 7 of the Clayton Act; in connection with the manufacture and sale of printing and lithographing inks, print rollers, varnishes, dry colors, paste colors, and other miscellaneous allied products.

Dismissed, after answer, by the following order:

The above-entitled proceeding coming on for consideration on the report of the board of review dated January 31, 1930, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed.

Appearances: *Mr. Everett F. Haycraft* for the Commission; *Mr. Jesse H. Steinhart*, of San Francisco, Calif., for respondent.

MORGAN-FIELD & CO., INC., LESTER STERN, MICHAEL HEILER, AND EARL WEIL. Complaint, July 23, 1927. Order, March 10, 1930. (Docket 1474.)

Charge: Adopting and using misleading corporate name, misrepresenting products offered, offering deceptive inducements to pur-

chase and advertising falsely or misleadingly; in connection with the sale of men's and boys' ready-made clothing.

Dismissed, after answer, for the reason that "respondents have gone out of business".

Appearances: *Mr. Alfred M. Craven* for the Commission; *Mayer, Meyer, Austrian & Platt*, of Chicago, Ill., and *Mr. George S. Ward*, of Washington, D. C., for respondents.

SOUTHERN ALBERTA LUMBER CO., LTD., also known as SOUTHERN ALBERTA LUMBER AND SUPPLY CO., LTD., and H. N. SERETH, individually and as manager of said corporation. Complaint, November 19, 1926. Order, March 14, 1930. (Docket 1430.)

Charge: Underselling competitors through the use of dishonest or fraudulent shipping practices; in connection with the purchase and sale of lumber.

Dismissed for the reason that the "respondents have gone out of business".

Appearances: *Mr. G. Ed. Rowland* for the Commission; *Covington, Burling & Rublee*, of Washington, D. C., for respondents.

CALUMET BAKING POWDER CO. Complaint, March 11, 1925. Order, March 29, 1930. (Docket 1292.)

Charge: Disparaging and misrepresenting product of competitor and advertising falsely or misleadingly; in connection with the manufacture and sale of baking powders.

Dismissed, by the following order:

The above-entitled proceeding coming on for decision by the Commission, upon the complaint of the Commission, the answer of respondent and agreed stipulation, and the Commission having considered the record, and being now fully advised in the premises,

It is ordered, That this proceeding be, and the same is, hereby, dismissed without prejudice.

Appearances: *Mr. Richard P. Whiteley* for the Commission; *Mr. Daniel R. Forbes*, of Washington, D. C., for respondent.

CHARLES FRESHMAN CO., INC. Complaint, October 18, 1929. Order, March 31, 1930. (Docket 1706.)

Charge: Acquisition of stock in competitor, namely, the Freed-Eiseman Radio Corporation, in violation of section 7 of the Clayton Act; in connection with the manufacture and sale of radio receiving sets and parts.

Dismissed, after answer, without assignment of reasons.

Appearances: *Mr. Edward E. Reardon* for the Commission; *Tompkins & Dee*, of New York City, *Mr. Charles D. Hammel* and *Mr. Lloyd Anderson*, of Washington, D. C., for respondent.

ALUMINUM CO. OF AMERICA. Complaint, July 21, 1925. Order, April 7, 1930. (Docket 1335.)

Charge: Discriminating in price, in violation of sections 2 and 5 of the Clayton and Federal Trade Commission Acts, respectively, interfering with and cutting off supplies of competitors and sources thereof, selling at and below cost, and harassing competitors, with intent and/or effect of maintaining or gaining a monopoly; in connection with the manufacture and sale of pig aluminum ingots, aluminum ingots, aluminum sheet and other aluminum products.

Dismissed, after answer and trial, by the following order:

The above-entitled proceeding coming on for consideration by the Commission upon the complaint of the Commission, the answer of respondent, the record, briefs, and oral argument of counsel for the Commission and for the respondent, and the Commission having duly considered same and being fully advised in the premises,

It is ordered, That the complaint herein be, and the same hereby is, dismissed for the reason that the charges of the complaint are not sustained by the testimony and evidence.

Appearances: *Mr. Richard P. Whiteley* and *Mr. E. J. Hornibrook* for the Commission; *Smith, Buchanan, Scott & Gordon*, of Pittsburgh, Pa., for respondent.

McCOY'S LABORATORIES, INC. Complaint, October 22, 1929. Order, April 8, 1930. (Docket 1708.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to results or nature of products; in connection with the sale of a proprietary medicine.

Dismissed, after stipulation, by the following order:

This matter coming on for consideration by the Commission, and it appearing that the subject matter of the complaint has been disposed of satisfactorily to the Commission by stipulation, whereby the respondent agrees to cease and desist from the practices alleged in the complaint and not to resume the same, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and the same hereby is dismissed.

Appearances: *Mr. Everett F. Haycraft* for the Commission; *Ellis, Ferguson, Houghton & Gary*, of Washington, D. C., for respondent.

CORDIANO BROTHERS, INC., AND W. P. BERNAGOZZI. Complaint, July 23, 1929. Order, May 3, 1930. (Docket 1687.)

Charge: Selling and sanctioning sale and use of well-known product's distinctive containers and name to and by others for adulterated articles; in connection with the manufacture and sale of cans and importation, packing, and sale of Italian olive oil.

Dismissed, after answer and trial, by the following order:

The above-entitled proceeding coming on for consideration upon the complaint of the Commission, the answer of respondents, testimony and evidence, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed for the reason that the charges of the complaint were not sustained by the testimony and evidence.

Appearances: *Mr. Richard P. Whiteley for the Commission; Mr. Simon Katz* and *Mr. Sol. L. Youngentob*, of New York City, for respondents.

HERMAN L. BALMUTH AND ISADORE BALMUTH, TRADING AS STANDARD FURNITURE FACTORIES. Complaint, October 22, 1929. Order, May 3, 1930. (Docket 1710.)

Charge: Using misleading trade name and advertising falsely or misleadingly as to business status; in connection with the sale and distribution of furniture.

Dismissed, after answer and trial, by the following order:

The above-entitled proceeding coming on for consideration by the Commission, and the Commission now being fully advised in the premises,

It is ordered, That the complaint be and the same is hereby dismissed for the reason that respondent is not engaged in interstate commerce.

Appearances: *Mr. Robert H. Winn* for the Commission; *Mr. Benjamin M. Gottesfeld*, of New York City, for respondents.

DIGESTS OF STIPULATIONS PUBLISHED AFTER DELETING NAME OF RESPONDENTS[1]

STIPULATION OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST

380. **False and Misleading Trade Name and Advertising—Hosiery and Underwear.**—Respondent, an individual, engaged in the sale and distribution of hosiery and underwear in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, adopted and used as a part of his trade name the word "Mills" and caused his said trade name containing the word "Mills" to be used in connection with the sale of his products in interstate commerce, in advertisements and on his stationery, including cards, billheads, and envelopes, all of which were distributed and circulated in interstate commerce; when in truth and in fact said respondent did not own, operate, or control a mill or factory wherein were manufactured or fabricated the hosiery and underwear sold and distributed by him in interstate commerce, but filled orders for such products from goods manufactured in mills or factories which he neither owned, operated, nor controlled.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the word "Mills" as part of his trade name, and from the use of the word "Mills" in any other way so as to import or imply that said respondent either owns, operates, or controls a mill or factory in which are manufactured or fabricated the products sold by him in interstate commerce; and from the use of the word "Mills" in any way which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that respondent

[1] Published to inform the public of those unfair methods and practices condemned by the commission and to establish precedents that will serve to eliminate unfair business methods of interest to the public and injury to competitors.

The digests published herewith cover those accepted by the commission during the period covered by this volume, namely, June 12, 1929–May 4, 1930. Digests of all previous stipulations of this character accepted by the commission—that is, numbers 1 to 379, inclusive—may be found in Vol. X at p. 461 et seq., Vol. XI at p. 494 et seq., and Vol. XII at p. 514 et seq.

owns, operates, and controls a mill or factory wherein are manufactured or fabricated the products sold by him in interstate commerce.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (June 12, 1929.)

381. **Lottery Merchandising—Malt Extract.**—Respondent, an individual, engaged in the manufacture of malt extract and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations liekwise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, packed in each of about 20 cans or containers in a shipment of 1,200 cans or more of said product a silver half dollar, and with said coin or prize contained therein sold and shipped said product in interstate commerce through his usual channel of distribution, thereby placing in the hands of dealers engaged in the business of selling such product to the purchasing public in means of distributing said product by chance or lottery.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use in interstate commerce of any scheme, plan, or method of selling or promoting the sale of his product which involves or includes the use of any gift enterprise, lottery, or any scheme of chance whereby any article, coin, or other thing of value is given for or in consideration of the purchase of any other article.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (June 12, 1929.)

382. **False and Misleading Trade Name and Advertising—Woolens and Dress Goods.**—Respondent, an individual, engaged in the sale and distribution of woolens and dress goods in interstate commerce, and in competition with other individuals, firms, partners, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, adopted a trade name containing the word "Mills," and which trade name containing the word "Mills" he used on his letterheads, order blanks, billheads, envelopes, and other printed matter distributed in interstate commerce in soliciting the sale of and selling his products; when in truth and in fact said respondent did not own, control, or operate a

mill or factory in which were manufactured the goods sold and distributed by him, and said respondent filled orders for such products from materials manufactured in mills or factories which he neither owned, operated, nor controlled.

Respondent agreed to cease and desist forever from the use of the word "Mills" as part of or in connection or conjunction with his trade name, and from the use of the word "Mills" in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said respondent either owns, controls, or operates a mill or factory wherein are made the products sold by him in interstate commerce.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (June 12, 1929.)

383. **False and Misleading Trade Name and Advertising—Truck replacement Parts.**—Respondent, a corporation, engaged in the sale and distribution of replacement parts for trucks in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, adopted as a part of its corporate or trade name the word "Manufacturing," which said corporate or trade name containing the word "Manufacturing" it used in the sale and distribution of its products in interstate commerce, and the said corporate or trade name containing the word "Manufacturing" was also used by the respondent in its said catalogues and other advertising matter and also in connection with a pictorial representation of a large 4-story building, above which were printed the words "The home of the largest * * * truck replacement parts organization in the world," and on the front of which building appeared, in large letters, its corporate or trade name containing the word "Manufacturing"; when in truth and in fact said respondent did not own, control, or operate a plant or factory wherein were manufactured the replacement parts sold and distributed by it in interstate commerce, and the said respondent filled orders for such products from stocks purchased by it from plants or factories which it neither owned, operated, nor controlled.

Respondent agreed to cease and desist forever from the use of the word "Manufacturing" as part of or in connection or conjunction with its corporate or trade name in the sale and distribution of its products in interstate commerce; and from the use of its corporate or trade name containing the word "Manufacturing" in its catalogues

and other printed and/or advertising matter circulated and distributed in interstate commerce in soliciting the sale of and selling its products, and from the use of a "cut" or pictorial representation of a building or buildings together with its corporate or trade name containing the word "Manufacturing" thereon and/or any other similar representation in soliciting the sale of and selling its products that directly assert or import or imply that said respondent is the manufacturer of the parts which it sells and distributes in interstate commerce; and from the use of the word "manufacturing" in any other way that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that said respondent either owns, operates, or controls a factory manufacturing the products which it sells.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 12, 1929.)

384. **Misbranding—Cigars.**—Respondent, an individual, engaged in the manufacture of cigars, and in the sale and distribution of the same in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his products in interstate commerce, caused to be affixed to the boxes containing the cigars manufactured by him a brand or label containing the words "Tampa, Florida" and with the said brand or label affixed thereto sold and distributed said cigars in commerce between and among various States of the United States; when in truth and in fact the cigars so branded or labeled and sold in interstate commerce were not made or manufactured in the city or district of Tampa, in the State of Florida, or from tobacco grown in the district or State aforesaid.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from including in the brand or label for his cigars the words "Tampa, Florida" either independently or in connection or conjunction with any other word or words so as to import or imply that the said product is made or manufactured in the city or district of Tampa, in the State of Florida, and from the use of the word "Tampa" in any other way which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the aforesaid cigars are in fact made in the city or district of Tampa, in the State of Florida.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts

may be used in evidence against him in the trial of the complaint which the commission may issue. (June 14, 1929.)

385. **False and Misleading Trade Names, Advertising, and Brands—Perfumes and Toilet Waters.**—Respondent, a corporation, engaged in the manufacture at its plant in the United States of America of perfumes and toilet waters, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals, likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products, caused circulars to be distributed in interstate commerce, which circulars featured its corporate or trade name with the words "Lioret—Paris—New York," "Narcisse," and/or "Eau de toilette," and said respondent also caused its said products to be sold and distributed in interstate commerce in bottles or other containers of domestic origin and which containers bore or had affixed thereto brands or labels bearing the words "Lioret—Paris—New York," "Narcisse," and/or "Eau de toilette"; when in truth and in fact the said products so advertised, branded, or labeled and sold in interstate commerce were not manufactured or compounded in France or of ingreditents any of which were of French origin, but were manufactured in the United States of ingredients all of which were of domestic origin.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "Lioret—Paris—New York" either independently or in connection or conjunction with its corporate or trade name in its advertising matter or on its brands or labels so as to import or imply that its products are of French or Parisian origin; and to cease and desist from the use of the word "Paris" either independently or in connection or conjunction with its corporate or trade name, or with the word "Lioret," or with any other word or words, or in any way, in soliciting the sale of and selling its products in interstate commerce, which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the said products are manufactured in Paris, France, or are of French origin.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 14, 1929.)

386. **Misbranding—Hats.**—Respondent, a corporation, engaged in the importation of hats in the rough from foreign countries which it finished, sold, and distributed in interstate commerce, and in compe-

tition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

In finishing certain of the hats which it imported in the rough from Japan respondent attached inside the hats leather sweatbands upon which were stamped the words "Genuine Toyo Panama," and sold and distributed such hats so marked and branded to purchasers thereof located in various States of the United States; when in truth and in fact said hats so imported, finished, and branded by the said respondent and sold and distributed by it in interstate commerce were not made from the leaves of the jipijapa, nor made in accordance with the process used in the manufacture of Panama hats, but were manufactured from a material or materials other than those of which Panama hats are manufactured.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from marking or branding its products with the words "Genuine Toyo Panama" when the said products are not made from the leaves of the jipijapa and in accordance with the process used in the manufacture of Panama hats, and from the use of the word "Panama" either independently or in connection or conjunction with the word "Genuine," or with any other word or words, or in any way, so as to import or imply or which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that such products are Panama hats.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 20, 1929.)

387. **Misbranding—Hats.**—Respondent, a corporation, engaged in the sale and distribution of hats and caps in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, purchased certain hats from an importer, which said products were branded "Genuine Toyo Panama." Said respondent, well knowing the materials of which said hats were manufactured, sold and distributed such hats so branded to purchasers thereof located in various States of the United States; when in truth and in fact said hats so marked, stamped, or branded and sold in interstate commerce were not made from the leaves of the jipijapa, nor made in accordance with the process used in the manufacture of Panama hats.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "Genuine Toyo Panama" as a mark, stamp, or brand for a product which is not made from the leaves of the jipijapa and in accordance with the process used in the manufacture of Panama hats, and from the use of the word "Panama" either independently or in connection or conjunction with the word "Genuine," or with any other word or words, or in any way, so as to import or imply or which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that such hats are Panama hats.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 20, 1929.)

388. **Misrepresenting competitors—Monuments and Tombstones.**—Respondents, copartners, engaged in fabricating monuments and tombstones of marble and granite and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, in soliciting the sale of and selling their products in interstate commerce, caused a circular letter to be printed, distributed, and circulated in interstate commerce among customers and prospective customers, wherein the following representation or statement appeared: "We are the only monument manufacturers in the State of Oklahoma who did not meet in Oklahoma City in February, 1921, and enter into an association pledging ourselves to each other to hold up to war-time prices"; when in truth and in fact no such association or agreement as referred to in said circular letter was made or entered into by the monument manufacturers at their convention held in Oklahoma City in February, 1921, or at any other time or place.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of declarations or statements in letters, circulars, and/or other printed matter distributed in interstate commerce whereby and wherein it is represented or stated that the monument manufacturers of Oklahoma have pledged themselves to maintain prices, or in any other way entered into a price-fixing agreement, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (June 20, 1929.)

389. **False and Misleading Corporate Name—Sweaters, Knitted Sport Suits, and Knit Goods.**—Respondent, a corporation engaged as a jobber in the sale and distribution in interstate commerce of knit goods, such as sweaters and knitted sport suits, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, adopted a corporate and trade name containing the words "Knitting Mills" and which said corporate and trade name containing the words "Knitting" and "Mills" it used in the sale and distribution of its products in interstate commerce; and on billheads and other stationery distributed in interstate commerce respondent made use of its said corporate and trade name containing the words "Knitting" and "Mills"; when in truth and in fact said respondent did not own, control, or operate any mill or factory wherein the products sold and distributed by it in interstate commerce were manufactured, but filled orders for such products from merchandise manufactured in mills or factories which it neither owned, operated, nor controlled.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "Knitting" and/or "Mills" or either of them independently or in connection or conjunction with any other word or phrase, as part of, or in connection or conjunction with its corporate or trade name so as to import or imply that said respondent owns, operates, or controls a mill or factory in which the products sold by it in interstate commerce are manufactured or fabricated; and from the use of the words "knitting" and/or "mills" in any other way which may have the capacity and tendency to confuse, mislead, or deceive the trade and/or the purchasing public into the belief that the aforesaid corporations owns, operates, or controls a mill or factory wherein the products sold by it in interstate commerce are manufactured or fabricated.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 28, 1929.)

390. **False and Misleading Advertising and Brands or Labels—Cotton-Pile Fabrics.**—Respondent, a corporation engaged in the sale and distribution of cotton-pile fabrics in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, designated and described the same as "Silverpelt," and caused advertisements to be inserted in publications having circulation between and among various States of the United States in which advertisements the word "Silverpelt" and the words "fur fabric" were featured and prominently displayed in describing said products.

Respondent also attached a ticket to each roll of said material delivered to its customers, which ticket bore the brand or label "Silverpelt," and also supplied its customers with labels bearing the word "Silverpelt" to be attached to garments made from such cloth; when in truth and in fact said products so advertised, labeled, sold, and distributed in interstate commerce under the trade name and brand "Silverpelt" were not made in whole or in part of the pelt or hide of a fur-bearing animal, but were made entirely of other material.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use, as a trade name, brand, or designation for its said products, or in magazine or other advertising matter circulated in interstate commerce, or on labels furnished to its customers of the word "Silverpelt" and/or the words "fur fabric," either independently or in connection or combination with each other or with any other word or words, letter or letters, which import or imply that the said products so marked, branded, advertised, and designated are made from the pelt or hide of a fur-bearing animal; and said respondent further agreed to cease and desist forever from the use of the word "Silverpelt" and/or the words "fur fabric" either independently or in connection or conjunction with any other word or words in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said products are made of the pelt or hide of a fur-bearing animal.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 28, 1929.)

391. **False and Misleading Advertising and Brands or Labels—Cotton Pile Fabrics.**—Respondent, a corporation, engaged in the manufacture of women's coats and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling women's coats in interstate commerce, desig-

nated and described the same as "Silverpelt," and caused advertisements to be inserted in publications having circulation between and among various States of the United States in which advertisements the word "Silverpelt" and/or the words "fur fabric" were featured and prominently displayed. Respondent attached a ticket to each of such garments made by it which tickets bore the brand or label "Silverpelt," and so labeled and branded sold and distributed such garments in interstate commerce; when in truth and in fact said products so advertised, labeled, sold, and distributed in interstate commerce were not made in whole or in part of the pelt or hide of a fur-bearing animal, but were made entirely of other material.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use, as a trade name, brand, or designation for its said products, or in magazine or other advertising matter circulated in interstate commerce, or on tickets or labels attached to said products of the words "fur fabric" and/or the word "Silverpelt" either independently or in connection with each other, or with any other word or words, letter or letters which import or imply that the said products so marked, branded, advertised, and designated are made of the pelt or hide of a fur-bearing animal; and said respondent further agreed to cease and desist forever from the use of the words "fur fabric" and/or the word "Silverpelt" either independently or in connection or conjunction with any other word or words in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said products are made of the pelt or hide of a fur-bearing animal.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 28, 1929.)

392. **Price Discrimination—Concrete Laundry Tubs.**—Respondent, a corporation, engaged in the manufacture of concrete laundry tubs and septic tanks at its plants located at different cities and in several States of the United States and in the sale and distribution of its products in interstate commerce, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, operates several plants in different cities and States of the United States, such plants including one located in the city of Philadelphia, in the State of Pennsylvania, and at which Philadelphia plant said respondent engaged in the manufacture of concrete laundry tubs, and in the sale and distriubtion of the same to purchasers, chiefly to plumbers' supply houses and builders located in the State of New Jersey as well

as the State of Pennsylvania, and in which territory said respondent had as its sole competitors—Stonite Products Co., engaged in the manufacture and sale of concrete laundry tubs, and whose output was taken up in substantially its entirety by a single consuming purchaser located at Philadelphia, Pa.; Baltimore Cement Products Co., engaged in the manufacture of concrete laundry tubs in the city of Baltimore, and some of which products it caused to be shipped to and sold in or about the city of Philadelphia, Pa.; and Myra Stone Products Co., a partnership, engaged since about April 1, 1927, in the manufacture and sale of concrete laundry tubs. The prevailing prices of products competitively sold by respondent and its aforesaid competitors were $4.50 and $4.75 per tub of the most popular size and other sizes varying in comparison with said popular size, while the product manufactured by the said Stonite Products Co. had been and was sold for a period of years for about 50 cents less than the price or prices at which the competing products were sold for the time mentioned aforesaid. The said prices were continuously maintained by said respondent and said competing companies for their respective products during the months of January, February, and March of 1927. During the fore part of April, 1927, respondent reduced the price at its Philadelphia plant on its popular size tub from $4.50 or $4.75 to $3.75, though no such reduction was made at any of its other plants aforesaid, and the said respondent did thereafter continue to maintain said reduced price in Philadelphia and territory adjacent thereto on its product of the popular size, the cost of manufacture of which was $4.10; when in truth and in fact the said reduction by said respondent of its price on laundry tubs in Philadelphia was not the result of a reduction in prices of tubs sold by competitors in the said Philadelphia territory and was not necessitated by the grade, quality, or quantity of the commodity sold or by reason of the difference in cost, of selling or transportation or was not necessitated in order to meet competition, but had the effect of discriminating in prices which were not made in good faith to meet existing competition in prices and tended to substantially lessen competition and/or to create a monopoly through the elimination of a competitor or competitors of said respondent.

Respondent agreed to cease and desist forever from discriminating, either directly or indirectly, in prices charged for its products in the territory or territories served by the said respondent and its competitors, where such discrimination in prices is not made in good faith to meet existing competition in prices and where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly through the elimination of a competitor or competitors of said respondent; unless such discrimination in prices shall be on account of differences in grade, quality, or quantity of the

commodity sold or that makes only due allowance for difference in cost of selling or transportation, or discrimination in price in the same or different communities in good faith to meet competition.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 28, 1929.)

393. **False and Misleading Price Advertising—Books and Magazines.**—Respondent, a corporation, engaged in the publication of books and magazines and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, solicited orders for one of its publications by means of advertisements inserted in popular magazines having interstate circulation and/or by means of form letters which were caused to be distributed in interstate commerce, certain of the said advertisements and advertising matter containing such phraseology as "I also want you to enroll as a private student of the course under my personal supervision. There are only a few students who are given this privilege of private enrollment." Another representation appeared in its said advertising matter and read as follows: "Special reduced price. Also I am going to reduce the price to you for thirty days. If you will enroll at once I will reduce the price to you from $19.50 to only $13.50 in easy monthly installments. You will save 30%." A still further advertised representation was as follows: "Therefore, for thirty days only we will cut the price right in half—we have cut the price to $9.75"; when in truth and in fact the price of $13.50 asked for the sets of books and alleged to be a "special reduced price" and available if accepted "at once" and the price of $9.75 subsequently asked for the sets of books and alleged to be for a period of "thirty days only" were not special in the sense that they were limited to a period of definite duration or available only to those accepting immediately, but were the regular and customary prices asked of all who could be induced to purchase said sets of books and without limit as to the time of acceptance.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever (1) from the use of the words "Special reduced price" or any other similar representation or representations so as to import or imply that the price at which the products are offered for sale is in truth and in fact special

for the period in which said offer was or is made and/or is other than the regular and customary price asked for its products when such is not the fact; (2) from the use of the phrases or representations "I am going to reduce the price to you for 30 days," "If you will enroll at once I will reduce the price," and "There are only a few students who are given this privilege," or of any other similar phrases or representations, so as to import or imply that the products designated or referred to by said phrases or representations constitute the subject matter of an offer, special or otherwise, which is to continue only for a period of 30 days or for a limited period of time and/or which offer is, or is to be, extended only to a privileged few, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 28, 1929.)

394. **False and Misleading Advertising—"Satin."**—Respondent, an individual, engaged in the sale and distribution of cloths and fabrics in interstate commerce for the use of corset and brassière manufacturers, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his products in interstate commerce, caused an advertisement to be inserted in a newspaper having circulation between and among various States of the United States wherein certain of his products were designated, represented, and referred to as "satin"; when in truth and in fact the said products so represented, advertised, and sold in interstate commerce were not manufactured in whole or in part from satin, the product of the cocoon of the silkworm, but were manufactured from a product which did not contain satin either in whole or in part.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the word "satin" either independently or in connection or conjunction with any other word or words in his advertisements or advertising matter to represent and describe his said products, and from the use of the word "satin" in any other way so as to import or imply that the said products are made in whole or in part from silk, and from the use of the word "satin" in any way that may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the said products are manufactured from silk, the product of the cocoon of the silkworm.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commisssion may issue. (June 28, 1929.)

395. **False and Misleading Corporate Name and Advertising—Ladies' Dresses.**—Respondent, a corporation, engaged in the sale and distribution of ladies' dresses in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its product in interstate commerce, caused the same to be described as "Phyllis Frocks," and stated and represented, in illustrated advertisements furnished for agents' use, and in stationery such as letterheads, envelopes, order blanks, and other similar printed matter distributed in interstate commerce, that its said products were "Made by Phyllis Silk Mills, Ltd.," under which name it conducted correspondence with customers and carried on the sale and distribution of its said products; when in truth and in fact neither the respondent nor the so-called "Phyllis Silk Mills, Ltd." owned, operated, or controlled a mill or factory for the fabrication of the garments which it sold and distributed in interstate commerce, or the cloth from which such garments were made; and said respondent filled orders for products which it manufactured from materials which it purchased from others.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of its trade name containing the word "Mills," and from the use of any other corporate or trade name containing the word "Mills," so as to import or imply that said corporation owns, operates, and controls a mill or factory in which the products sold and distributed by it in interstate commerce are manufactured or the material from which the same are made; and said respondent also agreed to cease and desist forever from the use of the word "Mills" in any way that may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said respondent owns, operates, or controls a mill or factory wherein the products sold and distributed by it in interstate commerce are made.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 28, 1929.)

396. **False and Misleading Advertising—Rubber Goods.**—Respondent, a corporation, engaged in the sale and distribution of

rubber goods in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent engaged as a wholesale and retail distributor of rubber goods, including products of that character obtained from the manufacturers thereof, one of which manufacturers was Goodyear Tire & Rubber Co., of Akron, Ohio. In the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, respondent caused certain of its advertising matter having interstate circulation to contain the words or phrase "The only Goodyear store in Newark"; when in truth and in fact there were a number of individuals, firms, and/or corporations located in the city of Newark, State of New Jersey, engaged in the sale and distribution in commerce of Goodyear products in competition with said respondent. Certain other of the advertising matter distributed in interstate commerce by said respondent contained the representation that said respondent was a "manufacturer"; when in truth and in fact the said respondent did not own, operate, or control a mill or factory wherein were made or manufactured the products sold by it in interstate commerce, and said respondent filled orders from products manufactured or made in plants or factories which it neither owned, operated, nor controlled.

Respondent agreed to cease and desist forever from the use of the phrase "The only Goodyear store in Newark," or of any other phrase or phrases in its advertising matter circulated in interstate commerce that imports or implies that said respondent is the only store located in Newark, N. J., engaged in the sale of Goodyear products; when such is not the fact. Respondent further agreed to cease and desist from the use of the word "manufacturer" either independently or in connection or conjunction with any other word or words, or in any way, in its advertising matter circulated in interstate commerce, or in soliciting the sale of and selling its products, that may import or imply that said respondent owns, operates, or controls a mill or factory wherein are manufactured or fabricated the products which it sells, or which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that it owns, operates, and controls a mill or factory for the manufacture or fabrication of its said products.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 28, 1929.)

397. **False and Misleading Advertising—Infants' Underwear.**—Respondent, a corporation, engaged in the manufacture of different

types of underwear for men, women, and children and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused its infants' underwear to be advertised in newspapers and other publications having circulation between and among various States of the United States, and in catalogues, booklets, and circulars distributed in interstate commerce, and in said advertisements featured a list of health authorities, as follows: "U. S. Government Public Health Service," "U. S. Children's Bureau," "New York Maternity Center," "Five leading women's magazines," "Better Babies Bureau," and "43 out of 48 State boards of health," and preceded such list by headings such as the following: "Dress your baby this way, say these great authorities," "The U. S. Children's Bureau indorses the prescription of these great authorities," "43 out of 48 State boards of health give this prescription for baby clothes," "The baby editors of 5 leading women's magazines agree with these great authorities," "This way to dress your baby is prescribed by these great authorities," "Baby clothes filling the prescription of leading life insurance company," "As specified by the New York Maternity Center and these great authorities," "These great authorities have given this prescription for baby clothes," "Protect your baby as these great authorities prescribe," "The U. S. Children's Bureau indorses the prescription of these great authorities," "As prescribed by these greatest authorities on infant care," "The U. S. Government Public Health Service tells mothers what babies should wear and these great authorities agree," "This prescription for your baby's clothes was given by these great authorities"; when in truth and in fact the only foundation for such representations or claims is to be found in the bulletin of the United States Department of Labor on Infant Care (Bureau Publication No. 8, revised, 1926) contained, at page 20, the following statement: "They (babies' shirts) are all wool, or wool and silk, wool and cotton, all silk, or all cotton. Usually either the cotton-and-wool or silk-and-wool mixtures are best * * *"; neither the United States Government Public Health Service, the United States Children's Bureau, nor any other United States Government bureau, nor any of the State boards of health has officially indorsed or approved the infants' garments made and sold by said respondent.

Respondent agreed to cease and desist forever, in its catalogues and other advertising matter circulated in interstate commerce in soliciting the sale of and selling its products, from the use of any word or

words and/or representations suggesting or implying that any United States Government bureau, or any State board of health has officially indorsed or approved the infants' garments made and sold by said respondent, when such is not the fact; and from the use of any word or words and/or representations which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said products so advertised are officially indorsed or approved by any United States Government bureau or by any State board of health, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 28, 1929.)

398. **False and Misleading Advertising—Correspondence Courses.**—Respondent, an individual, engaged in conducting a correspondence school, and more particularly in the business of preparing courses of instruction in physical culture and in the sale and distribution of such courses in interstate commerce, and in competition with other individuals, firms, corporations, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, caused his courses of instruction to be advertised by means of circulars, pamphlets, and other printed matter distributed in interstate commerce, as well as in newspapers having interstate circulation and in which advertising matter the said respondent described himself as "The world's foremost muscular scientist" and "The world's strongest physical director," while his courses of instruction are described as "The fastest health, strength, and personality building system known." As an inducement to purchase the courses of instruction, said advertising matter also contained the representation or statement, "No matter what your present physical condition, I GUARANTEE to bring your body to its utmost degree of perfection," together with the explanatory statement "That means your physique will be properly balanced," and the implied promise "You will have a development of which you will indeed be proud." Other statements contained in said advertising matter are "Through my instructions you can take off or put on weight wherever desired," "Most persons have some physical defect, which can, by my scientific methods, be easily corrected or overcome." The latter is followed by "To have a flat chest, drooping shoulders, protruding abdomen, knock-knees, bowlegs, spinal curvature, thin neck—to be scrawney or obese is not popular and certainly no longer necessary now that I offer quick, easy GUARANTEED methods to overcome them permanently." Still

further representations made in the said advertising matter are "Right from the start, your progress is carefully watched and you get the BEST SYSTEM that will give your entire body complete symmetry of form," "You will be made over, living a newer, happier, healthier, contented life such as you never dreamt possible." Under the heading "WHAT YOU GET" appear the representations "Sound instructions adapted to your needs for perfecting and strengthening all the inner vital organs—the heart, lungs, stomach, liver, kidneys, sexual system, nervous system, normalizing your entire figure by developing a splendid chest, a powerful abdomen, strong shapely arms and shoulders, wrists and fingers with a grip like steel, muscular thighs and calves. More energy, endurance, vitality, health, youthful vigor, and long life as well as happiness all from my natural simple methods without cumbersome apparatus." "It takes only a few minutes each day for a few short weeks and, zingo! you find yourself the possessor of giant strength, powerful useful muscles, unlimited vitality, tremendous energy, perfect health, and a beautifully proportioned body" and "When you are through with my course, you have all there is to get of essential information for the complete development of the perfect man"; when in truth and in fact such representations are misleading as the benefits and results alleged to be effected in many, if not all, instances are not probable of accomplishment or are exceptional, if true.

Respondent, in the course and conduct of his business, agreed to cease and desist forever from the use, in his advertising matter or in soliciting the sale of and selling his course of instruction in physical culture in interstate commerce, of such phrases or words as "No matter what your present physical condition I guarantee to bring your body to its utmost degree of perfection," "Your physique will be properly balanced," "You can take off or put on weight wherever desired," "You get the best system that will give your body complete symmetry of form," "You will be made over," or of any other phrases, words, or representations so as to import or imply, or which have the capacity or tendency to mislead or deceive the purchasing public into the belief that the body of the user of such physical exercises or training will be benefited as set forth in all cases notwithstanding the physical condition of the user previous to commencing said exercises.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (June 28, 1929.)

399. **False and Misleading Trade Name and Advertising—Paper and Twine.**—Respondents, copartners, engaged as wholesalers and jobbers in the sale and distribution of paper and twine in interstate commerce, and in competition with other partnerships, individuals,

firms, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, in soliciting the sale of and selling their products in interstate commerce, adopted and used as a part of their trade name the word "Mills." Respondents caused the said trade name containing the word "Mills" to be used on their letterheads, billheads, price lists, fillers, and other printed matter distributed in interstate commerce; when in truth and in fact the said respondents did not own, operate, or control a mill or factory wherein were manufactured the products sold and distributed by them in interstate commerce, but filled orders from products manufactured in mills or factories which they neither owned, operated, nor controlled.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of the word "Mills" as part of or in connection or conjunction with their trade name so as to import or imply that said respondents own, operate, and control a mill or factory in which are manufactured the products sold by them in interstate commerce, and from the use of the word "Mills" as part of or in connection or conjunction with their trade name, or in any other way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the said respondents own, operate, and control a mill or factory wherein are manufactured the products sold by them in interstate commerce.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (June 28, 1929.)

400. **False and Misleading Trade Name and Advertising—"Leatherfibre."**—Respondent, a corporation, engaged in the sale and distribution of vegetable fiber products so treated as to simulate leather in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, adopted as a part of its trade name the word "Leatherfibre," and which trade name containing the word "Leatherfibre" it used in the sale and distribution in interstate commerce of its products under the trade designation of "Russhyde." Use was also made of its said trade name containing the word "Leatherfibre" on its stationery, including letter-

heads, envelopes, and other similar printed matter distributed in interstate commerce and in advertisements inserted in periodicals having circulation between and among various States of the United States; when in truth and in fact said products were not prepared from leather, a product derived from the hides of animals, nor were they made of scraps of leather fabricated into a fiber material, nor were said products prepared by the process known as "Russianizing," nor by a process used to produce "russet" leather.

Respondent agreed to cease and desist forever from the use of the word "Leatherfibre" as part of or in connection or conjunction with its trade name in the sale and distribution of its products in interstate commerce, and from the use of the said trade name containing the word "Leatherfibre" in advertisements inserted in periodicals having circulation between and among various States of the United States, either independently or in connection or conjunction with any other words or phrases so as to import or imply that its said products are made from leather, the product of the hides of animals. Respondent also agreed to cease and desist forever from the use of the word "Russhyde," either independently or in connection or conjunction with any other word, phrase, or statement, or in any other way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said products are made from leather and have been prepared by the process known as "Russianizing" or by any process used to produce "russet" leather, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 28, 1929.)

401. **False and Misleading Advertising and Brands—Flavorings, Sirups, Extracts.**—Respondent, a corporation, engaged in the manufacture of flavorings, sirups, and extracts used in the manufacture of candies and ice creams and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, sold the products of its manufacture under the trade brand or designation "Mep," chiefly to ice-cream manufacturers and in some instances to wholesale grocers. It caused its said products to be advertised in trade periodicals having interstate circulation, the said advertising matter containing the phraseology "Get this working sample of Mep, the perfect maple flavor for ice cream"; when in truth and in fact

the said product contained no maple sirup or sap of the maple tree so as to be properly advertised, designated, and sold as "maple," but was composed of an ingredient or ingredients other than those obtained from the maple tree.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "maple" either independently or in connection or conjunction with the word "perfect" or the word "flavor" or with any other word or words so as to import or imply or which may have the capacity or tendency to mislead, confuse, or deceive the purchasing public into the belief that the said product is composed of maple sirup or of sap of the maple tree, when in truth and in fact such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 28, 1929.)

402. **False and Misleading Advertising—Carbon Paper, Typewriter Ribbons, and Office Supplies—Prizes or Premiums.**—Respondent, an individual, engaged in the sale and distribution of carbon paper, typewriter ribbons, and office supplies and equipment at wholesale in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his products in interstate commerce, caused circular letters, order blanks, and other advertising matter to be distributed in interstate commerce among his customers and prospective customers, the said advertising matter listing the carbon paper, typewriter ribbons, and other office stationery carried in stock by said respondent, and also including various offers of prizes or choices of prizes together with such statements as "Pictured on the inside pages of this letter is something you've always wanted to own. It may be a fine traveling bag for the trip you plan this summer. It may be a beautiful wrist watch, or a handsome desk clock. Whatever it is you are welcome to it—without a penny of cost to you. Just pick out the article that pleases you most—and it's yours by merely placing your order for carbon paper or typewriter ribbons with us, at the regular price," and "Merely our methods of advertising and introducing our merchandise," the various articles referred to being pictorially illustrated together with the description thereof and the words "Free with offer"; when in truth and in fact the said articles offered "without a penny of cost to you" and "merely our method

of advertising and introducing our merchandise" or as "free" were not given free or bestowed without compensation, but their cost was included in the price paid by the purchasers of said carbon paper, typewriter ribbons, and other office supplies and equipment.

Respondent agreed to cease and desist forever from the use in his circulars or on his order blanks or other advertising matter distributed in interstate commerce of the words "without a penny of cost to you," and "free," either independently or in connection or conjunction each with the other or with any other word or words in soliciting the sale of and selling his products in interstate commerce so as to import or imply that the products to which the said words refer are in truth and in fact given as a gratuity, and from the use of the words "without a penny cost to you" and "free," or any other word or words of like import, either independently or in connection or conjunction with any other word or words, or in any way which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products so offered "without a penny of cost to you" or as "free" are in fact given free and their cost is not included in the price paid by the purchasers for products ordered.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (June 28, 1929.)

403. **False and Misleading Advertising and Brands—Soap and Soap Powder.**—Respondent, a corporation, engaged in the manufacture of soap and soap products and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, manufactured a bar laundry soap for household use which it designated as "Naphtha soap," and sold such soap in interstate commerce under a brand name containing the word "naphtha" conspicuously printed upon the wrappers of bars or cakes of such soap in the form in which it was sold to the consuming public. Respondent also manufactured a soap product in the form of a powder which it designated as "Naphtha powder," and sold such product in interstate commerce under a brand name containing the word "naphtha" conspicuously printed upon the containers in which such powder was packed for distribution to the consuming public; when in truth and in fact the soap and soap products so manufactured, branded, advertised, and sold in interstate commerce retained only a small proportion of the

naphtha put therein upon manufacture, and the naphtha content of such soap and soap products was only approximately one-tenth of 1 per cent by weight of such soap and soap products at the time of their sale to the consuming public in the usual course of retail trade.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "naphtha," either alone or in combination with any other word or words, in the brand name of any soap product in the form of powder, flakes, or chips, or otherwise incidental to its advertisement and sale; and to cease and desist forever from the use of the word "naphtha," either alone or in combination with any other word or words, in the brand name, or otherwise incidental to the advertisement and sale in interstate commerce of soap in the form of bars or cakes; unless there be put into such soap upon its manufacture a quantity of naphtha sufficient in amount so that such soap will retain an amount of naphtha in excess of 1 per cent by weight of such soap, up to the time it is sold to the consuming public in the usual course of retail trade; and if it be necessary to that end, there be incorporated in such soap, upon its manufacture, ingredients other than naphtha which will retain the naphtha also incorporated therein, or prevent its rapid volatilization.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 28, 1929.)

404. **False and Misleading Advertising—Rope.**—Respondent, a corporation, engaged in the sale and distribution of manila rope for transmission, hoisting, and drilling in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused its products to be described in catalogues which it distributed in commerce between and among various States of the United States, and in which said catalogues the following, among other language, was used: "This company makes a special rope from selected manila fibre," "We will make any size rope that is ordered," "We make it ('Stevedore' drilling cable) of a selected grade of long manila fibre," "We make 'Stevedore' hoisting rope of selected manila fibre"; when in truth and in fact respondent did not manufacture the rope which it sold in interstate commerce, but filled orders for the rope which it sold purchased from others.

Respondent agreed to cease and desist forever in the advertisement, sale, and distribution of rope in interstate commerce of words and phrases such as "We will make," "We make it," "We make 'Stevedore' hoisting rope," or any of them, either independently or in connection or conjunction each with the other or with any other word or words, or any phrase or phrases, so as to import or imply that the product to which the same refer was made or manufactured by said respondent, and from the use of any word or words, phrase or phrases, that may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said product so sold by the aforesaid respondent in interstate commerce is made or manufactured by it, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint wnich the commission may issue. (June 29, 1929.)

405. **False and Misleading Advertising and Brands, or Labels—Malt Sirups.**—Respondent, a New York corporation, engaged as a distributor in the sale of malt sirups in interstate commerce and a certain Canadian corporation also engaged in selling malt sirups, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, the said New York corporation, is owned and operated by an individual who also controls and operates the certain other respondent corporation organized, existing, and doing business under and by virtue of the laws of the Dominion of Canada, and having its principal place of business located in the city of Toronto, Ontario, Canada, the said Canadian corporation being engaged in the sale and distribution of malt sirup in the Dominion of Canada under its corporate and trade name containing the words "Cream of Malt." Respondent, the said New York corporation, obtained the malt sold and distributed by it in interstate commerce from the manufacturer of the same located in the United States and who manufactured such malt from ingredients all of which were of domestic origin. Said product was purchased in the name of and invoiced to the aforesaid Canadian corporation, but was delivered by the domestic manufacturer as a drop shipment to the respondent, the said New York corporation, at its New York address.

Respondent, the said New York corporation, in soliciting the sale of and selling its product in interstate commerce, caused advertisements to be inserted in newspapers having interstate circulation, the said advertisements featuring the name and address of the said Canadian corporation, while on its letterheads, invoices, and other printed matter distributed in interstate commerce said respondent,

the New York corporation, described itself as "United States distributors," together with the name and address of the said Canadian corporation. Circulars or "dealers helps" were sent by respondent, the said New York corporation, to its wholesale trade for distribution among the customers of said trade and on which appeared the following: "The popular beverage of Canada for a generation has been the product of rich, sound, nutritive barley. The same from which our malts are manufactured." Respondent, the said New York corporation, also caused labels to be affixed to the containers of its products and which bore the words "Avoid imitations," together with the name and local address of the aforesaid Canadian corporation, so as to import or imply that the said Canadian corporation produced the said products and that the respondent, the said New York corporation, distributed the same within the United States. Certain of the labels used by the respondent, New York corporation, contained pictorial representations of beavers, maple leaves, and a crown, recognized insignia of the Dominion of Canada, the said advertising matter and labels having the capacity and tendency to mislead and deceive the purchasing public into the belief that the said products were of Canadian origin and/or composed of ingredients obtained from Canada; when in truth and in fact the said products were not obtained from or manufactured in the Dominion of Canada and/or imported into the United States from said country, but were manufactured in the United States from ingredients obtained from local sources.

Respondents, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use of the corporate or trade name and the local address of the said Canadian corporation in newspapers and other advertising matter circulated in interstate commerce, or on brands or labels or as a designation for products sold in interstate commerce, so as to import or imply that the said products are manufactured in Canada and have been imported into the United States, and from the use of the corporate and trade name of the said Canadian corporation either independently or in connection or conjunction with the local address of said Canadian corporation, or with any words or insignia, or in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are manufactured in Canada and have been imported into the United States or are composed of ingredients of Canadian origin, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (July 1, 1929.)

406. **False and Misleading Advertising—Toy Airplanes.**—Respondent, an individual, engaged in the manufacture of miniature or toy

airplanes and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his products in interstate commerce, caused circulars and other advertising matter descriptive of the miniature or toy airplanes manufactured and sold by him to be distributed to customers and prospective customers in various States of the United States, which advertising matter was illustrated by what purported to be a picture of the building in which his said business was carried on, and on the front of the building, as shown in the picture, appeared in large display type the following: "World's largest manufacturers model airplane sets and supplies," and over the door of what purported to be an annex or addition to said building appeared the words "Shipping Dept."; whereas the business so carried on by said respondent was limited to the manufacture and sale of miniature or toy airplanes and repair parts for same and the volume of such business did not exceed $10,000 per year and was carried on in two small rooms of the upper story of a small building, and there was no separate space utilized for shipping purposes.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of advertising matter containing a picture of the building in which he carries on business, used in a manner calculated to create the erroneous impression that all of the space in such building is occupied by him, including separate space for shipping department, and from the use of advertising matter which contains the claim or representation that he is the "World's largest manufacturer of model airplane sets and supplies."

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (July 10, 1929.)

407. **False and Misleading Advertising—Motor Boats.**—Respondent, a corporation, engaged in the manufacture of motor boats and in the sale and distribution of the same in interstate commerce and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Mahogany is the product of the genus Swietenia, tribe Swietenioideæ of the tree family scientifically called Meliaceæ. The genus Swietneia, of which there are several known species, is the only one

which produces true mahogany. Trees of the Swietenia group grow principally in the West Indies, southern Florida, southern Mexico, Central America, Venezuela, and Peru. No species of the genus Swietenia of this tree family grows in the Philippine Islands, except as specifically planted for decorative or experimental purposes.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused its said products to be advertised in periodicals having circulation in interstate commerce, and in said advertisements described the same as "constructed of Philippine mahogany," and stated that "The bottom, sides, deck, and stern are Philippine mahogany." Respondent also issued a price list and catalogue which it distributed in interstate commerce, and wherein it caused the following statement to appear, "All planking is mahogany"; when in truth and in fact the said products so advertised, respresented, designated, and sold in interstate commerce were not manufactured from wood derived from trees of the mahogany or Meliaceæ family, so as to be properly and accurately advertised, designated, represented, and referred to as "Philippine mahogany" or as "mahogany," but were products derived from the tree family scientifically called Dipterecarpacneæ.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "mahogany" either independently or in connection or conjunction with any other word or words in its advertisements, or as a trade designation for said products, so as to import or imply that said products are derived from trees of the mahogany or Meliaceæ family, when such is not the fact; and to cease and desist forever from the use of the word "mahogany" either independently or in connection or conjunction with the word "Philippine," or with any other word or words, or in any way as descriptive of said products which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are derived from trees of the mahogany or Meliaceæ family, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (July 10, 1929.)

408. **False and Misleading Advertising—Overalls.**—Respondent, a corporation, engaged in the manufacture of overalls and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, caused advertisements to be inserted in newspapers having circulation between and among various States of the United States, which said advertisements contained such statements and representations as "shrunk finish denim," "shrunk finish, indigo dyed denim"; when in truth and in fact the products so represented and referred to were not "shrunk" or "shrunken" in the sense in which such word is understood by the trade and among the purchasing public.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever in its advertisements circulated in interstate commerce, form the use of the word "shrunk" either independently or in connection or conjunction with any other word or words which import or imply that said products are manufactured from "shrunken" cloth as such word is generally accepted and understood to mean in the trade and among the purchasing public; and from the use of the word "shrunk" either independently or in connection or combination with any other word or words, or in any other way as descriptive of its products sold in interstate commerce, which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the said products are manufactured from cloth which has been shrunken, as such word is generally accepted and understood by the trade and by the purchasing public.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

409. **False and Misleading Trade Name and Advertising—Flannel Shirts; Leather and Knitted Sportwear.**—Respondent, an individual, engaged in the sale and distribution in interstate commerce of flannel shirts and leather knitted sportwear, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business in soliciting the sale of and selling his products in interstate commerce, adopted a trade name containing the word "Manufacturing," which said trade name he used in the sale of said products in interstate commerce; respondent caused his trade name containing the word "Manufacturing" to be used on his letterheads, envelopes, and other printed matter circulated in interstate commerce in soliciting the sale of and selling his product; when in truth and in fact the said respondent did not own, operate, or control a mill or factory in which were manufactured the products represented, designated, and described as afore-

said and sold and distributed by said respondent, and the said respondent filled orders for products from stocks purchased by him from mills or factories which he neither owned, operated, nor controlled.

Respondent agreed to cease and desist forever from the use of the word "Manufacturing" as part of, or in connection or conjunction with, his trade name in the sale and distribution of his products in interstate commerce, and from the use of a trade name containing the word "Manufacturing," or any other word or words which import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said respondent either owns, operates, or controls a mill or factory where are made the products which he sells and distributes in interstate commerce.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

410. **False and Misleading Advertising—Diamonds.**—Respondents, individuals, engaged in the sale and distribution of diamonds in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents in the course and conduct of their business in soliciting the sale of and selling their products in interstate commerce, and as a means of promoting the sale of said products, caused the same to be advertised in newspapers having circulation between and among various States of the United States in the following words: "Diamond ring. Must sell. Beautiful lady's setting. Large blue-white perfect cut diamond. For quick cash $100"; when in truth and in fact there was no emergency compelling the immediate sale of said products but same were offered and sold in the regular course of business.

Respondents in soliciting the sale of and selling their products in interstate commerce agreed to cease and desist forever from the use in advertisements of the words "must sell" either independently or in connection or conjunction with any other word or words, or similar representations, so as to import or imply that there is an emergency compelling the immediate sale of said product or which may mislead and deceive the purchasing public into the belief that an emergency exists, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

411. **False and Misleading Advertising—Diamonds.**—Respondent, an individual, engaged in the sale and distribution of diamonds in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in the course and conduct of her business in soliciting the sale of and selling her products in interstate commerce, and as a means of promoting the sale of said products, caused the same to be advertised in newspapers having circulation between and among various States of the United States, in the following words: "Diamond ring. Must sell. Beautiful lady's setting. Large blue-white perfect cut diamond. For quick cash $100"; when in truth and in fact there was no emergency compelling the immediate sale of said products, but same were offered and sold in the regular course of business.

Respondent agreed in soliciting the sale of and selling her products in interstate commerce to cease and desist forever from the use in advertisements of the words "must sell" either independently or in connection or conjunction with any other word or words, or similar representations, so as to import or imply that there is an emergency compelling the immediate sale of said products or which may mislead and deceive the purchasing public into the belief that an emergency esixts, when such is not the fact. (September 16, 1929.)

412. **False and Misleading Advertising and Branding—Laundry Soap.**—Respondent, a corporation, engaged in the manufacture of laundry soap and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, intered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in the course and conduct of its business manufactured and sold in interstate commerce a bar laundry soap for household use which it designated as "White Naphtha Soap" and sold such soap under that brand name and description which had been conspicuously printed upon the wrappers of bars or cakes of such soap in the form in which it is sold to the consuming public; when in truth and in fact such soap so branded, advertised, and sold, at the time of its sale to the consuming public in the usual course of retail trade, contained naphtha in an amount approximating only four-tenths of 1 per cent by weight of such soap.

Respondent agreed to cease and desist forever from the use of the word "naphtha" either alone or in combination with any other word or words in the brand name or otherwise incidental to the advertisement and sale of soap in the form of bars or cakes, unless there be

put into such soap upon its manufacture a quantity of naphtha sufficient in amount so that such soap will retain an amount of naphtha in excess of 1 per cent by weight of such soap, up to the time it is sold to the consumig public in the usual course of retail trade; and if it be necessary to that end, that there be incorporated in such soap upon its manufacture ingredients other than naphtha which will retain the naphtha also incorporated therein or prevent its rapid volatilization.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

413. **False and Misleading Advertising and Branding—Laundry Soap.**—Respondent, a corporation, engaged in the manufacture of laundry soap and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, manufactured and sold a bar soap for household use, designated by it as "Naphtha" soap, and sold such soap under said brand name conspicuously printed upon the wrappers around individual bars of such soap. The product so manufactured, branded, and sold had heretofore retained only a small portion of the naphtha put into it upon manufacture, and at the time such soap reached the consuming public, in the ususal course of retail trade, the naphtha remaining in such soap did not exceed seven-tenths of 1 per cent by weight of such soap.

Respondent agreed to cease and desist from the use of the word "naphtha" either alone or in combination with any word or words in the brand name of any soap manufactured and sold by it, or in the brand name of any soap made by any other manufacturer and sold by it in interstate commerce, under its own brand name or names, or otherwise incidental to the advertisement and sale of such soap, unless there be put in such soap upon its manufacture a quantity of naphtha sufficient in amount so that such soap will retain an amount of naphtha in excess of 1 per cent by weight of such soap up to the time it is sold to the consuming public in the usual course of retail trade; and if it be necessary to that end, that there will be incorporated in such soap, upon its manufacture, ingredients other than naphtha which will retain the naphtha also incorporated therein or prevent its rapid volatilization.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts

may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

414. **False and Misleading Advertising and Branding—Soap and Soap Products.**—Respondents, copartners, engaged in the manufacture of soap and soap products and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, manufactured and had manufactured for household use a bar laundry soap and a soap product in powdered form which they had designated as "White Naphtha" and "Naphtha Borax Soap Powder," respectively, and sold such products in interstate commerce under said brand names, respectively, printed upon the wrappers of individual cakes of soap and upon the containers in which such soap powder was packed for sale to the consuming public in the usual course of retail trade; that there is incorporated in said bar soap upon its manufacture a quantity of a hydrocarbon known as "naphtha" in the petroleum industry and to the consuming public, but the other constituent ingredients of such soap were of such a nature that the finished product would not retain a volatile ingredient such as naphtha, nor prevent its rapid volatilization, if incorporated therein upon manufacture, and as a result, any naphtha so incorporated therein is virtually all lost before it reached the consuming public in the usual course of retail trade, and the soap powder, because of the fact that it was composed of finely divided particles, would not retain a volatile ingredient, and any naphtha incorporated therein upon manufacture was wholly lost by volatilization before it reached the consuming public in the usual course of retail trade.

Respondents agreed to cease and desist from the use of the word "naphtha" either alone or in combination with any other word or words in the brand name of any soap products in the form of powder, flakes, or chips manufactured and sold by them or any of them, or otherwise incidental to the advertisement and sale of such products, and shall cease and desist from the use of the word "naphtha" either alone or in combination with any other word or words, in the brand name, or otherwise incidental to the advertisement and sale of soap manufactured and sold by them for household use in the form of bars or cakes, unless there be incorporated in such bar soap, upon manufacture, a quantity of the hydrocarbon known to the purchasing and consuming public as naphtha sufficient in amount so that such soap will retain an amount of such hydrocarbon greater than 1 per cent by weight of such soap up to the time it is sold to the consuming

public in the usual course of retail trade; and if it be necessary to that end, there will be incorporated in such soap, upon manufacture, ingredients other than naphtha which will retain the naphtha also incorporated therein or prevent its rapid volatilization.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

415. **False and Misleading Trade Name and Advertising—Milk and Food Products.**—Respondent, an individual, engaged in the sale and distribution of food products, including milk, in commerce in the District of Columbia, as defined by the Federal Trade Commission act, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The American Association of Medical Milk Commissioners (Inc.) is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located in the city of Brooklyn, N. Y. Its objects are to bring about a uniformity of standards in the production of raw milk under the name of "Certified Milk" and to encourage the production of milk of the highest possible standard of purity, and it carries out these objects through the maintenance of hygienic conditions in the production and distribution of milk, the veterinary supervision of herds, medical supervision of employees, and chemical and bacteriological examination of the milk. Through the activity of said association there has become known to the consuming public a product identified by the trade name of "Certified Milk," which is a trade name or brand meaning that the product to which it is applied has met all of the requirements of the American Association of Medical Milk Commissioners (Inc.), and such milk, so certified, has acquired a reputation and good will among the consuming public as being of exceptional purity and a high grade of excellence.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his products in commerce in the District of Columbia, adopted as a part of his trade name the words "Certified Dairies," which trade name including the words "Certified" and "Dairies" he used in the sale and distribution of his products in commerce in the District of Columbia; respondent caused signs to be placed in the windows of the store in which his said business was conducted, which signs included the words "Certified Dairies" in large letters; in his advertising, which consisted in part of reading matter printed on the paper bags in which his said products were enclosed and delivered to customers, the words "Certified Dairies"

were prominently displayed; and advertising circulars and letterheads containing the words "Certified Dairies" were distributed in commerce within the District of Columbia; when and in truth and in fact the milk sold and distributed by respondent had not been inspected by any representative of the American Association of Medical Milk Commissioners (Inc.), and/or certified by them and having their seal attached; and said respondent did not own, control, nor operate any dairy or dairies where the milk which he sold and distributed was produced, but such milk was purchased from others and resold by the said respondent.

Respondent, in promoting the sale and distribution of milk, agreed to cease and desist forever from the use of the words "Certified" or "Dairies," or either of them either independently or in connection, conjunction, or combination with any other word or words as a trade name, brand, or designation so as to import or imply, or lead the purchasing public to believe, that the product to which the same refers has been inspected and certified by the American Association of Medical Milk Commissioners (Inc.), or that said respondent owns, operates, or controls any dairy or dairies where the milk which he sells and distributes is produced, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

416. **False and Misleading Trade Name and Advertising Misrepresentation—Woolens and Worsted Piece Goods.**—Respondents, copartners, engaged in the sale and distribution of woolens and worsted piece goods, in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents in the course and conduct of their business adopted as and for part of their trade name the word "Mills" which trade name containing the word "Mills" they used in the sale and distribution of woolens and worsted piece goods in interstate commerce, and said respondents caused their said trade name, containing the word "Mills," to be used in advertisements inserted in trade papers and other publications having circulation between and among various States of the United States. The said respondents also caused their trade name containing the word "Mills" to be used on their letterheads, order blanks, billheads, envelopes, and other printed matter distributed in interstate commerce in soliciting the sale of and selling their products; when in truth and in fact the said respondents did not own, operate, or control a mill or factory in which were manu-

factured the goods sold and distributed in them in interstate commerce, and said respondents filled orders for said products from materials manufactured in mills or factories which they neither owned, controlled, nor operated.

Respondents agreed to cease and desist forever from the use of the word "Mills" as part of or in connection or conjunction with their trade name in the sale and distribution in interstate commerce of said products, and from the use of the word "Mills" as part of or in connection or conjunction with their trade name in their advertisements inserted in newspapers, magazines, or other publications having circulation between and among various States of the United States. Respondents also agreed to cease and desist from using the word "Mills" on their letterheads, advertising, and other printed matter distributed in interstate commerce so as to confuse, mislead, or deceive the purchasing public into the belief that said respondent either own, operate, or control a mill or factory wherein are made the products sold by them, or until such time as said respondents do actually own, operate, or control a mill or factory wherein the said products are made.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

417. **False and Misleading Advertising—Flavors and Sirups.**—Respondent, a corporation, engaged in the manufacture of flavors and sirups to be used in the manufacture of candies and ice creams and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, sold the product of its manufacture chiefly to candy and ice-cream manufacturers, and in soliciting the sale of and selling its said products caused them to be advertised in trade periodicals having interstate circulation. One of its products was designated and described in the aforesaid advertising matter as "Maple Flaver—a maple flavor possessing the true aroma of the old, fine maple sugar, and yet more practical and economical." In its price lists distributed in interstate commerce the said product was listed as "Maple"; when in truth and in fact the said product contained no maple sugar or sap of the maple tree so as to be properly advertised, designated, and sold as and for "maple," but was composed of an ingredient or ingredients other than that obtained from the maple tree.

Respondent agreed to cease and desist forever from the use of the word "maple" either independently or in connection or conjunction with the word "flavor" or with any other word or words so as to import or imply, or which may have the capacity and tendency to mislead, confuse, or deceive the purchasing public into the belief that the said product is composed of maple sirup or of the sap of the maple tree, when in truth and in fact such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

418. **False and Misleading Trade Name, Advertising and Brands on Labels—Hand Bags, Suitcases, and Other Luggage.**—Respondents, copartners, engaged in the sale and distribution of hand bags, suitcases, traveling bags, and other luggage in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, in soliciting the sale of and selling their luggage goods caused the same to be advertised in trade papers and magazines, having interstate circulation, under the trade name or designation "Nuhide," while on tags attached to their products sold and distributed in interstate commerce the following words appeared, "This article is made of genuine Nuhide guaranteed for satisfactory wear"; when in truth and in fact the said luggage so advertised, designated, described, and sold in interstate commerce was not made of leather, a product prepared from the skins or hides of animals, but was made of a material or materials simulating leather in appearance.

Respondents agreed to cease and desist forever from the use of the word "Nuhide" either independently or in connection or conjunction with any other word or words, or as a trade name, brand, or designation for their products so as to import or imply that the said products are made of leather, a product prepared from the skins or hides of animals; and the said respondents in soliciting the sale of and selling their products in interstate commerce also agreed to cease and desist from the use of the word "Nuhide" to designate their products in any way that may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are made of leather.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

419. **False and Misleading Trade Name and Advertising—Woolens and Velveteens.**—Respondent, an individual, engaged in the sale and distribution of woolens and velveteens in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, adopted as and for a part of his trade name the word "Mills," which trade name, containing the word "Mills," he used in the sale and distribution of woolens and velveteens in commerce between and among various States of the United States. Respondent also caused his trade name, containing the word "Mills" to be used on his letterheads, order blanks, billheads, envelopes, and other printed matter distributed in interstate commerce in soliciting the sale of and selling his said products in interstate commerce; when in truth and in fact said respondent did not own, control, or operate a mill or factory in which were manufactured the goods sold and distributed by him in interstate commerce, and said respondent filled orders for said products from materials manufactured in mills or factories which he neither owned, operated, nor controlled.

Respondent agreed to cease and desist forever from the use of the word "Mills" as part of, or in connection or conjunction with, his trade name in the sale and distribution in interstate commerce of said products, and from the use of the aforesaid trade name, containing the word "Mills" on his letterheads, advertising, and other printed matter distributed in interstate commerce in soliciting the sale of and selling said products, and from the use of the word "Mills" in any other way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said respondent owns, controls, and operates a mill or factory wherein are made the products sold by him, or until such time as said respondent owns, operates, and controls a mill or factory wherein the said products are made.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

420. **False and Misleading Advertising or Labeling—Wrist Watch Straps.**—Respondent, a corporation, engaged in the business of manufacturing novelties, including wrist watch straps, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following stipulation of facts and

agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, sold and distributed in interstate commerce leather straps for wrist watches, mounted on display cards, on certain of which cards it caused to be printed the words "English" and "English leather straps"; when in truth and in fact the straps so mounted and designated "English" and "English leather straps" were not made in England but were imported by said respondent from Germany.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "English" and/or "English leather straps" to designate straps not made in England or of English origin, and the use of the word "English" in any other way so as to import or imply, or which may have the capacity or tendency to confuse, mislead, and deceive the purchasing public into the belief, that such products are manufactured in England, or of English leather, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

421. **False and Misleading Advertising and Misrepresentation—"Brazilian Mahogany."**—Respondent, an individual, engaged in the importation of certain hardwoods and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Mahogany is the product of the genus Swietenia, tribe Swietenioideæ of the tree family scientifically called Meliaceæ. The genus Swietenia, of which there are several known species, is the only one which produces true mahogany. Trees of the Swietenia group grow principally in the West Indies, southern Florida, southern Mexico, Central America, Venezuela, and Peru.

Respondent, in the course and conduct of his business, adopted and used as a trade name for certain of the hardwoods which he imported and sold in interstate commerce the words "Brazilian Mahogany," which said trade name he used in correspondence with customers and prospective customers in soliciting the sale of his products, and also in invoices and other printed matter; when in truth and in fact the wood so designated represented and referred to under the trade name of "Brazilian Mahogany" was not derived from trees of the mahogany or Meliaceæ family so as to be properly and accurately represented or

designated as "mahogany" or as "Brazilian mahogany," but were products derived from the tree scientifically called Andiroba.

Respondent agreed to cease and desist forever from the use of the words "Mahogany" and/or "Brazilian mahogany" either independently or in connection or conjunction with any other word or words as a trade brand or designation for his said products, so as to import or imply that such products are those products which are derived from trees of the mahogany or Meliaceæ family, when such is not the fact; and said respondent further agreed to cease and desist forever from the use of the word "mahogany" either independently or in connection or conjunction with the word "Brazilian" or with any other word or words, or in any way which may have the capacity and tendency to confuse, mislead or deceive the purchasing public into the belief that said products are derived from trees of the mahogany or Meliaceæ family, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

422. **Disparagement of Goods of Competitor and Competitor—Furnaces.**—Respondent, an individual, engaged in the sale and distribution of furnaces in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business and in soliciting the sale of and selling his products in interstate commerce, caused said products to be advertised in newspapers and other publications having circulation between and among various States of the United States, in which said advertisements the aforesaid respondent represented that he had just taken over the line of furnaces now being sold by reason of the fact that the furnace formerly sold by him had been cheapened and lightened in weight, and also that the manufacturer of said furnace had refused to pay certain commissions which he alleged were rightfully due him. This respondent further represented that he would still service and stand back of any of the aforesaid furnaces that he had installed and would still furnish repairs therefore; when in truth and in fact the castings of the furnace to which respondent referred in said advertising were not cheapened or lightened, on the model of the furnace in question, and the refusal of said respondent to handle said furnace was not due to the alleged lightening of the said castings, but to other causes, including in particular a dispute or difference between the said respondent and

the said manufacturing company respecting the payment of commissions alleged to be due respondent by the said manufacturer.

Respondent agreed to cease and desist forever in the advertisement, sale, and distribution of his products in interestate commerce, from directly or indirectly publishing, circulating, or causing to be published or circulated any false, deceptive, or misleading statements concerning the product formerly sold by him, and particularly from publishing, circulating, or causing to be published or circulated in interstate commerce, directly or indirectly, any false, misleading, and derogatory statement concerning the business ethics of the said company that manufactured the product which he formerly sold.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

423. **False and Misleading Advertising and Representations—Ladies, Coats.**—Respondents, copartners, engaged in the manufacture of ladies' cloth coats and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents in the course and conduct of this business manufactured, sold, and/or distributed in interstate commerce a garment made of material represented, designated, described, and referred to by them as "Wombat," and, in soliciting the sale of and selling said product, caused advertisements to be inserted in publications having circulation between and among various States of the United States, in which publications they represented and designated said product as "Wombat," "Genuine Wombat," and "Fur fabric," and sold said product in interstate commerce under the trade brand or name of "Wombat"; when in truth and in fact the product so represented, designated, advertised, and sold in interstate commerce was not manufactured of the fur of the wombat, but was manufactured of material or materials other than wombat fur.

Respondents in soliciting the sale of and selling their products in interstate commerce agreed to cease and desist forever from the use of the word "Wombat" either independently or in connection or conjunction with any other word or words which directly assert, or import or imply that such products are made from wombat fur. Respondents further agreed to cease and desist forever from the use of the word "Wombat" either independently or in connection or conjunction with any other word or words, or in any other way as a trade name, brand, or designation for the said products, or in the

advertisements thereof which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that said products are made from the fur of the wombat.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

424. **False and Misleading Trade Name and Advertising—Woolens and Dress Goods.**—Respondents, copartners, engaged in the business of buying and selling woolens and dress goods in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, in soliciting the sale of and selling their products in interstate commerce made use of advertising matter and business stationery in which they featured the word "Mills" in the partnership or firm name under which they carry on said business; when in truth and in fact they did not own, operate, nor control a mill or factory in which any of the merchandise sold by them was manufactured, but such merchandise was purchased by them in the market for resale.

Respondents in soliciting the sale of woolens and dress goods and any other merchandise and the sale of same in interstate commerce agreed to cease and desist from the use of the word "Mills" as part of or in connection or conjunction with their partnership or firm name, or any trade name under which they or either of them, may carry on business, and further agreed to cease and desist from the use of any advertisements, business stationery, or other advertising matter which includes the word "Mills" in any manner descriptive of the partnership or trade name under which they or either of them carry on business, or in any manner descriptive of the nature of the business so carried on, until such time as they or either of them do own, operate or control a mill or factory in which the merchandise sold by them or either of them is made.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

425. **False and Misleading Advertising—Incinerators.**—Respondents, copartners, engaged in the manufacture of incinerators and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of

facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, manufactured incinerators, and in soliciting the sale of and selling said products in interstate commerce caused them to be advertised in trade publications having interstate circulation and by means of pamphlets, booklets, circular letters, and other printed matter distributed in interstate commerce, and in which advertising matter the said products were represented, designated, and referred to as "United States Standard Incinerators." Said advertising matter also contained such statements as "The design was adopted exclusively by the Quartermaster General's Department, the Navy, the Veterans' Bureau, and all other Government agencies." The said advertising matter also made reference to the products as "United States Standard Incinerator." In their pamphlet entitled "Municipal Refuse Incinerators" the said respondents designated their product as "United States Standard Incinerator" and accompanied such designation with a history of the said product including the statement, "A design was finally developed that was adopted in 1918 by the Quartermaster's Department of the United States Army and since then by other interested branches of the Government. It is known as the 'United States Standard' Incinerator." Letterheads used by said respondents contained the words "United States Standard Incinerator Patented," and on such stationery distributed among certain of their customers appeared the statement with reference to the incinerator in question, "Was developed by a board of consulting engineers for the United States Government in all its branches." Use was also made by respondent on their blue prints or drawings of the words "United States Standard"; when in truth and in fact the said products had never been adopted or accepted and recognized by the United States Government so as to be properly and accurately represented, designated, or referred to as "United States Standard" for the "exclusive" or other use by the various departments, bureaus, and branches of the Government.

Respondents agreed to cease and desist forever from the use of the words "United States Standard" or the words "United States" either independently or in connection or conjunction with the word "Standard," or with any other word or words, or in any way to designate, represent, or refer to their incinerators so as to import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said products have been adopted or accepted and recognized by the United States Government as "standard" for the use of its departments, bureaus, and branches; and said respondents further agreed to cease and desist from the use, in soliciting the sale of and selling their products in

interstate commerce, of such statements as "Adopted exclusively by the Quartermaster General's Department, the Navy, the Veterans' Bureau, and all other Government agencies," and/or "Used exclusively by the Navy, the Veterans' Bureau, and other Government agencies," and "Developed by a board of consulting engineers for the United States Government in all of its branches," so as to import or imply that said products are the sole and only type of incinerators used by the various branches of the United States Government, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

426. **Misbranding—Typewriter Ribbons.**—Respondent, a corporation, engaged in the sale and distribution of typewriter ribbons in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement, to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its product in interstate commerce stamped or caused its typewriter ribbons to be stamped or branded with the trade name or designation "Silkloth," and so marked and branded sold and distributed the same to purchasers thereof located in various States of the United States; when in truth and in fact the said ribbons contained no silk, the product of the cocoon of the silkworm, but were made wholly of a material other than silk.

Respondent agreed to cease and desist forever from the use of the word "Silkloth" as a trade brand or designation for its product, and the use of the word "silk" either independently or in connection or conjunction with any other word or words, letter, or letters to designate or describe the typewriter ribbons which it sells, and the use of the word "silk" in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said typewriter ribbons are made of silk, the product of the cocoon of the silkworm.

Respondent also agreed if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

427. **False and Misleading Trade Name and Advertising—Dress Goods.**—Respondent, an individual, engaged in the sale and distribution, by mail orders, of dress goods in interstate commerce, and in competition with other individuals, firms, partnerships, and cor-

porations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his products in interstate commerce, caused his trade name, containing the word "Mills" to be used in advertisements inserted in periodicals circulated in interstate commerce, and also on his letterheads, envelopes, and other printed matter distributed in interstate commerce; and in such advertisements made use of the following statements and representations: "Bargain!—This month. Special offer five yards free"; when in truth and in fact the said respondent did not own, control, or operate a mill or factory in which the merchandise sold by him as aforesaid was made or fabricated, but filled orders for such merchandise from products which were made or fabricated in mills or factories which he neither owned, controlled, nor operated; and the articles offered as being given "free" were not in truth and in fact given free, but their cost was included in the cost of the merchandise purchased.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use in advertisements and/or on his stationery or other printed matter circulated in interstate commerce of his trade name containing the word "Mills" and the use of the word "Mills" in any way so as to import or imply that the said respondent owns, operates, and/or controls a mill or factory in which are made or fabricated the products sold by him, and from the use of the word "Mills" either independently or in connection or conjunction with any other word or words, or in any other way, which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said respondent owns, controls, and/or operates a mill or factory for the manufacture or fabrication of the products which he sells; and the said respondent further agreed to cease and desist from the use of the word "free" either independently or in connection or conjunction with any other word or words which import or imply that the products to which the same refer are in fact given as a gratuity, and from the use of the word "free" in any way which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products so offered as "free" are in fact given free and that their cost is not included in the purchase price of other merchandise.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

428. **False and Misleading Trade Name and Advertising—Woolens and Dress Goods.**—Respondent, an individual, engaged in the sale and distribution of woolens and dress goods in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, adopted as and for a part of his trade name the word "Mills," and which trade name containing the word "Mills" he used in the sale and distribution of woolens and dress goods in commerce between and among the various States of the United States. Respondent also caused his trade name, containing the word "Mills" to be used on his letterheads, order blanks, billheads, envelopes, and other printed matter distributed in interstate commerce in soliciting the sale of and selling his said products in interstate commerce; when in truth and in fact respondent did not own, control, or operate a mill or factory in which were manufactured the goods sold and distributed by him in interstate commerce, and said respondent filled orders for said products from materials manufactured in mills or factories which he neither owned, controlled, nor operated.

Respondent agreed to cease and desist forever from the use of the word "Mills" as part of, or in connection or conjunction with, his trade name in the sale and dsitribution in interstate commerce of said products, and on his letterheads, advertising, and other printed matter distributed between and among various States of the United States in soliciting the sale of and selling his products, and from the use of the word "Mills" in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into belief that said respondent either owns, controls, or operates a mill or factory wherein are made the products sold by him in commerce between and among the various States of the United States, or until such time as said respondent does actually own, operate, or control a mill or factory wherein the said products are made.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

429. **Lottery Schemes—False and Misleading Advertising—Promotional Schemes, Advertising Data, Specialty Merchandise.**—Respondent, an individual, engaged in the business of selling to retailers sales promotional schemes, advertising data, and certain specialty merchandise used in connection with said sales promotional schemes in interstate commerce, and in competition with other individuals,

firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his merchandise in interstate commerce, (*a*) sold and distributed plans of merchandising and merchandise to retailers, which involved the operation of a lottery and the sale and distribution of goods by lot or chance, viz, respondent sold to retailers a padlock, a large number of keys, and one of three pieces of merchandise, to wit, a radio receiving set, a boy's auto, or a child's scooter, with which he also furnished a supply of advertising handbills and window cards; the merchant retailer gave a key to each purchaser of any merchandise to a fixed minimum amount; and when the keys were all distributed, the radio, auto, or scooter was given as a prize to the customer holding the key that would unlock the padlock; (*b*) used two trade names one of which included the words "Advertisers' Syndicate" and the other the word "Factories," and stated and represented through his salesmen and advertisements that he was a manufacturer or radios; when in truth and in fact said respondent did not represent any syndicate or association of advertisers, and did not own, control, or operate any mill or factory where the merchandise which he sells in interstate commerce, of any part thereof, was manufactured; (*c*) represented and advertised that certain of his products were offered for sale and sold at factory cost, when in truth and in fact all of said products were sold at a profit; (*d*) caused to be shipped or transported from his place of business in the State of Illinois into other States of the United States, instrumentalities and means of conducting and operating a game of chance or lottery, with appropriate literature offering the gift or prize, as hereinbefore described, to the chance purchaser who became the holder of the key that would unlock the padlock; (*e*) encouraged and enabled retail merchants, by means of advertising literature and other means, to represent that they were offering and selling merchandise at factory cost, when in truth and in fact the same was sold at a profit.

Respondent agreed to cease and desist forever from (*a*) the use in interstate commerce of any scheme, plan, or method of sale or of promoting the sale of his products which involves or includes the use of any gift enterprise, lottery, or any scheme of chance whereby an article is given as a prize or premium for or in consideration of the purchase of any other article; and also to cease and desist from using and transporting in interstate commerce any advertising matter for the use of local dealers in soliciting the sale of said products by means of any gift enterprise, lottery, or scheme of chance whereby any

article is offered as a prize or premium for and in consideration of the purchase of any other article; (*b*) the use of the words "Advertisers' Syndicate" and the word "Factories" either independently or in combination with any other word or words as part of his trade names so as to import or imply that said respondent represents any syndicate or association of advertisers, or that he is the manufacturer of the merchandise sold and/or that he owns, controls, or operates a mill or factory in which are manufactured or fabricated the products sold by him in interstate commerce; and from the use of the word "Factories" as part of, or in connection or conjunction with, his trade name, or in any other way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said respondent owns, controls, or operates a mill or factory wherein the products which he sells and distributes in interstate commerce are manufactured; (*c*) representing and advertising that his products are offered for sale, and sold, at factory cost, when such is not the fact; (*d*) encouraging and enabling retailers, through advertising matter and other means, to represent that they are offering and selling merchandise at factory cost, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

430. **False and Misleading Brands or Labels and Advertising—Candles.**—Respondent, a corporation, engaged in the sale and distribution of candles in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its candles in interstate commerce, caused certain of its candles to be branded or labeled as "Composition Beeswax Candles," and, so branded and labeled, sold said candles in commerce between and among various States of the United States, and also caused said trade brand, containing the word "beeswax" to be used in advertisements inserted in periodicals having circulation between and among various States of the United States; when in truth and in fact the candles so represented, designated, labeled, and advertised were not manufactured in substantial part of beeswax.

Respondent agreed to cease and desist forever from the use of the word "beeswax" either independently or in connection or conjunction with any other word or words as a brand or label for candles, or in its advertising matter used in soliciting the sale of and selling its said

candles, in interstate commerce, so as to import or imply that its said candles are manufactured in whole or in substantial part of beeswax, or from the use of the word "beeswax" in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said candles are made in whole or in substantial part of beeswax, when such is not the fact; unless, when said candles are composed in substantial part of beeswax and partly of some other material or materials, and the word "beeswax" is used to represent, designate, or describe said candles or as a brand or label for the same the word "beeswax" shall be employed in connection or combination with some other word or words, displayed in type equally as conspicuous as that in which the word "beeswax" is printed, so as to clearly indicate that the product is not composed wholly of beeswax, or that will properly and accurately describe the same.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

431. **False and Misleading Advertising—Hosiery.**—Respondents, copartners, engaged in the manufacture of hosiery for women and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, manufactured women's stockings from a material or materials other than silk, and in soliciting the sale of and selling said product in interstate commerce caused advertising matter, including circulars and pamphlets, to be distributed in interstate commerce, in which said advertising matter said product was described as "Rayon silk" and further described as "Fashioned, narrow ankle," and "Fashioned ankles"; when in truth and in fact the said hosiery was not fabricated from silk, the product of the cocoon of the silkworm, but was made of or from a material or materials other than silk; and the said product was not manufactured in accordance with the process used in the manufacture of fashioned hosiery, and was not that product known to the trade and the purchasing public as fashioned hosiery.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from (*a*) the use of the word "silk" either independently or in connection or conjunction with any other word or words, as a trade brand or designation in the advertisement, sale, or distribution in interstate commerce of the aforesaid hosiery which is not composed of silk, the

product of the cocoon of the silkworm, and from the use of the word "silk" in any other way so as to confuse, mislead, or deceive the purchasing public into the belief that the said product is composed of silk, when such is not the fact; (*b*) the use of the word "fashioned," either independently or in connection or conjunction with any other word or words, or in any other way as descriptive of their product, which imports or implies, or which may have the tendency and capacity to confuse, mislead, or deceive the purchasing public into the belief that the said product is manufactured in accordance with that process used in the manufacture of fashioned hosiery, and/or as being that product known to the trade and the public as fashioned, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

432. **False and Misleading Advertising and Brands or Labels—Soft Drink Concentrates.**—Respondent, a corporation, engaged in the manufacture of concentrates for use in the preparation of soft drinks and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, sold its products to soda-fountain dispensers and users located in various States of the United States, such sales being made chiefly through traveling salesmen. As means for promoting the sale of its products, the said respondent issued price lists which it distributed in interstate commerce and wherein use was made under the general heading of the names of fruits such as "grape," "lemon," "lemon lime," "orange," "peach," "pineapple," "cherry," "lime," "strawberry," "raspberry," together with the cost of each. The said price list also contained the statement "Flavors are fruit concentrates." A label was affixed to each of the containers of said products and on such label appeared the name of a fruit as "grape," "lemon," "lemon lime," "orange," "peach," "pineapple," "cherry," "lime," "strawberry" or "raspberry," the said fruit names being printed in large heavy black type and accompanied by the word "Imitation" printed in much smaller and less conspicuous type than that in which the fruit names were printed. The said labels also bore the slogan "Every ounce an orchard," and contained pictorial representations of various fruits or clusters of fruit; when in truth and in fact the products designated, described, labeled, and advertised as aforesaid were not manufactured in whole or in such substantial part from the juice or the fruit of the

grape, lemon, lime, orange, peach, pineapple, cherry, strawberry, or raspberry so as to be properly and accurately designated or referred to by the use of such fruit names or any of them.

Respondent agreed to cease and desist forever from the use of the words "grape," "lemon," "lime," "orange," "peach," "pineapple," "cherry," "strawberry," and "raspberry," and from the slogan "Every ounce an orchard" either independently or in connection or conjunction each with the other or with any other word or words, slogan, pictorial representation, or in any way, in its advertising matter or on its brands or labels to designate its products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are composed of the juice or the fruit of the grape, lemon, lime, orange, peach, pineapple, cherry, strawberry, or raspberry, or of any fruit; unless (*a*) if the said words, or any of them, are used to designate or describe the flavor of the said products, the words so used shall be immediately preceded by the word "imitation" printed in type equally as conspicuous as that in which the said designated or descriptive word is printed; or (*b*) if the product is composed in substantial part of the juice or fruit of either the grape, lemon, lime, orange, peach, pineapple, cherry, strawberry, or raspberry so as to derive its color and flavor from said fruit and the word "grape," "lemon," "lime," "orange," "peach," "pineapple," "cherry," "strawberry," or "raspberry" is used to designate the product, in which case the said designating word shall be accompanied by a word or words which shall be printed in type equally as conspicuous as that in which the said designating word is printed so as to clearly indicate that the product is not made wholly from the juice or the fruit indicated by the said designating word and that will otherwise properly and accurately represent, define, and describe the product so as to clearly indicate that the same is composed in part of a product or products other than the juice or fruit indicated by the said designating word.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

433. **Misleading Trade Name and Brands or Labels—Matches.**—Respondents, two corporations, engaged in the manufacture and/or sale and distribution in interstate commerce of matches in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of business, caused certain of their products which were defective or inferior in grade to be packed in boxes, containers, or cartons bearing the words or stencil "Gem Matches, Wheeling Match Company, Wheeling, West Virginia," and caused said containers filled with said products and bearing the label as aforesaid to be sold and distributed at reduced prices in interstate commerce in competition with the products of the said West Virginia Match Co., of Wheeling, W. Va., so as to mislead or confuse the purchasing public by reason of the similarity of said trade names and likewise designating the same address; when in truth and in fact the said products so labeled and sold in interstate commerce were products manufactured by one of the respondents and were not products of the Wheeling Match Co., of Wheeling, W. Va., and/or the West Virginia Match Co., of Wheeling, W. Va.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of the name "Wheeling Match Company" and/or address "Wheeling, West Virginia," so as to import or imply that the said Wheeling Match Co. and the said West Virginia Match Co. are one and the same; and the said respondents also agreed to cease and desist from the use as a brand or label for products manufactured by the said respondents or either of them, of the fictitious words "Wheeling Match Company, Wheeling, West Virginia," or any other words which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the said products are products manufactured by an individual, firm, partnership, or corporation other than the said respondents.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

434. **Misbranding—Shellac Compounds or Substitutes.**—Respondents, copartners, engaged in the sale and distribution of so-called shellac in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, caused their products to be branded and labeled "White Shellac," and so branded and labeled, sold and distributed the same in interstate commerce; when in truth and in fact the product so labeled and sold was not manufactured wholly of shellac gum dissolved in alcohol, as recognized and understood by the trade and the purchasing public to be the constituent elements or formula of which shellac is com-

posed, but was manufactured or compounded so as to contain, in varying quantities, constituent elements, ingredients, or substitutes other than those contained in the product known to the trade and the purchasing public as "shellac."

Respondents, in soliciting the sale of and selling their product in interstate commerce, agreed to cease and desist forever from the use on labels affixed to the aforesaid product sold by them of the word "shellac" either independently or in connection or conjunction with any other word or words, so as to import or imply that the product so labeled is composed of shellac gum dissolved in alcohol, when such is not the fact; or unless, when the product is not pure shellac but one in which shellac is the principal and predominant element, and the word "shellac" is used to designate the product, the word "shellac" shall be accompanied by the word "compound" printed in type equally as conspicuous as that in which the word "shellac" is printed, so as to indicate clearly that such product is not composed wholly of shellac gum cut in alcohol; or if the product is one in which no shellac gum is used or in which shellac gum is not the principal and predominant element, and the word "shellac" is used to designate said product, the word "shellac" shall be accompanied by the word "substitute" printed in type equally as conspicuous as the word "shellac."

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

435. **False and Misleading Advertising—Oleomargarine.**—Respondent, a corporation, engaged in the manufacture and in the sale and distribution of oleomargarine in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its product in interstate commerce caused said product to be described and referred to in certain of its advertising pamphlets distributed by it in interstate commerce as follows: "Churned especially for lovers of good butter," "Is Government inspected and O. K.'d by Uncle Sam," "Contains only pure fresh pasteurized milk, and rich fresh vegetable oils. * * * the reason for its wholesomeness," and "Sunlit churneries are the last word in cleanliness"; when in truth and in fact the said products so advertised, described, sold, and distributed in interstate commerce were not the products known to the trade and purchasing public as creamery butter, a dairy or milk product, but were manufactured products com-

posed in substantial part of ingredients or substitutes other than those of which creamery butter is made, One of the products advertised, sold, and distributed by said respondent contained some animal fat; the other product advertised, sold, and distributed by said respondent was not inspected or passed upon by United States Government inspectors.

Respondent agreed to cease and desist forever from using in the advertisement, sale, and distribution of its oleomargarine products in interstate commerce the words "butter," "churned," and/or "churneries" either independently or in connection or conjunction with any other word or words, phrase or phrases, in any way so as to import or imply or otherwise have the capacity or tendency to mislead or deceive the purchasing public into the belief that said products so represented and described are those products known to the purchasing public as butter. Respondent further agreed to cease and desist from using statements to the effect that either of its said brands of oleomargarine contain only milk and vegetable oils, when they, or either of them, contain also animal fat; and from statements to the effect that either of its said brands of oleomargarine is "Government inspected and O.K'd by Uncle Sam," when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

436. **False and Misleading Advertising—Underwear; Hosiery.**—Respondent, a corporation, engaged in the manufacture of underwear and hosiery and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, as a means of promoting the sale of its product in interstate commerce, caused advertisements to be inserted in newspapers and other periodicals having circulation between and among various States of the United States, in which advertisements said respondent featured the material, other than silk, which it used in the manufacture of its products, designating the same by the trade name "Bemberg," which material was represented so as to create the impression that "Bemberg" was superior to rayon. Such representations were as follows: "You will discover in it a new and better glove silk, for it is woven with a percentage of bemberg (a finer quality European fibre) to give it body and durability beyond compare * * * There's a social distinction between this * * * and rayon * * * one that your customers will be quick to note," "Bemberg is not rayon"; when in truth and in fact the prod-

uct designated "Bemberg" is produced from cellulose, and is a rayon product.

Respondent agreed to cease and desist forever in interstate commerce from stating and representing in advertisements, circulated in interstate commerce, or otherwise, that "Bemberg" is not a rayon fabric.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

437. **False and Misleading Advertising—Silverware, Cutlery, Novelties, and the Like.**—Respondent, a corporation, engaged in the sale and distribution of a large variety of merchandise including silverware, cutlery, novelties, and the like in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce caused the same to be represented in its aforesaid catalogues as follows: Certain products were described as "platinum finish," when in truth and in fact the said products were not made of platinum metal, but were manufactured of metals other than platinum; a nut-crack and pick set was described as a "Seven-piece nut set consisting of six picks and one crack, heavily nickel plated on steel," which was pictorially represented and priced at $20 a gross; when in truth and in fact the set so described and pictorially represented was of a different type and was sold by said corporation at $24 per gross. Certain products were described as made of "nickel silver," when in truth and in fact said products were not made of nickel silver; certain fruit bowls were described as "gold lined," a cigarette box as having a "gold boxing," and an ash tray and two cigarette sets were described as "made in gold"; all of which were elsewhere described as having a "gold finish"; certain smoking sets were described as "made in gold, nickel, copper, bronze, and oxidized silver," and also as "silver antique"; when in truth and in fact none of said products was made of gold, copper, bronze, silver, or oxidized silver, or was lined, boxed, or finished with gold; certain smoking sets were advertised and pictured in display boxes bearing the prices $20, $10, and $4.50 per set, which said sets were offered at the prices of $1.25, 85 cents, and 65 cents each, respectively; when in truth and in fact the prices marked on said boxes were much in excess of the prices at which the articles were intended to be sold and much in excess of the actual price at which they were sold in the usual course of businesss.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist from the use of the word "platinum" either independently or in connection or conjunction with any other word or words, letter, or letters in its advertisements or advertising matter distributed in interstate commerce so as to import or imply that the products so designated and referred to are made of platinum or contain some platinum; and from the use of the word "platinum" in any way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the products so referred to are made of or contain platinum; the pictorial representations, as an illustration of products advertised and offered at certain prices, of better and higher priced articles; the use of the words "nickel silver" to describe articles which are not made of nickel silver; the use of such words and expressions as "gold lined," "gold boxing," "made in gold," "gold finish," "made in gold, nickel, copper, bronze, and oxidized silver," and/or "silver antique" to describe products not made of gold, silver, oxidized silver, or bronze, and not lined, boxed, or finished with gold as represented; the use of any means of describing or illustrating its products, such as smoking sets, together with any false, fictitious, or misleading statements of, or concerning the prices thereof, or together with any false, fictitious, or misleading statements regarding the value of said products.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

438. **False and Misleading Advertising and Brands or Labels—Soap Flakes.**—Respondent, a corporation, engaged in the business of manufacturing a soap product in the form of flakes for household use, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair practices as set forth therein.

Respondent, in the course and conduct of its business, manufactured a soap product, and in the sale and distribution of the same in interstate commerce caused to be printed on the containers in which said product was packed for distribution to the consuming public, and in advertising matter descriptive of said product, the claim that such product when used for washing clothes, dishes, and other articles would produce suds which would sterilize such articles without boiling, although said product contained no ingredient or ingredients in sufficiently concentrated form to free such articles from pathogenic bacteria and other microorganisms.

Respondent in soliciting the sale of and selling its product in interstate commerce agreed to cease and desist from having printed upon the containers in which its product is packed for distribution to the consuming public, or in advertisements or advertising matter descriptive of such product, the claim that such product when used for washing clothes, dishes, and other articles will produce suds which will sterilize such articles without boiling.

Respondent also agreed that should it ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

439. **False and Misleading Representations, Advertising, and Brands or Labels—Overalls and Similar Products.**—Respondent, an individual, engaged in the sale and distribution of overalls and similar products in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair practices as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his product in interstate commerce, advertised and represented on letterheads, billheads, and otherwise that he was the manufacturer of a certain brand of overalls which he offered for sale and sold in interstate commerce, which said product he caused to be marked and branded with labels containing the words "Union made," and caused said products so marked, branded, or labeled to be sold and distributed in commerce between and among various States of the United States; when in truth and in fact said products were not manufactured by said respondent and none of said other concerns so manufacturing such products for said respondent employed workmen who were members of, or affiliated with, any organization known, recognized, and referred to as "union," but such products so sold and distributed in interstate commerce were not "union made" or made by artisans or workmen who were members of or affiliated with any association or organization generally known, recognized, and referred to as "union."

Respondent agreed to cease and desist forever from representing directly or indirectly by advertisements or in any other manner that he is the manufacturer of the products which he sells and distributes in interstate commerce, unless and until he does so actually manufacture the same; and/or marking, branding, or labeling, or causing to be marked, branded, or labeled, such products so sold and distributed in interstate commerce with the word or words "union made" or any other word or words indicating or implying that such garments are made by artisans or workmen who are members of or affiliated with associations or organizations generally known, recognized, and referred

to as "unions," unless and until such respondent does actually make said garments, or causes them to be made by artisans or workmen who are members of or affiliated with associations or organizations generally known, recognized, and referred to as "unions."

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

440. **False and Misleading Advertising and Brands or Labels—Cotton Goods.**—Respondent, a corporation, engaged in the sale and distribution of cotton goods in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its product in interstate commerce, caused certain of said products to be represented, designated, and described as "Satin Ray" and "Satin Glo" and caused to be stamped on the wrappers or containers of the same the words "Satin Ray" and "Satin Glo"; and so branded, sold, and distributed said products in interstate commerce, when in truth and in fact said products contained no silk, the product of the cocoon of the silk worm, but were wholly composed of other materials.

Respondent agreed to cease and desist forever from the use of the word "satin" either independently or in connection or conjunction with any other word or words in soliciting the sale of and selling its said products in interstate commerce, and/or in the branding of the same, which import or imply that the said products are made of silk, the product of the cocoon of the silkworm; and from the use of the word "satin" in any other way as descriptive of the aforesaid products sold by it in interstate commerce which may have the capacity and tendency to confuse, mislead, and deceive the trade and/or the purchasing public into the belief that the said products are manufactured from silk, the product of the cocoon of the silkworm, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

441. **False and Misleading Advertising—Motor Boats, Cruisers, Submarines.**—Respondent, a corporation, engaged in the manufacture of motor boats, cruisers, and submarines, and in the sale and distribution of the same in interstate commerce and in competition with other corporations, individuals, firms, and partnerships likewise

engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Mahogany is the product of the genus Swietenia, tribe Swietenioideæ, of the family scientifically called Meliaceæ. The genus Swietenia, of which there are several known species, is the only one which produces true mahogany. Trees of the Swietenia group grow principally in the West Indies, southern Florida, southern Mexico, Central America, Venezuela, and Peru. No species of the genus Swietenia of this tree family grows in the Philippine Islands, except as specifically planted for decorative or experimental purposes.

Respondent in the course and conduct of its business in soliciting the sale of and selling its products in interstate commerce caused said products to be advertised in trade periodicals of national circulation, and in catalogues which they distributed in interstate commerce, wherein the following among other statements and representations appeared: "Exterior and interior trim, mahogany"; "Deck, mahogany, finished bright"; "Cabin trunk and all exterior joiner work, mahogany. Interior painted with mahogany trim"; "Mahogany exterior and interior trim"; "Cabin trunk and exterior trim, mahogany"; "Interior, enameled with mahogany trim"; when in truth and in fact the said products so advertised, represented, designated, and sold in interstate commerce were not manufactured from wood products derived from trees of the mahogany or Meliaceæ family, so as to be properly and accurately advertised, represented, designated, and referred to as mahogany, but were products derived from the tree family scientifically called Dipterecarpaceæ.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the word "mahogany" either independently or in connection or conjunction with any other word or words in its advertisements, or as a trade designation for said products so as to import or imply that said products are derived from trees of the mahogany or Meliaceæ family, when such is not the fact; and said respondent also agreed to cease and desist from the use of the word "mahogany" either independently or in connection or conjunction with any other word or words or in any way as descriptive of said products which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are derived from trees of the mahogany or Meliaceæ family, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in eveidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

442. **False and Misleading Advertising—Stationery.**—Respondent, a corporation, engaged in the business of printing stationery and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, caused advertising matter consisting of newspaper advertisements and business cards to be distributed in interstate commerce, in soliciting the sale of and selling its stationery products, which said advertising matter represents its product as "Plateless engraving," and its business as "Printing and engraving"; when in truth and in fact the process used by said respondent in the manufacture of its products is and was not the process of producing an impression on such stationery from inked plates in which have been stamped, cut, or carved letters, sketches, designs, or inscriptions from which impressions or reproductions are made, known as engraving, but were and are the result of the use of a chemical in powdered form, applied to type printing while the ink is wet, and in passing same through a baking process the heat causes said chemical to fuse so as to present a raised letter effect resembling in appearance or simulating the impression made from inked engraved plates, known as engraving.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the words "engraved" and/or "engraving" to represent or describe its products in circulars, cards, newspapers, or other advertisements of whatsoever character, circulated or distributed in interstate commerce in soliciting the sale of the same. Respondent further agreed to cease and desist from the use of the words "engraved" or "engraving" either independently or in connection with any other word or words which may import or imply that said products so printed and sold are the result of impressions made from inked engraved plates, commonly known to the trade and the purchasing public as engraving, or the use of the words in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the products printed and sold by said corporation are engraved.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

443. **False and Misleading Advertising—Watches and Jewelry.**—Respondent, a corporation, engaged in the business of selling and dis-

tributing through the United States mail watches and jewelry in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, has caused advertisements to be inserted in periodicals having circulation between and among various States of the United States, and also has caused advertisements to be inserted in catalogues and circulars which it distributes between and among various States of the United States, wherein certain of its products are described, designated, and referred to as follows:

(*a*) A so-called "President Model" watch was advertised in stylebooks as having "21 genuine pigeon-blood rubies and sapphire jewels"; when in truth and in fact the jewels in said watches were not rubies or sapphires.

(*b*) Seventeen-jewel watches were advertised in circulars under trade names generally used in stylebooks to describe 21-jewel watches.

(*c*) A set of so-called "silverware" was illustrated and described in a circular as a "Gorgeous 26-piece of silverware," and in the body of the description as "S. L. & G. H. Rogers solid nickel silver"; when in truth and in fact the said set was not made of silver.

(*d*) A certain watch was advertised as "the insured watch"; when in truth and in fact the so-called insurance was merely a guarantee against defects in material and workmanship.

(*e*) Various settings of articles of jewelry, particularly rings, were described as "ruby," "sapphire," "amethyst," "aquamarine," and/or "pearl"; when in truth and in fact such settings were not rubies, sapphires, amethysts, aquamarines, or pearls, but were synthetic or reconstructed products.

(*f*) Necklaces were described as "pearl," "French pearls," "indestructible pearls," "iridescent natural pearls," and/or "pearl finish"; when in truth and in fact they were not pearls but were made of a product other than pearl.

(*g*) Toilet sets were described and represented as "ivory," "white ivory," "ivory finish" and/or "white ivory finish" and as "amber," "pearl on amber," "amber finish," and/or "blue pearl amber" and as "leatherette"; when in truth and in fact the same were not made of ivory or amber, or of leather, but a product or products other than represented.

(*h*) Certain articles of jewelry were described as "platinum finish," "soft platinum finish," and/or "platina"; which contained no platinum.

Further, said respondent represented that past due accounts and other indebtedness were placed in the hands of a collection agency; when in truth and in fact no such agency was employed.

Further, said respondent caused circular letters to be sent to its debtors, inneundo and containing indirect threats to prosecute its debtors for using the mails with intent to defraud it, and suggestions that their failure to meet their obligation rendered them liable to such prosecution; when in truth and in fact such was not the case.

Respondent agreed to cease and desist forever from—

(*a*) Representing in advertisements or otherwise that the jewels in any watch are rubies and/or sapphire jewels, when the same are not rubies or sapphires.

(*b*) Representing in advertisements or otherwise 17-jewel watches under trade names generally used to describe 21-jewel watches.

(*c*) Representing in advertisements or otherwise sets of so-called silverware as "26-piece of silverware," when the same is made of a metal or metals other than silver.

(*d*) Representing in advertisements or otherwise that its watches are insured, when they are merely guaranteed against defects in material and workmanship.

(*e*) Representing in advertisements or otherwise the settings of articles of jewelry, such as rings, as "ruby," "sapphire," "amethyst," "aquamarine," and/or "pearl," when such settings are synthetic or reconstructed.

(*f*) Representing in advertisements or otherwise that necklaces are "pearl," "French pearls," "indestructible pearls," "iridescent natural pearls," and/or "pearl finish," when the same are not pearls but are made of a product or products other than pearl.

(*g*) Representing in advertisements or otherwise toilet sets to be "ivory," "white ivory," "ivory finish," and/or "amber finish," or as "amber," "pearl on amber," "amber finish," and/or "blue pearl amber," and/or as "leatherette," when the same are made of a product or products other than represented.

(*h*) Representing in advertisements or otherwise that articles of jewelry are "platinum finish," "soft platinum finish," and/or "platina," when such products are not platinum.

(*i*) Representing by correspondence and otherwise that past due accounts have been placed in the hands of a collection agency, when no such independent agency is employed.

(*j*) Representing by correspondence, circular letters, or otherwise that debtors who fail to meet their obligations promptly thereby render themselves liable to criminal prosecution, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts

may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

444. Simulation—False and Misleading Advertising—Forms, Tags, Bills, Cards, and Other Automotive Stationery.—Respondents, an individual and a corporation, both of which were engaged in the business of selling forms, tags, bills, cards, sales books, and other stationery supplies used by the automotive trade, and in competition with corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

In the course and conduct of his business a certain individual respondent on or about December 31, 1926, entered into business under a certain trade name, which said trade name simulated the name of a corporation organized in 1921 and engaged in a similar business as that of respondent. The said respondent conducted his said business under such trade name until November, 1927, when he caused the business to be incorporated under the laws of the State of New York under a trade name other than used by him in the conduct of his individual business. In the subsequent conduct of said business the said corporation made use of its corporate name and included therewith the representation "Successor to" followed by the trade name formerly used by the aforesaid individual that simulated the name of the competitive corporation organized as above stated in the year 1921; when in truth and in fact the said respondents were not in any way connected with or associated with the corporation organized, existing, and doing business five years previous to the establishment of respondent's business.

Further, in the course and conduct of their business, the said individual respondent and his corporate successor adopted certain forms which bore the individual key or design number theretofore used by the said competing corporation organized in 1921, and used the same on forms, tags, bills, cards, and other stationery sold and distributed in interstate commerce so as to cause confusion by suggesting the identity of said individual respondent and his corporate successor with said corporation organized and existing since the year 1921.

Further, in the course and conduct of their business, said respondents caused said corporate name, containing the word "Printing," to be used on circulars, billheads, cards, letterheads, envelopes, and other advertising matter distributed in interstate commerce, together with the word "manufacturers"; when in truth and in fact the said respondents did not own, control, or operate a plant or factory or manufacturing establishment wherein the products sold by them were

manufactured, fabricated, or printed, but filled orders for products manufactured, fabricated, or printed at plants, factories, or printing presses which they did not own, control, or operate.

Said respondents in soliciting the sale of and selling products in interstate commerce agreed to cease and desist forever from the following practices: "(*a*) From the use of a trade name simulating that of the aforesaid corporation organized in 1921, or any other name so as to import or imply that the said respondents are part of, or in any way connected or associated with, the said competitors; (*b*) from copying and using the forms with individual key or design numbers used by said corporation organized in 1921; (*c*) from the use of the words 'Printing' or 'manufacturing' as part of or in connection or conjunction with their trade or corporate name in their advertisements or advertising matter distributed in interstate commerce so as to import or imply or which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said respondents own, control, or operate a mill, factory, or printing establishment for the manufacture or fabrication of their products or the materials from which their products are made, when such is not the fact."

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

445. **Misbranding—Shellac Compounds or Substitutes.**—Respondent, a corporation, engaged in the sale and distribution of painters' supplies including paints, varnishes, and shellacs in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use on labels affixed to the products sold by it of the word "shellac" iether independently or in connection or conjunction with any other word or words, so as to import or imply that the product so labeled is composed wholly of shellac gum dissolved in alcohol, when such is not the fact; or unless, when the product is not pure shellac, but one in which shellac is the principal and predominant element, and the word "shellac" is used to designate the product, such word shall be accompanied by the word "compound," printed in type equally as conspicuous as that in which the word "shellac" is printed, so as to indicate clearly that such product is not composed wholly of shellac gum cut in alcohol; or if the product is one in which no shellac gum is used, or in which shellac gum is not the principal and predominant

element, and the word "shellac" is used to designate said product, the word "shellac" shall be accompanied by the word "substitute" printed in type equally as conspicuous as the word "shellac."

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

446. **False and Misleading Advertising—Razors and Razor Blades.**—Respondent, a corporation, engaged in the manufacture of razors and razor blades and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products, agreed to cease and desist forever from using in its circulars and other advertising matter distributed in interstate commerce the words "free" and/or "give" either independently or in connection or conjunction each with the other or with any other word or words, so as to import or imply that the products to which said words, or either of them, refer are in truth and in fact given as a gratuity; and from the use of the words "free" and/or "give" or any other word or words of like import, either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the products so offered as "free" or "given" are in fact given free and that their cost is not included in the price paid by the purchasers for some other product or products ordered.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

447. **False and Misleading Advertising—Sponges and Chamois.**—Respondent, a corporation, engaged in the sale and distribution of sponges and chamois in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of—

(*a*) Words and/or phrases such as "Operating our own packing houses," "Producers and packers of sponges," and/or "Importer and exporter," or any or either of them, or any similar words or phrases

which import or imply that said corporation owns and operates a vessel or vessels engaged in the sponge fisheries and/or is a producer, packer, importer, or exporter of sponges, when such is not the fact.

(*b*) The words or phrases "Operating packing houses at Tarpon Springs, Florida, Batabano, Cuba," and/or either or both thereof, or any similar words or phrases which import or imply that said corporation owns, controls, and/or operates packing houses at such places, or at any other place where it does not in fact so own, control, and operate the same.

(*c*) Any similar words or phrases which may tend to confuse, mislead, or deceive the purchasing public into the belief that said corporation is a producer and packer of sponges, and owns and operates its own vessel or vessels and packing houses, or that it is an importer and exporter of sponges, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

448. **Simulation—False and Misleading Advertising—Raised Opal Glass Letters.**—Respondents, a corporation and an individual, engaged in the sale and distribution since 1927 and 1928, respectively, in the sale, distribution, and/or advertisement in interstate commerce of raised opal glass letters for use in advertising signs, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of the word "Larson" as part of or in connection or conjunction with their respective trade names in the advertisement, sale, and distribution in interstate commerce of their products, so as to import or imply that they, or either of them, is a part of or in any way connected with the Larson Glass Sales Corporation; and the said respondents also agreed to cease and desist from the use of the word "Larson" either independently or in connection or conjunction with any other word or words in their trade names, or in any other way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the said respondents, or either of them, is a part of or in any way connected or associated with the Larson Glass Sales Corporation of Long Island City, N. Y.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

449. **False and Misleading Brands and Advertising—Cotton Threads.**—Respondent, a corporation, engaged in the manufacture of cotton threads and the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "Linen Process"-either independently or in connection, conjunction, or combination with any other word or words, letter or letters, as a trade brand or designation, so as to import or imply that the product to which the same refers is composed of linen, the product of the flax or hemp plant, and from the use of the word "linen" in any way that may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products sold by the said respondent in interstate commerce were manufactured from linen, the product of the flax or hemp plant.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

450. **False and Misleading Trade Name and Advertising—Flannel Cloth.**—Respondent, a corporation, engaged in the sale and distribution of flannel cloth in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "Mills" as part of, or in connection or conjunction with, its trade name in the sale and distribution in interstate commerce of said products, and on its letterheads, advertising, and other printed matter distributed in interstate commerce in soliciting the sale of and selling its products, and from the use of the word "Mills" in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said respondent either owns, controls, or operates a mill or factory wherein are made the products sold by it in commerce between and among the various States of the United States, or until such times as the said respondent does actually own, operate, or control a mill or factory wherein the said products are made.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts

may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

451. **False and Misleading Advertising—Therapeutic Lamps.**—Respondent, a corporation, engaged in the manufacture of electrical appliances, including an alleged infra-red ray therapeutic lamps in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever in its advertising and other printed matter from the following representations or statements:

(*a*) That the lamps are specially built, when such is not the fact.

(*b*) Offering its lamps at pretended "special prices," which are in truth and in fact the regular prices of such products.

(*c*) Announcing and declaring its intention to raise the prices of its lamps, and/or fixing a date for such raised prices to become effective, when in truth and in fact the said prices were not raised and/or there was no intention of raising the same.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

452. **False and Misleading Advertising—Electric Clocks.**—Respondent, a corporation, engaged in the manufacture of electrically-driven clocks in the sale and distribution in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever in its advertising matter circulated in interstate commerce from making any claim that its clocks are operated, controlled, and/or corrected by United States Naval Observatory time, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

453. **False and Misleading Trade Name Advertising—Sweaters, Sport Suits, Knit Cloth.**—Respondents, copartners, engaged in the sale and distribution of sweaters, sport suits, and knit cloth in interstate

commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from—

(*a*) The use of the words "Knitting" and/or "Mills" as part of or in connection or conjunction with their trade name so as to import or imply that the said respondents either owned, operated, or controlled a mill or factory in which were manufactured or fabricated the products sold by them in interstate commerce; and from the use of the words "Knitting" and/or "Mills" as part of or in connection or conjunction with their trade name, or in any other way which may have the capacity and tendency to confuse, mislead, and deceive the trade or the purchasing public into the belief that the said respondents owned, operated, or controlled a mill or factory wherein were manufactured or fabricated the products sold by them in interstate commerce.

(*b*) The use of such words or expressions as "Mills Brooklyn, N. Y., Philadelphia, Pa., Newark, N. J.," or of any other similar words on their billheads, or otherwise, implying that said respondents owned, controlled, and operated a mill or mills wherein were manufactured the products which they sold and distributed in interstate commerce, when such is not the fact; or of any other statement or representation which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the aforesaid respondents owned, controlled, and operated a mill or mills, factory or factories, wherein were manufactured or fabricated the products sold by them in interstate commerce.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

454. **False and Misleading Trade Name and Advertising—Drug Sundries.**—Respondents, copartners, engaged in the sale and distribution of drug sundries in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreements to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist from the use in interstate commerce of the word "Rexall" either independently or in connection or conjunction with the word "bottle," or with any other word or words, in their advertisements or other printed matter of whatsoever character, so as to import or imply or otherwise confuse, mis-

lead, or deceive the trade or purchasing public into the belief that the products so represented are manufactured by the United Drug Co., when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

455. **False and Misleading Advertising—Ladies' and Misses' Sweaters and Similar Products.**—Respondent, a corporation, engaged in the sale and distribution of ladies' and misses' sweaters and similar products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the words "Knitting" and "Mills," or either of them, as part of or in connection or conjunction with its corporate or trade name in the sale and distribution of its products in interstate commerce, and from the use of the words "Knitting" and "Mills," or "manufacturers," in its advertisements and other printed matter circulated and distributed in interstate commerce in soliciting the sale of and selling its products so as to import or imply that said respondent is the manufacturer of the products sold and distributed by it in interstate commerce, or which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said respondent owns and operates a mill or factory where the products which it sells are made; or until such time as said respondent does actually own and operate a mill or factory for the manufacture of the products which it sells and distributes in interstate commerce.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

456. **False and Misleading Advertising—Disparagement of Competitive Products—Meat-Curing Preparation.**—Respondent, a corporation, engaged in the manufacture of a preparation for the home curing of meats and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use in its advertising matter circulated in interstate commerce of any and all

statements which import or imply that the products of a competitor or competitors are dangerous, poisonous, and/or deleterious to health, and from the use of any and all such statements in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the products of a competitor or competitors are injurious to health, unless such statements are warranted and supported in truth and in fact. Respondent also agreed to cease and desist from the use of the statement "The impure product made by the destructive distillation of wood known as pyroligneous acid is not suitable for food," purporting to be Food Inspection Decision No. 140 of the United States Department of Agriculture, or of any other statement or citations of the said decision and which have the capacity and tendency to convey an erroneous belief as to the true meaning of the said decision.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

457. **False and Misleading Advertising—Watch Movements.**—Respondents, copartners, engaged in the importation of watch movements and in the sale and distribution of watches in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use in advertising matter, of whatsoever character, circulated and distributed in interstate commerce, of the words "manufacturers" or "factory" either independently or in connection or conjunction with any other word or words so as to import or imply that the said respondents either own, operate, or control a factory for the manufacture or fabrication of the products sold by them in interstate commerce; and from the use of the word "manufacturers" or "factory" in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said respondents either own, operate, or control a factory wherein are made or fabricated the products which they sell and distribute in interstate commerce.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

458. **False and Misleading Advertising—Resilvering and Replating Instruction.**—Respondent, an individual, engaged in the sale and

distribution in interstate commerce, of certain formulæ and courses of instruction in resilvering and replating metal goods, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the phrases and statements, "I will send all for only $5 the regular price being $10, but for a limited time only the price has been reduced to $5," "Your generous $10.00 offer for only $5.00," and "Special $5.00 price," so as to import or imply that the products designated and referred to by the said phrases and statements constitute the subject matter of a special offer which is to continue only for a limited period of time, when such is not the fact. Respondent also agreed to cease and desist from the use of the word "special" either independently or in connection or conjunction with any other word or words, or in any way, to designate the price of his products, when in truth and in fact such price is not special but is the regular and customary price asked for his products in the usual course of business. Respondent further agreed to cease and desist from the statement or representation, "I am the sole owner of fourteen patents, grants, and copyrights," so as to import or imply, or which may have the capacity or tendency to mislead or deceive the purchasing public into the belief, that said respondent actually owns the specified number of patents, grants, and copyrights, all of which relate to the art of plating or the process of mirror silvering, when in truth such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

459. **False and Misleading Advertising—Livestock Remedies.**—Respondent, a corporation, engaged in the manufacture of stock remedies and in the sale and distribution of the same in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever (1) from the use in its advertisements or advertising matter distributed in interstate commerce of statements or representations which import and imply, or which may have the capacity or tendency to mislead or deceive the purchasing public into the belief, that its products possess thera-

peutic values in excess of those which said products actually possess, or that its products are remedies for various hog and/or poultry diseases, when in truth and in fact the use of the products as curative agents has not been such as to justify the representations that its products do actually cure or effectively treat those infections and/or diseases as specified in the advertisements and advertising matter; (2) from using in its advertisements or advertising matter or otherwise testimonial letters represented to have been written by users of its products, when in truth such letters do not set forth a true representation of the facts, are not authentic, and have not been authorized by the purported writers or authors of the same; (3) from representing through its agents or representatives or by other means or methods that its products contain the same constituent elements or ingredients as are contained by the product of its competitor, when in truth such is not the fact; (4) from making any false and misleading statement to the effect that it has acquired or otherwise taken over the business of a competitor.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

460. **Misbranding—Cigars.**—Respondent, an individual, engaged in the manufacture of cigars and in the sale and distribution of the same in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "Havana," either independently or in connection or conjunction with any other word or words, as a trade name, brand, or label in the sale in interstate commerce of a product not composed wholly of tobacco grown on the island of Cuba; unless when said product is composed in substantial part of tobacco grown on the island of Cuba and the word "Havana" is properly used to designate said product, in which case the word "Havana" shall be employed in connection with some other word or words, which shall be displayed in type equally as conspicuous as those in which the word "Havana" is printed so as to indicate clearly that such product is not made wholly of tobacco grown on the island of Cuba, and that will otherwise properly and accurately represent, define, or describe said product so as to indicate clearly that the same is composed in part of tobacco other than that known to the trade and the purchasing public as "Havana."

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

461. **Passing Off—Medicinal Supplies and Syringes.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of medicinal supplies and syringes designed for use by the medical profession, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Jena," either independently or in connection or conjunction with the words "glass," or with any other word or words so as to import or imply that said product is made of that glass recognized and understood by the scientific and professional world to be Jena glass or that product manufactured by the Jena Glass Works, of Jena, Germany; and said respondent further agreed to cease and desist from the use of the word "Jena" in any way as descriptive of its said product which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said product is Jena glass.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

462. **Simulation of Trade Name; False and Misleading Advertising—Song Slides.**—Respondent, a corporation, engaged in the sale and distribution of song slides in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the words "formerly of Kirksville, Missouri," or "Kirksville, Missouri," either independently or in connection or conjunction with any other words or in any way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said respondent is connected or associated with the Sims Song Slide Corporation, of Kirksville, Mo., and the said respondent also agreed to cease and desist forever from the use of the photograph of an assembly of students observing a curtain

or screen on which are represented bars of music with an instructor pointing thereto, either independently or in connection or conjunction with the words "Sims New Process Slides" or with any other words or in any way which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said respondent is connected or associated with the Sims Song Slide Corporation.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

463. **False and Misleading Trade Name and Advertising—Sweaters; Swimming Suits; Knit Goods.**—Respondents, copartners, engaged in the sale and distribution of knit goods, such as sweaters, swimming suits, and knitted dresses, in interstate commerce, in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of the words "Knitting" and/or "Mills," independently or in connection or conjunction with any other word or words, as part of or in connection or conjunction with their trade name, so as to import or imply that said respondents own, operate, or control a mill or factory in which the products sold by them in interstate commerce are manufactured or fabricated; and from the use of the words "Knitting" and/or "Mills" in any other way which may have the capacity or tendency to confuse, mislead, or deceive the trade and/or the purchasing public into the belief that said respondents own, operate, or control a mill or factory wherein the products sold by them in interstate commerce are manufactured or fabricated.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

464. **False and Misleading Trade Name and Advertising—Woolen Piece Goods.**—Respondent, a corporation, engaged in the sale and distribution of woolen piece goods in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "Mills" as part of or in connection or conjunction with its trade

or corporate name in the sale and distribution of its products in interstate commerce, and from the use of the said trade name containing the word "Mills" on its letterheads, advertising, and other printed matter distributed in interstate commerce in soliciting the sale of and selling its products, and from the use of the word "Mills" in any other way which may have the capacity and tendency to mislead, confuse, or deceive the purchasing public into the belief that said respondent owns, operates, and controls a mill or factory wherein are made the products sold by it; or until such time as said respondent does own, operate, and control a mill or factory wherein the said products are made.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

465. **False and Misleading Trade Name and Advertising—Woolens and Dress Goods.**—Respondent, an individual, engaged in the sale and distribution of woolens and dress goods in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "Mills" as part of or in connection or conjunction with his trade name in the sale and distribution of his products in interstate commerce, and from the use of the word "Mills" on his letterheads, advertising, and other printed matter distributed in interstate commerce, and from the use of the word "Mills" in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said respondent either owns, operates, or controls a mill or factory wherein are made the products sold by him in interstate commerce; or until such time as said respondent does actually own, operate, or control a mill or factory wherein the said products are made.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

466. **Passing Off—Misbranding—Watch Cases.**—Respondents, a corporation and an individual, engaged in the manufacture of watch-cases and in the sale and distribution of the same in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents agreed to cease and desist forever from the use of the word "Arista" as part of or in connection or conjunction with their corporate or trade name containing the word "Arista," or of any similar corporate or trade name in the sale and distribution of their products in interstate commerce so as to import or imply that the goods of said respondents are the goods of the said H. Gisiger and W. Gisiger. Said respondents also agreed to cease and desist from the use of the word "Arista," either independently or in connection or conjunction with any other word or words, or in any way as a mark, brand, or designation for their products, which may have the capacity or tendency to directly or indirectly suggest that the goods of the said respondents are the goods of the said H. Gisiger and W. Gisiger.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

467. **Simulation of Trade Name—False and Misleading Advertising—Paper Products.**—Respondent, a corporation, engaged in the sale and distribution of paper products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of its corporate or trade name simulating the corporate name of its competitor, Northern Paper Mills, in soliciting the sale of and selling its products in interstate commerce, and from the use of its said corporate or trade name in any way so as to confuse the purchasing public into the belief that the business conducted by said respondent and that of its said competitor, Northern Paper Mills, are one and the same, or that said respondent is connected or associated in any way with the said Northern Paper Mills. Respondent also agreed to cease and desist from the use of the word "Mills," either independently or in connection or conjunction with any other word or words, in its corporate or trade name, or in any other way, in soliciting the sale of and selling its products in interstate commerce, which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that it owns, operates, and controls a mill, plant, or factory wherein are manufactured or fabricated the products which it sells and distributes in interstate commerce.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

468. **False and Misleading Advertising—Gifts; Premiums; Novelties.**—Respondent, an individual, engaged in the selling and distributing of gifts, premiums, and novelties in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use in interstate commerce of any scheme, plan, or method of promoting the sale of his products in interstate commerce which involved or included—

(*a*) Describing his products as made up in "Combinations of jade and ivory, mahogany and ivory, and/or pearl and ivory"; as having "rose or blue pearl amber trimmings"; or as "Ivory finish," or "Ebony finish," when the same are made and/or finished with other materials than those designated.

(*b*) Advertising in catalogues, price lists, or otherwise to give any article as a prize or premium for and in consideration of the purchase of any other article, by representing or describing the same as "free" so as to import or imply that the products to which the same refer are given as a gratuity, when such is not the fact.

(*c*) Advertising and soliciting the sale of, and selling and transporting in interstate commerce, any instrument or device purporting to be or representing a chance, share, or interest in, or dependent on the event of a lottery, so-called gift concern, or any other similar enterprise offering prizes dependent upon lot or chance.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

469. **False and Misleading Trade Name and Advertising—Tobacco Products.**—Respondent, a corporation, engaged in the sale and distribution of tobacco products in interstate commerce, in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in selling and distributing its said products in interstate commerce, agreed to cease and desist forever from—

(*a*) The use in its advertising matter, of whatsoever character, circulated and distributed in interstate commerce, of the word "manufacturer," either independently or in connection or conjunction with any other word or words, so as to import or imply that said respondent either owns, operates, or controls a factory for the manufacture of the products sold and distributed by it in interstate com-

merce; and from the use of the word "manufacturer" in any way so as to confuse or deceive the purchasing public into the belief that the said respondent either owns, controls, or operates a factory wherein are made the products which it sells.

(*b*) The use of the words "Nicotine-freed," "De-nicotined," "De-nicotinized," "No Harm," "Harmless," and/or "Harm-free," or any of them, either independently or in connection or conjunction with any other word or words in advertisements or other printed matter descriptive of such tobacco products so as to import or imply that the said products are free from nicotine, and the use of any other representation or statement which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that such products are free from nicotine and/or that the same are harmless, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

470. **False and Misleading Advertising—Cellulose Products.**—Respondent, a corporation, engaged in the manufacture of cellulose products in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product "Naps" in interstate commerce, agreed to cease and desist forever from the use of the words "rayon" and/or "silk," either independently or in connection or conjunction each with the other, or with any other word or words, as a brand or label for its product "Naps," that import or imply that such product is made or fabricated from rayon and/or from silk; and from the use of the words "rayon" and/or "silk" either independently or in connection or conjunction with any other word or words or in any other way which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the product so advertised, branded, or labeled is made or fabricated of rayon and/or silk, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

471. **False and Misleading Advertising and Brands or Labels—Candles.**—Respondent, a corporation, engaged in the manufacture of candles, in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged,

entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

"Altar" candles, "rubrical" candles, and "Candlemas" candles are candles used by various religious denominations and churches in religious ceremonies, and are so made as to conform to the ecclesiastical requirements for the purpose designated.

Respondent, in the sale and distribution of its product in interstate commerce, agreed to cease and desist forever from (*a*) the use of the words "rubrical" and/or "Candlemas," or either of them, either independently or in connection or conjunction with any other word or words as a brand or label for its products, or in its advertisements, unless the candles so represented, designated, and referred to are made in conformity with the established ecclesiastical requirements so as to be properly and accurately represented, designated, and referred to as "rubrical" and/or "Candlemas" candles; (*b*) the use of the words "beeswax," "stearic acid," and/or "stearine," or any or either of them, either independently or in connection or conjunction with any other word or words, as a brand or label for its products or in its advertisements; unless, when said candles are composed in substantial part of beeswax or stearic acid and the words "beeswax," "stearic acid," or "stearine" is used in its trade brand or designation for said candles, the words "beeswax," "stearic acid," or "stearine" shall be employed in connection, conjunction, or combination with some other word or words, letter or letters, which shall be displayed in type equally as conspicuous as that in which the words "beeswax," "stearic acid," or "stearine" is printed so as to clearly indicate that such product is not made wholly from beeswax or stearic acid, and that will otherwise properly and accurately represent, define, or describe said product so as to clearly indicate that the same is composed in part of an ingredient or ingredients other than beeswax or stearic acid.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

472. **False and Misleading Advertising and Brands or Labels—Chewing Gum and Confectionery.**—Respondent, a corporation, engaged in the manufacture of chewing gum and confectionery used in slot machines in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from (*a*) describing its products through the use of such words and/or phrases as "High quality chicle," "Very best grade of chicle," and/or "Best quality chicle compound," and from the use of the word "chicle" either independently or in connection or conjunction with any other word or phrase so as to import or imply that the product so designated has as its base chicle gum, when such is not the fact; and from the use of the word "chicle" in any way that may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are made of, or have as their base, chicle gum; (*b*) the use of the word "free" either independently or in connection or conjunction with any other word or words which import or imply that the products to which the same refer are in truth and in fact given as a gratuity when such is not the fact; and from the use of the word "free" in any other way which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said products so offered as "free" are in fact given free and that their cost is not included in the price of the other goods purchased.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

473. **False and Misleading Trade Name and Advertising—Sweaters, Bathing Suits, and Other Knit Goods.**—Respondent, an individual, engaged in the sale and distribution in interstate commerce of sweaters, bathing suits, and other knit goods, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the words "Knitting" and "Mills" as part of or in connection or conjunction with his trade name in soliciting the sale of and selling his products in interstate commerce; and the said respondent also agreed to cease and desist from the use of the words "Knitting" and/or "Mills" either independently or in connection or conjunction with such expressions as "Direct from mill to wearer," "Made in our mills," or with any similar word or statement in his advertisements or advertising matter, so as to import or imply that he owns, operates, or controls a knitting mill or factory wherein are knitted or manufactured the products sold by him in interstate commerce; and the said respondent further agreed that he will not make use of the aforesaid words or representations in any other way so as to confuse, mislead, or deceive the purchasing public into the belief that he is the

manufacturer or maker of the products sold by him in interstate commerce.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

474. **False and Misleading Advertising and Brands or Labels—Sirup.**—Respondent, an individual, engaged in the manufacture of sirup and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist forever from the use of the word "cherry" either independently or in connection or conjunction with the word "smash," or with any other word or words, pictorial representation or in any way, in his advertising matter distributed in interstate commerce, or as a trade brand or designation for his product so as to import or imply that the said product is composed of the juice or the fruit of the cherry; unless when said product is composed in substantial part of the cherry, the juice or the fruit thereof, and the word "cherry" is used as a trade brand or designation for said product in which case the said word "cherry" shall be accompanied by some other word or words which shall be printed in type equally as conspicuous as that in which the word "cherry" is printed so as to properly and accurately advertise, describe, and designate said product and that will otherwise correctly indicate that the same is composed in part of an ingredient or ingredients other than the juice of the cherry or the fruit thereof; or unless when the product is composed of less than a substantial amount of the juice or fruit of the cherry, and the word "cherry" is used as a trade brand or designation for the product in which case the word "cherry" shall be accompanied by the word "imitation" and which said accompanying word shall be printed in type equally as conspicuous as that in which the word "cherry" is printed so as to properly and accurately designate and describe said product.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

475. **False and Misleading Trade Names or Advertising—Hosiery and Lingerie.**—Respondent, a corporation, engaged in the sale and distribution of hosiery and lingerie in interstate commerce, and in competition with other corporations, firms, individuals, and partner-

ships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Mills" as part of or in connection or conjunction with its trade name, so as to import or imply that said respondent owns, operates, or controls a mill or factory in which are manufactured or fabricated the products sold and distributed by it in interstate commerce; and from the use of the word "Mills" as part of or in connection or conjunction with its trade name, or in any other way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the aforesaid corporation owns, operates, or controlls a mill or factory in which the products sold and distributed by it in interstate commerce are manufactured or fabricated; and said respondent further agreed to cease and desist forever from the use in its advertisements circulated in interstate commerce, or in any other way, of such words and phrases as "Men's lisle silk hose," "Men's silk and mercerized hose," "Men's pure silk sport hose reinforced with art silk," "Girls' art silk socks," "Ladies' pure thread silk hose," "Ladies' silk vest," or any other similar representation to describe products not made of silk, the product of the cocoon of the silkworm.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

476. **False and Misleading Advertising—Cigars, Cigarettes, and Tobacco.**—Respondent, a corporation, engaged in the sale and distribution of cigars, cigarettes, and tobacco in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from making the representations or claim that its products can be used, regardless of quantity, without danger or injury to the health, or any other like representation so as to import or imply that its said product can be used regardless of quantity without danger to the health, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

477. **False and Misleading Trade Name and Advertising—Sweaters, Bathing Suits, and Similar Knit Goods.**—Respondents, copartners, engaged in the sale and distribution of sweaters, bathing suits, and other similar knit goods in interstate commerce, and in competition with other partnerships, corporations, firms, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of the words "Knitting" and/or "Mills" as part of, or in connection or conjunction with, their trade name so as to import or imply that the said copartners own, operate, or control a mill or factory in which are manufactured or fabricated the products sold by them in interstate commerce; and from the use of the words "Mills" and/or "Knit" in any way which may have the capacity and tendency to confuse, mislead, or deceive the trade or purchasing public into the belief that the said copartners own, operate, or control a mill or factory wherein are manufactured or fabricated the products sold by them in interstate commerce.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

478. **False and Misleading Advertising and Branding—Bath Towels; Cotton Goods.**—Respondents, a corporation and partnership, the former engaged in the manufacture of cotton goods, including a high-grade bath towel, in interstate commerce, and the latter engaged in the business as distributing agents for various manufacturers of cotton goods, including the above-mentioned corporation, in interstate commerce, and in competition with other corporations, partnerships, firms, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent corporation and respondent copartners, in soliciting the sale of and selling their products in interstate commerce, agreed, both individually and collectively, to cease and desist forever from using as a brand or label for their products, or in advertising, selling, or distributing the same in interstate commerce, any pictorial representation of a cadet or soldier in uniform, and/or colors simulating the official colors of the United States Military Academy, and/or swords crossed on a shield, either independently or in connection or conjunction each with the other or with the words "West Point," so as to confuse, mislead, or deceive the purchasing public into the belief that said products are made in accordance with Government specifications

and/or have been adopted by the War Department for the use of the United States Military Academy at West Point, and/or are used by the cadets of the aforesaid Government institution, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

479. **Misbranding—Shellac Compound or Substitute.**—Respondent, an individual, engaged in the manufacture of paints and varnishes and in the sale and distribution of same in interstate commerce, and in competition with other individuals, corporations, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist forever from the use of the word "Shellac" either independently or in connection or conjunction with any other word or words so as to import or imply that the product so represented, designated, or labeled is composed wholly of shellac; unless, when the product is not pure shellac, but one in which shellac gum is the principal and predominant element, and the word "shellac" is used to designate the product, such word shall be accompanied by the word "compound" printed in type equally as conspicuous as that in which the word "shellac" is printed, so as to indicate clearly that such product is not composed wholly of shellac gum cut in alcohol; or, if the product is one in which no shellac gum is used, or in which shellac gum is not the principal or predominant element, and the word "shellac" is used to designate said product, such word shall be accompanied by the word "substitute" in type as conspicuous as the word "shellac."

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

480. **False and Misleading Advertising and Brands or Labels—Cotton Thread.**—Respondent, a corporation, engaged in the manufacture of cotton thread and in the sale and distribution of same in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use

in its advertisements or advertising matter, or as a brand or legend on spools, cones, and/or cartons, of the words "Silk" and/or "Linen," or either of them, either independently or in connection or conjunction with any other word or words so as to import or imply that the said products are made of silk, the product of the cocoon of the silkworm, or linen, the product of flax or hemp; and from the use of the words "silk" and/or "linen" in any way which may have the capacity and tendency to confuse, mislead, or deceive the trade or the purchasing public into the belief that said products are made of silk, the product of the cocoon of the silkworm, and/or of linen, the product of flax or of hemp.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

481. **False and Misleading Trade Name and Advertising—Silver-Plated Ware.**—Respondent, an individual, engaged in the sale and distribution of coupons for use by retailers in the sale of their goods, and in the redemption of such coupons by exchanging therefor various articles of silver-plated ware in interstate commerce, and in competition with other individuals, corporations, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist forever from the use of the word "Rogers" as part of, or in connection or conjunction with his trade name, and/or in advertising, soliciting the sale of or selling his product, or in any other way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the silverware used by said respondent to redeem his coupons is the silverware manufactured by William A. Rogers (Ltd.); unless if said word "Rogers" is used, the same shall be accompanied by the full name of the actual manufacturers of such silverware, or by the words "Not William A. Rogers, Limited," in type equally as conspicuous as that in which the word "Rogers" is printed.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

482. **Misbranding—Knives and Razors.**—Respondent, a corporation, engaged in the business of manufacturing knives and razors and in the sale and distribution of same in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following stipulation of facts

and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the words "Solingen" and/or "Germany" as a trade name or brand for its razors, either independently or in connection or conjunction each with the other, or with any other word or words, so as to import or imply that the products so marked or branded were made at Solingen or in Germany; and from the use of the words "Solingen" and/or "Germany" in any way so as to confuse, mislead, or deceive the purchasing public into the belief that said razors were made at Solingen or in Germany, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1929.)

483. **False and Misleading Representations and Advertising—Encyclopedias and Reference Works.**—Respondents, a corporation trading under its own name and also a trade name, and an individual, engaged in the sale and distribution of sets of encylopedias and reference works and in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, the said corporation and the said individual, individually and collectively agreed to cease and desist forever from representing, in any manner whatsoever, to purchasers or prospective purchasers, that—

(*a*) As a special introductory offer, a limited number of purchasers in a given community would be sold, for advertising purposes, sets of encyclopedias or reference works, together with a loose-leaf extension service or other inducement at a price much lower than the price regularly charged, when such is not the fact.

(*b*) That sets of encyclopedias or reference works would be given to persons who subscribed to the loose-leaf extension service, when such is not the fact.

(*c*) That the price of sets of encyclopedias or reference works would later be advanced, when such is not the fact.

(*d*) That sets of encyclopedias or reference works could be returned by the purchaser, if not satisfactory, when such is not the fact.

(*e*) That the sets of encyclopedias or reference works which it sells are published by the New York Times newspaper, when such is not the fact.

(*f*) That bookcases are furnished free to purchasers for sets of encyclopedias or reference works, when such is not the fact.

(*g*) That the price charged for such sets of encyclopedias or reference works is a special price, reduced in consideration of the furnishing by the purchaser of a written indorsement and recommendation, and/or that said purchasers are obligated to furnish such indorsements and recommendations.

(*h*) Charging and collecting from purchasers, and requiring said purchasers to pay, 20 cents per quarter, or any other sum, for a loose-leaf extension service, unless the same is so required, or otherwise provided for in the contract which the purchaser signs and the subscriber is fully advised thereof when he signs the same.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

484. **False and Misleading Advertising—Animal Biscuits.**—Respondent, a corporation, engaged in the manufacture of animal biscuits and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use in its advertisements or advertising matter of the following: Statements to the effect that the moisture content of its product is 2 per cent, or is materially less than that of its competitors, when such is not the fact; statements to the effect that purchasers of its competitors' products pay from $16 to $32 per ton for water; inaccurate and misleading purported analyses of its said product which do not correctly state the facts respecting the same.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint, which the commission may issue. (September 16, 1929.)

485. **False and Misleading Advertising—Musical Saws.**—Respondent, an individual, engaged in the business of selling and distributing instruments designated and referred to as "musical saws" in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from—

1. Any and all statements and representations which import or imply that persons may readily master the art of playing the "musical

saw like a professional" or which have the capacity or tendency to mislead or deceive the purchasing public into the belief that the art of playing the musical saw may be acquired by persons having no special musical talent or ability, when in truth such is not the fact.

2. The use of the word "free" either independently or in connection or conjunction with any other word or words, or in any way, so as to import or imply or which may have the capacity or tendency to mislead or deceive the purchasing public into the belief that the product referred to is in truth and in fact given free or bestowed without compensation and that the cost is not included in the price paid by purchasers for other products.

3. The use of the words "special," "introductory," and "for a limited time" either independently or in connection or conjunction with any other word or words or in any way so as to import or imply that the products designated or referred to by such words constitute the subject matter of a special offer which is to continue only for a limited period of time, when such is not the fact.

4. The fictitious marking-up of the prices of his courses of instruction or products sold and distributed by him in interstate commerce and the use of enrollment applications or other matter containing fictitious representations of prices in connection with the sale and distribution of said products in interstate commerce.

5. Representing that many of his pupils are on the vaudeville stage, making big money as entertainers, until such time as such representations are true.

6. The use of the words "process patented" either independently or in connection with any other word or words so as to import or imply or which may have the capacity or tendency to mislead or deceive the purchasing public into the belief that the said respondent is the owner of a process patent covering his product, when such is not the fact.

7. The use of the word "manufacturers" either independently or in connection or conjunction with any other words or words in his advertising matter of whatsoever character so as to import or imply or which may have the capacity or tendency to mislead or deceive the purchasing public into the belief that the said respondent owns, operates, and controls a factory or plant wherein are manufactured the products sold by him in interstate commerce.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

486. **Simulation of Containers—Canned Goods, Rice, Citron, and Lemon, and Orange Peels.**—Respondent, an individual, engaged in the business as distributor of canned goods, rice, etc., including citron, lemon peel, and orange peel, in interstate commerce, and in competi-

tion with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from selling or offering for sale or otherwise disposing in interstate commerce of his products, or any of them, packed or placed in any container of yellow and brown coloring matter or design of dress in imitation of coloring matter and design of dress of the container of products sold and distributed in interstate commerce by Hill Bros. Co. (Inc.), that may have the capacity and tendency to confuse the purchasing public into the belief or which may cause such public to believe that the products of the said respondent are those of the said Hill Bros. Co. (Inc.).

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1929.)

487. **Price Maintenance Combinations or Conspiracies—Desks.**—Respondent, a voluntary unincorporated organization whose membership was composed of a number of corporations engaged in the manufacture of desks and in the sale and distribution thereof in interstate commerce, in competition with other corporations, firms, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent associations, their officers and members, agreed to cease and desist forever from the use of any and all cooperative methods having the purpose or effect of restricting, restraining, or suppressing, or which have the capacity or tendency to restrict, restrain, or suppress competition in the sale of products in interstate commerce by the following cooperative methods or means:

(1) Discussing and agreeing upon uniform prices, terms, discounts, and differentials, or adopting or employing any means or methods which fix or tend to fix the prices, terms, discounts, or differentials at which the products of said membership shall be sold by them, or which are designed to, or which do, equalize or make uniform the sale prices, terms, discounts, or differentials of the members of said association, or any of them.

(2) Compiling, publishing, and distributing among the members of said association of average, normal, or standard production costs with instructions or understandings for the translation of such costs into uniform selling prices.

(3) Seeking and securing the cooperation of its members, or any of them, in reporting the names of persons, firms, or corporations

who have been "turned down" or refused products by such members for the reason that such persons, firms, or corporations were or were alleged to be "irregular" dealers.

(4) Maintaining or keeping a record of the names of such "turndowns" or so-called "irregular" dealers and disseminating the names of such dealers among the respective associations and/or the members or officers of the same for the purpose or with the effect of preventing such alleged "irregular" dealers from thereafter obtaining products from members of the said organizations.

(5) Soliciting and obtaining the cooperative promises or assurances of association members that they will not sell products to such "turndowns," or refused dealers.

(6) From the use of any and all practices or means involving the cooperation of said associations, their officers and/or members, which eliminate or suppress or which have the capacity or tendency to eliminate or suppress competition between and among the members of the respective associations.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 16, 1929.)

488. **False and Misleading Trade Names, Advertising, and Brands—Malt Sirup.**—Respondent, an individual, engaged in the business of selling and distributing malt sirup in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist forever from the use as a trade brand or designation for his product or in his newspaper or other advertising matter circulated in interstate commerce of the word "Bohemia" either independently or in connection or conjunction with any other word or words, so as to import or imply that the said product is manufactured in Bohemia or of ingredients obtained from said country, and the said respondent also agreed to cease and desist from the use of the word "Bohemia" either independently or in connection or conjunction with any other word or words, pictorial representation, or in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said product is of foreign manufacture and/or has been imported into the United States or has been obtained from Bohemia.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the

facts may be used in evidence against him in the trial of the complaint which the commission may issue. (October 7, 1929.)

489. **False and Misleading Advertising—General Merchandise.**—Respondent, a corporation, engaged in the business of selling general merchandise by mail orders direct to the consumer in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in its catalogues and other advertising matter distributed in interstate commerce (*a*) of the words "satin," "satin de chine," "smart satin," "rayon satin," "satin and hackle feather," "satinette," "velour," "silk-faced velour," "velvet," "silk," "tub silk," "silk mixed pongee," "silk brocaded pongee," "pongee," "plush," "crush plush," and "velveteen plush," either independently or in connection or conjunction with each other, or with any other words which import or imply that the products so described, designated, represented, or referred to are made of silk; and from the use of the above-quoted words or any of them, either independently or in connection or conjunction with each other, or in any other way which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the products so represented or described are made of silk, or unless, when the products are composed in substantial part of silk, and the word "silk," "satin," "satinette," "velour," "velvet," "velveteen," "pongee" or "plush" is used as descriptive thereof, such word shall be accompanied by another word or words which shall be printed in type equally as conspicuous as that in which the said descriptive word is printed so as to clearly indicate that said products are not made wholly of silk; (*b*) of the words "wool mixed," "wool mixed flannel," "flannel," "flannelette," "cashmere flannel," "velour flannel," "plaid flannel," and "serge," either independently or in connection or conjunction with each other, or with any other word or words which import or imply that the products so designated, described, represented, or referred to are made of wool; and from the use of the above-quoted words, or any of them either independently or in connection or conjunction with each other, or with any other word or words, or in any other way which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the products so represented or described are made of wool; or unless, when the products are composed in substantial part of wool, and the word "wool," "flannel," or "serge" is used as descriptive thereof, such words shall be accompanied by another word or words which shall be printed in type equally as conspicuous as that in which

the descriptive word is printed so as to clearly indicate that the said products are not made wholly of wool; (*c*) of the words "beaver," "beaverette," "muskrat," "seal," "sealine," "coney," "squirrel," or "ermine," either independently or in connection or conjunction with any other word or words, syllable or syllables, letter or letters, to designate and describe products which are not made of the skins of the beaver, muskrat, seal, coney, squirrel, or ermine, respectively, and from the use of said words "beaver," "muskrat," "seal," "coney," "squirrel," or "ermine" in any way which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the products so represented and described are made from the skins of the beaver, muskrat, seal, coney, squirrel, or ermine, respectively; (*d*) of the word "wolf" in connection or conjunction with the word "Manchurian" or with any other word or words which import or imply, or which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the products so described are made from the skin or pelt of the wolf; (*e*) of the word "linene" either independently or in connection or conjunction with any other word or words, or in any way so as to import or imply, or which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the products so designated, represented, described or, referred to are made of linen, a product prepared from flax or hemp; (*f*) of the words "chamois suede" or "capeskin" either independently or in connection or conjunction each with the other, or with any other word or words as descriptive of its products so as to import or imply, or which may have the tendency to confuse, mislead, and deceive the purchasing public into the belief that the said products are made or fabricated from leather, a product prepared from the skins of certain animals; (*g*) of the words "Angora" or "polaire" in any way so as to import or imply that the products so described are made from the wool of the Angora or other goat; (*h*) of the word or phrase "Kid-finished top" in any way so as to import or imply that the said products so described are made of leather, the product of the skin of a kid, when such is not the fact; (*i*) of the words or phrase "tan calf-finished leather" in any way so as to import or imply that the said products so described are made of leather, the product of the skin of a calf, when such is not the fact; (*j*) of the word "leatherette" either independently or in connection or conjunction with any other word or words, letter or letters, or in any other way to designate or describe its products so as to import or imply that said products are made of leather prepared from the hides of animals, when such is not the fact; (*k*) of the word "pearls" to describe products which are imitations of pearl; (*l*) of the word "filet" either independently or in connection or conjunction with any other word or words or in

any other way so as to import or imply, or which may have the capacity or tendency to confuse, mislead, and deceive the purchasing public into the belief that said products are manufactured by hand when such is not the fact; (*m*) of the words or phrase "solid gold, engraved all around" either independently or in connection or conjunction with any other word or words or in any other way so as to import or imply or which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the products so described are engraved by hand, when such is not the fact; (*n*) of the word or words "hand tooled" either independently or in connection or conjunction with any other word or words or in any other way so as to import or imply, or which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the products so described are made and finished by hand, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (October 7, 1929.)

490. **False and Misleading Advertising—Jewelry.**—Respondent, a corporation, engaged in the manufacture of jewelry and in the sale and distribution of same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the soliciting of the sale of and selling its products in interstate commerce, agreed to cease and desist from furnishing to its customers advertising matter or advertisements, and/or causing said advertising matter to be circulated or distributed in interstate commerce, using therein the words "amethyst," "topaz," "aquamarine," or "emerald" to describe products which are not amethyst, topaz, aquamarine, or emerald; and the words "seed pearls" to describe products which are not pearls; and the words "solid 14 kt. white gold rings" to describe rings which are not 14-karat white gold; or either or any of such representations in any way which may have the capacity or tendency to mislead and deceive the purchasing public into the belief that the products to which the same refer are amethyst, topaz, aquamarine, emerald, or pearl settings, when in truth and in fact such is not the case; or from using the words and figures "14 kt." and/or "white gold" as descriptive of products which are not composed of gold as represented.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts

may be used in evidence against it in the trial of the complaint which the commission may issue. (October 7, 1929.)

491. **False and Misleading Corporate Name, Advertising, and Brands or Labels—Woolen and Worsted Goods.**—Respondent, a corporation, engaged in the sale and distribution of woolen and worsted goods in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Mills" as a part of or in connection or conjunction with its corporate or trade name, and from the use of the words "Mills" and "manufacturers" either independently or in connection or conjunction with any other word or words in its advertising circulated in interstate commerce, or on its brands or labels affixed to products so as to import or imply that said corporation is the manufacturer or maker of said products. The said respondent also agreed to cease and desist from the use of the words "Mills" and "manufacturers" either independently or in connection or conjunction with any other word or words, or in any way, in the advertisement, sale, and/or distribution of its products in interstate commerce, which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said corporation owns, operates, and controls a mill or factory wherein the products advertised and sold by it are manufactured.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 7, 1929.)

492. **False and Misleading Trade Name and Advertising—Men's Ready-Made Clothing.**—Respondents, copartners, engaged in the sale and distribution of ready-made clothing for men in interstate commerce, and in competition with other partnerships, corporations, firms, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use—

(1) Of the words "Tailorcraft," "Tailoring," and/or "Tailors" as a part of or in connection or conjunction with their trade name and from the use of the words "Tailorcraft," "Tailoring," and/or "Tailors" in advertisements inserted in newspapers or other publications

having circulation between and among various States of the United States, so as to import or imply that said respondents own, control, or operate a mill or factory wherein are made and fabricated the clothing which they sell and distribute in interstate commerce; or which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said respondents are tailors and make clothing which they sell and distribute "to measure."

(2) Of such words and phrases as "Tailored to custom requirements," "Maker-to-wearer clothing," "Tailored to fit," "Send us the order and we make it up," "Splendidly tailored suits and topcoats," and/or any other similar statements, which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said respondents make to the measure of the customer the clothing sold by them, or that said respondents either own, control, or operate a mill or factory wherein the products sold by them in interstate commerce are actually tailored to measure, manufactured or fabricated.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (October 7, 1929.)

493. **False and Misleading Trade Name and Advertising—Table Covers, Dresser Scarfs, Table Runners, and Luncheon, Tea, and Buffet Sets.**—Respondent, an individual, engaged in the sale and distribution of table covers, dresser scarves, table runners, and luncheon, tea, and buffet sets in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of—

(*a*) The word "Manufacturing" as part of or in connection or conjunction with his trade name, in the sale and distribution of his products in interstate commerce, and from the use of said trade name containing the word "Manufacturing" inserted in newspapers or other printed matter circulated in interstate commerce so as to import or imply that said respondent owns or operates a mill or factory wherein are manufactured the products sold by him, when such is not the fact.

(*b*) The word "Linenette" as part of or in connection or conjunction with his trade name in the sale and distribution of his products in interstate commerce, and from the use of the said trade name containing the word "Linenette" in advertisements or other printed matter inserted in newspapers having circulation between and among various States of the United States, so as to import or imply that the

products sold by him in interstate commerce are made in whole or in part of linen, when such is not the fact.

(*c*) The word "embroidered" in advertisements inserted in newspapers circulated in interstate commerce so as to import or imply that the product so described and designated is embroidered, when such is not the fact.

(*d*) The words "Manufacturing," "linenette," and/or "embroidered" either separately or in connection or conjunction with each other, or with any other word or words, phrase or phrases, or in any other way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the said respondent owns, operates, or controls a mill or factory wherein the products sold by him are made; or that the product designated by him as "* * * Embroidered linenette ever-kleen tablecloths * * *" is in fact embroidered, or is composed in whole or in part of linen, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (October 16, 1929.)

494. **False and Misleading Representations and Advertising—Books.**—Respondent, a corporation, engaged in the business of publishing books and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling said book in interstate commerce, agreed to cease and desist forever from selling and distributing the said book in interstate commerce under the following title and representation: "Letters of Pontius Pilate written during His Governorship of Judæa to His Friend Seneca in Rome, Edited by W. P. Crozier," without at the same time disclosing that the same is written by W. P. Crozier and not merely "edited" by him; and/or from using any other words, phrases, or expressions which may have a tendency or capacity to confuse, mislead, and deceive the purchasing public into the belief that the contents of said book are a redaction or edition of ancient manuscripts, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 16, 1929.)

495. **False and Misleading Advertising and Brands or Labels—Soap and Soap Products.**—Respondent, a corporation, engaged in the business of manufacturing and selling soap and soap products in

interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist from the use of the word "naphtha" either alone or in combination with any other word or words, in the brand name of any soap product in the form of powder, flakes, or chips, or otherwise incidental to its advertisement and sale. That it will cease and desist from the use of the word "naphtha" either alone or in combination with any other word or words, in the brand name, or otherwise incidental to the advertisement and sale of soap in the form of bars or cakes, unless there be put into such soap upon its manufacture a quantity of naphtha sufficient in amount so that such soap will retain an amount of naphtha in excess of 1 per cent by weight of such soap, up to the time it is sold to the consuming public in the usual course of retail trade; and if it be necessary to that end, there will be incorporated in said soap, upon manufacture, ingredients other than naphtha which will retain the naphtha also incorporated therein or prevent its rapid volatilization.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 16, 1929.)

496. **False and Misleading Advertising—Hardware.**—Respondents, copartners, engaged in the sale and distribution of hardware by mail order in interstate commerce, and in competition with other partnerships, corporations, firms, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents agreed to cease and desist forever from the use in their catalogues or other advertising matter circulated in interstate commerce—

(*a*) Of the words "first quality" and/or "high grade" either independently or in connection or conjunction with any other word or words to define or describe their products so as to import or imply that said products are of high grade or quality, or which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are of the high grade or quality, when such is not the fact.

(*b*) Of the words "tool steel" and/or "special analysis steel" either independently or in connection or conjunction with any other word or words to define or describe their products so as to import or imply that said products are made of tool or other high-grade steel,

or which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said products are made of tool or other high-grade steel, when such is not the fact.

(c) Of the words "tempered" or "well tempered" either independently or in connection or conjunction with any other word or words to define or describe their products so as to import or imply that said products are of a superior temper, or which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said products are of a superior temper, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (October 16, 1929.)

497. **False and Misleading Advertising—Rubber Tile.**—Respondent, a corporation, engaged as a jobber or wholesaler in the sale and distribution of rubber tile in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "manufactured by" or of any other word or words in its advertising matter, or in any way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products so advertised and sold in interstate commerce are manufactured or fabricated by said respondent, or that the said respondent owns, operates, and controls a plant or factory in which the said products are manufactured or fabricated.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 23, 1929.)

498. **False and Misleading Advertising—Textiles; "Velvets."**—Respondent, a corporation, engaged in the manufacture of textiles, including a line of so-called "velvets" and in the sale and distribution of same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from representing or designating a fabric as "velvet," the pile of which is made of a product

or substance other than silk, the product of the cocoon of the silkworm, and from the use of the word "velvet" either independently or in connection or combination with any other word or words which import or imply that the pile of said product so marked, branded, advertised, and designated is made of silk; and said respondent further agreed to cease and desist from the use of the word "velvet" in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the pile of said products is made of silk, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 23, 1929.)

499. **False or Misleading Advertising—Cutlery and Kitchen Tools.**—Respondent, an individual, engaged in the sale and distribution in interstate commerce of certain types of cutlery and kitchen tools, and in competition with other individuals, corporations, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use in his advertisements and/or advertising matter of the words "stainless steel" either independently or in connection or conjunction with any other word or words so as to import or imply that the said products are manufactured or fabricated wholly of that material known to the trade and the purchasing public as stainless steel, and from the use of the words "stainless steel" in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said products are made of stainless steel, when such is not the fact; unless, when said products are made in part of stainless steel and in part of some other materials, and the words "stainless steel" are used to designate or describe such products, the words "stainless steel" shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the words "stainless steel" are printed so as to clearly indicate that said products are not made wholly of stainless steel, but in part of a material other than stainless steel; and said respondent further agreed to cease and desist from stamping his products on the handles with the words "stainless steel" or in any other way indicating or implying that all the metal parts are made of stainless steel, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts

may be used in evidence against him in the trial of the complaint which the commission may issue. (October 23, 1929.)

500. **False and Misleading Advertising and Brands or Labels—Candles.**—Respondent, a corporation, engaged in the manufacture of candles and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "beeswax" and "wax" either independently or in connection or conjunction with any other word or words, or in any other way, on its brands or labels or in its advertising matter distributed in interstate commerce, so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are composed of beeswax; unless, when said products are composed in substantial part of beeswax and the word "beeswax" or the word "wax" is used as a trade brand or designation for said products, in which case the said word "beeswax" or the word "wax" shall be accompanied by some other word or words which shall be displayed in type equally as conspicuous as that in which the word "beeswax" or the word "wax" is printed so as to indicate clearly that such products are not made wholly of beeswax, or that will otherwise properly and accurately represent or describe said products so as to indicate clearly that the same are composed in part of a product or products other than beeswax.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 23, 1929.)

501. **False and Misleading Advertising—Brass, Bronze, Cupro Nickel, and Nickel Alloy Products.**—Respondent, a corporation, engaged in the manufacture of products composed of brass, bronze, Cupro nickel, so-called nickel silver, and nickel alloys in the sale and distribution of same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its said product in interstate commerce, agreed to cease and desist forever from the use in its advertisements or advertising matter and on its letterheads of the word "silver" either independently or in connection or conjunction with any other word or words so as to import or imply that the

said product so designated is manufactured in whole or in part of that metal known to the trade and the purchasing public as silver; and from the use of the word "silver" in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said product is made in whole or in part of silver, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 29, 1929.)

502. **False and Misleading Advertising—Wearing Apparel and Dry Goods.**—Respondent, a corporation, engaged in the business of selling, chiefly by mail orders, a general line of wearing apparel and dry goods to the consumer in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in its catalogues and other advertising matter, distributed in interstate commerce, of the word "wool" either independently or in connection or conjunction with the word "all," or with any other word or words, or in any way, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are made wholly of wool, when such is not the fact. The said respondent also agreed to cease and desist from the use of the word "silk" either independently or in connection or conjunction with the word "all," or with any other word or words, or in any way as descriptive of its products, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are composed wholly of silk, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 29, 1929.)

503. **False and Misleading Advertising—Cigarettes and Other Tobacco Products.**—Respondent, a corporation, engaged in the manufacture of cigarettes and other tobacco products and in the sale and distribution of the same in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement

to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, as a means of soliciting the sale of and selling its products in interstate commerce, adopted and used numerous newspapers, magazines, and other publications having interstate circulation, and wherein the said respondent, and/or its advertising agents or agencies, caused advertisements to be inserted in the aforesaid publications featuring what purported to be the testimonials of famous people who smoke respondent's products and found they protect from irritation. Certain of said testimonials were obtained by respondent for a valuable consideration from the alleged authors thereof. The said advertising matter also contained a testimonial or indorsement purporting to be that of certain actresses in a musical show who were credited with the statement to the effect that through the use of respondent's cigarettes "that's how we stay slender"; when in truth and in fact the said actresses were not cigarette smokers and did not stay slender through the smoking of respondent's products. Further, in soliciting the sale of and selling its products in interstate commerce, the respondent caused certain of its advertising matter to be broadcast through a radio station located in a certain State and having a hook-up with radio stations located in other States of the United States, the said advertising matter included a testimonial purporting to be that of a well-known musical comedy star and which, in part, set forth that the alleged author of the testimonial, when making a certain talking picture, smoked that brand of cigarettes manufactured by respondent, and which, because of the special treatment employed in the manufacture of said cigarettes, had been freed of all irritants with the result that the smoking of said cigarettes kept the alleged author in good shape and feeling peppy and his voice as clear as a bell in every scene; when in truth and in fact the aforesaid comedy star authorized the aforesaid testimonial and received a consideration for the above statement attributed to him, but which statement he did not prepare, see prior to its use, or sign. In addition to the use of the alleged testimonials, the respondent caused various forms of advertising matter to contain such statements as "Every woman who fears overweight finds keen interest in new-day and common-sense ways to keep a slender, fashionable figure," "Women retain slender figures," and "No longer need you face the rigid requirements of harsh dieting methods. Overweight is banished," etc.; when in truth and in fact health and vigor to men, slender figures to women, and reduction of flesh in all cases will not necessarily result from the smoking of respondent's brand of cigarettes.

Respondent, its officers, agents, representatives, servants, and employees, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in newspapers,

magazines, radio talks, or other means of any and all testimonials and indorsements unless the same represent and are the genuine, authorized, and unbiased opinions of the author or authors or the alleged author or authors thereof, and if a monetary or other consideration has been given for a testimonial the said respondent shall publish or cause to be published, along with said advertisements, in an equally conspicuous manner, the fact that said testimonials have been paid for. The said respondent, its officers, agents, representatives, servants, and employees, also agreed to cease and desist from using in advertising matter or in radio talks statements or representations to the effect that "Women retain slender figures," and "Overweight is banished," or any other statements, representations, or words in advertisements or advertising matter circulated in interstate commerce or in radio talks broadcast through hook-ups in various States of the United States and in interstate commerce so as to import or imply or which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the smoking of respondent's cigarettes will bring slender figures and cause the reduction of flesh in all cases.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 18, 1929.)

504. **False and Misleading Advertising—Dress Goods Remnants.**—Respondent, an individual, engaged in the sale and distribution direct by mail order of dress goods remnants in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever in soliciting the sale of and selling his products in interstate commerce from the use in his advertisements in periodicals having circulation between and among various States of the United States (*a*) of the word "free" either independently or in connection or conjunction with any other word or words so as to import or imply that the products to which the same refer are in truth and in fact given as a gratuity, when such is not the fact; and from the use of the word "free" in any way which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said products so offered as free, are in fact given free, when such is not the fact; (*b*) of statements and representations importing or implying that his "free" offer is made for a limited time only, when the same is made without time limit in the regular course of business; (*c*) of statements and representations im-

porting or implying that purchasers' money will be refunded without fully disclosing the terms and conditions under which refunds will be made.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (October 22, 1929.)

505. **False and Misleading Advertising—Fly Catching Ribbon.**—Respondents, copartners, engaged in the sale and distribution of a sticky ribbon for catching flies in interstate commerce, and in competition with other partnerships, firms, corporations, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their said product in interstate commerce, agreed to cease and desist forever from the use in their advertisements and/or correspondence of the word "honey" either independently or in connection or conjunction with any other word or words so as to import or imply that said product is composed of, or treated with, honey; and from the use of the word "honey" in any way which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that said product is composed of honey or is treated with honey, when such is not the fact.

Respondent also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (November 22, 1929.)

506. **False and Misleading Advertising—Concentrates.**—Respondent, an individual, engaged as a jobber in the sale and distribution of concentrates in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the words "orange," "loganberry," "lemon," "lime," "banana," "cherry," "grape," "pineapple," and "strawberry" either independently or in connection or conjunction with any other word or words, or in any way in his advertising matter, or otherwise, to designate his products, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are composed of the juice or the fruit of the orange, loganberry, lemon, lime, banana, cherry,

grape, pineapple, and strawberry; unless (*a*) if the product is composed in substantial part of the juice or fruit of either the orange, loganberry, lemon, lime, banana, cherry, grape, pineapple, and strawberry so as to derive its color and flavor from said fruit, and the word "orange," "loganberry," "lemon," "lime," "banana," "cherry," "grape," "pineapple," and "strawberry" is used to designate the product, in which case the said designating word shall be accompanied by a word or words which shall be printed in type equally as conspicuous as that in which the said designating word is printed so as to clearly indicate that the product is not made wholly from the juice or fruit indicated by the said designating word, and that will otherwise properly and accurately represent, define, and describe the product so as to clearly indicate that the same is composed in part of a product or products other than the juice or fruit indicated by the said designating word; (*b*) if the product derives its flavor from other than fruit and the name of a fruit is used to designate or describe the flavor of said product, in which case the name of the fruit so used shall be immediately preceded by the word "imitation," or some other word or words, printed in type equally as conspicuous as that in which the name of the fruit is printed so as to indicate clearly that the flavor of said product is not derived from the fruit indicated or the juice of the same.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (November 22, 1929.)

507. **False and Misleading Advertising—Crêpe Paper.**—Respondent, a corporation, engaged in the manufacture of a general line of paper and paper specialties, including crêpe paper, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use of the statement, "It is the only crêpe paper that can be sewed successfully by hand or on a sewing machine," and or from any other statements or representations which will confuse, mislead, or deceive the trade and the purchasing public into the belief that its crêpe paper is the only product of its kind which can be successfully sewn, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 4, 1929.)

508. **False and Misleading Advertising—Files.**—Respondent, an individual, engaged in the business of purchasing used or discarded files and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from offering for sale and selling in interstate commerce used, secondhand, or reclaimed files without distinctly, definitely, and clearly stating, setting out, and informing customers and prospective customers that such files are used, secondhand, or reclaimed files.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (December 4, 1929.)

509. **Misbranding—Neckties.**—Respondent, a corporation, engaged in the manufacture of men's neckties and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "silk" on its brands or labels affixed to products sold and distributed by it in interstate commerce, so as to import or imply or which may have the capacity or tendency to confuse or mislead the purchasing public into the belief that the said products are composed of silk, the product of the cocoon of the silkworm; unless when the said products are composed in substantial part of silk and the word "silk" is used as descriptive thereof, in which case the word "silk" shall be accompanied by a word or words printed in type equally as conspicuous as that in which the word "silk" is printed so as to clearly indicate that the product is made in part of a material or materials other than silk.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 4, 1929.)

510. **False and Misleading Trade Name and Advertising—Social and Business Stationery.**—Respondents, an individual and a corporation, engaged in the business of printing stationery for social and business purposes and in the sale of same in interstate commerce, and in competition with other individuals, corporations, firms, and partnerships likewise engaged, entered into the following stipulation of facts

and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, the said individual and the said corporation, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of the word "Evograving" as part of or in connection or conjunction with their corporate or trade name, and from the use of the words "engraving," "embossing," "evograving," and/or "graving," or any of them, to represent or describe their products, either independently or in connection or conjunction with any other word or words, letter or letters, so as to import or imply that said products printed and sold by them are the result of impressions made by inked engraved plates, generally known to the purchasing public as engraving or embossing, and from the use of the aforesaid words in any way as descriptive of their products, which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are engraved or embossed, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said true stipulation of the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (December 6, 1929.)

511. **False and Misleading Trade Name and Advertising—Woolens.**—Respondent, a corporation, engaged in the sale and distribution of woolens in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Mills" as part of or in connection or conjunction with its corporate or trade name or names, and from the use in its advertising matter and/or on its stationery or other printed matter, circulated in interstate commerce, of the words "Mills," "manufacturers," or "direct to the consumer," either independently or in connection or conjunction each with the other, or with any other word or words, or in any other way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said respondent owns, controls, and operates a mill or factory wherein are made or fabricated the products which it sells, when in truth such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 6, 1929.)

512. **Misbranding—Typewriter Ribbons.**—Respondent, a corporation, engaged in the manufacture of typewriter ribbons and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its aforesaid product in interstate commerce, agreed to cease and desist forever from the use of the word "silk," either independently or in connection or conjunction with any other word or words so as to import or imply that the product so designated, represented, referred to, and/or labeled and sold in interstate commerce is manufactured from silk, the product of the cocoon of the silkworm; and from the use of the word "silk" either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said product is manufactured from silk, the product of the cocoon of the silkworm.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 6, 1929.)

513. **Misbranding—Malt Beverages.**—Respondent, a corporation, engaged in the manufacture of malt beverages and in the sale and distribution of same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of or selling its product in interstate commerce, agreed to cease and desist forever from the use of the word "Berlin" in connection or conjunction with the word "Bier" or the words "Auf Deutsche Art Gebrautes," "Lieblings Getrank Der Besten Familien," and/or in connection or conjunction with the pictorial representation of the German flag or other German emblem or insignia, or in any other way, on its brands or labels or otherwise to designate its product, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said product is made in Germany and/or imported into the United States, when in truth such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 6, 1929.)

514. **False and Misleading Trade Name and Advertising—Hosiery.**—Respondent, an individual, engaged in the sale and distribution of hosiery in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the words "Mills" and "Knitting" or either of them as part of or in connection or conjunction with his trade name or names in the sale and distribution in interstate commerce of his product, and from the use of the words "Mills," "Knitting," and "manufacturers," or of any of them, on his letterheads, envelopes, invoices, order blanks, or other printed matter distributed in interstate commerce in soliciting the sale of and selling his product, either independently or in connection or conjunction each with the other, or with any other word or words, pictorial representations, or in any way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said respondent owns, operates, and controls a mill or factory wherein is made the product sold by him in interstate commerce, or until such time as the said respondent does actually own, operate, and control a mill or factory wherein the said product is made.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (December 6, 1929.)

515. **False and Misleading Advertising—General Merchandise.**—Respondent, a corporation, engaged in the sale and distribution by mail order of a large variety of merchandise in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Bristles" either independently or in connection or conjunction with any other word or words so as to import or imply that the products so designated and described are made of that material known to the trade and the purchasing public as bristles; and from the use of the word "bristles" in any way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said products are made of bristles, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the

facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 16, 1929.)

516. **Misbranding—Mercerized Cotton Yarns.**—Respondent, a corporation, engaged in the manufacture of mercerized cotton yarns and of the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its aforesaid products in interstate commerce, agreed to cease and desist forever from the use of the word "silk" either independently or in connection or conjunction with any other word or words, letter or letters, so as to import or imply that the products so designated, represented, referred to or labeled and sold in interstate commerce are manufactured in whole or in part from silk, the product of the cocoon of the silkworm; and from the use of the word "silk" either independently or in connection or conjunction with any other word or words, letter or letters, or in any way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the products so designated and sold by said respondent in interstate commerce are manufactured in whole or in part from silk, the product of the cocoon of the silkworm, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 16, 1929.)

517. **False and Misleading Advertising—Leather Harness.**—Respondent, a corporation, engaged in the manufacture of leather harness and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from (*a*) representing, directly or indirectly, that James M. Walsh is living and giving his personal attention to the management and direction of its business; (*b*) representing, directly or indirectly, that prices quoted by it are wholesale prices, when the same are in fact retail prices.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 20, 1929.)

518. **False and Misleading Brands and Advertising—Soap Products.**—Respondent, a corporation, engaged in the manufacture of soap and soap products and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "naphtha" either independently or in connection or conjunction with any other word or words in the brand name of any soap or soap products manufactured by it, or otherwise incidental to the advertisement and sale of soap and soap products, when such soap and soap products contain no hydrocarbon other than the petroleum distillate known in the petroleum industry and to the purchasing and consuming public as kerosene; and the said respondent also agreed to cease and desist from the use of the word "naphtha" either independently or in connection or combination with any other word or words or in any way as a brand name for its soap products in the form of flakes, chips, or powder, or otherwise incidental to the advertisement and sale of such soap products, and in the event such word as "naphtha" is used in the brand name of said products, in which case there will be incorporated in such products, when manufactured, a quantity of the hydrocarbon known to the trade and purchasing public as naphtha sufficient in amount so that said products will retain an amount of such hydrocarbon in excess of 1 per cent by weight of such soap up to the time it is sold to the consuming public in the usual course of retail trade, and if it be necessary to that end, that there will be incorporated in such soap upon manufacture, ingredients other than naphtha which will retain the naphtha also incorporated therein, or prevent its rapid volatilization.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 20, 1929.)

519. **False and Misleading Advertising, Trade Name and Brands—Tile Flooring.**—Respondent, a corporation, engaged in the manufacture of tile flooring and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "Rubberstone" as part of or in connection or conjunction with its corporate or trade name, in soliciting the sale of or selling its product in interstate commerce, and from the use of the word "rubber" either independently or in connection or conjunction with the word "stone" or with any other word or words, or in any way in its advertising matter or as a trade brand or designation for its product, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said product contains rubber, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 20, 1929.)

520. **Misbranding—Confectionery.**—Respondent, a corporation, engaged in the manufacture of confectionery and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use on brands or labels for such products of the words "home made" either independently or in connection or conjunction with any other word or words so as to import or imply that the products so designated, represented, referred to, or labeled and sold in interstate commerce are made or fabricated in the home and/or by hand; and from the use of the words "home made" either independently or in connection or conjunction with any other word or words, or in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers thereof into the belief that the products so designated, represented, labeled, and sold in interstate commerce are made in the home and/or by hand, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 20, 1929.)

521. **False and Misleading Advertising—Fly Ribbon.**—Respondent, a corporation, engaged in the sale and distribution of a sticky ribbon for catching flies in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease

and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use in its advertisements of the word "honey" either independently or in connection or conjunction with any other word or words so as to import or imply that said product is composed in substantial part, or substantially treated with, honey; and from the use of the word "honey" in any way which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that said product is composed in substantial part of honey, or is substantially treated with honey, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 23, 1929.)

522. **False and Misleading Advertising—Towels, Toweling, Sheets, and Sheeting.**—Respondent, a corporation, engaged in the sale and distribution of towels, toweling, sheets, and sheeting in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its said product in interstate commerce, agreed to cease and desist forever from the use in newspaper or other advertising matter, or as a trade name or brand, of the word "lineen" either independently or in connection or conjunction with any other word or words so as to import or imply that the product so designated, represented, referred to, or labeled and sold in interstate commerce is manufactured from material derived from flax or hemp; and from the use of the word "lineen" either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasers thereof into the belief that the product so designated is manufactured from material derived from flax or hemp, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 23, 1929.)

523. **Resale Price Maintenance—Mercerized Cotton Fabric.**—Respondent a corporation, engaged in the sale and distribution of a mercerized cotton fabric, used chiefly for women's and children's dresses, draperies, and pyjamas in interstate commerce, and in com-

petition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the following cooperative methods: (*a*) Seeking and securing from its customers promises or assurances that they would cooperate with said corporation in the maintenance of any system of resale prices whatsoever; (*b*) seeking and securing the cooperation of its customers in reporting the names of, and other information in reference to, competitors and others who fail to maintain said resale prices; (*c*) seeking and securing by any means whatsoever agreements, promises, or assurances of cooperation from alleged price cutters that such offenders will maintain suggested resale prices, as a condition to further supplying said offenders with its products; (*d*) directly or indirectly carrying into effect, by cooperative methods, any system whatsoever for the maintenance of resale prices established by said corporation.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 1, 1930.)

524. **False and Misleading Trade Name and Advertising—Sport Wear, Sweaters, Bath Suits, Infants' Knit Wear, Knit-Wear Specialties.**—Respondent, a corporation, engaged in the business, as a jobber and distributor, of selling and distributing knit-wear specialties, including novelties, sport wear, sweaters, bath suits, fancy knit goods, and infants' knit wear in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "MillerKnit" as part of or in connection or conjunction with its corporate or trade name and from the use of the words "MillerKnit," "Knit," and "Mills" either independently or in connection or conjunction each with the other or with any other word or words or in any other way on its stationery or in its advertisements or advertising matter so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that said respondent owns, operates, and controls the mill or factory wherein are actually made, knitted, or fabricated the products sold and distributed by it in interstate commerce.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts

may be used in evidence against it in the trial of the complaint which the commission may issue. (January 3, 1930.)

525. **False and Misleading Advertising and Labels—"Pyro-Pine."**—Respondent, a corporation, engaged in the manufacture, compounding, and preparation of drugs, medicines, and chemicals, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use in its advertising matter and/or in wrappers or labels of statements and representations that Pyro-Pine is the concentrate, or the same mineral salt that makes effective the waters of European baths and American hot springs; that Pyro-Pine opens the bodily pores, stimulates the perspiration, and/or causes fat and bodily poisons to be sweated out; that its use reduces the weight of the human body, either generally or as to specific parts thereof; that the use of Pyro-Pine is beneficial in cases of rheumatism, neuralgia, or other similar diseases.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 3, 1930.)

526. **False and Misleading Advertising—Toy Airplanes.**—Respondent, a corporation, engaged in the manufacture of toy airplanes and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competiton as set forth therein.

Respondent, in soliciting the sale of and selling its said products in interstate commerce, agreed to cease and desist forever from the publication, circulation, and distribution in interstate commerce of advertisements or advertising matter which does not accurately represent and describe the products offered for sale and/or the results obtained thereby.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 8, 1930.)

527. **Simulation of Trade Name—Paper Box Board and Box-Makers' Supplies.**—Respondent, an individual, engaged in the business of selling paper box board and box-makers' supplies, as a jobber, in interstate commerce, and in competition with other indi-

viduals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the word "Nashua" in his advertising matter circulated in interstate commerce, or as a trade brand or designation for his products so as to import or imply that said products are made by the Nashua Gummed & Coated Paper Co., when such is not the fact; and from the use of the word "Nashua" either independently or in connection or conjunction with any other word or words, or in any way in his advertising matter, or as a trade brand or designation for his products which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said products are the products of said Nashua Gummed & Coated Paper Co., when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (January 8, 1930.)

528. **False and Misleading Advertising—Proprietary Medicines.**—Respondent, a corporation, engaged in compounding, selling, and distributing a proprietary medicine in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use of advertising matter which does not truthfully represent and describe the product which it offers for sale or the results obtained from its use.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 8, 1930.)

529. **False and Misleading Advertising—Pleasure Boats.**—Respondent, a corporation, engaged in the manufacture of small pleasure boats and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "mahogany" and "Philippine mahogany" either indepen-

dently or in connection or conjunction with any other word or words in its advertisement, or as a trade designation for said products, so as to import or imply that such products are those products which are derived from trees of the mahogany or Meliaceæ family, when such is not the fact; and the said respondent further agreed to cease and desist from the use of the word "mahogany" either independently or in connection or conjunction with the word "Philippine," or with any other word or words, or in any way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into belief that said products are those products which are derived from trees of the mahogany or Meliaceæ family, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 13, 1930.)

530. **False and Misleading Advertising—Floor, Furniture, and Automobile Polishes.**—Respondent, an individual, engaged in the manufacture of liquid floor, furniture, and automobile polishes and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competiton as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "wax" either independently or in connection or conjunction with any other word to designate his said product distributed in interstate commerce so as to import or imply that the said product is manufactured in substantial part from that product known to the trade and the public as wax; and from the use of the word "wax" in any way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said product is made of wax in whole or in part; unless, when said product is made in substantial part of wax and in part of some other ingredient or ingredients, and the word "wax" is used to designate or describe the product, in which case the word "wax" shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the word "wax" is printed so as to indicate clearly that said product is made in part of an ingredient or ingredients other than wax.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (January 13, 1930.)

531. **False and Misleading Trade Name, Labels, and Advertising—Milk of Magnesia Wafers.**—Respondent, a corporation, engaged in the sale and distribution of milk of magnesia wafers in interstate com-

merce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use of the word "Laboratories" as part of or in connection or conjunction with its corporate or trade name, so as to import or imply that said respondent either operates or controls a factory or laboratory in which is manufactured or compounded the product sold by it in interstate commerce, and from the use of the word "Laboratories" as part of or in connection or conjunction with its corporate or trade name, or in any other way which may have the tendency and capacity to confuse, mislead, or deceive the purchasing public into the belief that the respondent owns, operates, or controls a factory or laboratory wherein are made or compounded the product sold by it in interstate commerce; and from the use in its advertising on labels, circulars, or in any other way of statements to the effect that "Each wafer represents two teaspoonfuls milk of magnesia," when such is not the fact, or until such time as said respondent does actually sell in interstate commerce a product of which each wafer is actually equivalent to two teaspoonfuls of milk of magnesia.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 13, 1930.)

532. **False and Misleading Advertising and Brands or Labels—Fishing Tackle.**—Respondent, a corporation, engaged in the importation, manufacture, sale, and distribution of fishing tackle in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling the aforesaid product in interstate commerce, agreed to cease and desist forever from the use of the words "Silk Gut" either independently or in connection or conjunction with any other word or words so as to import or imply that the product so designated, represented, referred to, labeled, branded, advertised, and sold in interstate commerce is a "silk gut" leader, as that term is generally understood and used by the trade and the purchasing public, and from the use of the words "Silk Gut" either independently or in connection or conjunction with any other word or words, or in any other way which may have the tendency or capacity to confuse, mislead, and deceive the trade and/or the purchasing public into the belief that the product so designated and sold

by said respondent in interstate commerce is a "silk gut" leader, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 22, 1930.)

533. **False and Misleading Advertising and Brands or Labels—Cotton Goods.**—Respondent, a corporation, engaged in the sale and distribution of cotton goods in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "charmeuse" either independently or in connection or conjunction with any other word or words, so as to import or imply that the product so designated, represented, referred to, or labeled and sold in interstate commerce is manufactured from silk, the product of the cocoon of the silkworm, when such is not the fact; and from the use of the word "charmeuse" in any other way which may have the capacity and tendency to confuse, mislead, and deceive purchasers thereof into the belief that the product so designated is manufactured from silk, the product of the cocoon of the silkworm, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 22, 1930.)

534. **False and Misleading Advertising—Motor Boats.**—Respondent, a corporation, engaged in the sale and distribution of motor boats in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in advertisements, circulars, and/or catalogues circulated in interstate commerce of statements or representations implying that the said corporation either owns, operates, or controls a plant or factory wherein are built and manufactured the products so advertised and sold by it in interstate commerce; and from the use of statements or representations in any way which may have the capacity and tend-

ency to confuse, mislead, and deceive the purchasing public into the belief that the aforesaid respondent either owns, operates, or controls a plant or factory wherein are built and manufactured the products sold by it in interstate commerce; the use in advertisements, circulars, and/or catalogues circulated in interstate commerce of the word "mahogany" either independently or in connection or conjunction with any other word or words so as to import or imply that its motor boats are constructed in whole or in part of wood derived from trees of the mahogany or Meliaceæ family, when such is not the fact; and from the use of the word "mahogany" either independently or in connection or conjunction with the word "Philippine" or with any other word or words, or in any way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said motor boats are constructed in whole or in part of wood derived from trees of the mahogany or Meliaceæ family, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 22, 1930.)

535. **False and Misleading Advertising—Motor Boats.**—Respondent, a corporation, engaged in the sale and distribution of motor boats in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "mahogany" either independently or in connection or conjunction with any other word or words in its advertisements, so as to import or imply that the motor boats which it sells are constructed in whole or in part of wood derived from trees of the mahogany or Meliaceæ family, when such is not the fact; and from the use of the word "mahogany" either independently or in connection or conjunction with the word "Philippine" or with any other word or words, or in any way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said motor boats are constructed in whole or in part of wood derived from trees of the mahogany or Meliaceæ family, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 22, 1930.)

536. **False and Misleading Trade Name, Advertising, and Brands or Labels—Paints, Enamels, and Similar Products.**—Respondent, a corporation, engaged in the sale and distribution of paints, enamels, varnishes, roof coatings, and other similar products in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from (*a*) the use of the word "Manufacturing" as part of or in connection or conjunction with its corporate or trade name so as to import or imply that said respondent either owns, operates, or controls a mill or factory in which are manufactured or fabricated the products sold by it in interstate commerce; and from the use of said corporate name, containing the word "manufacturing," and on sample color cards, in circulars, and/or other advertising matter circulated in interstate commerce; and from the use of the word "manufacturing" either independently or in connection or conjunction each with the other, or with any other words or phrases so as to import or imply that the said respondent either owns, operates, or controls a mill or factory wherein are manufactured the products so advertised and sold by it in interstate commerce; the respondent company also agreed to cease and desist forever from the use of the word "manufacturing" either independently or in connection or conjunction with any other word, phrase, or statement, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the aforesaid respondent either owns, operates, or controls a factory wherein are manufactured the products sold by it in interstate commerce; (*b*) the use of statements and representations to the effect that it is a branch of, or affiliated with, Sherwin-Williams Co., when such is not the fact; (*c*) the use of the words "Rubberseal" and/or "Rubbersealit" as trade names or brands, or in its advertisements circulated in interstate commerce, either independently or in connection or conjunction with any other word or words to designate its products distributed in interstate commerce, so as to import or imply that the said products are composed in whole or in part of rubber; and from the use of the word "rubber" either independently or in connection or conjunction with any other word or words, letter or letters, so as to confuse, mislead, or deceive the purchasing public into the belief that said products are composed in whole or in part of rubber, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 22, 1930.)

537. **False and Misleading Advertising.—Books.**—Respondents, copartners, engaged in the book publishing business and in the sale and distribution of such books in interstate commerce, and in competition with other partnerships, firms, corporations, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their product, The Holly Edition, in interstate commerce, agreed to cease and desist forever from such statements or representations as "the authentic text," "the first authentic text," or "the complete text" as descriptive of the said edition, when in in truth such statements or representations are not supported in fact; and the said copartners also agreed to cease and desist from the use of the words "authentic" and "complete" either independently or in connection or conjunction with any other word or words, or in any other way as descriptive of the said edition so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said Holly Edition is an authentic edition of Edgar Allan Poe's story entitled "The Gold Bug," or that the said edition is an authentic and/or complete text of the said story containing all of Edgar Allan Poe's major and minor alterations and additions, when in truth such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (January 22, 1930.)

538. **False and Misleading Advertising—Monuments, Statues, and Building Stone.**—Respondent, an individual, engaged in the sale and distribution, at wholesale, of monuments, statues, and building stone of granite and marble in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use on his letterheads, printed or other advertising matter, of the words "Aberdeen, Scotland" in connection or conjunction with the words "branch office" or with any other word or words, or in any way; and the words "Barre, Vt." in connection or conjunction with the words "works at," or with any other word or words, or in any other way so as to import or imply or which may have the capacity or tendency to confuse or mislead the purchasing public into the belief that the said respondent has or operates an office at Aberdeen, Scotland, and has or operates a plant or works at Barre, Vt., when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (January 22, 1930.)

539. **False and Misleading Advertising and Brands or Labels—Auto Enamel.**—Respondent, an individual, engaged in the sale and distribution of paints, varnishes, brushes, and other painting supplies in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the word "rubber" either independently or in connection or conjunction with any other word or words so as to import or imply that the product sold by him under the name of "J. W. P. Auto Enamel" is in truth and in fact a product manufactured in whole or in part from rubber; and from the use of the word "rubber" either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the said product is manufactured in whole or in part from rubber so as to be properly and accurately designated, described, and referred to as a "rubber" enamel.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (January 22, 1930.)

540. **False and Misleading Advertising and Brands or Labels—Automobile Tires.**—Respondents, corporations, engaged in the business of manufacturing and in the sale and distribution of automobile tires in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of the letters "AAA" either independently or in connection or con junction with any other word or words, or in any other way, as a brand or label for their said products, or in their advertisements or advertising matter circulated in interstate commerce, so as to import or imply or which may have the capacity or tendency to mislead or deceive the purchasing public into the belief that the use of such brand or label is or has been authorized or licensed by the American

Automobile Association, or that such products are or have been indorsed or approved by said association, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (January 22, 1930.)

541. **False and Misleading Advertising—Blankets, Undergarments, Outergarments, and Luggage.**—Respondent, a corporation, engaged in the sale and distribution, by mail order direct to purchasers, of blankets, under and outer garments, luggage and other similar merchandise in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from representing, directly or indirectly, that it either owns, operates, or controls a mill or factory in which are manufactured or fabricated the products sold by it in interstate commerce, and/or in any way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that it owns, operates, or controls a mill or factory wherein are manufactured or fabricated the products sold by it in interstate commerce; and said respondent further agreed to cease and desist from making statements in reference to the wool content of the products which it sells and distributes in interstate commerce, such as "Made of pure virgin wool, combined with just enough strong Tsin-Tsin cotton," and/or any similar expression which may be calculated to mislead and deceive the purchasing public into the belief that said products are made in substantial part of wool, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 24, 1930.)

542. **False and Misleading Advertising—Artificial Limbs.**—Respondents, copartners, engaged in the manufacture of artificial limbs and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, firms, corporations, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents agreed to cease and desist forever from—

(*a*) Circulating in interstate commerce undated testimonials in connection wtith alleged portraits of customers wearing artificial

limbs purchased from said copartnership in such a way as to suggest or lead the purchasing public to believe that such testimonials are of recent date and/or such wearers are still living, when such is not the fact.

(b) Circulating in interstate commerce imposed or "faked" cuts, calculated, when taken in connection with accompanying testimonials, to confuse, mislead, and deceive the purchasing public into the belief that the individuals so pictured were photographed in places and surroundings, or engaged in occupations, other than those which actually existed, or that such individuals are still living, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (January 29, 1930.)

543. **False and Misleading Advertising, and Brands or Labels—Facial Creams, Emulsions, Powders, and Similar Preparations.**—Respondent, a corporation, engaged in the manufacture and importation of facial creams, emulsions, powders, soaps, astringents, lotions, perfume, rouges, and other similar preparations for ladies' use, and in the sale and distribution of same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Paris" on its brands or labels or in its advertising matter or in any way so as to import or imply or which may tend to deceive the purchasing public into the belief that the said respondent has a place of business in Paris, France, when in truth such is not the fact; and the said respondent also agreed to cease and desist from the use of the word "Paris" either independently or in connection or conjunction with the words "Lait D'Amandes," "Crème Perfection," "Crème Anti-Rides," or with any other word or words, or in any way on its brands or labels or otherwise to designate its products so as to import or imply or which may have the capacity or tendency to mislead or deceive the purchasing public into the belief that the said products are made in France and/or imported into the United States, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 29, 1930.)

544. **False and Misleading Advertising and Brands or Labels—Imitation Pearls, Etc.**—Three respondents, corporations, one engaged in the manufacture of products containing genuine and imitation stones and in the sale and distribution of the same in interstate commerce, the second engaged in dealing in imitation pearls, crystals, jade, and other similar products in interstate commerce, and the third engaged in dealing in imitation pearls in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use in advertisements, labels, markings on boxes, and otherwise of the words "pearl," "crystal," "jade," "amethyst," and/or "ruby" either independently or in connection or conjunction each with the other, or with any other word or words, so as to import or imply that their products are made of natural stones, when such is not the fact; and from the use of the words "pearl," "crystal," "jade," "amethyst," "ruby," and/or "synthetic" in any way which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that said products are made of natural stones; unless when any of the words "pearl," crystal," "jade," "amethyst," or "ruby" is used to designate or describe such products, such designating word shall be accompanied by the word "imitation" or some other word or words printed in type equally as conspicuous as that in which the said designating word is printed so as to indicate clearly that said products are not made of natural stones; and from the use of the words "synthetic" and/or "indestructible" so as to import or imply that said products are synthetic and/or indestructible, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (January 31, 1930.)

545. **False and Misleading Advertising—Paper.**—Respondent, a corporation, engaged as a jobber of paper and in the sale and distribution of same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the letter and words "S. Sulphite Trunk Wrapper" either independently

or in connection or conjunction with any other word or words as descriptive of its said products so as to import or imply that said products have a rupture strength capable of withstanding a Cady or Mullen test of not less than 150 pounds to the square inch, or that said products have the qualifications of tensile strength and weight as specified by rulings of the Interstate Commerce Commission and the regulations of the trade; and the said respondent also agreed to cease and desist from the use of the letter and word "S. Sulphite" either independently or in connection or conjunction with any other word or words, or in any way as descriptive of its products, which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products have a rupture strength capable of withstanding a Cady or Mullen test of not less than 150 pounds to the square inch, or that said products have the qualification of tensile strength or weight as specified by the rulings of the Interstate Commerce Commission and the regulations of the trade, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 13, 1930.)

546. **False and Misleading Trade Name Advertising, and Brands or Labels—Piece Goods.**—Respondent, a corporation, engaged in the importation of piece goods in the gray, which were "finished" locally, and in the sale and distribution of same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling the aforesaid products in interstate commerce, agreed to cease and desist forever from the use of the word "Nusylk" either independently or in connection or conjunction with any other word or words so as to import or imply that the products so designated, represented, or labeled and sold in interstate commerce are manufactured from silk, the product of the cocoon of the silkworm, and from the use of the word "silk" or the phonetic spelling thereof "sylk" either independently or in connection or combination with the letters "Nu" or with any other letters or words, or in any way which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are manufactured from silk, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts

may be used in evidence against it in the trial of the complaint which the commission may issue. (January 31, 1930.)

547. **False and Misleading Trade Name, Advertising, and Brands or Labels—Piece Goods.**—Respondent, a corporation, engaged as a sales agency of and for piece-goods products and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling the aforesaid products in interstate commerce, either as principal or agent therefor, agreed to cease and desist forever from the use of the word "Nusylk" either independently or in connection or conjunction with any other word or words so as to import or imply that the products so designated, represented, or labeled and sold in interstate commerce are manufactured from silk, the product of the cocoon of the silkworm and from the use of the word "silk" or the phonetic spelling thereof "sylk" either independently or in connection or combination with the letters "Nu" or with any other letters or words, or in any way which may have the capacity or tendency to mislead or deceive the purchasing public into the belief that the said products are manufactured from silk, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 31, 1930.)

548. **False and Misleading Advertising—Imprint Lead Pencils.**—Respondent, a corporation, engaged in the sale direct to purchasers by mail orders of imprint lead pencils in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the words or figures "22 Kt." "gold," and/or "gold leaf" in its advertisements, circulars, and other advertising matter circulated in interstate commerce to describe and designate its products, so as to import or imply that said products are engraved or imprinted in gold or gold leaf, when such is not the fact; and from the use of the word or figures "22 Kt." and/or "gold" either independently or in connection or conjunction with any other word or words, or in any other way which may have the tendency and capacity to confuse, mislead, or deceive the purchasing public into the belief that the products so described and designated are engraved or imprinted in gold or gold leaf, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 31, 1930.)

549. **False and Misleading Trade Name and Advertising—Men's Clothing.**—Respondent, an individual, engaged in the manufacture of men's clothing and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "Mills" as part of or in connection or conjunction with his trade name or in any other way in soliciting the sale of and selling his product in interstate commerce, so as to import or imply that he owned, operated, or controlled a mill or factory for the manufacture of the cloth from which his product is made, and further from the use of the word "Mills" in any way so as to mislead or deceive the purchasing public into the belief that he owned, operated, or controlled a mill or factory for the manufacture of the cloth from which his product is made, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (February 3, 1930.)

550. **False and Misleading Advertising—Colic Remedy or Medicine.**—Respondent, an individual engaged in the manufacture of a so-called colic remedy or medicine for household use and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist and hereafter to abandon the publication, circulation, and distribution in interstate commerce of any advertising which does not truthfully represent and describe the product offered for sale, or the results obtained by its use.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (February 3, 1930.)

551. **Simulation of Goods—Finger Cots.**—Respondent, a corporation engaged in the sale and distribution of druggists' sundries, including finger cots, in interstate commerce, and in competition with

other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use, by advertisements or otherwise, of the word "Paroubek" or the abbreviation thereof "Paro," either independently or in connection or conjunction with any other word or words, or in any way, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that its product is the product of a competitor. The said respondent also agreed to cease and desist from advertising and selling or offering for sale in interstate commerce its product mounted on cards simulating in color, style, size, design, and/or general appearance the cards used by a competitor, as a mounting for the products of the latter, and which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the products of the said respondent are the products of the said competitor.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 5, 1930.)

552. **Misbranding—Paints, Varnishes, and Painters' Supplies.**—Respondent, a corporation engaged in the sale and distribution, at wholesale, of paints, varnishes and painters' supplies in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its said products in interstate commerce, agreed to cease and desist forever from—

(*a*) The use on labels or otherwise of the words "manufactured only" by respondent company, and from the use of the word "manufactured" or "manufacturers" in any way which may have the tendency or effect to confuse, mislead, and deceive purchasers into the belief that said respondent is the manufacturer of the products which it sells and distributes in interstate commerce, when such is not the fact.

(*b*) The use on labels or otherwise of such representations as "Electrochemically pure aluminum bronze" and from the use of the words "pure " and/or "aluminum," or either of them, either alone or in combination with any other word or words, or in any other way which may have the tendency and capacity to confuse, mislead, and

deceive the purchasers into the belief that the product is chemically pure aluminum bronze, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 5, 1930.)

553. **False and Misleading Advertising—Fountain Pens and Pen Points.**—Respondent, a corporation engaged in the manufacture of fountain pens and pen points and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "iridium" either independently or in connection or conjunction with any other word or words or in any other way in its advertisements or advertising matter distributed in interstate commerce, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the products so referred to are made of, tipped, or equipped with iridium, when in truth such is not the fact.

Respondent further agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 7, 1930.)

554. **False and Misleading Advertising—Coffee.**—Respondent, an individual, engaged in the sale and distribution of coffee in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist forever from the use in his catalogues, radio talks, and other advertising means of the words "cultured ripened" as descriptive of or to designate his product, and from the statement or representation that his said product has been treated with a ripening process involving fungous growth, when in truth it has not been so ripened or treated; and the said respondent also agreed to cease and desist from the use of the words "cultured ripened" and the statement or representation "A special ripening process consisting of ripening the coffee in high-temperature rooms for 14 days with fungous growth" either independently or in

connection or conjunction each with the other, or with any other words, statements, representations, or in any way as descriptive of the process of treating his product, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that said product is "cultured ripened" or has been treated with a ripening process involving fungous growth.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (February 7, 1930.)

555. **Exclusive Dealings—Rubber and Metal Plumbing.**—Respondent, a corporation, engaged in the manufacture of rubber and metal plumbing specialties and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from making any sales or contracts for the sale of goods, ware, merchandise, supplies, or other commodities, or fixing a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the purchaser shall not use or deal in the goods, wares, merchandise, supplies, or other commodities of a competitor or competitors of the seller, where the effect of such sale or contract for sale, or of such condition, agreement, or understanding, may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 7, 1930.)

556. **Passing Off and Simulation—Anticrow and Bird Chemical.**—Respondent, a corporation, engaged in the manufacture of chemicals and particularly of a product designed to prevent crows and other birds from pulling up seed corn after planting, and in the sale and distribution of such product in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its product in interstate commerce agreed to cease and desist forever from the following practices:

(*a*) The use in interstate commerce in its advertising matter or advertisements or as a trade brand or designation for its product of the word "Repellent," the pictorial representation of a crow or a container simulating in size, shape, or appearance the container used by its competitor either independently or in connection or conjunction each with the other, so as to import or imply that the said product sold by it in interstate commerce is that of its competitor. Respondent further agreed that it would not use any other trade brand or designation for its product so as to mislead, confuse, or deceive the purchasing public into the belief that the product is that of its competitor, when such is not the fact.

(*b*) Copying the advertising matter of said competitor and circulating the same in interstate commerce.

(*c*) Stating or representing to customers and/or prospective customers that its product and that of its competitor are identical and/or are made by the same concern, and/or that it has purchased the business of its competitor, when such is not the fact, or from any other similar act or acts, methods, or practices which may have the effect of misleading and confusing the purchasing public in respect to the origin of the product.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 7, 1930.)

557. **False and Misleading Trade Name, Advertising, and Brands or Labels—Woven Fabrics for Suitings.**—Respondents, copartners engaged in the sale and distribution of woven fabrics for suitings in interstate commerce, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following stipulation of facts and agreements to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use as a trade name, brand, or designation for their products of the word "Lampelt" and/or "Fur Fabric," and from the use of tickets or labels sold and distributed with their products containing the words "Lampelt" and/or the words "Fur Fabric," or any other word or words which import or imply that the products to which the said labels are affixed are made of the pelt or skin of a sheep or a lamb, or of the pelt or hide of a fur-bearing animal, when such is not the fact; and from the use of the word "Lampelt" and/or the words "Fur Fabric" either independently or in connection or conjunction each with the other, or with any other word or words, or in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said products are made of the pelt

or hide of a sheep, a lamb, or of a fur-bearing animal, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulations as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (February 10, 1930.)

558. **False and Misleading Advertising—Paraffin Paper Containers.**—Respondent, a corporation engaged as a jobber in the sale and distribution of paraffin paper containers in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from misrepresenting, directly or indirectly, the true intent and meaning of its contracts and from the use of the word "Manufacturer" or "Manufacturers" on its billheads, letterheads, and/or other stationery circulated in interstate commerce so as to import or imply that it manufactures the products which it sells, and from stating and representing, directly or indirectly, that it is a manufacturer, when such is not the fact, or any other statement or representation so as to import or imply that said respondent owns, operates, or controls a mill or factory in which are manufactured or fabricated the products sold by it in interstate commerce; and from the use of the word "Manufacturer" or "Manufacturers" in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said respondent owns, operates, or controls a mill or factory wherein are manufactured or fabricated the products sold by it in interstate commerce, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 14, 1930.)

559. **False and Misleading Advertising and Brands or Labels—Paints and Varnishes.**—Respondent, an individual engaged in the sale and distribution of paints and varnishes in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the word "Manufacturer" on his stationery, or in advertisements or otherwise, so as to import or imply that the said respondent owns,

operates, or controls a mill or factory in which are manufactured or fabricated the products sold by him in interstate commerce, and from the use of the word "Manufacturer" in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that he owns, operates, or controls a mill or factory wherein are manufactured or fabricated the products sold by him in interstate commerce; and from the use on labels or otherwise of the words "Ground in pure linseed oil" either independently or in connection or conjunction with any other word or words so as to import or imply that the product so designated, represented, referred to, or labeled and sold in interstate commerce is made or compounded in such substantial part of linseed oil as to properly represent it is a product " ground in linseed oil," as that term is generally understood by the trade and the purchasing public, and from the use of the words " ground in pure linseed oil " either independently or in connection or conjunction with any other word or words or in any other way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the product so designated, labeled, and sold by said respondent in interstate commerce is manufactured or compounded in such substantial part of linseed oil as to constitute it a product "ground in linseed oil" as that term is generally understood by the trade and the purchasing public, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (February 14, 1930.)

560. **Misbranding or Mislabeling—Paints and Varnishes.**—Respondent, a corporation, engaged in the manufacture of paints and varnishes and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use on its labels of the words "Ground in linseed oil," so as to import or imply that the said product to which the same refers is manufactured or compounded in such substantial part of linseed oil as to constitute a product "ground in linseed oil," as that term is understood by the trade and purchasing public, and from the use of the words "ground in linseed oil," in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief

that the said product is manufactured or compounded in such substantial part of linseed oil as to constitute a product "ground in linseed oil" as that term is understood by the trade and the purchasing public, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 14, 1930.)

561. **Misbranding—Silk Fabrics.**—Respondent, a corporation, engaged in the importation of silk fabrics and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "Honangee" and "Honan de Chine," either independently or in connection or conjunction with any other word or words so as to import or imply that the products so designated, represented, referred to, or labeled and sold in interstate commerce are made in Honan, China, and are the product of the wild silkworm of that Province; and from the use of the words "Honangee" and/or "Honan de Chine," either independently or in connection or conjunction with any other word or words or in any other way which may have the capacity and tendency to confuse, mislead, and deceive purchasers thereof into the belief that the products so designated and sold by said corporation in interestate commerce are "Honan" silk, the product of the wild silkworm of the Province of Honan, in China.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 14, 1930.)

562. **False and Misleading Advertising—Household and Office Supplies.**—Respondent, an individual, engaged in the sale and distribution, chiefly by mail orders, of household and office supplies in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of (*a*) the word "linen" either independently or in connection or conjunction with any other word or words, letter or letters, as so to

confuse, mislead, and deceive the purchasing public into the belief that the product so described and designated are in fact composed in whole or in part of linen, the product of the flax or hemp plant, when such is not the fact; (*b*) the word "damask" either independently or in connection or conjunction with any other word or words, letter or letters, to describe a fabric in the manufacture of which a pattern is stamped thereon after the same is woven and which pattern is not woven into the fabric and formed by the different directions of the thread.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (February 19, 1930.)

563. **False and Misleading Advertising—Automotive Correspondence Course.**—Respondent, a corporation, engaged in conducting a school whose curriculum included and includes a correspondence course in auto instruction and in the sale and distribution of such course in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its courses of instruction by means of advertisements and advertising matter circulated in interstate commerce, agreed to cease and desist from (*a*) the making of an offer limited to 15 or 30 days or other designated time, when in truth and in fact such offer is not so limited but may be taken advantage of at any time; (*b*) the representation of an offer as "especial," when in truth and in fact such offer is not special but is the regular and customary offer made in the usual course of business; (*c*) the use in its enrollment blanks, contracts, or otherwise of fictitious prices or representations of prices in connection with the sale and distribution in interstate commerce of its courses of instruction; (*d*) representing that certain supplies or lessons, or both, are given free, or as a gratuity to the student purchasing or taking the course of instruction, when such is not the fact; (*e*) representing that the student is given personal instruction, help, and attention by the president or head of the corporation or a department hereof, when such is not the fact; (*f*) the use of the words "Guarantee of reimbursement" and the word "guarantee" in the description of "money-back" agreements between the said corporation and its students, unless such money-back agreements shall be unconditioned except as to completion of course and payment and return of textbooks, and provided that the claimant have at least 30 days after completion of the course to file application for refund; (*g*) representing that collections of past due accounts or other indebt-

edness are being made through a collection agency, when in truth and in fact no such agency exists independent of said corporation.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 19, 1930.)

564. **False and Misleading Advertising—Processed Oils and Sizings.**—Respondent, a corporation, engaged in the manufacture of processed oils and sizings for the use of the textile trade and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever in its advertising and correspondence, or in any other way, from stating and representing that said product is not a sulphonated oil; when in truth and in fact said product is so made and compounded as to fall within the definition of a sulphonated oil as generally understood by the trade and the purchasing public.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 19, 1930.)

565. **False and Misleading Trade Name and Advertising—Knitted Outer and Under Wear.**—Respondent, a corporation, engaged in the sale and distribution of knitted outer and under wear in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its said products in interstate commerce, agreed to cease and desist forever from the use of the word "Mills" as part of its trade name, and also from the use of the word "Mills" in any way so as to import or imply that the said corporation either owns, operates, or controls a mill or factory in which are manufactured or fabricated the products sold by it in interstate commerce; and from the use of the word "Mills" in any way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the said respondent owns, operates, or controls a mill or factory wherein are manufactured or fabricated the products sold and distributed by it in interstate commerce, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 19, 1930.)

566. **Misbranding—Mackerel.**—Respondent, a corporation engaged as an exporter and importer and in the sale and distribution of a variety of canned products including mackerel in interstate and foreign commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate and foreign commerce, agreed to cease and desist forever from the use on labels of the word "Salmo," and of the picture of a salmon, or either of them, independently or in connection or conjunction each with the other, or with any other word or words, picture or pictures, so as to import or imply that the product so designated, represented, referred to, or labeled and sold in interstate and/or foreign commerce is salmon; and from the use of the word "Salmo" either independently or in connection or conjunction with any other word or words, picture or pictures, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasers thereof into the belief that the product so designated and sold by said respondent in interstate or foreign commerce is salmon.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 19, 1930.)

567. **Misbranding—Mackerel.**—Respondent, a corporation, engaged in the packing of fish including mackerel, and in the manufacture of fish meal and fish oil, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use on its labels of the words "King Solomon" in connection with any picture or representation of a salmon, and if it is used in connection with any other fish the picture used shall be a true representation of the fish named, and the name of such fish shall be in letters equally conspicuous as the words "King Solomon." Respondent further agreed to cease and desist from the use of the words "Packed salmon style,"

and/or the picture of a king salmon, or either of them independently or in connection or conjunction with each other, or with any other word or words, or in any other way so as to import or imply that the product so designated, represented, referred to or labeled and sold in interstate commerce is salmon or "king" salmon, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 19, 1930.)

568. **Misbranding—Mackerel.**—Respondent, an individual engaged as a merchandise broker, exporter, and manufacturers' agent, in the sale and distribution at wholesale of a variety of canned products, including canned mackerel in interstate and foreign commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist forever from the use on labels for canned mackerel of the words "Packed salmon style," and from the use of the picture of a king salmon, or either of them, independently or in connection or conjunction with each other, or with any other word or words so as to import or imply that the product so designated, represented, referred to, or labeled and sold in interstate and/or foreign commerce is salmon, and from the use of the words "Packed salmon style," or any other similar expression, either independently or in connection or conjunction with any other words or words, picture or pictures, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasers thereof into the belief that the product so designated and sold by said respondent in interstate and/or foreign commerce is salmon.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (February 19, 1930.)

569. **Misbranding—Mackerel.**—Respondent, a corporation engaged in the business of packing fish, including mackerel, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use

on its labels of the words "Chum" and "Salmon style" and of the picture of a king salmon, or either or any of them, independently or in connection or conjunction with each other, or with any other word or words, picture or pictures, so as to import or imply that the product so designated, represented, referred to, or labeled and sold in interstate commerce is salmon; and from the use of the words "Chum" and/or "Salmon style" either independently or in connection or conjunction with any other word or words, picture or pictures, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasers thereof into the belief that the product so designated and sold by said respondent in interstate commerce is salmon.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 19, 1930.)

570. **Misbranding—Mackerel.**—Respondent, a corporation engaged in the sale and distribution of a variety of products, including canned mackerel, in interstate and foreign commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate and foreign commerce agreed to cease and desist forever from the use on its labels of the words or phrases "Salmon style" and/or "Salmon style mackerel," and of the picture of a salmon, or either of them, independently or in connection or conjunction each with the other, or with any other word or words, picture or pictures, so as to import or imply that the product so designated, represented, referred to, or labeled and sold in interstate and/or foreign commerce is salmon; and from the use of the aforesaid words, phrases, and/or pictures or any or either of them in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasers thereof into the belief that the product so designated and sold by said respondent in interstate or foreign commerce is salmon.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 19, 1930.)

571. **False and Misleading Advertising—Toy Airplanes.**—Respondent, an individual engaged in the sale and distribution of toy airplanes in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist

forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from (*a*) the use in his advertising matter, of whatsoever character, circulated in interstate commerce, of the word "manufactured," or of any abbreviation thereof, either independently or in connection or conjunction with any other word or words, so as to import or imply that the said respondent either owns, operates, or controls a plant or factory for the manufacture or fabrication of the products sold and distributed by him in interstate commerce, and from the use of the word "manufactured," either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said respondent either owns, controls, or operates a plant or factory wherein are made or fabricated the products which he sells and distributes in interstate commerce; (*b*) the publication, circulation, and distribution in interstate commerce of advertisements or advertising matter which does not accurately represent and describe the products offered for sale and/or the results obtained thereby.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (February 19, 1930.)

572. **Resale Price Maintenance—Air Rifles, Liquid Pistols, and Other Toys.**—Daisy Manufacturing Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal place of business located in the town of Plymouth, in the State of Michigan, engaged in the manufacture of air rifles, liquid pistols, and other toys, under the trade name and brand of "Daisy," which it sold and distributed, through jobbers, in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

In the course and conduct of its business, Daisy Manufacturing Co. caused products of its manufacture to be extensively advertised in magazines and other periodicals having circulation between and among various States of the United States and its sales were made, for the most part, through mail orders. In the early part of the year 1924 it adopted a system, involving the cooperation of the wholesale trade, for the maintenance and enforcement of resale prices established by it, and which system the said company has since continuously main-

tained and enforced. As a method of effecting obedience to its said system, Daisy Manufacturing Co., cooperating with the trade aforesaid, employed the following means, to wit:

(*a*) Sought and secured agreements, promises, and assurances from its customers that they would cooperate in the maintenance of resale prices suggested by it, and threatened to and did withhold supplies from dealers who failed or refused to maintain its suggested resale prices.

(*b*) Availed itself of the cooperation of customers in reporting dealers who failed to maintain its suggested resale prices, and solicited and obtained promises and assurances from such offending dealers to maintain its suggested resale prices, as a condition to further supplying such dealers with its products.

(*c*) After cutting off offending dealers who had failed or refused to maintain its suggested resale prices, resumed selling said dealers upon their agreeing to maintain, and maintaining, such prices.

It is further stipulated and agreed by and between the said Garland S. Ferguson, jr., chairman of the Federal Trade Commission, and Daisy Manufacturing Co. that Daisy Manufacturing Co. hereby agreed to cease and desist forever from the following cooperative methods:

(*a*) Seeking and securing from the wholesale and other trade assurances, promises, or agreements to cooperate with said company in the maintenance of any system of resale prices whatsoever.

(*b*) Seeking and securing the cooperation of its customers in reporting dealers who fail to maintain the resale prices established by it.

(*c*) Seeking and securing, by any means whatsoever, promises, assurances, or agreements from price cutters, or alleged price cutters, that such offenders will maintain suggested resale prices as a condition to further supplying such dealers with its products.

(*d*) Directly or indirectly carrying into effect, by cooperative methods, any system whatsoever for the maintenance of resale prices established by the company.

It is further stipulated and agreed by and on behalf of the commission that this stipulation is taken for the purpose of effecting a settlement of the particular matters and things recited in said stipulation, and it is further understood and agreed that this stipulation, together with the names of the parties stipulating, shall be released for publication and become a part of the public record. (February 26, 1930.)

573. **False and Misleading Advertising and Brands or Labels—Pimientos.**—Respondent, a corporation, engaged in the manufacture, importation, sale, and distribution, at wholesale, of groceries and food products in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement

to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in packing, branding, labeling, soliciting the sale of, and selling the aforesaid products in interstate commerce, agreed to cease and desist forever from (*a*) the use on its containers for pimientos of labels resembling or simulating in color and/or arrangement those used by Spanish packers of the product; (*b*) the use on such labels of Spanish words and expressions, not essential to the description of the product, but having a tendency to suggest a Spanish origin. This, however, not to prohibit the said respondent company using its trade name, "Carmelo."

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 26, 1930.)

574. **False and Misleading Advertising and Brands or Labels—Malt Beverage.**—Respondent, a corporation, engaged in the manufacture of a malt beverage and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use of the words "Pelissier's Limited, Manitoba, Winnipeg, Canada" on its brands or labels affixed to its said product or in its advertisements or advertising matter circulated in interstate commerce so as to import or imply that said product is that product manufactured in the Dominion of Canada by Pelissier's Limited and imported into the United States; and the said respondent also agreed to cease and desist from the use of the word "Canada" either independently or in connection or conjunction with the words "Pelissier's Limited," "Manitoba," or "Winnipeg," or with any other word or words, or with the pictorial representation of a coat of arms of a foregin country or which simulates that of a foreign country, or in any other way as descriptive of its product which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that said product is of Canadian manufacture and imported into the United States.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 26, 1930.)

575. **False and Misleading Advertising and Brands or Labels—Malt Beverage.**—Respondent, a corporation, engaged in the business, as distributor, or selling and distributing a malt beverage in interstate

commerce, and in competition with other corporations, firms, partnerships, and individuals, likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use of the words "Pelissier's Limited, Manitoba, Winnipeg, Canada" on its brands or labels affixed to its product and from the use, in its advertisements or advertising matter circulated in interstate commerce, of the statement "Pelissier's Limited, who brew Kingsbury Pale in Winnipeg, saw the possibility of selling a real beer in the United States and have made arrangements to have this beer brewed under regulations of the Volstead Act, thereby permitting sale in this country," so as to import or imply that said product is that product manufactured in the Dominion of Canada by Pelissier's Limited and imported into the United States; and the said respondent also agreed to cease and desist from the use of the words "Canada Beer" or the word "Canada" either independently or in connection or conjunction with the words "Beer," "Pelissier's Limited," "Manitoba," or "Winnipeg," or with any other word or words, or with the pictorial representation of a coat of arms of a foreign country or which simulates that of a foreign country, or in any other way, as descriptive of its product which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that said product is of Canadian manufacture and imported into the United States, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 26, 1930.)

576. **False and Misleading Advertising—Automobile Tires.**—Respondent, a corporation, engaged in the manufacture of rubber tires for automobiles and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from stating and representing, in advertisements or otherwise, (*a*) that Sears Roebuck & Co. and the Goodyear Tire & Rubber Co. have or has a director in common; (*b*) that the respondent company at any time made all the rubber tires sold by Sears Roebuck & Co.; (*c*) that respondent company learned of the negotiations between Sears

Roebuck & Co. and the Goodyear Tire & Rubber Co. while they were in progress and before the contract between said companies was executed; (*d*) that respondent company is in a more advantageous position in respect of the payment of a profit to the manufacturer than is the Goodyear Tire & Rubber Co. or Sears Roebuck & Co., when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 26, 1930.)

577. **False and Misleading Advertising—Grape Juice Products.**—Respondent, an individual, engaged in the sale and distribution of grape juice products in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever, in advertisements and correspondence, from the following representations and statements: (*a*) That he has branches in all principal cities, when such is not the fact; (*b*) that he has warehouses at Jersey City, N. J., or a subwarehouse at Hoboken, N. J., or elsewhere, when such is not the fact; (*c*) that his company was awarded diplomas or gold medals at expositions in various cities, when such is not the fact; (*d*) that he, or his company, has vineyards and plants in Sonoma County, Calif., when such is not the fact; and from statements, representations, and/or insinuations that competitors market either a pasteurized product or a concentrate which is preserved with sulphur dioxide or other chemicals, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (February 26, 1930.)

578. **Misbranding—Shellacs.**—Respondent, a corporation, engaged in the manufacture of paints and shellacs and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use on labels affixed to the products sold by it of the words "Shellac strictly pure" either independently or in connection or conjunction

with any other word or words so as to import or imply that the product so labeled is strictly pure or composed wholly of shellac, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 26, 1930.)

579. **False and Misleading Advertising—Oysters.**—Respondent, a corporation, engaged in the sale and distribution of oysters, crabs, and fish in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in advertising, soliciting the sale of, and selling its said products in interstate commerce, agreed to cease and desist forever from the use of the word "Cotuit" either independently or in connection or conjunction with any other word or words so as to import or imply that the products so described and designated are Cotuit oysters; and from the use of the word "Cotuit" in any other way which may have the capacity and tendency to confuse, mislead and deceive purchasers into the belief that its products, or any of them, are Cotuit oysters, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 26, 1930.)

580. **False and Misleading Advertising and Brands or Labels—Pharmaceutical Preparation.**—Respondent, a corporation, engaged in the manufacture of pharmaceutical preparations and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use of the words "Milk of Magnesia" either independently or in connection or conjunction with the word "tablet," or with any other word or words, or in any way in its advertisements or advertising matter or on its labels affixed to products shipped in interstate commerce so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that said product is that product known to the trade and purchasing public as Milk of Magnesia in tablet form and which conforms to the specifications of the United States Pharmacopœia.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 26, 1930.)

581. **Misbranding—Paints and Varnishes.**—Respondent, a corporation, engaged in the manufacture of paints and varnishes and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "lead" and/or "zinc" either independently or in connection or conjunction with any other word or words, so as to import or imply that its products are composed of white lead or of zinc, or that white lead or zinc is the principal and predominant element therein, when such is not the fact; and also to cease and desist from the use of the words "lead" and/or "zinc" in any other way which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the products so described and designated are composed of white lead and/or of zinc, or that white lead or zinc is the principal and predominant element therein, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 26, 1930.)

582. **False and Misleading Trade Name and Advertising—Hosiery, Lingerie, and Similar Products.**—Respondent, a corporation, engaged in the sale and distribution of hosiery, lingerie, and other similar products in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from—

(*a*) The use in its corporate and trade name of the word "Mills," and also from the use of the word "Mills" either independently or in connection or conjunction with any other word or words, in its advertising or other matter distributed in interstate commerce, so as to import or imply that the said corporation, owns, operates, or controls a mill or factory in which the products sold and distributed by it in interstate commerce are knitted or fabricated; and from the

use of the word "Mills" either independently or in connection or conjunction with any other word or words, in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said respondent owns, operates, or controls a mill or factory wherein are knitted or fabricated the products sold and distributed by said corporation in interstate commerce, when such is not the fact.

(*b*) The use of the word "silk" either independently or in connection or conjunction with any other word or words, in its advertising matter distributed in interstate commerce, so as to import or imply that the products so designated and referred to are made of or contain silk; and from the use of the word "silk" in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the products so designated are made of or contain silk, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 26, 1930.)

583. **False and Misleading Advertising and Brands or Labels—Malt Extract.**—Respondent, a corporation engaged in the manufacture of a malt extract and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use, as a trade brand or designation for said product sold or distributed in interstate commerce, of the words "imported," "German," and "Dutch" either independently or in connection or conjunction each with the other or with the words "Meierhof," "Kron Prinz," or with the statement or expression "Gott Mit Uns 1870," or with any other word or words, statement or expression, pictorial representation or insignia, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said product, or an ingredient or ingredients thereof, is or are of foreign origin, manufacture, or growth, and/or is or have been imported into the United States from abroad, or is or have been obtained from Germany or Holland; unless when said product is composed in part of an ingredient or ingredients which has or have been actually obtained from Germany or Holland and/or imported into the United States and the word "German," or "Dutch," or "imported" is used to designate the product, in which case the

said word or words shall be used so as to accurately and properly designate and refer to the particular ingredient or ingredients which have been imported.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 26, 1930.)

584. **False and Misleading Advertising—Seasoning Product.**—Respondent, a corporation engaged in the manufacture of a liquid seasoning product used by meat packers in the seasoning of sausages and prepared meats and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use of the words "oil of spice" and/or "oils of spice" either independently or in connection or conjunction with any other word or words, phrase or phrases, so as to imply that its product consists wholly or in predominant part of the oils of spices, when such is not the fact; and from the use of the words "oil of spice" and/or "oils of spice" either independently or in connection or conjunction each with the other, or with any other words, phrases, or statements which may have the capacity and tendency to confuse, mislead, and deceive the purchaser into the belief that its product consists wholly or in predominant part of the oils of spices, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 28, 1930.)

585. **Simulation of Trade Name—Window Screens.**—Respondent, a corporation engaged in the manufacture of window screens which roll up like a curtain and disappear into the window casing, and in the sale and distribution of such product in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use in its advertising matter, stationery, and/or correspondence circulated in interstate commerce of the words "Disappearing," "Screen," and/or "Company" as a part of a corporate or trade name, and from

the use of the words "Disappearing," "Screen," and/or "Company" in any combination with each other, or with any other word or words which may tend to confuse, mislead, or deceive the purchasing public into the belief that said respondent is a part of or connected or affiliated with any competitor company.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 28, 1930.)

586. **False and Misleading Advertising—Waxes.**—Respondent, an individual, engaged in the importation of gums and waxes and in the sale and distribution of the same at wholesale in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use in advertisements and correspondence of the word "ceresine," either independently or in connection or conjunction with any other word or words so as to import or imply that the products so designated, represented, and referred to and sold in interstate commerce are those products known to the trade and the purchasing public as ceresine wax or as ceresine; and from the use of the word "ceresine" either independently or in connection or conjunction with any other word or words or in any other way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said products are ceresine or ceresine wax, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (March 3, 1930.)

587. **False and Misleading Advertising and Brands or Labels—Concentrates and/or Beverages, etc.**—Respondents, corporations, engaged in the manufacture and purchase of products and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of the words "grape," "apricot," "lemon," "nectar," "cherry," "lime," "orange," and "loganberry" either independently or in con-

nection or conjunction with any other word or words or in any way in their advertising matter or on their brands or labels to designate or describe their products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are composed of the juice or the fruit of the grape, apricot, lime, cherry, lemon, orange, loganberry, or other fruit; unless (*a*) if the word "grape," "apricot," "lemon," "nectar," "cherry," "lime," "orange," and "loganberry" is used to describe or designate the flavor of the said product, the words so used shall be immediately preceded by the word "imitation" printed in type equally as conspicuous as that in which the said designating or descriptive word is printed; and (*b*) if the product is composed in substantial part of the juice or the fruit of either the grape, apricot, lemon, cherry, lime, orange, or loganberry so as to derive its color and flavor from said fruit and the word "grape," "apricot," "lemon," "cherry," "lime," "orange," or "loganberry" is used to designate the product, in which case the said designating word shall be accompanied by a word or words which shall be printed in type equally as conspicuous as that in which the said designating word is printed so as to indicate clearly that the product is not made wholly from the juice or the fruit indicated by the said designating word, and that will otherwise properly and accurately represent, define, and describe the products so as to indicate clearly that the same is composed in part of an ingredient or ingredients other than the juice or the fruit indicated by the said designating word. The said companies also agreed to cease and desist from the use of the words "mahogany," "ebony," and "ivoroid" as descriptive of their products advertised, sold, and distributed in interstate commerce so as to import or imply or which may tend to deceive the purchasing public into the belief that the said products are made of mahogany or ebony or ivoroid, when such is not the fact. The said companies further agreed to cease and desist from the use of the word "castile" either independently or in connection or conjunction with any other word or words as descriptive of their products advertised, sold, and distributed in interstate commerce, unless said products are in truth and in fact made of olive oil so as to be properly and accurately described and represented as castile. The said companies also agreed to cease and desist from illustrating and describing articles of merchandise in their advertisements or advertising matter, distributed in interstate commerce, together with any false, fictitious, or misleading statements of or concerning the prices of said articles of merchandise, or together with any false, fictitious, or misleading statements as to the value of said articles of merchandise, or any of them. The said companies also agreed to cease and desist from the use of the words "cod liver oil" as descriptive of products so as to import or imply, or

which may have the capacity or tendency to mislead the purchasing public into the belief, that the said products are composed of cod liver oil or of cod liver oil in sufficient quantity so as to be properly designated by the use of the descriptive words "cod liver oil," when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (March 3, 1930.)

588. **False and Misleading Advertising and Sale of Lottery Devices—Cigar Lighters, Novelties, Key Cases, Ash Trays, Punch Boards, and Similar Articles.**—Respondent, an individual, engaged in the sale and distribution of cigar lighters, novelties, key cases, ash trays, and other similar articles in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in advertising, soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever—

(*a*) From the use of the word "Manufacturing" as part of or in connection or conjunction with his trade names on his stationery or any other printed or advertising matter distributed by him in interstate commerce so as to import or imply that the said respondent is the maker of the products sold by him, or that he either owns, operates or controls a plant or factory in which are made or fabricated the products sold and distributed by him in interstate commerce, and from the use of the word "manufacturing" in any other way that may have the capacity and tendency to confuse, mislead, or deceive the trade or the purchasing public into the belief that the said respondent is the maker of the products sold by him in interstate commerse, or that he owns, operates, or controls a plant or factory in which the products sold and distributed by him in interstate commerce are made or fabricated, when such is not the fact.

(*b*) From stating, representing, and holding out the inducement of a purported guaranty of the sale of his said products, in advertisements or by correspondence or otherwise, without at the same time stating clearly and plainly, in type as large and conspicuous as that in which the guaranty is printed, that the same applied only to first orders.

(*c*) From advertising, selling, and distributing in interstate commerce any device to be used for conducting a lottery or game of chance, such as punch cards or punch boards, together with equipment for such purpose.

(*d*) From stating and representing in advertisements or otherwise that his "De Luxe Pocket Lighters" are made in gold, in nickel silver, or are silver plated, when such is not the fact.

(*e*) From stating and representing in advertisements or otherwise that the cases in which his "De Luxe Pocket Lighters" are packed are made of leather, when such is not the fact.

(*f*) From making erroneous and exaggerated statements and claims respecting the profits realized by agents in the sale of his products.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the compalint which the commission may issue. (March 3, 1930.)

589. **False and Misleading Trade Name, Advertising, and Brands or Labels—Knitted Sweaters.**—Respondent, an individual, engaged in the sale and distribution of knitted sweaters in interstate commerce, and in competition with other individuals, corporations, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his said products in interstate commerce, agreed to cease and desist forever from the use of the words "Knitting" or "Mills" as part of his trade name, and also from the use of the word "manufacturers" either independently or in connection, conjunction, or combination with any other word or words on his labels, or other printed matter, so as to import or imply that said respondent owns, operates, or controls a mill or factory in which the products sold and distributed by him in interstate commerce are knitted or fabricated; and from the use of the words "knitting," "mills," or "manufacturers" in any way that may have the tendency and capacity to confuse, mislead, and deceive the purchasing public into the belief that said respondent owns, operates, or controls a mill or factory wherein the products sold and distributed by him in interstate commerce are knitted or fabricated, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (March 3, 1930.)

590. **False and Misleading Advertising and Brands or Labels—Concentrates.**—Respondent, a corporation, engaged in the manufacture of concentrates used in the preparation of beverages and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use

of the word "orange" either independently or in connection or conjunction with the word "crushed," or with any other word or words, pictorial representations, or in any way in its advertising matter or on its labels to designate its product sold or distributed in interstate commerce so as to import or imply or which have the capacity or tendency to mislead or deceive the purchasing public into the belief that the said product so advertised or represented is composed of the juice or the fruit of the orange, when such is not the fact; unless, when said product is only composed in substantial part of the juice or the fruit of the orange, not including water and sugar, so as to derive its flavor and/or color from said fruit, and the word "orange" is used as a designation for said product, in which case the word "orange" shall be employed in connection or combination with some other word or words which shall be displayed in type equally as conspicuous as that in which the word "orange" is printed so as to indicate clearly that such product is not made wholly from said fruit or the juice of the same, and that will otherwise properly and accurately represent, define, and describe said product so as to indicate clearly that the same is composed of an ingredient or ingredients other than the juice or the fruit of the orange.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 5, 1930.)

591. **False and Misleading Advertising—Reference Works; Imitation Pearls.**—Respondent, a corporation, engaged in the purchase, sale, and distribution of sets of reference works and of strings of imitation pearls, in interstate commerce and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling said products in interstate commerce, agreed to cease and desist forever from the use of—

(*a*) Statements and representations to the effect that said products were purchased from a manufacturer, when such is not the fact.

(*b*) Statements and representations that said products are indestructible, when such is not the fact.

(*c*) The words and figures "Regular retail price $20.00," "Experts value them at $25.00," and/or "Our special price to subscribers only $4.90," either independently or in connection or conjunction with each other or with any other words or in any way which may have the tendency to confuse, mislead, or deceive the purchasing public into the belief that such prices are special and introductory, when in

truth and in fact the same are the usual and customary prices at which such products are sold.

Respondent also agreed that if it should over resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 5, 1930.)

592. **Misbranding—Hosiery.**—Respondent, a corporation, engaged in the manufacture of hosiery and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "wool" either independently or in connection or conjunction with any other word or words, as a brand or label, so as to import or imply that the said products so branded and labeled are manufactured, in whole or in part, of wool, when such is not the fact; and from the use of the word "wool" either independently or in connection or conjunction with any other word or words or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasers thereof into the belief that the products so designated, branded, and sold by said respondent in interstate commerce are manufactured in whole or in part from wool, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 5, 1930.)

593. **False and Misleading Advertising—Hides, Pelts, Furs, and Wool.**—Respondent, an individual, engaged in the purchase of hides, pelts, furs, and wool, and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the words "tanners" and/or "manufacturers," either independently or in connection or conjunction with any other word, phrase, or statement, or in any other way, which may have the capacity and tendency to confuse, mislead, and deceive the purchasing and/or selling public into the belief that said respondent either owns, operates, or controls a tannery or factory wherein are tanned, made, and finished the

products purchased and sold by him, or any of them, in interstate commerce, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (March 5, 1930).

594. **False and Misleading Trade Name and Advertising—Knitted Outer Wear; Hosiery.**—Respondent, an individual engaged in the sale and distribution of knitted outer wear and hosiery in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the words "Knitting" and/or "Mills" as part of his trade name, and from the use of the words "knitting" and/or "mills" in any other way so as to import or imply or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said respondent owns, operates or controls a mill or factory wherein are manufactured or fabricated the products sold by him in interstate commerce, when such is not the fact; and from use of the words "Direct from mills to you," or of any other word or words, phrase, statement, or other representation which may import or imply or which may have the tendency to confuse, mislead, and deceive purchasers into the belief that said respondent manufactures the products which he sells in interstate commerce, or that the said products are in fact sold direct to the buyer, direct from the factory or manufacturer without the intervention of middlemen, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (March 7, 1930.)

595. **False and Misleading Representations—Men's Suitings.**—Respondents, copartners, engaged in the sale and distribution of men's suitings, through salesmen or solicitors direct to consumers, in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of the words "woolens" and "worsteds" either independently or in

connection or conjunction with any other word or words, on invoices, or in any other way so as to import or imply that the products dealt in by them are made or fabricated, in whole or in part, from wool, when such is not the fact; and from the use of the words "woolens" and/or "worsteds" either independently or in connection or conjunction with any other word or words or in any other way which may have the tendency and capacity to confuse, mislead, or deceive the purchasing public into the belief that said products are made or fabricated, in whole or in part, of wool, when such is not the fact.

Respondent also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (March 7, 1930.)

596. **False and Misleading Advertising and Brands or Labels—Toilet Preparations.**—Respondent, an individual engaged in the sale and distribution of toilet preparations in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from advertising, labeling, or otherwise marking his products with fictitious and exaggerated prices, and from making any false, fictitious, or misleading representations or statements concerning the value or price of said products, or any of them, are intended, to be, and are, sold in the usual course of retail trade; and from making any and all representations or statements that would import or imply that the products were sold at a price that did not afford to the seller a profit, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (March 7, 1930.)

597. **False and Misleading Advertising—Cold Compound; Laxative Tablets; Proprietary Medicine.**—Respondent, a corporation, engaged in the business of manufacturing a cold compound, laxative tablets, and more particularly a proprietary medicine and in the sale and distribution of the same in interstate commerce, and in competition with other coporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist and to hereafter

abandon the publication, circulation, or distribution in interstate commerce of each and all statements which do not truthfully represent and describe the therapeutic value of its said product offered for sale, or the results obtained as represented by the said advertising matter. Said respondent also agreed to cease and desist from the use in its advertisements and advertising matter of any and all testimonials and indorsements, unless the same represent and are the genuine and unbiased opinions of the author or authors thereof; and if a consideration has been given for a testimonial which said respondent uses in its advertisements and advertising matter, then, in that event, the said respondent shall publish or cause to be published with said testimonial in an equally conspicuous manner the fact that said testimonial was obtained for a consideration.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 7, 1930.)

598. **False and Misleading Trade Name, Advertising, and Brands or Labels—Cotton Goods.**—Respondent, a corporation engaged in the business as a "Converter" and in the sale and distribution of cotton goods in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Charmeusette" either independently or in connection or conjunction with any other word or words in its advertisements or advertising matter, or as a trade brand or designation for its product, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the product so designated is made of silk, the product of the cocoon of the silkworm; unless, when the word "Charmeusette" is used as a trade brand or designation for said product, or otherwise to represent or designate the same, the word "Charmeusette" shall be accompanied in conspicuous type with the words or statement that the said product is all cotton.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 12, 1930.)

599. **Misbranding—Gray Cotton Goods.**—Respondent, a corporation, engaged in the purchase of gray cotton fabrics, which it caused to be finished, and in the sale and distribution of such finished products

in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "chiffon" and/or "Taffadora," or any other simulation or variation of the words "chiffon" and "taffeta," either independently or in connection or conjunction with any other word or words, so as to import or imply that the products so designated, represented, referred to, or labeled and sold in interstate commerce are manufactured from silk, the products of the cocoon of the silkworm; and from the use of the words "chiffon" and/or "Taffadora," or any variation or simulation thereof, either independently or in connection or conjunction with any other word or words or in any other way which may have the capacity and tendency to confuse, mislead, or deceive purchasers thereof into the belief that the products so designated and sold by said respondent in interstate commerce are manufactured from silk, the product of the cocoon of the silkworm, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 12, 1930.)

600. **Misbranding—Jewelry; Watchcases.**—Respondent, a corporation, engaged in the business as a manufacturer of diamondlike jewelry and watchcases, and in the sale and distribution of such products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use, as descriptive of its products of the markings "14-K" or "12-K" and the words "rolled gold" either independently or in connection or conjunction each with the other or with any other word or words or in any way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products to which the said markings and/or words refer are manufactured of 14-karat gold or of 12-karat gold and/or are manufactured in accordance with the specified standard of not less than three one-thousandths of an inch in thickness of gold on the outside of the said watchcases and not less than

one one-thousandth of an inch in thickness of gold on the inside of said cases, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 12, 1930.)

601. **False and Misleading Advertising—Watch Parts.**—Respondent, a corporation, engaged in the manufacture of watch parts in Switzerland and importing the same into the United States and there assembling the same into watches, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "emerald" or "sapphire," or either of them, either independently or in connection or conjunction with any other word or words, so as to import or imply that the products to which the same refer are in fact set with emeralds or sapphires, when such is not the fact; and from the use of the words "emeralds" and "sapphires," or either of them, either independently or in connection or conjunction with any other word or words or in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that such settings are emeralds and/or sapphires, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 12, 1930.)

602. **Misleading Trade Names and Brands or Labels—Shellac and Shellac Substitutes.**—Respondents, copartners, engaged in the manufacture of shellac and shellac substitutes and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use on labels affixed to the products sold by them of the word "shelaco," or any other simulation or phonetic spelling of the word "shellac," either independently or in connection or conjunction with any other word or words so as to import or imply that the products so labeled

are composed wholly of shellac; or unless, when the product is not pure shellac, but one in which shellac gum is the principal or predominant element and the word "shellac" or any simulation or phonetic spelling thereof is used to designate the product, such word shall be accompanied by the word "compound" printed in type equally as conspicuous as that in which the word "shellac" or any simulation or phonetic spelling thereof is printed, so as clearly to indicate that such product is not composed wholly of shellac gum cut in alcohol; or if the product is one in which no shellac gum is used or in which shellac gum is not the principal or predominant element, and the word "shellac" or any simulation or phonetic spelling thereof is used to designate said product, such word shall be accompanied by the word "substitute" printed in equally as conspicuous type as that in which the word "shellac" or any simulation or phonetic spelling thereof is printed.

Respondent also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (March 12, 1930.)

603. **Using Lottery Scheme—Chocolate-Coated Confectionery.**—Respondent, a corporation, engaged in the manufacture of chocolate-coated confectionery and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in interstate commerce of any scheme, plan, or method of sale or of promoting the sale of its candy products which involves or includes the use of any gift enterprise, lottery, or other scheme of chance whereby an article is given as a prize or premium for or in consideration of the purchase of any other article; and it is also understood and agreed that the said respondent will cease and desist from using and from transporting in interstate commerce any advertising matter for the use of local dealers in soliciting the sale of said products by means of any gift enterprise, lottery, or scheme of chance whereby any article is offered as a prize or premium for and in consideration of the purchase of any other article.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 12, 1930.)

604. **False and Misleading Advertising and Brands or Labels—Bronze Powders.**—Respondents, copartners, engaged in the manufacture of bronze powders and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from (*a*) the use in advertisements and on labels affixed to the containers in which their product was packed and distributed in interstate commerce, of the word "aluminum" either independently or in connection or conjunction with any other word or words so as to import or imply that the product so advertised and labeled is composed wholly of aluminum; or unless, when said product is not pure aluminum but one in which aluminum is the principal and predominant element, and the word "aluminum" is used to designate the product, such word shall be accompanied by the word "compound" or some other like word printed in type equally as conspicuous as that in which the word "aluminum" is printed, so as clearly to indicate that such product is not composed wholly of aluminum; (*b*) the use in advertisements and on labels affixed to the containers in which their product is packed and distributed in interstate commerce, of the letters "U. S." and the pictorial representation of the United States flag or of the United States shield so as to import or imply that the products so advertised, labeled, offered for sale, and sold in interstate commerce are made under Government contract or in accordance with Government specifications or requirements, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (March 14, 1930.)

605. **False and Misleading Trade Name and Advertising—Credit and Statistical Supply Service.**—Respondent, a corporation, engaged in the business of furnishing credit and statistical information and doing a general collection business for its subscribers, and it has corresponded and transmitted reports and collections through the mails to its subscribers in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever in interstate commerce from the use of the words "Millinery Board of Trade" as part

of its corporate or trade name, either independently or in connection or conjunction each with the other or with any other word or words, in advertisements, correspondence, stationery, or other printed matter, so as to import or imply that said respondent is a voluntary nonprofit association of individuals, concerns, and corporations engaged in the millinery trade, when such is not the fact; and from the use of the words "Millinery Board of Trade" in any way that may have the tendency and capacity to confuse, mislead, or deceive the trade or the purchasing public into the belief that said respondent is a voluntary nonprofit association of individuals, concerns, and corporations, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 17, 1930.)

606. **False and Misleading Trade Name and Advertising—Coal.**—Respondent, a corporation, engaged in the business of mining, selling, and distributing coal at wholesale in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use of the words "Black Band Coal" as part of or in connection or conjunction with its corporate or trade name and from the use of the words "Black Band Coal" in any way which may have the capacity and tendency to confuse, mislead, and deceive the trade and the purchasing public into the belief that the coal which it sells and distributes in interstate commerce is "Black Band Coal," when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 17, 1930.)

607. **False and Misleading Trade Name and Advertising—Portraits and Picture Frames.**—Respondent, an individual, engaged in the manufacture, sale, and distribution of portraits and picture frames in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from (*a*) representing, in any manner whatsoever, to customers or prospective

customers that, as a special introductory and limited offer, customers residing in a given community would be sold portraits and frames at a price lower than the price regularly charged, when such is not the fact; (*b*) representing, in any manner whatsoever, to customers or prospective customers that the portraits sold them were paintings on cloth or canvas, when such is not the fact; (*c*) using as a part of his trade name the words "Art Institute" so as to import or imply that said respondent is the owner or head of an organization for the promotion of art, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (March 19, 1930.)

608. **False and Misleading Advertising—Poultry and Livestock Remedies.**—Respondent, a corporation, engaged in the manufacture of poultry and livestock remedies and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "Antiseptic" in its advertisements and advertising matter circulated in interstate commerce, and from the publication, circulation, and distribution in interstate commerce of the aforesaid advertising or other advertising matter which does not truthfully represent and describe the products offered for sale or the results obtained as represented by such advertising matter.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 21, 1930.)

609. **Misbranding—Composition Books.**—Respondent, a corporation, engaged in the manufacture of school supplies, including composition books, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its said products in interstate commerce, agreed to cease and desist forever from marking, stamping, branding, or labeling composition books by means of letters, numerals, or otherwise in such a way as to indicate, import, or imply that such books contain more or a different number

of pages than their actual content; and/or from marking, stamping, branding, or otherwise making use of numbers or figures on its said products which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that such products contain more or a different number of pages than the actual content, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 2, 1930.)

610. **Misbranding or Mislabeling—Shellacs and Shellac Substitutes.**—Respondents, individuals, engaged in the manufacture of paints, varnishes, and shellacs and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents agreed to cease and desist forever from the use on labels affixed to the products sold by them of the word "shellac" either independently or in connection or conjunction with any other word or words so as to import or imply that the product so labeled is composed wholly of shellac; or unless, when the product is not pure shellac but one in which shellac is the principal and predominant element, and the word "shellac" is used to designate the product, such word shall be accompanied by the word "compound" printed in type equally as conspicuous as that in which the word "shellac" is printed, so as to indicate clearly that such product is not composed wholly of shellac gum cut in alcohol; or, if the product is one in which no shellac gum is used, or in which shellac gum is not the principal and predominant element, and the word "shellac" is used to designate said product, such word shall be accompanied by the word "substitute" printed in type equally as conspicuous as the type in which the word "shellac" is printed.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (April 2, 1930.)

611. **False and Misleading Advertising—Blankets and Shawls.**—Respondents, copartners, engaged in the sale and distribution of novelty goods for the concession trade, including blankets and shawls, in interstate commerce, and in competition with other partnerships, firms, corporations, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease

and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents agreed to cease and desist forever from the use of the words "Indian blankets," "Indian shawls," "wigwam shawls," and/or "Indian wigwam blankets," either independently or in connection or conjunction with each other, or with any other word or words, in their advertisements or advertising matter, to represent the products sold by them in interstate commerce so as to import or imply that the said products are Indian products, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (April 2, 1930.)

612. **Using Lottery Scheme—Confectionery.**—Respondent, a corporation, engaged in the manufacture of confectionery and in the sale and distribution of same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use in interstate commerce of any scheme, plan, or method of sale or of promoting the sale of its candy products which involves or includes the use of any gift enterprise, lottery, or any scheme of chance whereby an article is given as a prize or premium for or in consideration of the purchase of any other article; and it is also understood and agreed that the said corporation will cease and desist from using and from transporting in interstate commerce any advertising matter for the use of local dealers in soliciting the sale of said products by means of any gift enterprise, lottery, or scheme of chance whereby any article is offered as a prize or premium for and in consideration of the purchase of any other article.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 2, 1930.)

613. **False and Misleading Trade Name and Advertising—Tissue Paper and Paper Products.**—Respondents, copartners, engaged in the sale and distribution of paper products, including tissue paper, in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist

forever from the alleged unfair methods of competiton as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of the word "Mills" as part of or in connection or conjunction with their trade name in the sale and distribution in interstate commerce of their products, and from the use of the word "Mills" in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said copartners either own, control, or operate a mill or factory wherein the products, sold by them in interstate commerce are made or fabricated.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (April 2, 1930.)

615.[1] **False and Misleading Advertising—Battery Chargers.**—Respondent, an individual, engaged in the manufacture of battery chargers and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use in advertisements or advertising matter of statements and/or representations:

(*a*) That he is the largest maker of service-station chargers in the world.

(*b*) That his charger will save from 40 to 60 per cent on electric current.

(*c*) That his charger has the capacity to handle from 50 to 70 per cent more, or nearly double the number of batteries handled by other similar devices.

(*d*) That his charger employs scientific principles impossible for others to use.

(*e*) That his charger is the most successful charger ever constructed.

(*f*) That the so-called extras furnished with the charger are free, when they are merely such as are usually furnished with chargers and their cost is included in the price paid therefor.

(*g*) That his chief engineer completed a series of developments which greatly facilitated the use of the "Steinmetz principle," and thereby made it possible to reduce the cost of the chargers.

(*h*) That the price at which his charger is offered is a special or reduced price, when such is not the fact.

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[1] Stipulation to which No. 614 assigned, canceled.

(*i*) That chargers have been set aside, crated, and/or reserved for specific customers in connection with the statement that the factory is behind in the production of chargers, when such is not the fact.

(*j*) From the use in advertisements and advertising matter and on letters circulated in interstate commerce of a cut or representation of a factory building or buildings with the words "Manufacturers of service station equipment," with an address and the name of a chief engineer, and other words, which, taken in connection with such cut, directly assert or clearly import and imply that the building or group of buildings represented in such cut is a factory owned, controlled, or operated by said respondent, when such is not the fact.

(*k*) From the publication, circulation, and distribution in interstate commerce of the hereinbefore-mentioned advertising matter and/or of any other advertising matter which does not truthfully represent and describe the products offered for sale or the results obtained from their use.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (April 4, 1930.)

616. **False and Misleading Advertising and Brands or Labels—Lamb and Sheep Skins.**—Respondents, a corporation, engaged in the business of tanning and dressing lamb and sheep skins and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "wombat" in its advertising or advertisements of its products circulated in interstate commerce and/or on labels distributed with its said products in interstate commerce; and from the use of the word "wombat" in any other way which may confuse, mislead, or deceive purchasers into the belief that the products so described are made from the skin or pelt of the wombat, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 4, 1930.)

617. **False and Misleading Advertising and Brands or Labels—Blankets, Robes, and Shawls.**—Respondents, copartners, engaged in the sale and distribution of novelty goods, including blankets, robes, and shawls, in interstate commerce, and in competition with other partnerships, firms, corporations, and individuals likewise engaged,

entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their product in interstate commerce, agreed to cease and desist forever from the use of the words "Indian," "Navajo," and/or "Blackfoot" to designate blankets, robes, and shawls in their advertisements or advertising matter, or as a brand or label or in any other way in connection with the sale in interstate commerce of their blankets, robes, and shawls, so as to import or imply that the said products are in truth and in fact Indian products, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (April 4, 1930.)

618. **False and Misleading Advertising—Knitted Goods.**—Respondent, a corporation, engaged in the sale and distribution of knitted goods in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "factory" either independently or in connection or conjunction with any other word or words, on its letterheads or other advertising matter distributed by it in interstate commerce, so as to import or imply that the said corporation owns, controls, or operates a mill or factory in which the products sold and distributed by it are knitted or fabricated; and from the use of the word "factory" in any other way that may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said corporation owns, controls, or operates a mill or factory wherein the products sold and distributed by said corporation are knitted or fabricated, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 4, 1930.)

619. **False and Misleading Advertising—Chocolate Candies; Premiums.**—Respondent, an individual, engaged in the sale and distribution of chocolate candies, by mail orders, in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competiton as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from—

(*a*) The use of the word "free" either independently or in connection or conjunction with any other word or words or in any other way so as to import or imply or which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the products referred to are in truth and in fact given free or bestowed without compensation, and that their cost is not included in the price paid by purchasers for other products.

(*b*) The use of the word "silverware" either independently or in connection or conjunction with any other word or words as descriptive of products not composed, in whole or in part, of that metal known to the trade and the purchasing public as silver, and not silver plated, and from the use of the word "silver" either independently or in connection or conjunction with any other word or words or in any way, as descriptive of his products, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are composed in whole or in part of silver or are silver plated, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (April 4, 1930.)

620. **Using Lottery Scheme—Confectionery.**—Respondents, copartners, engaged in the manufacture of confectionery and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, firms, corporations, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents agreed to cease and desist forever from the use in interstate commerce of any scheme, plan, or method of sale of their candy products which involves or includes the use of any gift enterprise, lottery, or other scheme of chance whereby an article is given as a prize or premium for or in consideration of the purchase of any other article; and it is also understood and agreed that the said copartners will cease and desist from using and from transporting in interstate commerce of any labels or advertising matter for the use of local dealers in soliciting the sale of said products by means of any gift enterprise, lottery, or scheme of chance whereby any article is offered as a prize or premium for and in consideration of the purchase of any other article.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts

may be used in evidence against them in the trial of the complaint which the commission may issue. (April 14, 1930.)

621. **False and Misleading Advertising—Periodicals.**—Respondent, an individual, engaged in the publication of a monthly periodical which is devoted to the interests of the paper and pulp trade, and which circulates in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from republishing and/or reproducing any of the printed matter and data published by his competitors, and circulating the same in interstate commerce, when such purported reproduction or republication is not complete, without causing information to that effect to appear thereon in plain, clear, and conspicuous type.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used against him in the trial of the complaint which the commission may issue. (April 14, 1930.)

622. **False and Misleading Trade Name and Advertising—Paper Products.**—Respondent, a corporation, engaged in the sale and distribution of paper products in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "Mills" as part of or in connection or conjunction with its corporate or trade name in the sale and distribution of its products in interstate commerce, and on letterheads, advertising, or other printed matter distributed in interstate commerce in soliciting the sale of and selling said products; and from the use of the word "Mills" in any other way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said corporation owns, controls, or operates a mill or factory wherein the products sold by it in interstate commerce are made or fabricated.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 14, 1930.)

623. **Misbranding—Braided Goods.**—Respondent, a corporation, engaged in the manufacture of braided goods and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise

engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "silk" either independently or in connection or conjunction with any other word or words so as to import or imply that the products so designated, represented, referred to, or labeled and sold in interstate commerce are manufactured from silk, the product of the cocoon of the silkworm, when such is not the fact; and from the use of the word "silk" either independently or in connection or conjunction with any other word or words or in any other way which may have the capacity and tendency to confuse, mislead, or deceive purchasers thereof into the belief that the products so designated are manufactured from silk, the product of the cocoon of the silkworm, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 14, 1930.)

624. **False and Misleading Advertising—Blankets and Shawls.**—Respondent, a corporation, engaged in the sale and distribution of concession goods for fairs, bazaars, and carnivals, including blankets and shawls, in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever in interstate commerce from the use of the words "Indian," "wigwam," "Sioux," and/or "Mingo," either independently or in connection or conjunction with any other word or words, in its advertisements or advertising matter or in any other way, in connection with the sale of its products, so as to import or imply that the said products are made by Indians, when such is not the fact. The said corporation also agreed to cease and desist from the use of the word "manufacturers" on its letterheads, stationery, or other printed matter distributed by it in interstate commerce so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said corporation owns, operates, and controls the mill or factory wherein is made or manufactured the products sold by it in interstate commerce, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts

may be used in evidence against it in the trial of the complaint which the commission may issue. (April 14, 1930.)

625. **False and Misleading Advertising—Foreign Woods.**—Respondent, a corporation, engaged in the importation of foreign woods and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "walnut" either independently or in connection or conjunction with any other word or words in its advertisements or as a trade designation for its products so as to import or imply that such products are those products which are derived from trees of the walnut or Juglandaceæ family, when such is not the fact; and said respondent further agreed to cease and desist from the use of the word "walnut" either independently or in connection or conjunction with any other word or words or in any way as descriptive of its products which may have the capacity and tendency to confuse, mislead, and deceive the purchasers into the belief that said products are those products which are derived from trees of the walnut or Juglandaceæ family, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 21, 1930.)

626. **False and Misleading Advertising and Brands or Labels—Malt Sirup.**—Respondent, a corporation, engaged in the sale and distribution of malt sirup in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its said products in interstate commerce, agreed to cease and desist forever from the use of the word "Bohemian" either independently or in connection with any other word or words on its labels or in any other way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the said products so marked, branded, or designated are manufactured in Bohemia or in Czechoslovakia, or from ingredients obtained from said countries.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts

may be used in evidence against it in the trial of the complaint which the commission may issue. (April 21, 1930.)

627. **False and Misleading Advertising—Foreign Woods; Veneers.**—Respondent, an individual, engaged in the importation of foreign woods which he causes to be manufactured into veneers and which veneers he sells and distributes in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting and sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the word "walnut" either independently or in connection or conjunction with any other word or words in his advertisements or as a trade designation for his products so as to import or imply that such products are those products which are derived from trees of the walnut or Juglandaceæ family, when such is not the fact; and said respondent further agreed to cease and desist from the use of the word "walnut" either independently or in connection or conjunction with any other word or words or in any way as descriptive of his products which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said products are those products which are derived from trees of the walnut or Juglandaceæ family, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (April 21, 1930.)

628. **False and Misleading Advertising and Brands or Labels—Blouses.**—Respondent, an individual, engaged in the manufacture of blouses and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his said products in interstate commerce, agreed to cease and desist forever from the use of the words "English broadcloth," or either of them, either independently or in connection or conjunction with any other word or words, as a trade name or brand for his products, or in any other way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said products are made of broadcloth, and/or of material which has been imported from England, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (April 23, 1930.)

629. **Simulation of Goods—Toast and Other Foods Products.**—Respondent, a corporation, engaged in the manufacture of toast and other food products and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from selling or offering for sale in interstate commerce its products placed in packages or cartons simulating in color scheme, style, size, design, and/or general appearance the packages or cartons used by a competitor as containers for its toast products, and the use of which said package or carton, with or without the trade name of the competitor appearing thereon, by the said respondent may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the products of the said respondent are the products of the said competitor.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 23, 1930.)

630. **False and Misleading Advertising and Brands or Labels—Cigars.**—Respondents, copartners, engaged in the manufacture of cigars and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the unfair methods of competition as set forth therein.

Respondents, individually and as copartners, agreed to cease and desist forever from—

(*a*) The use of the word "Havana" to represent or designate their said product, either independently or in connection or conjunction with any other word or words, as a brand or label in the sale and distribution in interstate commerce of a product not composed of tobacco grown in the island of Cuba.

(*b*) The use of the words "Your kind of a 10¢ cigar for 5¢" or any other similar expression so as to import or imply that said product is the same as formerly made and sold under the trade name of respondents, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts

may be used in evidence against them in the trial of the complaint which the commission may issue. (April 23, 1930.)

631. **False and Misleading Trade Name Advertising and Brands or Labels—Unfinished Cotton and Rayon Fabrics.**—Respondent, a corporation, engaged in the purchase of unfinished cotton and rayon fabrics which it causes to be finished and in the sale and distribution of such finished products in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use in interstate commerce of—

(*a*) The word "Mills" as part of its trade name and from the use of the said trade name, containing the word "Mills" in advertisements in newspapers and/or catalogues, or on labels, either independently or in connection or conjunction with any other word or phrase, so as to import or imply that said corporation either owns, controls, or operates a factory wherein the products so advertised and sold by it in interstate commerce are manufactured or finished.

(*b*) The word "tub-fast" in advertisements or on labels to describe products that will fade when washed and which are not "tub-fast" as said term is generally understood in the trade and among the purchasing public.

(*c*) The word "linene" either independently or in connection or conjunction with any other word or words, or in any way, so as to import or imply or which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the products so designated or referred to are made of linen, a product prepared from flax or hemp, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation may be used in evidence against it in the trial of the complaint which the commission may issue. (April 23, 1930.)

632. **False and Misleading Advertising and Brands or Labels—Motor Appliance.**—Respondent, an individual, engaged in the manufacture of an appliance for use on internal-combustion motors and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever, in advertising, labeling, selling, and distributing his said product in interstate commerce, from—

(*a*) Making use in advertising matter circulated in interstate commerce, or on brands or labels affixed to the carton in which said product was sold, any representation or statement so as to import or imply that said product so branded was patented, or the words "letters patent granted," or any other like representation, so as to mislead or confuse the purchaser into the belief that the product to which the statement referred was in truth and in fact patented, when such is not the fact.

(*b*) Making any false, fictitious, or misleading statements on cartons in which said product is packed, sold, and distributed in interstate commerce concerning the price or value of said product, and from selling and supplying his customers with said product stamped, branded, labeled, or otherwise marked with any false, fictitious, or misleading price known to be in excess of the price at which said product is intended to be and usually is sold at retail.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (May 2, 1930.)

633. **False and Misleading Advertising—Fountain Pens, Pencils, Watches, and Novelties.**—Respondent, a corporation, engaged as a jobber of fountain pens, pencils, watches, and novelties and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its watch products in interstate commerce, agreed to cease and desist forever from the use of the word "rebuilt" to designate, represent, or as descriptive of watch products sold and distributed in interstate commerce, and which said products are not or have not been in truth and in fact overhauled, reconditioned, and/or reconstructed as the term "rebuilt," when used to describe articles of merchandise, signified or tends to signify to the trade and purchasing public. Respondent also agreed to cease and desist from using in its advertisements and advertising matter distributed in interstate commerce of addresses or locations of factories as "Factories: No. Bergen, N. J., Arlington, N. J., Passaic, N. J.," and from the use of the word "factories" either independently or in connection or conjunction with the aforesaid addresses or locations, or in any other way, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said respondent owns, operates, and controls a factory or factories at the addresses indicated, or any factory or factories, or mills, wherein are made,

manufactured, or fabricated the products which the said corporation sells and distributes in interstate commerce, when in truth such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 2, 1930.)

634. **False and Misleading Advertising and Brands or Labels—Men's Shirts.**—Respondent, an individual, engaged in the manufacture of men's shirts and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the word "broadcloth" as a brand, label, or otherwise in connection with the advertising, offering for sale, or sale in interstate commerce of shirts unless the fabric of which the same are made is in fact broadcloth as generally understood by the trade and the purchasing public.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (May 2, 1930.)

635. **False and Misleading Advertising and Brands or Labels—Carbon Paper.**—Respondents, copartners, engaged in the sale and distribution of carbon paper in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their carbon paper in interstate commerce, agreed to cease and desist forever from the use of the word "manufacturers" and of the words "manufactured by" on their labels affixed to their carbon paper product or on their letterheads, invoices, or other stationery or advertising matter of whatsoever character so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said copartners own, operate, or control a mill or factory wherein is made the carbon paper which they sell, when in truth such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (May 2, 1930.)

636. **False and Misleading Advertising and Brands or Labels—Cigars and Tobacco Products.**—Respondent, a corporation, engaged in the manufacture of cigars and tobacco products and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever in advertising, selling, and distributing its products in interstate commerce from the use in its advertising matter of whatever character and/or on labels of the words "Nico-Teen-Less," or either or any of them, independently or in connection or conjunction with any other word or words descriptive of its tobacco products, or in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that such products are free from nicotine and/or that the same are harmless, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 2, 1930.)

637. **False and Misleading Trade Names and Advertising—Cotton, Rayon, and Silk Linings.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of cotton, rayon, and silk linings, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from representing, designating, and describing its products in its advertisements or advertising matter as "Earl-Glo Satin" and/or "Earl-Glo Serge," and further agreed to cease and desist from the use of the words "Earl-Glo Satin" and/or "Earl-Glo Serge" in any other way so as to mislead, confuse, or deceive the purchasing public into the belief that the products so designated, represented, and referred to are made respectively, either in whole or in part, of silk or wool, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 2, 1930.)

638. **False and Misleading Advertising and Conduct—Celery.**—Respondent, an individual, engaged in the sale and distribution of

celery in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist forever from making statements and representations in advertising, or in any other way, to the effect that he is a grower of celery, when such is not the fact, and from making statements and representations in advertising, or in any other way, so as to confuse, mislead, or deceive purchasers into the belief that his product is Michigan-grown celery, when such is not the fact; and the said respondent further agreed that he will not ship or cause to be shipped from the State of Michigan in interstate commerce celery grown in a State or States other than the State of Michigan so as to confuse, mislead, or deceive the purchaser thereof into the belief that the said celery was and is Michigan-grown or grown in the State of Michigan, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (May 2, 1930.)

639. **False and Misleading Advertising, Brands or Labels and Conduct—Celery.**—Respondent, an individual, engaged in the sale and distribution of celery in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist forever from representing in advertisements, labels, or in any other way, so as to confuse, mislead, or deceive purchasers into the belief that his said product sold by him is Michigan-grown celery, when such is not the fact; and the said respondent further agreed that he will not ship or cause to be shipped from the State of Michigan in interstate commerce celery grown in a State or States other than the State of Michigan so as to confuse, mislead, or deceive the purchaser thereof into the belief that the said celery was and is Michigan-grown or grown in the State of Michigan, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used against him in the trial of the complaint which the commission may issue. (May 2, 1930.)

640. **False and Misleading Advertising and Conduct—Celery.**—Respondent, an individual, engaged in the sale and distribution of

celery in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist forever from making statements and representations in advertising, or in any other way, to the effect that he is a grower of celery, when such is not the fact; and from representing in advertising, or in any other way, so as to confuse, mislead, or deceive the purchasers into the belief that his product is Michigan-grown celery, when such is not the fact; and the said respondent further agreed that he will not ship or cause to be shipped from the State of Michigan in interstate commerce celery grown in a State or States other than the State of Michigan so as to confuse, mislead, or deceive the purchaser thereof into the belief that the said celery was and is Michigan-grown or grown in the State of Michigan, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (May 2, 1930.)

641. **False and Misleading Brands or Labels and Conduct—Celery.**—Respondent, an individual, engaged in the sale and distribution of celery in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist forever from representing on labels, or in any other way, so as to confuse, mislead, or deceive purchasers into the belief that said product is Michigan-grown celery, when such is not the fact; and the said respondent further agreed that he will not ship or cause to be shipped from the State of Michigan in interstate commerce celery grown in a State or States other than the State of Michigan so as to confuse, mislead, or deceive the purchaser thereof into the belief that the said celery was and is Michigan-grown or grown in the State of Michigan, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (May 2, 1930.)

642. **False and Misleading Advertising, Brands or Labels, and Conduct—Celery.**—Respondent, an individual, engaged in the sale

and distribution of celery in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist forever from representing in advertisements or other printed matter that he is a grower of celery, when such is not the fact, and from using brands, labels, or other printed matter in connection with the sale of his product so as to confuse, mislead, or deceive purchasers into the belief that his said product is Michigan-grown celery, when such is not the fact; and said respondent further agreed that he will not ship or cause to be shipped from the State of Michigan in interstate commerce celery grown in a State or States other than the State of Michigan so as to confuse, mislead, or deceive the purchaser thereof into the belief that the said celery was and is Michigan-grown or grown in the State of Michigan, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (May 2, 1930.)

643. **False and Misleading Advertising, Brands or Labels, and Conduct—Celery.**—Respondents, copartners, engaged in the sale and distribution of celery in interstate commerce, and in competition with other partnerships, firms, corporations, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their said products in interstate commerce, agreed to cease and desist forever from representing in advertising, on labels, or in any other way so as to confuse, mislead, or deceive purchasers into the belief that the said product sold by them is Michigan-grown celery, when such is not the fact; and the said copartners further agreed that they will not ship or cause to be shipped from the State of Michigan in interstate commerce celery grown in a State or States other than the State of Michigan so as to confuse, mislead, or deceive the purchaser thereof into the belief that the said celery was and is Michigan-grown or grown in the State of Michigan, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (May 2, 1930.)

644. **False and Misleading Advertising and Conduct—Celery.**—Respondents, copartners, engaged in the sale and distribution of celery in interstate commerce, and in competition with other partnerships, firms, corporations, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their said product, agreed to cease and desist from making statements or representations in advertising, or in any other way, which may confuse, mislead, or deceive purchasers into the belief that they are growers of celery and/or that said product is Michigan-grown celery, when such is not the fact; and the said copartners further agreed that they will not ship or cause to be shipped from the State of Michigan in interstate commerce celery grown in a State or States other than the State of Michigan so as to confuse, mislead, or deceive the purchasers thereof into the belief that the said celery was and is Michigan-grown or grown in the State of Michigan, when such is not the fact.

Respondents further agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (May 2, 1930.)

645. **False and Misleading Advertising—Motor Boats.**—Respondent, a corporation, engaged in the manufacture of motor boats and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its said products in interstate commerce, agreed to cease and desist forever from the use of the word "mahogany" in its advertising or as a trade designation for its said products so as to import or imply that said products are made wholly from material derived from trees of the mahogany or Meliaceæ family, when such is not the fact; and said respondent further agreed to cease and desist forever from the use of the word "mahogany" either independently or in connection or conjunction with any other word or words or in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said products are made wholly from materials derived from trees of the mahogany or Meliaceæ family, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 2, 1930.)

APPENDIX I

ACTS OF CONGRESS FROM WHICH THE COMMISSION DERIVES ITS POWERS

FEDERAL TRADE COMMISSION ACT[1]

[Approved Sept. 26, 1914]

[PUBLIC—No. 203—63D CONGRESS]

[H. R. 15613]

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes

Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of

Five commissioners. Appointed by President, by and with, etc. Not more than three from same political party.

[1] This act has been annotated up to July 1, 1921, and may be found, so annotated, in Volume III of the Commission's Reports. Reported decisions of the courts for the period covered by this volume (June 12, 1929, to May 4, 1930) and arising under this act are printed in full in Appendix II hereof (see *infra*, p. 559 et seq.). Previously reported decisions will be found set forth in Appendix II of Volumes II-XII, inclusive, of the Commission's Reports.

It should be noted that the jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159, sec. 406 of said Act providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture] except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the Act, entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved Sept. 26, 1914, or under sec. 11 of the Act, entitled 'An Act to supplement existing laws against

Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION—Continued.

Term, seven years.

each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

Chairman to be chosen by commission.

Pursuit other business prohibited.

Removal by President.

Vacancy not to impair exercise of power by remaining commissioners.

Seal judicially noticed.

The commission shall have an official seal, which shall be judicially noticed.

Sec. 2. SALARIES. SECRETARY. OTHER EMPLOYEES. EXPENSES OF THE COMMISSION. OFFICES.

Commissioner's salary, $10,000.

SEC. 2. That each commissioner shall receive a salary of $10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The

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unlawful restraints and monopolies, and for other purposes,' approved Oct. 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case."

In connection with the history in Congress of the Federal Trade Commission Act, see address of President Wilson delivered at a joint session on Jan. 20, 1914 (Congressional Record, vol. 51, pt. 2, pp. 1962-1964, 63d Cong., 2d sess.); report of Senator Cummins from the Committee on Interstate Commerce on Control of Corporations, Persons, and Firms engaged in Interstate Commerce (Feb. 26, 1913, 62d Cong., 3d sess., Rept. No. 1326); Hearings on Interstate Trade Commission before Committee on Interstate and Foreign Commerce of the House, Jan. 30 to Feb. 16, 1914, 63d Cong., 2d sess.; Interstate Trade, Hearings on Bills relating to Trust Legislation before Senate Committee on Interstate Commerce, 2 vols., 63d Cong., 2d sess.; report of Mr. Covington from the House Committee on Interstate and Foreign Commerce on Interstate Trade Commission (Apr 14, 1914, 63d Cong., 2d sess., Rept. No. 533); also parts 2 and 3 of said report presenting the minority views respectively of Messrs. Stevens and Lafferty; report of Senator Newlands from the Committee on Interstate Commerce on Federal Trade Commission (June 13, 1914, 63d Cong., 2d sess., Rept. No. 597) and debates and speeches, among others, of Congressmen Covington for (references to Congressional Record, 63d Cong., 2d sess., vol. 51), part 9, pp. 8840-8849; 9068; 14925-14933 (part 15); Dickinson for, part 9, pp. 9189-9190; Mann against, part 15, pp. 14939-14940; Morgan, part 9, 8854-8857, 9063-9064, 14941-14943 (part 15); Sims for, 14940-14941; Stevens of N. H. for, 9063 (part 9); 14941 (part 15); Stevens of Minn. for, 8849-8853 (part 9); 14933-14939 (part 15); and of Senators Borah against, 11186-11189 (part 11); 11232-11237, 11298-11302, 11600-11601 (part 12); Brandegee against, 12217-12218, 12220-12222, 12261-12262, 12410-12411, 12792-12804 (part 13), 13103-13105, 13299-13301; Clapp against, 11872-11873 (part 12), 13061-13065 (part 13), 13143-13146; 13301-13302; Cummins for, 11102-11106 (part 11), 11379-11389 11447-11458 (part 12), 11528-11539, 12873-12875 (part 13), 12912-12924, 12987-12992, 13045-

commission shall appoint a secretary, who shall receive a salary of $5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

Appointment of secretary. Salary, $5,000.

Other employees. Salaries fixed by Commission.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

Except for secretary, commissioners' clerks, and such special experts and examiners as Commission may find necessary, all employees part of classified service.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefore approved by the commission.

Expenses of commission allowed and paid on presentation of itemized approved vouchers.

13052, 14768–14770 (part 15); Hollis for, 11177–11180 (part 11); 12141–12149 (part 12), 12151–12152; Kenyon for, 13155–13160 (part 13); Lewis for, 11302–11307 (part 11), 12024–12933 (part 13); Lippit against, 11111–11112 (part 11), 13210–13219 (part 13); Newlands for, 9930 (part 10), 10376–10378 (part 11), 11081–11101, 11106–11116, 11594–11597 (part 12); Pomerene for, 12870–12873 (part 13), 12993–12996, 13102–13103; Reed against, 11112–11116 (part 11), 11874–11876 (part 12), 12022–12029, 12150–12151, 12539–12551 (part 13), 12933–12939, 13224–13234, 14787–14791 (part 15); Robinson for, 11107 (part 11), 11228–11232; Saulsbury for, 11185, 11591–11594 (part 2); Shields against, 13056–13061 (part 13), 13146–13148; Sutherland against, 11601–11604 (part 12), 12805–12817 (part 13), 12855–12862, 12980–12986, 13055–13056, 13109–13111; Thomas against, 11181–11185 (part 11), 11598–11600 (part 12), 12862–12869 (part 13), 12978–12980; Townsend against, 11870–11872 (part 12); and Walsh for, 13052–13054 (part 13).

See also Letters from the Interstate Commerce Commission to the chairman of the Committee on Interstate Commerce, submitting certain suggestions to the bill creating an Interstate Trade Commission, the first being a letter from Hon. C. A. Prouty dated Apr. 9, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); letter from the Commissioner of Corporations to the chairman of the Committee on Interstate Commerce, transmitting certain suggestions relative to the bill (H. R. 15613) to create a Federal Trade Commission, first letter dated July 8, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by the Bureau of Corporations, relative to sec. 5 of the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 20, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by George Rublee relative to the court review in the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 25, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); and dissenting opinion of Justice Brandeis in *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 429–442. (See case also in Vol. II of Commission's Decisions, p. 564 at pp. 570–579.)

Sec. 2. SALARIES. SECRETARY. OTHER EMPLOYEES. EXPENSES OF THE COMMISSION. OFFICES—Continued.

Commission may rent suitable offices.

Until otherwise provided by law, the commission may rent suitable offices for its use.

Auditing of accounts.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

Sec. 3. BUREAU OF CORPORATIONS. OFFICE OF THE COMMISSION. PROSECUTION OF INQUIRIES.

Bureau of Corporations absorbed by Commission.

SEC. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

Clerks, employees, records, papers, property, appropriations, transferred to Commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

Principal office in Washington, but Commission may meet elsewhere.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

May prosecute any inquiry anywhere in United States

Sec. 4.—DEFINITIONS.

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce."

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any

such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members. "Corporation."

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this Act. "Documentary evidence."

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto. "Acts to regulate commerce."

"Antitrust acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety;[2] also the sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen. "Antitrust acts."

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE.[3]

SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful. Unfair methods unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce. Commission to prevent. Banks and common carriers excepted.

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[2] For text of Sherman Act, see footnote on pp. 533–535.

[3] Jurisdiction of Commission under this section limited by sec. 406 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159. See second paragraph of footnote on p. 519.

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE.—Continued.

Commission to issue complaint when unfair method used and to public interest.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such 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 under this section.

To serve same on respondent with notice of hearing.

Respondent to have right to appear and show cause, etc.

Intervention allowed on application and good cause.

Testimony to be reduced to writing and filed.

If method prohibited, Commission to make written report stating findings, and to issue and serve order to cease and desist on respondent.

Modification or setting aside by the Commission of its order.

Disobedience of order. Application to Circuit Court of Appeals by Commission.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its applica-

tion a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Action by Court. Notice to respondent. Decree affirming, modifying, or setting aside Commission's order.

Commission's findings. Conclusive if supported by testimony.

Introduction of additional evidence, if reasonable grounds for failure to adduce theretofore.

May be taken before Commission.

Commission may make new or modified findings by reason thereof.

Judgment and decree subject to review upon certiorari, but otherwise final.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

Petition by respondent to review order to cease and desist.

To be served on Commission.

Jurisdiction of Court of Appeals same as on application by Commission, and Commission's findings similarly conclusive.

Sec. 5. UNFAIR COMPETITION, COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE—Continued.

Jurisdiction of Court exclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Proceedings to have precedence over other cases.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same

Liability under antitrust acts not affected.

shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.[4]

Service of Commission's complaints, orders, and other processes.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (*a*) by delivering

Personal; or

a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the cor-

At office or place of business; or

poration to be served; or (*b*) by leaving a copy thereof at the principal office or place of business of such person,

By registered mail.

partnership, or corporation; or (*c*) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or

Verified return by person serving, and return post-office receipt, proof of service.

place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Sec. 6. FURTHER POWERS.[5]

To gather and compile information, and to investigate with reference to organization, business, etc., of corporations, except banks and common carriers.

SEC. 6. That the commission shall also have power—

(*a*) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

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[4] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in last paragraph of sec. 4 of this act, see p. 523.

[5] Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

To require annual or special reports from corporations, except banks and common carriers.

(*b*) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

Such reports to be under oath, or otherwise, and filed within such reasonable period as commission may prescribe.

To investigate, either on own initiative or application of Attorney General, observance of final decree entered under antitrust acts.

(*c*) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts,[6] to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to made such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

To transmit findings and recommendations to Attorney General.

To investigate, on direction President or either House, alleged violations of antitrust acts.

(*d*) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts [6] by any corporation.

To investigate and make recommendations, on application of Attorney General, for readjustment of business of alleged violator of antitrust acts.

(*e*) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts[6] in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

To make public, as it deems expedient, portions of information obtained.

(*f*) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient

[6] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in last paragraph of sec. 4 of this act, see p. 523.

Sec. 6. FURTHER POWERS—Continued.

To make reports to Congress, together with recommendations for new legislation. To provide for publication of its reports and decisions.

in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

To classify corporations, and make rules and regulations incidental to administration of Act.

(*g*) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

To investigate foreign trade conditions involving foreign trade of United States, reporting to Congress with recommendations deemed advisable.

(*h*) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Sec. 7. SUITS IN EQUITY UNDER ANTITRUST ACTS. COMMISSION AS MASTER IN CHANCERY.

Court may refer suit to Commission.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts,[7] the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

To ascertain and report an appropriate form of decree.

Commission to proceed on notice to parties and as prescribed by court. Exceptions. Proceedings as in other equity causes.

Court may adopt or reject report in whole or in part.

Sec. 8. COOPERATION OF OTHER DEPARTMENTS AND BUREAUS.[8]

To furnish, when directed by President, records papers, and information, and to detail officials and employees.

SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and

[7] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in last paragraph of sec. 4 of this act, see p. 523.

[8] Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

shall detail from time to time such officials and employees to the commission as he may direct.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT.[9]

Commission to have access to documentary evidence and right to copy same.

SEC. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpœna the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any members of the commission may sign subpœnas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

May require attendance of witnesses and production of evidence.

Subpœnas, oaths, affirmations, examination of witnesses. Reception of evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Witnesses and evidence may be required from any place in United States.

Disobedience to a subpœna. Commission may invoke aid of any United States court.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpœna issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

In case of contumacy or disobedience of subpœna, any district court in jurisdiction involved may order obedience.

Disobedience thereafter punishable as contempt.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

Mandamus from district courts on application of Attorney General to enforce compliance with Act.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investi-

Commission may order depositions at any stage.

[9] Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT—Continued.

May be taken before person designated by Commission.

gation. Such depositions may be taken before any person designated by the commission and having power to

Testimony to be reduced to writing, etc.

administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent.

Appearance, testimony, and production of evidence may be compelled as in proceeding before Commission

Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witness fees, same as paid for like services in United States courts.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Incriminating testimony or evidence no excuse for failure to testify or produce

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpœna of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpœna issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

But natural person shall not be prosecuted with respect to matters involved.

Perjury excepted

Sec. 10. PENALTIES.[10]

Failure to testify or to produce documentary evidence. Offender subject to fine or imprisonment, or both.

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpœna or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

[10] Provisions and penalties of secs. 6, 8, 9, and 10 of this Act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

False entries, statements, or tampering with accounts, records, or other documentary evidence, or willful failure to make entries, etc., or

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

Willful refusal to submit documentary evidence to Commission.

Offender subject to fine or imprisonment, or both.

Failure of corporation to file required report.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Forfeiture for each day's continued failure.

Recoverable in civil suit in district where corporation has principal office, or does business.

Various district attorneys to prosecute for recovery.

Unauthorized divulgence of information by employee of Commission punishable by fine or imprisonment or both

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000,

Sec. 10. PENALTIES—Continued.

or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

Sec. 11. ANTITRUST ACTS AND ACT TO REGULATE COMMERCE.

Not affected by this act.

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts[11] or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

THE CLAYTON ACT[1]

[Approved Oct. 15, 1914]

[PUBLIC—No. 212—63D CONGRESS]

[H. R. 15657]

AN ACT To supplement existing laws against unlawful restraints and monopolies, and for other purposes

Sec. 1. DEFINITIONS.

"Antitrust laws."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That "antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved

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[11] For text of Sherman Act, see footnote on pp. 533-535. As enumerated in last paragraph of sec. 4 of this act, see p. 523.

[1] This act has been annotated up to July 1, 1921, and may be found, so annotated, in Volume III of the Commission's Reports. Subsequent reported decisions for the period covered by this and the preceding volumes (July 1, 1921, to May 4, 1930) and bearing on the provisions of this act affecting the Commission are: *Canfield Oil Co.* v. *Federal Trade Commission*, 274 Fed. 571 (see opinion set forth in Appendix II of Volume IV at p. 542 et seq.); *Sinclair Refining Co.* v. *Federal Trade Commission*, 276 Fed. 686 (see opinion set forth in Appendix II of Volume IV at p. 552 et seq.); *Auto Acetylene Light Co.* v. *Prest-O-Lite Co., Inc.*, 276 Fed. 537; *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346, 42 Sup. Ct. 360; *United Shoe Machinery Corporation* v. *United States*, 258 U. S. 451, 42 Sup. Ct. 363; *Aluminum Co. of America* v. *Federal Trade Commission*, 284 Fed. 401 (see opinion set forth in Appendix II of Volume V at p. 529 et seq.); *Standard Oil of N. J. et al.* v. *Federal Trade Commission*, 282 Fed. 81 (see opinion set forth in Appendix II of Volume V at p. 542 et seq.); *Legg* v. *Hood*, 113 S. E. 642 (Ga.); *Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568 (see opinion set forth in Appendix II of Volume V at p. 599 et seq.); *Mennen Co.* v. *Federal Trade Commission*, 288 Fed. 774 (see opinion and decision set forth in Appendix II of Volume VI at p. 579 et seq.); *Federal Trade Commission* v. *Sinclair Refining Co. et al.*, 261 U. S. 463 (see opinion and decision set forth in Appendix II of Volume VI at p. 587 et seq.); *B. S. Pearsall Butter Co.*, 292 Fed. 720 (see opinion and decision set forth in Appendix II of Volume VI at p. 605 et seq.); *A. B. Dick Co.* v. *Fuller*, 6 F. (2d) 393; *National Biscuit Co. et al.* v. *Federal Trade Commission*, 299 Fed. 733 (see opinion and decision set forth in Appendix II of Volume VII at page 603 et seq.); *Aluminum Co. of America* v. *Federal Trade Commission*, 299 Fed. 361 (see opinion and decision set forth in Appendix II of Volume VII at page 618 et seq.); *Western Meat Co.* v. *Federal Trade Commission*, 1 F. (2d) 95 (see opinion and decision set forth in Appendix II of Volume VIII at page 589); *Butterick Co. et al.* v.

July second, eighteen hundred and ninety;[2] sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh,

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Federal Trade Commission, 4 F. (2d) 910 (see opinion and decision set forth in Appendix II of Volume VIII at page 602); *S. S. Kresge Co.* v. *Champion Spark Plug Co.*, 3 F. (2d) 415; *Swift & Co.* v. *Federal Trade Commission*, 8 F. (2d) 595 (see opinion and decision set forth in Appendix II of Volume VIII at page 616); *Western Meat Co.* v. *Federal Trade Commission*, 4 F. (2d) 223 (see opinion and decision set forth in Appendix II of Volume VIII at page 623); *Federal Trade Commission* v. *Thatcher Manufacturing Co.*, 5 F. (2d) 615 (see opinion and decision set forth in Appendix II of Volume IX at page 631); *Parker* v. *New England Oil Corporation*, 8 F. (2d) 392, 418; *The Q. R. S. Music Co.* v. *F. T. C.*, 12 F. (2d) 730 (see opinion and decision set forth in Appendix II of Volume X at page 683); *General Investment Co.* v. *N. Y. C. R. Co.*, 271 U. S. 228; *Connecticut Tel. & El. Co.* v. *Automotive Equipment Co.*, 14 F. (2d) 957, 967, 969 et seq.; *Continental Securities Co.* v. *M. C. R. Co.*, 16 F. (2d) 378; *Federal Trade Commission* v. *Western Meat Co. et al.*, 272 U. S. 554 (see opinion and decision set forth in Appendix II of Volume XI at page 629); *General Investment Co.* v. *N. Y. C. R. Co.*, 23 F. (2d) 822; *Lord* v. *Radio Corporation of America*, 24 F. (2d) 565; *Swift & Co.* v. *United States*, 276 U. S. 311; *Radio Corporation* v. *Lord*, 28 F. (2d) 257 (C. C. A.); *International Shoe Co.* v. *Federal Trade Commission*, 29 F. (2d) 518 (see opinion and decision set forth in Appendix II of Volume XII at p. 732); *Van Camp & Sons* v. *American Can Co.*, 278 U. S. 245; *Porto Rican American Tobacco Co.* v. *American Tobacco Co.*, 30 F. (2d) 234; *Western Meat Co.* v. *Federal Trade Commission*, 33 F. (2d) 824 (see opinion and decision set forth in Appendix II of this volume at p. 559); *Lord et al.* v. *Radio Corporation of America*, 35 F. (2d) 962; *International Shoe Co.* v. *Federal Trade Commission*, 280 U. S. 291 (see opinion and decision set forth in Appendix II of this volume at p. 593); *United States* v. *Bates Valve Bag Corporation et al.*, 39 F. (2d) 162; and *Sidney Morris & Co.* v. *National Assn. Stationers, etc.*, 40 F. (2d) 620 (C. C. A.).

It should be noted in connection with this law—

That the so-called Shipping Board Act (sec. 15, ch. 451, 64th Cong., 1st sess., 39 Stat. 728, 734) provides that "every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the Act approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' and amendments and acts supplementary thereto * * *";

That the jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159, sec. 406 of said Act providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture], except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved Sept. 26, 1914, or under sec. 11 of the Act, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved Oct. 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case"; and

That by the last paragraph of sec. 407 of the Transportation Act, approved Feb. 28, 1920, ch. 91, 41 Stat. 456 at 482, the provisions of the Clayton Act and of all other restraints or prohibitions, State or Federal, are made inapplicable to carriers, in so far as the provisions of the section in question, which relate to division of traffic, acquisition by a carrier of control of other carriers and consolidation of railroad systems or railroads, are concerned.

That Public No. 146, Sixty-seventh Congress, approved Feb. 18, 1922 (42 Stat. 388), permits, subject to the provisions set forth, associations of producers of agricultural products for the purpose of "preparing for market, handling, and marketing in interstate and foreign commerce such products * * *." See also, in this general connection, the Cooperative Marketing Act, approved July 2, 1926, 44 Stat. 803.

[2] The Sherman Act (26 Stat. 209), which, as a matter of convenience is printed herewith.

Sec. 1. DEFINITIONS—Continued.

eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce."

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

"Person" or "persons."

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and as-

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The act, omitting the usual formal "*Be it enacted*," etc., follows:

CONTRACTS, COMBINATIONS, ETC., IN RESTRAINT OF TRADE ILLEGAL.

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

PERSON MONOPOLIZING TRADE GUILTY OF MISDEMEANOR—PENALTY.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

COMBINATIONS IN TERRITORIES OR DISTRICT OF COLUMBIA ILLEGAL—PENALTY.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

sociations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Sec. 2. PRICE DISCRIMINATION.[3]

Unlawful where effect may be to substantially lessen competition or tend to create a monopoly.

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale 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 or tend to create a monopoly in any line of com-

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ENFORCEMENT.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

ADDITIONAL PARTIES.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpœnas to that end may be served in any district by the marshal thereof.

FORFEITURE OF PROPERTY.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SUITS—RECOVERY.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared unlawful by this act, may sue therefor in any circuit court of the United States, in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

"PERSON" OR "PERSONS" DEFINED.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State or the laws of any foreign country.

[3] On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 691.

Sec. 2. PRICE DISCRIMINATION—Continued.

But permissible if based on difference in grade, quality, or quantity, or in selling or transportation cost, or if made to meet competition and

merce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

Vendor may select own customers if not in restraint of trade.

Sec. 3. TYING OR EXCLUSIVE LEASES, SALES OR CONTRACTS.[4]

Unlawful where effect may be to substantially lessen competition.

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, 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, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

May sue in any United States district court, and recover threefold damages, including cost of suit

Sec. 4. VIOLATION OF ANTITRUST LAWS—DAMAGES TO PERSON INJURED.

SEC. 4. That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws [5] may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect

[4] On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 533.

[5] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in Clayton Act, see first paragraph thereof on p. 532.

to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Sec. 5. PROCEEDINGS BY OR IN BEHALF OF UNITED STATES UNDER ANTITRUST LAWS. FINAL JUDGMENTS OR DECREES THEREIN AS EVIDENCE IN PRIVATE LITIGATION. INSTITUTION THEREOF AS SUSPENDING STATUTE OF LIMITATIONS.

Prima facie evidence against same defendant in private litigation.

SEC. 5. That a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust laws [6] to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, This section shall not apply to consent judgments or decrees entered before any testimony has been taken: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.

Consent judgments or decrees excepted.

Running of statute of limitations with respect to private rights suspended pending proceeding by the United States under antitrust laws.

Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain or punish violations of any of the antitrust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof.

Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE.

Labor, agricultural, or horticultural organizations and their members, organized for mutual help and without capital stock, not affected by antitrust laws with respect to their legitimate objects.

SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws [6] shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects

[6] For text of Sherman Act, see footnote on pp. 533-535. As enumerated in Clayton Act, see first paragraph thereof on p. 532.

Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE—Continued.

thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

Sec. 7. ACQUISITION BY CORPORATION OF STOCK OR OTHER SHARE CAPITAL OF OTHER CORPORATION OR CORPORATIONS.[1]

Of other corporation. Prohibited where effect may be to substantially lessen competition, restrain commerce, and tend to create a monopoly.

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Of two or more other corporations. Prohibited where effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Purchase solely for investment excepted.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation enaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Formation of subsidiary corporations for immediate lawful business also excepted.

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[1] On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 533.

It should be noted also that corporations for export trade are excepted from the provisions of this section. (See p. 556, sec. 3.)

Common carriers excepted with reference to branch or tap lines where no substantial competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Existing rights heretofore lawfully acquired not affected.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided,* That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws,[8] nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS.[9]

Not to serve more than one bank, banking association, or trust company if deposits, capital, surplus, and undivided profits aggregate over $5,000,000.

SEC. 8. That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employee of more than one bank, banking association or trust company organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than $5,000,000; and no private banker or person who is a director in any bank or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and

[8] For text of Sherman Act, see footnote on pp. 533-535. As enumerated in Clayton Act see first paragraph thereof on p. 532.

[9] By the last paragraph of the Act of Sept. 7, 1916, amending the Federal Reserve Act, ch. 461, 39 Stat. 752 at 756, it is provided that the provisions of sec. 8 shall not apply to "A director or other officer, agent or employee of any member bank" who may, "with the approval of the Federal Reserve Board be a director or other officer, agent or em-

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS—Contd.

undivided profits aggregating more than $5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

How eligibility determined.

Not to serve more than one bank, banking association or trust company located in city or incorporated town or village of more than 200,000 inhabitants.

No bank, banking association or trust company, organized or operating under the laws of the United States, in any city or incorporated town or village of more than two hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee any private banker or any director or other officer or employee of any other bank, banking association or trust company located in the same place: *Provided*, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares, to joint-stock land banks organized under the provisions of the Federal Farm Loan Act, or to other banking institutions which do no commercial banking business:[9a] *Provided further*, That a director or other officer or employee of such bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other: *And provided further*, That nothing contained in this section shall forbid

Certain savings banks, land banks, and noncommercial banking institutions excepted.

Where entire stock of one bank, etc., owned by stock holders of other, also excepted.

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ployee of any" bank or corporation, "chartered or incorporated under the laws of the United States or of any State thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States," in the capital stock of which such member bank may have invested under the conditions and circumstances set forth in the Act.

On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 533.

[9a] That part of the proceeding clause beginning with "to joint-stock land banks" added by Act of Mar. 2, 1929, ch. 581.

a director of class A of a Federal reserve bank, as defined in the Federal Reserve Act from being an officer or director or both an officer and director in one member bank: *And provided further*, That nothing in this Act shall prohibit any private banker from being an officer, director, or employee of not more than two banks, banking associations, or trust companies, or prohibit any officer, director, or employee of any bank, banking association, or trust company, or any class A director of a Federal reserve bank, from being an officer, director, or employee of not more than two other banks, banking associations, or trust companies, whether organized under the laws of the United States or any State, if in any such case there is in force a permit therefor issued by the Federal Reserve Board; and the Federal Reserve Board is authorized to issue such permit if in its judgment it is not incompatible with the public interest, and to revoke any such permit whenever it finds, after reasonable notice and opportunity to be heard, that the public interest requires its revocation.

Class A director of Federal reserve bank excepted and

Private banker or officer, etc., of member bank, or class A director may serve, with consent of Federal Reserve Board, not more than two other banks, etc., where no substantial competition.

The consent of the Federal Reserve Board may be procured before the person applying therefor has been elected as a class A director of a Federal reserve bank or as a director of any member bank.[10]

Consent may be secured before applicant elected director.

That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than $1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws.[11] The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corpora-

Not to serve two or more presently or previously competing corporations if capital, surplus, and undivided profits aggregate more than $1,000,000, and elimination of competition by agreement would violate antitrust laws.

How eligibility determined.

[10] The part of the section immediately preceding beginning with, "*And provided further*, That nothing in this Act" to this point, amendments made by act May 15, 1916, ch. 120, act May 26, 1920, ch. 206, and Act Mar. 9, 1928, ch. 165.

[11] For text of Sherman Act, see footnote on pp. 533-535. As enumerated in Clayton Act, see first paragraph thereof on p. 532.

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS—Contd.

tion next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

Eligibility at time of election or selection not changed for one year.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

Sec. 9. WILLFUL MISAPPLICATION, EMBEZZLEMENT, ETC., OF MONEYS, FUNDS, ETC., OF COMMON CARRIER A FELONY.

SEC. 9. Every president, director, officer or manager of any firm, association or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property or assets of such firm, association or corporation, arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be

Penalty, fine, or imprisonment, or both.

fined not less than $500 or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

May prosecute in district court of United States for district where offense committed.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

Jurisdiction of State courts not affected. Their judgments a bar to prosecution hereunder.

That nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS.

Dealings in securities, etc., and contracts for construction or maintenance, aggregating more than $50,000 a year to be by bid in case director, etc., of common carrier, also director, etc., of other party or has a substantial interest therein.

SEC. 10. That after two years from the approval of this Act no common carrier engaged in commerce shall have any dealings in securities, supplies or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than $50,000, in the aggregate, in any one year with another corporation, firm, partnership or association when the said common carrier shall have upon its board of directors or as its president, manager or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Bidding to be competitive under regulations prescribed by Interstate Commerce Commission, and to show names and addresses of bidder, officers, etc.

Penalty for preventing or attempting to prevent free and fair competition in bidding.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section in the case of an officer or director.

Carrier to report transactions hereunder to Interstate Commerce Commission.

Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

Commission to report violations, and its own findings to Attorney General.

Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS—Continued.

Misdemeanor for director, etc., to knowingly vote for, direct, aid, etc., in violation of this section.

If any common carrier shall violate this section it shall be fined not exceeding $25,000; and every such director, agent, manager or officer thereof who shall have knowingly voted for or directed the act constituting such violation or who shall have aided or abetted in such violation shall be deemed guilty of a misdemeanor and shall be fined not exceeding $5,000, or confined in jail not exceeding one year, or both, in the discretion of the court.

Penalty.

Effective date extended to Jan. 1, 1921.

The effective date on and after which the provisions of section 10 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall become and be effective is hereby deferred and extended to January first, nineteen hundred and twenty-one: *Provided*, That such extension shall not apply in the case of any corporation organized after January twelfth, nineteen hundred and eighteen.[12]

Except as to corporations organized after Jan. 12, 1918.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS. SERVICE.[13]

Jurisdiction as respectively applicable vested in—

SEC. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Interstate Commerce Commission;

Federal Reserve Board; and

Federal Trade Commission.

Commission or board to issue complaint if believes secs. 2, 3, 7, or 8 violated, and serve same with notice of hearing on respondent or defendant.

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so

[12] Above paragraph, sec. 501 of the Transportation Act, Feb. 28, 1920, ch. 91, 41 Stat. 456 at 499.

[13] On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 533.

complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such 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 under this section.

Respondent to have right to appear and show cause, etc.

Intervention may be permitted for good cause.

Transcript of testimony to be filed.

In case of violation commission or board to make written report stating findings, and to issue and serve order to cease and desist on respondent.

Commission or board may modify or set aside its order until transcript of record filed in Circuit Court of Appeals.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commis-

In case of disobedience of its order, commission or board may apply to Circuit Court of Appeals for enforcement of its order, and file transcript of record.

Court to cause notice thereof to be served on respondent and to have power to enter decree affirming, modifying or setting aside order of commission or board.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS. SERVICE—Continued.

Findings of commission or board conclusive if supported by testimony.

sion or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave

Introduction of additional evidence may be permitted on application, and showing of reasonable ground for failure to adduce theretofore.

to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may

Commission or board may make new or modified findings by reason thereof.

seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original

Judgment and decree subject to review upon certiorari, but otherwise final.

order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Petition by respondent to review order to cease and desist.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A

To be served on commission or board which thereupon to certify and file transcript of record in the court.

copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same

Jurisdiction of Court of Appeals same as on application by commission or board and commission's or board's findings similarly conclusive.

jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

Jurisdiction of Court of Appeals exclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust Acts.[14]

Proceedings to have precedence over other cases, and to be expedited.

Liability under antitrust acts not affected.

Complaints, orders, and other processes of the commission or board under this section may be served by anyone duly authorized by the commission or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Service of commission's or board's complaints, orders, and other processes. *Personal; or*

At office or place of business; or

By registered mail.

Verified return of person serving, and return post-office receipt, proof of service.

Sec. 12. PLACE OF PROCEEDINGS UNDER ANTITRUST LAWS. SERVICE OF PROCESS.

SEC. 12. That any suit, action, or proceeding under the antitrust laws[14] against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

Proceeding may be instituted or process served in district of which corporation an inhabitant or wherever it may be found.

Sec. 13. SUBPŒNAS FOR WITNESSES IN PROCEEDINGS BY OR ON BEHALF OF THE UNITED STATES UNDER ANTITRUST LAWS.

SEC. 13. That in any suit, action, or proceeding brought by or on behalf of the United States subpœnas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or crimi-

[14] For text of Sherman Act, see footnote on pp. 533–535. For antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 532.

Sec. 13. SUBPŒNAS FOR WITNESSES IN PROCEEDINGS BY OR ON BEHALF OF THE UNITED STATES UNDER ANTITRUST LAWS—Continued.

May run into any district, but permission of trial court necessary in civil cases if witness lives out of district and more than 100 miles distant.

nal, arising under the antitrust laws [15] may run into any other district: *Provided*, That in civil cases no writ of subpœna shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

Sec. 14. VIOLATION BY CORPORATION OF PENAL PROVISIONS OF ANTITRUST LAWS.

Deemed also that of individual directors, officers, etc.

SEC. 14. That whenever a corporation shall violate any of the penal provisions of the antitrust laws,[15] such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding $5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

A misdemeanor.

Penalty, fine or imprisonment, or both.

Sec. 15. JURISDICTION OF UNITED STATES DISTRICT COURTS TO PREVENT AND RESTRAIN VIOLATIONS OF THIS ACT.

SEC. 15. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends

District attorneys, under direction of Attorney General, to institute proceedings.

Proceedings may be by way of petition setting forth the case, etc.

After due notice, Court to proceed to hearing and determination as soon as may be.

Pending petition instituting proceeding Court may make temporary restraining order or prohibition.

[15] For text of Sherman Act, see footnote on pp. 533-535. For antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 532.

of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpœnas to that end may be served in any district by the marshal thereof.

Court may summon other parties.

Sec. 16. INJUNCTIVE RELIEF AGAINST THREATENED LOSS BY VIOLATION OF ANTITRUST LAWS.

SEC. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws,[16] including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided,* That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

Open to any person, firm, etc., on same conditions and principles as other injunctive relief by courts of equity against threatened conduct that will cause loss or damage.

Preliminary injunction may issue upon proper bond and showing.

But United States alone may sue for injunctive relief against common carrier subject to Act to Regulate Commerce.

Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS.

SEC. 17. That no preliminary injunction shall be issued without notice to the opposite party.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the in-

No preliminary injunction without notice.

No temporary restraining order in absence of a showing of immediate and irreparable injury or loss.

Temporary restraining order, to show date and hour of issue, define injury, etc.

[16] For text of Sherman Act, see footnote on pp. 533-535. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 532.

Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS—Continued.

jury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

If without notice, issuance of preliminary injunction to be disposed of at earliest possible moment.

Opposite party may move dissolution or modification on two days' notice.

Sec. 263 of Judicial Code repealed.

Section two hundred and sixty-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, is hereby repealed.

Sec. 266 not affected.

Nothing in this section contained shall be deemed to alter, repeal, or amend section two hundred and sixty-six of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

Sec. 18. NO RESTRAINING ORDER OR INTERLOCUTORY ORDER OF INJUNCTION WITHOUT GIVING SECURITY.

Except as provided in sec. 16 of this act.

SEC. 18. That, except as otherwise provided in section 16 of this Act, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Sec. 19. ORDERS OF INJUNCTION OR RESTRAINING ORDERS—REQUIREMENTS.

Must set forth reasons, be specific, and describe acts to be restrained.

SEC. 19. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same.

Binding only on parties to suit, their officers, etc.

Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT.

SEC. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

Not to issue unless necessary to prevent irreparable injury.

Threatened property or property rights must be described with particularity.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute,

Not to prohibit any person or persons from terminating any relation of employment, recommending others by peaceful means so to do, etc.

Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT—Contd.

any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Acts specified in this paragraph not to be considered violations of any law of the United States.

Sec. 21. DISOBEDIENCE OF ANY LAWFUL WRIT, PROCESS, ETC., OF ANY UNITED STATES DISTRICT COURT, OR ANY DISTRICT OF COLUMBIA COURT.

SEC. 21. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

If act done also a criminal offense under laws of United States or of State in which committed, person to be proceeded against as hereinafter provided.

Sec. 22. RULE TO SHOW CAUSE OR ARREST. TRIAL. PENALTIES.

SEC. 22. That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however,*

Court or judge may issue rule to show cause why person charged should not be punished.

Trial if alleged contempt not sufficiently purged by return.

Failure of natural person to make return. Attachment against person.

That if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

If body corporate, attachment for sequestration of its property.

Trial may be by court, or upon demand of accused, by jury.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

Trial to conform to practice in criminal cases prosecuted by indictment or upon information.

Penalty, fine or imprisonment, or both.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000, nor shall such imprisonment exceed the term of six months: *Provided*, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Fine paid to United States or complainant or other party injured. If accused natural person, fine to United States not to exceed $1,000.

Court or judge may dispense with rule and issue attachment for arrest.

Accused to be brought before judge promptly and admitted to bail. Proceedings thereafter same as if rule had issued.

Sec. 23. EVIDENCE. APPEALS.

Evidence may be preserved by bill of exceptions.

SEC. 23. That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions,

Judgment reviewable upon writ of error.

and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified

Granting of writ to stay execution, and

as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the

Accused to be admitted to bail.

accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

Sec. 24. CASES OF CONTEMPT NOT SPECIFICALLY EMBRACED IN SEC. 21 NOT AFFECTED.

Committed in or near presence of court, or

SEC. 24. That nothing herein contained shall be construed to relate to comtempts committed in the presence

In disobedience of any lawful writ or process in suit or action by or in behalf of United States.

of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or

And other cases not in sec. 21.

prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not

Punished in conformity with prevailing usages at law and in equity.

specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

Sec. 25. PROCEEDINGS FOR CONTEMPT. LIMITATIONS.

Must be instituted within one year

SEC. 25. That no proceeding for contempt shall be instituted against any person unless begun within one year

Not a bar to criminal prosecution.

from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for

Pending proceedings not affected.

the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

Sec. 26. INVALIDITY OF ANY CLAUSE, SENTENCE, ETC., NOT TO IMPAIR REMAINDER OF ACT.

SEC. 26. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence,

But to be confined to clause, sentence, etc., directly involved.

paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Approved, October 15, 1914.

WEBB ACT [1]

[Approved Apr. 10, 1918]

[PUBLIC—No. 126—65TH CONGRESS]

[H. R. 2316]

AN ACT To promote export trade, and for other purposes

Sec. 1. DEFINITIONS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "export trade" wherever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale. "Export trade."

That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States. "Trade within the United States."

That the word "Association" wherever used in this Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations. "Association."

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[1] In this general connection, i. e., regulation and promotion of export trade, mention should perhaps be made of the so-called antidumping legislation, prohibiting, penalizing, and affording relief for systematic importation and sale of articles into the United States at prices substantially less than their actual market value or their wholesale price, as in the act specified, where done with the intent of destroying or injuring a domestic industry, preventing the establishment thereof, or of restraining or monopolizing any part of trade and commerce in the articles concerned, in the United States. Act of Sept. 8, 1916, ch. 463, sec. 801, 39 Stat. 798.

As regards cases, see reference to act in *United States* v. *United States Steel Corporation*, 251 U. S. 417 at 453, in *Ex Parte Lamar*, 274 Fed. 160 at 171, and in *American Export Door Corporation* v. *John A. Gauger Co.*, 283 Pac. 462 (Wash.), in which the court, in a suit by a Webb Law association against a member, to enforce the membership contract, held the contract void as a restraint of trade at the common law and violative of the State constitution, the act inoperative to regulate such intrastate matters as therein concerned, as beyond the Federal jurisdiction, and, as regards the exemptions provided by the act, from the antitrust laws, as not intended to reach such situations as disclosed by the facts of said case. Except as above noted, the act does not appear to have been involved in reported cases.

Sec. 2. ASSOCIATION FOR OR AGREEMENT OR ACT MADE OR DONE IN COURSE OF EXPORT TRADE—STATUS UNDER SHERMAN ANTITRUST LAW.

Association not illegal if organized for and engaged in export trade solely.

SEC. 2. That nothing contained in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety,[2] shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

Nor agreement nor act, if not in restraint of trade within the United States, or of the export trade of any domestic competitor, and

If such association does not artificially or intentionally enhance or depress prices of, or substantially lessen competition, or restrain trade in commodities of class exported.

Sec. 3. ACQUISITION BY EXPORT TRADE CORPORATION OF STOCK OR CAPITAL OF OTHER CORPORATION.

Lawful under Clayton Act unless effect may be to restrain trade or substantially lessen competition within United States.

SEC. 3. That nothing contained in section seven of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen,[3] shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

Sec. 4. FEDERAL TRADE COMMISSION ACT EXTENDED TO EXPORT TRADE COMPETITORS.

SEC. 4. That the prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September

[2] For text of Sherman Act, see footnote on pp. 533–535.
[3] See *ante*, p. 532 et seq.

twenty-sixth, nineteen hundred and fourteen,[4] shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

Even though acts involved done without territorial jurisdiction of United States.

Sec. 5. OBLIGATIONS OF EXPORT TRADE ASSOCIATIONS UNDER THIS ACT. PENALTIES FOR FAILURE TO COMPLY. DUTIES AND POWERS OF COMMISSION.

Export trade associations or corporations to file statement with Federal Trade Commission showing location of offices, names, and addresses of officers, etc., and also articles of incorporation or contract of association, etc.

SEC. 5. That every association now engaged solely in export trade, within sixty days after the passage of this Act, and every association entered into hereafter which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

To furnish also information as to organization, business, etc.

Penalties, loss of benefit of secs. 2 and 3, and fine.

District attorneys to prosecute for recovery of forfeiture.

[4] See *ante*, p. 519 et seq.

Sec. 5. OBLIGATIONS OF EXPORT TRADE ASSOCIATIONS UNDER THIS ACT. PENALTIES FOR FAILURE TO COMPLY. DUTIES AND POWERS OF COMMISSION— Continued.

Federal Trade Commission to investigate restraint of trade, artificial or intentional enhancement or depression of prices or substantial lessening of competition by association.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

May recommend readjustment in case of violation.

To refer findings and recommendations to Attorney General if association fails to comply with recommendation.

Commission given same powers as under Federal Trade Commission Act so far as applicable.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes." [5]

Approved, April 10, 1918.

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[5] See *ante*, p. 519 et seq.

APPENDIX II

DECISIONS OF THE COURTS IN CASES INSTITUTED AGAINST OR BY THE COMMISSION[1]

WESTERN MEAT CO. *v.* FEDERAL TRADE COMMISSION[2]

(Circuit Court of Appeals. Ninth Circuit. June 24, 1929)

No. 4064

MONOPOLIES KEY NO. 24 (2)—DIVESTMENT OF STOCK UNLAWFULLY ACQUIRED NEED NOT INCLUDE DIVESTMENT OF PLANT AND PROPERTY NECESSARY TO GOING CONCERN SO AS TO RESTORE COMPETITION (CLAYTON ACT, Sec. 7; 15 USCA, Sec. 18).

Divestment of stock acquired by corporation in violation of the Clayton Act, section 7 (15 USCA, sec. 18), need not include a divestment of plant and property necessary to a going concern so as to restore competition that was interrupted by unlawful acquisition of stock.

MONOPOLIES KEY NO. 24 (2)—CORPORATION UNABLE TO DIVEST ITSELF OF STOCK AS ORDERED, HAD RIGHT TO SELL PROPERTY AT EXECUTION SALE TO COLLECT BONA FIDE DEBT (CLAYTON ACT, Sec. 7; 15 USCA, Sec. 18).

Where corporation, ordered to divest itself of stock acquired in violation of Clayton Act, section 7 (15 USCA, sec. 18), had tried in good faith for a period of nearly two years to sell stock and plant and property acquired, it had lawful right thereafter to sell property on execution sale for purpose of enforcing collection of bona fide debt.

(The syllabus is taken from 33 F. (2d) 824)

Petition by the Western Meat Co. to review an order of the Federal Trade Commission. On return by petitioner, in which it prays for approval of its final report, with objections thereto by respondent. Objections overruled, and report approved.

F. L. Horton, of Chicago, Ill., *Sullivan & Sullivan & Theo. J. Roche* and *Edward Barry*, all of San Francisco, Calif., and *John D. Hoyt*, of Reno, Nev., for petitioner.

Robert E. Healy and *Alfred M. Craven*, both of Washington, D. C., for respondent.

Before GILBERT, RUDKIN, and DIETRICH, Circuit Judges.

GILBERT, *Circuit Judge:*

The petitioner, the Western Meat Co., was a competitor of the Nevada Packing Co. in interstate selling and distributing meat

[1] The period covered is that of this volume, namely, June 12, 1929, to May 4, 1930, inclusive.

[2] The case is reported in 33 F. (2d) 824.

Pursuant to a subsequent stipulation, petition for writ of certiorari, granted by the Supreme Court on October 21, 1929, was dismissed on May 19, 1930, and the case remanded to the court herein, which, on June 6, 1930, vacated and set aside its decision in the instant case overruling the Commission's objections to the report of the Western Meat Co.; it appearing to the Commission that through a sale of the physical property and assets of the Nevada Packing Co., negotiated after the decision in question and as a separate and independent transaction, and approved by the Commission, the full purpose of the original order of the Commission (See 5 F. T. C. 417), would be accomplished, and full protection of the public interest provided for.

products. In 1916 the former purchased all the stock of the latter. On February 2, 1923, the Federal Trade Commission entered an order directing the petitioner to divest itself of all capital stock of the Nevada Packing Co., so as to include in such divestment the latter company's plant and all property necessary to the operation thereof, and forbidding it either directly or indirectly to retain any of the fruits of the acquisition of said stock, and that in such divestment no stock or property so to be divested should be sold or transferred directly or indirectly to any stockholder, officer, director, employee, or agent, connected with the petitioner or any of its officers or stockholders. In *Western Meat Co.* v. *Federal Trade Commission*, 4 Fed. (2d) 233,[1] this court held that a portion of the order thus made went beyond the authority of the Commission as defined by statute and directed that it be modified by eliminating therefrom the injunction against the acquisition of the plant and property of the Nevada Packing Co. On certiorari from the Supreme Court in *Federal Trade Commission* v. *Western Meat Co.*, 272 U. S. 544,[2] is was held that while the order of the Commission went beyond the letter of the statute, it must be construed with regard to the existing circumstances and must be read in the light of the general purpose of the statute and applied with a view to effectuate that purpose, since preservation of established competition was the great end which the legislature sought to secure. In [825] pursuance of the mandate of the Supreme Court, this court, on May 2, 1927, entered a final order and restored thereto the words of the original order of the Commission. Thereafter the Western Meat Co., the petitioner herein, obtained at intervals three extensions of time within which to comply with the order, representing in each petition for extension of time that it had continuously endeavored in good faith to divest itself of said capital stock of the Nevada company in accordance with the decree.

It was three years after the petitioner acquired the capital stock of the Nevada company that the Federal Trade Commission filed its complaint charging violation of section 7 of the Clayton Act. During that period the petitioner advanced about $715,000 to the Nevada company and the latter expended $225,000 of that sum in the enlargement and betterment of its plant. Thereafter payments were made by the Navada company on account of the indebtedness until on June 22, 1928, the balance unpaid was $275,000. During the third extension of time so allowed the petitioner, and after many futile efforts to divest itself of the stock of the Nevada company, the petitioner brought an action against the latter company alleging an indebtedness of the latter in the sum of $275,000, secured judgment thereon by default, and on execution sale bid in the plant of the Nevada company, consisting of all real property and machinery and merchandise of the value of $110,000 and thereafter transferred the capital stock to one H. H. Scheeline, who had been made a party to the proceeding. At the time of the transfer of the stock to Scheeline the physical assets of the Nevada company had all been disposed of and there remained only certain bills and accounts receivable of the face value of $99,436.92 and cash in the sum of

[1] Also reported in 8 F. T. C. 623.

[2] Also reported in 11 F. T. C. 629.

$6,447.61, and the indebtedness of the Nevada Packing Co. in the form of notes and accounts was $99,299.11, and since such transfer the accounts, except about $1,000 in amount, have been collected and applied to that indebtedness. In selling to Scheeline, the petitioner delivered to him the certificates representing the stock, together with the seal of the Nevada company and the stock book and stock ledgers. No conditions were attached to the sale. Scheeline became in good faith and has since remained the sole and exclusive owner of said stock. After that sale the petitioner filed its report with this court and with the Commission.

The case comes on to be heard upon the return made by the petitioner in which it prays that its final report be approved by the court. The Federal Trade Commission, in objecting to the final report, has failed to point out definitely the particulars of the petitioner's default or to specify distinctly what was left undone that ought to have been done or what was done that ought not to have been done. Its position seems to be that inasmuch as the preservation of established competition was the great end which the legislature sought to secure by the Clayton Act, an act which was intended to supplement the purpose and effect of the Sherman Act, *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346, 355, the order of the Commission prohibits any divestment of the stock of the Nevada company which would enable the petitioner to retain any benefit or any outcome, result, or effect of the acquisition thereof, that the divestment must carry with it the plant and physical assets of the Nevada company as a going concern and be effectual to render possible the restoration of the competition that had been wrongly suppressed, in short, that the divestment of the stock must include a divestment of the plant and property necessary to a going concern so as to restore the competition that was interrupted by the unlawful acquisition of the stock. That position is, we think, wholly unsustainable. In purchasing the stock of the Nevada company the petitioner paid presumably the full market value thereof. It owed nothing therefore to the former owners of that stock and it was not the purpose of the order of the Commission that it restore to the Nevada company or to its stockholders anything which it acquired by the purchase. The order of the Commission requiring the petitioner to divest itself of the stock is not susceptible of the construction which is suggested, and unquestionably such an order would have been beyond the powers of the Commission. Counsel for the Commission makes no question of the [826] good faith of the petitioner's effort to divest itself of the stock or of the good faith of the indebtedness for which it obtained its judgment and on which it caused the properties of the Nevada company to be sold. It does say, however, that inasmuch as the petitioner still held the stock of the Nevada company, it had no right to proceed as it did by its action at law for the collection of that company's debt to it. A similar contention was made in *Aluminum Co. of America* v. *Federal Trade Commission*, 299 Fed. 361, where it was urged that the debt on which the Aluminum company sued was fraudulent and that therefore it should be restrained from collecting the same. But the court found that the indebtedness was not fraudulent, and not being fraudulent, the court was powerless to restrain the judgment creditor from proceeding in any manner provided by law for the collection of its debt. Said the court:

"Does the Clayton Act, in a case like this, thus nullify other laws and deprive such a creditor of the right to resort to them? We have found nothing in its terms which indicates that it does."

Counsel for the Commission fails to point out the further steps that should have been taken by the petitioner to reestablish the Nevada company as a going concern. Obviously that result could only have been accomplished by inducing others to invest in the stock of the company. All efforts to sell the stock and plant with a view to reestablishing the industry failed, and it is inferable that the failure resulted from the petitioner's inability to show that the venture would be successful. We can not see that it could have done more than it did. It tried in good faith for a period of nearly two years to sell the stock and the plant and the property which it has acquired from the Nevada company, and what it did thereafter we think it had the lawful right to do.

The decision of the Supreme Court in *Federal Trade Commission* v. *Western Meat Co.* must be read in the light of the other decisions of the court rendered at the same time and disposed of in the same opinion. Thus in *Thatcher Manufacturing Co.* v. *Federal Trade Commission* the court said: "When the Commission institutes a proceeding based upon the holding of stock contrary to section 7 of the Clayton Act, its power is limited by section 11 to an order requiring the guilty person to cease and desist from such violation, effectually to divest itself of the stock, and to make no further use of it. The act has no application to ownership of a competitor's property and business obtained prior to any action by the Commission, even though this was brought about through stock unlawfully held. The purpose of the act was to prevent continued holding of stock and the peculiar evils incident thereto." The court went on to say that if the purchase of property has produced an unlawful status a remedy is provided through the courts, but that the Commission is without authority under such circumstances. Here the debt of the Nevada company to the petitioner was incurred in good faith prior to any action of the Federal Trade Commission. No valid reason is advanced for holding that the petitioner was powerless to subject the debtor's property to the payment of the debt. Had the petitioner succeeded in its efforts to sell the stock of the Nevada company to a purchaser or purchasers who would acquire the same and assume the indebtedness of that company to the petitioner, no question could be made of the right of the petitioner to enforce the satisfaction of its claim by an action at law.

The Commission cites cases which arose under the Sherman Act, such as *Standard Oil Co.* v. *United States*, 221 U. S. 1; *United States* v. *American Tobacco Co.* 221 U. S. 106; *Continental Insurance Co.* v. *United States*, 259 U. S. 156; and others, to the effect that public interests are paramount to private interests and that if for reasons of public policy the legislature declares that a railway shall not become the purchaser of a competing line, the purchase is none the less unlawful because the parties choose to have it take the form of a judicial sale, and it is argued that while there was no direct prohibition in the decree forbidding the petitioner to acquire the physical assets of the Nevada Packing Co., it is still true that the decree specifically provided such a divestiture of the stock and has pre-

cluded the petitioner from acquiring and retaining in any manner any of the physical assets. But the Clayton Act, as we have seen, contains no such broad grant of power as does the Sherman Act, and the punishment can be only that which the statute prescribes, *Wilder Mfg.* v. *Corn Products Co.* 236 U. S. 165. The harmful result of the purchase of the stock by the petitioner was the suppression of competition and the injury to the public. But it did not call for restitution [827] or reparation to any injured person A decree ordering that a divestment of stock so unlawfully acquired be made in such a way as to restore competition would be incapable of enforcement. The most that could be done was that which was done here, to require the divestment of the stock and the property and to deny the offender the right to obtain or keep any advantage which might be the result, directly or indirectly, of its unlawful act. We find no ground for sustaining the Commission's contention that the petitioner has failed to comply with the order of the Commission and the decree of this court.

The objections to the final report are overruled and the report is approved.

FEDERAL TRADE COMMISSION *v.* SMITH ET AL.[1]

(District Court, S. D. New York. July 18, 1929)

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—FEDERAL TRADE COMMISSION MAY COMPEL PERSONAL ATTENDANCE OF NECESSARY WITNESSES (FEDERAL TRADE COMMISSION ACT, SEC. 6 (a) (d); 15 USCA, SEC. 46 (a) (d)).

Under Federal Trade Commission Act, section 6 (a) (d); 15 USCA, section 46 (a) (d), Federal Trade Commission, in exercise of powers of investigation, may compel the personal attendance of such witnesses as may be regarded as able to furnish information concerning subject-matter which Commission has under investigation, and such witnesses, when called, may be required, subject to their constitutional immunities, to testify concerning their knowledge of such subject-matter as is within the jurisdiction of the Commission.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—DUCES TECUM SUBPŒNAS OF FEDERAL TRADE COMMISSION, DIRECTED TO OFFICER OF INTERSTATE CARRIER OF ELECTRICITY, REQUIRING PRODUCTION OF CERTAIN DOCUMENTS, HELD NOT SUSTAINABLE.

Duces tecum subpœnas of Federal Trade Commission, to require officer of interstate carrier of electricity to produce operating expense ledgers and certain other papers of such carrier, *held* not sustainable, since Congress had not, as yet, undertaken to regulate interstate carrier of electricity in the same manner as interstate common carriers, and books and vouchers sought by Commission related not alone to interstate business of carrier, but to its intrastate business as well.

SEARCHES AND SEIZURES KEY-NO. 7 (25)—UNTIL PARTICULAR DOCUMENTS BECOME EVIDENTIARY, CARRIER NEED NOT LAY BEFORE FEDERAL TRADE COMMISSION ITS DOCUMENTS FOR SCRUTINY, TO DETERMINE WHETHER ANTITRUST LAWS HAD BEEN VIOLATED (CONST. U. S. AMEND. 4).

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[1] Reported in 34 F. (2d) 323.

Until particular documents, including books, become evidentiary, interstate carrier of electricity was not obligated to lay before Federal Trade Commission its books and papers for scrutiny in an investigation to ascertain whether the antitrust laws had been violated, and to report facts to Congress on a subject over which it had legislative jurisdiction, and concerning which it has directed the Commission to report; such carrier being within protection afforded by Const. U. S. Amend. 4.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—FEDERAL TRADE COMMISSION MAY RESORT TO PROCESS OF SUBPŒNA TO SECURE ATTENDANCE AND TESTIMONY OF WITNESS AND PRODUCTION OF DOCUMENTARY EVIDENCE (FEDERAL TRADE COMMISSION ACT, SEC. 6 (a); SEC. 5, 15 USCA (SEC. 45).

Federal Trade Commission, in conducting an investigation under Federal Trade Commission Act, section 6 (a), which has not ripened into a proceeding under section 5, 15 USCA section 45, may resort to process of subpœna, provided that process is not abused, to secure the attendance and testimony of witnesses and the production of documentary evidence relating to matter under investigation.

(The syllabus is taken from 34 F. (2d) 323)

At law. Application by the Federal Trade Commission for an order directing A. E. Smith, comptroller and assistant secretary, Electric Bond & Share Co., and others, to attend before the Commission and to produce certain documents. Respondent's objections to subpœnas duces tecum sustained, and objections interposed to questions propounded individual witnesses overruled.

Mr. Charles H. Tuttle, United States Attorney, of New York City (*Mr. Thomas J. Crawford*, Assistant United States Attorney, of New York City, of counsel), for petitioner.

[324] *Mr. Robert E. Healy* and *Mr. Adrien F. Busick*, both of Washington, D. C., for Federal Trade Commission.

Simpson, Thacher & Bartlett, of New York City, and *Mr. John F. MacLane*, of Salt Lake City, Utah (*Mr. John W. Davis* and *Mr. Louis Connick*, both of New York City, of counsel), for respondents and Electric Bond & Share Co.

KNOX, *District Judge:*

For the purpose of the decision to be made upon this application of the Federal Trade Commission for an order which will direct A. E. Smith to attend before the Commission, and there to produce the operating expense ledgers and certain other papers of the Electric Bond & Share Co., it will be assumed that such corporation, as to a part of its business, is engaged in interstate commerce, and is thus within the provisions of the Federal Trade Commission Act of September 26, 1914. Furthermore, my opinion is that the Commission in the exercise of the powers of investigation, which are conferred upon it by subdivisions (a) and (d) of section 6 of the act, may compel the *personal* attendance of such witnesses as may be regarded as able to furnish information concerning the subject matter

which the Commission has under investigation, and that such witnesses, when called, may be required, subject to their constitutional immunities, to testify concerning their knowledge of such subject matter as is within the jurisdiction of the Commission. *McGrain* v. *Daugherty*, 273 U. S. 135.

In connection with the adjudication just cited, attention must be had to the statement of Justice Van Devanter on page 153 of the report in which he said:

> It will be observed from the terms of the resolution that the warrant (calling for the arrest of Daugherty) was to be issued in furtherance of the effort to obtain the personal testimony of the witness and, like the second subpœna, was not intended to exact from him the production of the various records, books and papers named in the first subpœna.

Had Daugherty's alleged contumacy been based upon the first subpœna that the Senate directed to him, it is open to doubt if the Supreme Court would have sustained the process. The first subpœna was open to the objection that it was, in effect, a general warrant, and was bad under the decision of *Federal Trade Commission* v. *American Tobacco Co.*, 264 U. S. 298.

With this latter case, and that of *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407, in mind, I think the duces tecum subpœnas of the petitioner which have issued to the present respondents are not to be sustained. The Congress has not, as yet, undertaken to regulate the interstate carrier of electricity in the same way as interstate common carriers are now supervised and controlled, and the legislative right of the Federal Trade Commission to investigate companies, which are engaged in the transmission of electric current over state boundaries, or the holding corporations, by which the activities of the producing companies are directed, and which, as a result, may be also engaged in interstate commerce, is hardly comparable with that of the Interstate Commerce Commission with respect to interstate common carriers. See *Smith* v. *Interstate Commerce Commission*, 245 U. S. 53.

Until the powers of petitioner with respect to such inquiries as it may undertake shall have been enlarged by appropriate statutes, the present limitations which hedge about its inquisitorial functions must be recognized. One of them is that until particular documents, including books, become evidentiary, respondent corporation is not obligated to lay before the Commission its books and papers for scrutiny in—

> an investigation to ascertain whether the antitrust laws have been violated and to report facts to Congress on a subject over which it has legislative jurisdiction and concerning which it has directed the Commission to report. (Petitioner's brief, p. 83.)

The company is within the protection afforded by the fourth amendment to the Constitution. So far as is shown by the present papers, the books and vouchers that are sought by petitioners relate not alone to interstate business of the Electric Bond & Share Co., but to its intrastate business as well. And even as to interstate business, petitioner in the absence of a well-founded basis, can not say to a suspected corporation, "Stand and deliver the possible evidences of the crime of which you are suspected". *Federal Trade Commission* v. *American Tobacco Co.*, supra; *Federal Trade Commission* v. *Balti-*

more Grain Co., 284 Fed. 886, affirmed, 267 U. S. 586. A time may come when petitioner will have established the reasonableness of a demand for particular papers or books from Electric Bond & Share Co., but it does not appear to have arrived. So far, the suggestion that the corpo[325]ration may, perhaps, have violated the antitrust laws rests only on hearsay or suspicion.

In stating what has been said, the court is not at all unmindful of respondent's vigorous contention that petitioner is without authority, in conducting an investigation under subdivision (a) of section 6 of the Trade Commission Act, to resort to the process of subpœna. In support of the argument, my atetntion has been called to the history of the legislation, and to the decision of Justice Smith of the Supreme Court of the District of Columbia in *Miller's National Federation et al.* v. *Federal Trade Commission*[1] in which he held that the Commission is without power to—

> issue or serve subpœnas or to compel witness to attend or testify or to exact the production of documentary evidence until it has proceeded against the corporation by taking the action set out in section 5

of the act. My thought is also directed to a number of other decisions from which I am asked to reach the conclusion expressed by Justice Smith.

The point which respondents thus seek to establish is so enshrouded by the mists of legislative arguments, prior decisions, and present controversies, that a volume might easily be written in an effort to disperse them. But I have neither the time nor disposition to do so. It must suffice to say that respondent's argument in the premises has been carefully considered and found unpersuasive. By way of brief response to the point advanced by respondents, it may be said that the Commission's declared power to require by subpœna the attendance and testimony of witnesses, and the production of documentary evidence relating to a matter properly under "*investigation*" is an illusion unless it comprehends investigations such as are contemplated by subdivisions (a) and (d) of section 6 of the act. Investigations of the characters there specified are within the "purposes" of the act.

Such seems to have been the intention of the committees of Congress which had the Trade Commission bill in charge before its enactment into law. When the bill was in conference, there appears to have been a good deal of trading back and forth between the conferees upon the phraseology of its provisions. But this circumstance, as I conceive it, constitutes no license to this court to disregard the natural effect of the language contained in the bill on final passage, and the avowed object of the legislation. So far as I can see, there was no constitutional barrier to the grant to the Commission of the power to use compulsory process in its lawful investigations. Petitioner, of course, must not abuse the process, but with this restriction, I am satisfied that it can be used in an "investigation" which has not ripened into a proceeding under section 5 of the act, and which may be of aid to the Congress in considering legislation that is within the scope of its authority.

As a result of the views hereinbefore set out, respondent's objections to the subpœnas duces tecum will be sustained, and those that

[1] See 10 F. T. C. 789.

were interposed to the pertinent and competent questions propounded to the individual witnesses will be overruled.

As was said at the outset, I have assumed that the Electric Bond & Share Co. is in part at least engaged in interstate commerce. If respondents wish to contest the propriety of this assumption, the matter will have to go to a master; or, if petitioner wishes an adjudication to the effect that the interstate business of the Electric Bond & Share Co. is so intimately associated and connected with interstate commerce that all the company's activities are subject to the jurisdiction of the Commission, a reference will be required to establish the fact.

MASLAND DURALEATHER CO. ET AL. *v.* FEDERAL TRADE COMMISSION [1]

(Circuit Court of Appeals, Third Circuit. September 18, 1929)

No. 4085

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—FINDINGS OF FEDERAL TRADE COMMISSION AS TO FACTS OF UNFAIR METHODS OF COMPETITION IN COMMERCE ARE CONCLUSIVE WHEN SUPPORTED BY TESTIMONY (15 USCA SEC. 45).

Under act September 26, 1914, section 5, 38 Stat. 719 (15 USCA sec. 45), empowering Federal Trade Commission to prevent persons, partnerships, or corporations, except banks and common carriers, from using unfair methods of competition in commerce, the findings of the Commission as to facts, if supported by testimony, are conclusive.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—EVIDENCE SUSTAINED FINDING OF FEDERAL TRADE COMMISSION THAT "DURALEATHER" WAS TRADE-NAME OF IMITATION LEATHER INVOLVED IN PROCEEDING CHARGING UNFAIR COMPETITION (15 USCA SEC. 45).

Evidence in proceeding instituted by Federal Trade Commission under act September 26, 1914, 38 Stat. 717 (15 USCA secs. 41–51), charging use of unfair methods of competition in interstate commerce in violation of section 5 of the act (15 USCA sec. 45), *held* sufficient to sustain finding that "Duraleather" was the trade-name of imitation leather involved in proceeding.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68(3)—"DURALEATHER" AS TRADE-NAME FOR IMITATION LEATHER HELD INHERENTLY FALSE AND MISLEADING WITHIN LAW RELATING TO UNFAIR COMPETITION (15 USCA SEC. 45).

"Duraleather" as trade-name for imitation leather *held* inherently false and misleading, within meaning of act September 26, 1914, section 5, 38 Stat. 719 (15 USCA sec. 45), forbidding use of unfair methods of competition in interstate commerce.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 97—FALSE TRADE-NAME HAVING CAPACITY AND TENDENCY TO DECEIVE ORDINARY PURCHASER WILL BE ENJOINED (15 USCA SEC. 45).

A false trade-name, or one that has both the capacity and tendency to deceive the ordinary purchaser, will be enjoined in accordance with act September 26, 1914, section 5, 38 Stat. 719 (15 USCA sec. 45).

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[1] Reported in 34 F. (2d) 733. Case before Commission reported in 12 F. T. C. 351.

(The syllabus is taken from 34 F. (2d) 733)

Petition by the Masland Duraleather Co. and another to review an order of the Federal Trade Commission. Order modified and affirmed.

[734] *Mr. Robert T. McCracken* and *Mr. C. Russell Phillips*, both of Philadelphia, Pa., for petitioners.

Mr. Robert E. Healy, *Mr. Edward J. Hornibrook*, and *Mr. Adrien F. Busick*, all of Washington, D. C., for respondent.

Before WOOLLEY and DAVIS, Circuit Judges, and RELLSTAB, District Judge.

RELLSTAB, *District Judge.*

The Masland Duraleather Co., a Pennsylvania corporation, and W. & J. Sloane, a New Jersey corporation, jointly petition this court to review and set aside an order made by the Federal Trade Commission, commanding them to cease and desist from using the term "Duraleather" as a trade name on imitation leather, on their stationery, in their advertisements of the product, and "from using the word leather or any other word or combination of words in such manner as to import or imply that such products are real leather."

The respondent hereafter will be called Commission, and the petitioners, when separately referred to, will be termed Masland company and Sloane, respectively.

The Commission, in that part of its answer which is in the nature of a cross-bill, prays for a decree affirming this order and requiring petitioners to conform thereto.

The challenged order is the result of proceedings instituted by the Commission, pursuant to the act of September 26, 1914, 38 Stat. 717 (15 USCA, secs. 41–51), entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," in which it was charged that petitioners were using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of that act.

The decried business methods and their alleged consequences are set out in two counts. Both deal with petitioners' use of an alleged false and misleading trade name in marking, advertising, and marketing their artificial leather product, and the results thereof. The first relates to competition in the pertinent trade generally, while the second is confined to a particularly named alleged competitor.

The Commission's findings underlying this order, pertinent or necessary to be understood on this review, somewhat abbreviated are:

That the Masland company is "engaged in the manufacture of a product which it calls 'Duraleather,' an imitation or artificial leather"; that Sloane is engaged in selling and distributing this product "to manufacturers of automobiles, automobile bodies, trunks, suitcases, satchels, upholstered articles, and other similar products, who manufacture many of said products in whole or in part of said imitation or artificial leather"; that petitioners compete

with others making "leather and imitation or artificial leather," who sell the same throughout the United States; that petitioners' product contains no leather, but is painted and embossed with a grain closely resembling genuine leather; that the manufacture of this imitation leather was begun in 1914 by Walter E. Masland, individually, who designated it as "Duraleather"; that since its incorporation (1919) the Masland company continued this manufacture and designation; that prior to 1924 Masland company branded its imitation leather with the word "Duraleather" and so advertised it without explanation that it was artificial and in imitation of genuine leather; that since 1924 Masland company "has used the term 'Duraleather' in branding, labeling, designating, and advertising its said imitation or artificial leather, which term is printed in very conspicuous type and is also accompanied with the phrase 'The Durable Leather Substitute' in letters of less conspicuous type"; that samples of this imitation leather, sent to customers and prospective customers before 1924 "bore the word 'Duraleather' without explanation that the product was imitation or artificial"; that since 1924 "these samples have borne the word 'Duraleather' in conspicuous letters and the words 'A Durable Leather Substitute' in letters so small as to be hardly discernable to the human eye"; that "Duraleather" is frequently billed to customers of petitioners by Sloane, without explanation on the billing or invoice that the same is imitation or artificial; that on orders to imitate samples of genuine leather furnished by persons desiring such imitation, Masland company endeavors to make this particular imitation; that in 1923 the Virginia Trunk & Bag Co. purchased from one of the jobber customers of petitioners a quantity of "Duraleather," which it used in making traveling bags and suitcases, and which it sold in several of our States as "Duraleather" bags, "Duraleather" suit cases, and "Duraleather" overnight bags, without explanation that the same were made of artificial or imitation leather, and that in the same year this company issued more than 10,000 catalogues and circulars "in which some of its bags and suitcases were described as 'black, cobra grained Duraleather,' without explanation that the same were made from imitation leather"; that the reason this company "used the word 'Duraleather,' as above described, was because such name was given to the prod[735]uct by the manufacturers thereof"; that among the competitors of petitioners is A. C. Lawrence Leather Co., which is engaged in the manufacture of genuine leather, which it sells to makers of shoes, luggage, upholstered furniture, automobiles, novelties, and other products, located in several States; that this company for more than twenty-five years used its registered name, "Duro," as a trade mark for calfskin and vealskin leathers made and sold by it, and advertised this trade name in connection with its said product as "Duro calf," "Duro veal," and "Duro calf leather"; that this company successfully opposed the registration by Masland company of the word "Duraleather"; and that there is a similarity between the designated products of this company and the "Duraleather" made by the Masland company; that the use by petitioners "of the trade name 'Duraleather' has the capacity and tendency to mislead and deceive the consuming public into the belief that said 'Duraleather' is a product of the aforesaid competitor and to cause the consuming public to purchase articles made in whole or in part from

'Duraleather' in such belief"; that petitioners' use of the term "Duraleather" as applied to their imitation leather suggests the use of that term by their customers or the latter's customers "in the marketing and sale of products made in whole or in part of 'Duraleather'"; that such uses have "the tendency and capacity to divert trade from those who are engaged in the manufacture of real leather and those who are engaged in the manufacture of imitation leather and selling and advertising the same as such imitation leather"; that such uses also have "the capacity and tendency to deceive the consuming public into the belief that the articles made therefrom are made from genuine leather and to cause the consuming public to purchase the same in such belief"; and that petitioners' recited "acts and practices place in the hands of others the means of committing a fraud upon the consuming public by enabling dealers to offer for sale and sell to the consuming public articles made from 'Duraleather' as and for articles made of real leather."

These findings are challenged in the following summarized particulars:

That the name of petitioners' product since 1924 has not been "Duraleather," but "Duraleather, the Durable Leather Substitute," and that this amplified name is clearly legible.

That there is no evidence (*a*) of competition between petitioners and A. C. Lawrence Leather Co.; (*b*) or between them and any manufacturer of genuine leather; (*c*) or that the public, or anyone, has been, or is likely to be, deceived by such amplified name; (*d*) or that sales of this product were made without knowledge on the part of, or explanation to, purchasers that it was imitation leather; (*e*) that anyone was, or is likely to be, deceived into the belief that the product was genuine leather; (*f*) or that the amplified name suggests to customers a product made therefrom as being made of leather or "Duraleather"; (*g*) or that thereby any trade has been, or is likely to be, diverted from manufacturers of real leather; (*h*) or that the consuming public has been, or is likely to be, deceived into the belief that articles made from that product are made from genuine leather; (*i*) or that the consuming public has been misled into purchasing such articles as a result of any such belief; (*j*) or that petitioners' use of that amplified name, places, or is likely to place, in the hands of others the means of deceiving the public into believing that such articles are made of real leather.

In dealing with these alleged errors, we must bear in mind that by section 5 of the act referred to, "the Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce," and that its findings as to facts, if supported by testimony, are made conclusive. *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483; *Curtis Pub. Co.* v. *Federal Trade Commission*, 270 F. 881; 260 U. S. 568.

It is noted that the basic challenge relates to the trade name, and that many of the other challenges need be considered only in case this court determines in favor of the petitioners' contention that the trade name is not "Duraleather," but "Duraleather, the Durable Leather Substitute."

It is conceded, and the record establishes, that from 1915 to 1924 the name for this imitation leather was "Duraleather," without any additions. During this period the product in question was advertised and marketed under that trade name, the first four years by Walter E. Masland and thereafter by his successor the Masland Co. In 1924, for some reason not disclosed, there was added to the word "Duraleather" the phrase "The Durable Leather Substitute"; from which time this amplified name has been used in marking, advertising, and marketing this imitation leather. However, the word "Duraleather," whenever it appeared with the additions referred to, was always on a line by [736] itself and was of much larger type than the additions which appeared on a line below, and by far was the more prominent; and on some of the Masland company's billheads and on one form of the Sloane tags used in labeling this product, it was made the more conspicuous by being printed in red ink in contrast with the black ink used in printing the additional phrase. On samples, this addition was in many instances hardly discernible. Undisputedly "Duraleather" was the sole name for this imitation leather for nine years. Thereafter, and seemingly purposely, it was the most conspicuous and outstanding word in the marking, advertising, and billing of this imitation leather. This "catchy" word, notwithstanding its later association with the additional phrase referred to, did not lose its significance or dominancy as the commercial signature under which the petitioners were advertising and marketing their product.

Some time subsequent to the addition of this phrase, the Masland company advertised its imitation leather in The Decorative Furnishers Directory and Buyers Guide, published in New York City in pocket edition form. This advertisement carried a prominently displayed cut or picture of an upholstered armchair. Above and below this cut was printed the word "Duraleather" on one line and the words "The Durable Leather Substitute" on the following line. Here also in both places "Duraleather" was printed in the larger type. The type used in printing it in the upper part of the advertisement was considerably the largest used in this advertisement, and was second only to the displayed armchair in prominence. Between the two lines of printing and immediately underneath the upper word "Duraleather" and closer to it than to the phrase "The Durable Leather Substitute," were the words "Trade Mark." The spacing and placing of these latter two words indicate that they referred to "Duraleather" and not to the phrase following.

A clipping of this advertisement was produced by the petitioners in response to the Commission's request. They obtained it from the publishers of this directory, who inclosed it with a letter dated January 17, 1928, wherein the Masland company was asked if the advertisement was "O. K.," or whether a change was to be made therein for inclusion in its 1928 edition of the directory. The president of the Masland company, when questioned in advance of its production, in regard to an advertisement of this product in this Directory, after stating his unfamiliarity with such matters, said this Directory was a small publication and that the Masland company "had an advertisement there possibly one or two years and then cut it out because it was of no material value."

At the time this clipping and the publisher's letter were produced, counsel for the petitioners stated that this advertisement had not been recently used.

No other testimony in relation to this advertisement was given, so that we have no means of determining the year when, or the particular edition of this Guide wherein, this advertisement appeared.

On its face, it evidences that it was prepared after Masland company had coupled its trade name "Duraleather" with the phrase referred to. And the use of the words "Trade Mark" in closer connection with the former than the latter, is evidence that at that time, whenever it was, Masland company still considered that "Duraleather" alone was the trade-mark. How long after that Masland company continued of the same mind, is left to conjecture, as is also the reason for not furnishing any more light on that subject. However, we are not to be supposed to have given a dominating emphasis on the failure of petitioners to explain the use of the words "Trade Mark" in the connection referred to. We are satisfied that the evidence taken as a whole affecting the question now considered, not only supports the Commission's finding that "Duraleather" is the trade name of petitioners' imitation leather, but that it fully sustains such finding.

The next question, and to our mind closely allied with the one just considered as limiting the inquiry before us, is:

Is this name inherently false or misleading?

Leather is the tanned skin of an animal and the petitioners' product concededly contains no leather. It has a cotton cloth base on which is spread a coating composed of nitrocellulose solution, castor oil, and various pigments for coloring, and by painting and embossing is made to resemble real leather on the only side thereof that is exposed to view when made up into goods or used in upholstering, paneling, or trimming.

"Duraleather" is a coined word. "Dura" admittedly is an abbreviation of the word "durable," and the word thus composed can be given no other meaning than "Durable leather." So read and considered it is an assertion that the product marked, advertised, and sold as "Duraleather" consists of leather. By putting this imitation product bearing a false name into the channels of trade, whatever may have been the petitioners' motive in so doing, they furnished their customers and [737] those dealing with them the means to misrepresent that the goods made from that product were made of leather, and when such a false trade name is subsequently associated with the sale of goods made from such product, the petitioners can not escape legal responsibility by disclaiming any intention to deceive or by showing that those with whom they dealt directly—first purchasers of the product—well knew that it was but an imitation or substitute for the genuine article. While this imitation leather, as it passed from the petitioners in the first instance, was to its customers a finished product, it was to their knowledge and purpose to be used ultimately in upholstering and in the manufacture of suitcases and other goods and to come into the hands of those usually called the consuming public.

The knowledge which these original and intermediate buyers had as to the character of the petitioners' product can not be imputed to the ultimate buyer. There is nothing on the face of the upholstered goods and those made up in whole or in part from this imitation leather that would convey such knowledge to the buyers thereof. So far as appearances were concerned, the contrary would be the intimation. These purchasers of the goods thus made could and would see only one side of this product—that side which had been purposely made to resemble or imitate genuine leather. Masland company concedes that many of these would have difficulty to distinguish its product thus made up from genuine leather. When these goods are unaccompanied with the name "Duraleather," as is the case in most instances, the likelihood that the purchaser thereof would be deceived into buying them, believing that they were made of genuine leather, was ever present. But when the goods so made are advertised as made of "Duraleather," as was done by the Virginia Trunk & Bag Co. in its catalogues and circulars issued for 1924 use by its customers and prospective customers located throughout several of the States, and who mostly were retailers of leather and imitation leather goods, in which advertisements appeared cuts or prints of suitcases under some of which was printed the legend "Made of 'Duraleather'" or "Made of Black Cobra Grain Duraleather," the likeness of such goods and the trade name associated therewith in which the word "leather" was prominent, would cooperate and tend to deceive the ordinary ultimate buyer of such bags into the belief that their purchases were made of genuine leather. The price thereof, assuming that to their knowledge it was less than that of ordinary leather goods, would in many instances, probably, mean no more—if that much—than that they were made of an inferior grade of leather.

A false trade name or one that has both the capacity and tendency to deceive the ordinary purchaser will be enjoined. *Sears, Roebuck & Co.* v. *Federal Trade Commission* (C. C. A. 7), 258 F. 307; *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483, *supra; Royal Baking Powder Co.* v. *Federal Trade Commission* (C. C. A. 2), 281 F. 744; *Guarantee Veterinary Co.* v. *Federal Trade Commission* (C. C. A. 2), 285 F. 853; *Fox Film Corporation* v. *Federal Trade Commission* (C. C. A. 2), 296 F. 353; *Procter & Gamble Co.* v. *Federal Trade Commission* (C. C. A. 6), 11 F. (2d) 47; *Federal Trade Commission* v. *Balme* (C. C. A. 2), 23 F. (2d) 615; *Indiana Quartered Oak Co.* v. *Federal Trade Commission* (C. C. A. 2), 26 F. (2d) 340.

The potential deceptive character of this trade name is also shown by its similarity with "Duro," the registered trade name of A. C. Lawrence Leather Co., used in connection with its advertisements and sales of calfskin and veals—genuine leathers—manufactured by it for use in upholstering and in making traveling bags and other leather goods, and in which branch of trade petitioners and Lawrence company compete.

While "Duro" is not combined with the word "leather" in a compound word, as is petitioners' "Duro," its use is associated with leather. If "Duraleather" was the name given to a genuine leather,

there would be no question but that it would be in conflict with the registered name "Duro" used as aforesaid whenever and wherever the two competed.

True, the manufacturers of goods made from either of these products and the jobbers who sell them to such manufacturers, are not deceived as to the character of the "Duraleather." To them the product thus named is but a substitute for the genuine article, some of which is called "Duro," but not so to the ordinary ultimate buyers of the goods made from this imitation product, who know of goods being made of leather called "Duro." To them, not having the knowledge of the original or intermediary buyers, goods advertised as made from "Duraleather" would be likely to mean that they were made from the "Duro" product—genuine leather.

Goods bought under such conditions would tend to injure and victimize both purchasers and Lawrence company. That the record does not show any instances of the latter kind of purchasers, does not militate against the Commission's finding that the petitioners' trade name has the capacity and [738] tendency to deceive the ultimate buyer. For under the cited cases, actual deception is not necessary to be shown ere such unfair trade practices can be enjoined.

For the foregoing reasons we are of the opinion that petitioners' trade name is "Duraleather"; that it is inherently false; and that it has the capacity and tendency to deceive the ultimate purchasers of the goods made from the imitation leather marked, advertised, and marketed under such trade name into the belief that such goods are made of genuine leather.

The remaining question is:

Shall the challenged order be affirmed or modified?

The record before us is barren of any evidence indicating that in the selection or use of this trade name, petitioners sought to deceive the purchasers of the goods made from the product bearing that name, or to overreach any of their competitors by unfair commercial methods.

During a decade and a half of trading, Masland Company and its predecessors in business built up a trade closely associated with this name, which during that period, has become increasingly of trade value to petitioners. The relinquishment of this name, now made imperative, necessarily will be attended with some loss, which should not be greater than necessary to fulfill the Commission's order. We, therefore, modify the order by adding to the last paragraph the following: "That if the manner and form of their compliance should embrace a new and acceptable trade name, the petitioners may for six months after the Commission has approved the new manner and form, use on this imitation leather product, stationary, and in their advertising the word 'Duraleather' in representing that the new trade name stands for the same product which the Masland company had previously manufactured and petitioners had previously sold under the name 'Duraleather.'"

Thus modified the order of the Commission is affirmed.

FEDERAL TRADE COMMISSION *v.* KAY[1]

(Circuit Court of Appeals, Seventh Circuit. September 18, 1929)

No. 4104

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—THAT TESTS SHOWING PRODUCT HAD NO RADIOACTIVITY DID NOT DETERMINE WHETHER SPECIMENS WERE ACTUALLY RADIUM HELD NO ANSWER TO CHARGE OF UNTRUTHFULLY MARKETING PRODUCT AS RADIUM (TRADE COMMISSION ACT, SEC. 5; 15 USCA SEC. 45).

Where tests of respondent's product by Bureau of Standards showed that it had no radioactivity whatever, and was not radium, it was no answer to charge made by Federal Trade Commission that respondent untruthfully and falsely marketed his product in interstate commerce as radium, in violation of Trade Commission Act, section 5 (15 USCA sec. 45), that Bureau of Standards in passing on specimens commercially submitted to it does not determine that such specimens are actual radium, but merely that there is radioactivity, notwithstanding mesothorium as well as radium responds positively to such tests.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—FALSE LABELING AND ADVERTISEMENTS CONSTITUTE "UNFAIR COMPETITION" WITHIN COGNIZANCE OF FEDERAL TRADE COMMISSION (TRADE COMMISSION ACT, SEC. 5; 15 USCA SEC. 45).

False labeling and advertisements which are false in fact constitute an unfair method of competition, placed within cognizance of Federal Trade Commission by Trade Commission Act, section 5 (15 USCA sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—REGISTRATION OF TRADE-MARK IN PATENT OFFICE IS NO PROTECTION AGAINST PROCEEDINGS FOR UNFAIR METHODS OF COMPETITION (TRADE COMMISSION ACT, SEC. 5; 15 USCA SEC. 45).

Registration of a trade-mark in patent office is no protection against proceedings under Federal Trade Commission Act, section 5 (15 USCA sec. 45), for practicing unfair competition, where such trade-mark is in fact used falsely and as part of an unfair method of competition.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—ANY FALSE REPRESENTATION THAT PRODUCT SOLD IN INTERSTATE COMMERCE WAS RADIUM WAS MATTER OF PUBLIC INTEREST WITHIN COGNIZANCE OF FEDERAL TRADE COMMISSION (TRADE COMMISSION ACT, SEC. 5; 15 USCA SEC. 45).

Since radium is used largely for treatment of disease, and especially cancer, any misrepresentations by respondent that product advertised and distributed by him in interstate commerce was radium was a matter of public interest with which Federal Trade Commission was empowered to deal under Trade Commission Act, section 5 (15 USCA sec. 45).

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[1] Rehearing denied Nov. 8, 1929. Reported in 35 F. (2d) 160. Case before commission in 7 F. T. C. 15 and 12 F. T. C. 168.

Petition for writ of certiorari denied by the Supreme Court on June 2, 1930. Petition for rehearing on certiorari, denied October 13, 1930.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—TRADE COMMISSION'S FINDINGS THAT RESPONDENT'S PRODUCT SOLD AS RADIUM WAS NOT RADIUM HELD SUSTAINED BY EVIDENCE (TRADE COMMISSION ACT, SEC. 5; 15 USCA SEC. 45).

Findings of Federal Trade Commission that respondent's product advertised and distributed in interstate commerce as radium was not in fact radium, and on which an order to desist under Trade Commission Act, section 5 (15 USCA sec. 45), was based, *held* sustained by evidence.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—ELAPSE OF SEVERAL YEARS AFTER FILING DESIST ORDER DID NOT DEPRIVE TRADE COMMISSION OF RIGHT TO MODIFY FINDINGS AND ORDER; REMEDY BEING BY PETITION FOR REVIEW, IF MORE PROMPT ACTION WAS DESIRED (TRADE COMMISSION ACT, SEC. 5; 15 USCA SEC. 45).

Under Trade Commission Act, section 5 (15 USCA sec. 45), providing that, until transcript of record shall have been filed in Circuit Court of Appeals, Trade Commission may at any time modify or set aside any report or order made by it, fact that there was a delay of several years between time when Commission filed its original findings and order to desist and order modifying findings and order did not deprive Commission of right to make such modification; remedy of respondent, if more prompt action was desired, being to petition for review and have Commission certify and file required transcript in court.

(The syllabus is taken from 35 F. (2d) 160)

Petition by the Federal Trade Commission for a decree for enforcement of its cease and desist order against Abbott E. Kay, granted, as indicated.

Mr. Edward L. Smith, of Phillipsburg, N. J., for petitioner.

Mr. Abbott E. Kay, pro se.

Before ALSCHULER and PAGE, *Circuit Judges*, and LUSE, *District Judge*.

LUSE, *District Judge*:

The Federal Trade Commission, the petitioner, seeks a decree of this court for enforcement of the modified order of the petitioner dated June 21, 1928, against Abbott E. Kay, under the provisions of section 5 of the act of Congress approved September 26, 1914 (38 Stats. 717).

On December 14, 1922, the petitioner issued a complaint charging respondent Kay and one R. T. Nelson with the use of unfair methods of competition in interstate commerce, the gist of which was that Kay and [161] Nelson were producing and marketing in interstate commerce, a product or substance as radium which in fact was not radium. After answers were filed testimony was heard before an examiner of the Commission, and the Commission made its findings of fact and its conclusion, and pursuant thereto issued, and caused to be served, an order requiring the respondents to cease and desist from such methods of competition.[1] On June 21, 1928, the Commis-

[1] Reported in 7 F. T. C. 15.

sion, after notice and hearing, modified its findings of fact and issued its modified order as follows:

MODIFIED ORDER TO CEASE AND DESIST

It is now ordered, That respondents, Abbott E. Kay and R. T. Nelson, as individuals and as copartners, doing business under the name of Aaban Radium Co., their servants, agents, and employees, cease and desist from further, in any manner whatsoever—

1. Selling or offering for sale or advertising as and for radium or as containing radium, or possessing radioactive properties, the product heretofore sold and advertised as and for radium by respondents.
2. Applying, employing, or using descriptively the word "radium" or any compound thereof implying radioactivity in connection with the sale, offering for sale, or advertising of the product heretofore sold and advertised as and for radium by respondents.
3. Making or causing to be made in advertising matter or otherwise representations, statements, or assertions that the product heretofore sold and advertised by respondents is radium, or that said product contains radium.
4. Making or causing to be made any false statement, claim, or representation of similar import or effect in connection with the sale of any other product or substance.

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 compiled with the order to cease and desist hereinbefore set forth.[1]

Such modified order was served, and Nelson made and filed a report indicating that he had complied with the order to cease and desist, but the respondent Kay filed a report stating that he had no intention of abandoning his business. Whereupon the Commission applied to this court for its decree against him.

Respondent Kay appeared in *propria persona* and without counsel. No legal questions, as such, have been directly raised except that the findings and order of the Commission were unwarranted under the evidence, but the entire record has been carefully examined with a view to determining the legality and correctness of the Commission's findings and order.

Section 5 of the Trade Commission Act makes the Commission's findings conclusive as to the facts, if supported by evidence. The Government Bureau of Standards was furnished with several samples of the product which the respondent Kay had sent to various persons in various States, under the "escrow plan," or for other purposes, and subjected such specimens to the scientific tests to which that bureau was accustomed to subject specimens of radium for determining their genuineness. None of such samples of the Kay product responded to the radium tests so applied. One other test was applied to a sample of Doctor Kay's product, outside the Bureau of Standards, and the testimony indicates that the sample failed to respond to such test. Such failure in all instances, the testimony amply shows, indicated that none of the samples of the Kay product had any appreciable radioactivity. It is true that radioactivity found by the photographic and electroscopic tests, which were used in all cases, may be found upon tests of mesothorium as well as radium. Nevertheless absence of radioactivity sufficient to affect a sensitive photographic film, or an electroscope, is

[1] Reported in 12 F. T. C. 168.

scientifically considered as proof that the specimen tested is neither radium nor mesothorium.

It appears from the evidence that in the radium industry the regular method of purchase by physicians from the manufacturers of genuine radium is for the latter to send the product which it proposes to sell to the Government Bureau of Standards for tests. The bureau customarily subjects the product so submitted to the electroscopic and photographic tests, and compares the results of such tests with similar tests made of a standard unit of radium kept by the bureau for the purpose of comparison, and certifies the product proposed to be sold as having the radioactivity shown by the tests, and the amount of such radioactivity is admeasured by comparison with the bureau's radium standard. The bureau does not ordinarily determine whether the product submitted to it is actually radium, or some other substance, such as mesothorium, hav[162]ing radioactivity. The explanation for this is that the process of determining whether the product is actually radium, or mesothorium, or some other radioactive substance, is an intricate one, requiring damaging or destruction of the plaques or tubes in which the product is usually contained, and some interference with the product itself. The result is that the Bureau of Standards has contented itself with certifying to the radioactivity of the commercial product in terms of radium equivalent, as determined by its comparison with the radioactivity of the known standard unit of the bureau. In commercial practice radium thus submitted to the bureau is so certified and transmitted to the purchaser's bank, and delivered to the purchaser upon payment of the purchase price to the bank after examination of the product with its certificate. Respondent Kay makes much of the omission by the Bureau of Standards to determine that the specimens commercially submitted to it are actually radium, but it is apparent that this is no answer to the charge made by the Federal Trade Commission that the product of the respondent Kay has no radioactivity whatsoever, is not radium, and hence is untruthfully and falsely marketed by the respondent Kay as radium.

The evidence before the Commission amply established the fact that the respondent Kay had advertised in various magazines, some of them in general circulation, that his product was radium. The cases, *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483; *Royal Baking Powder Co.* v. *Federal Trade Commission*, 281 Fed. 744; *Indiana Quartered Oak Co.* v. *Federal Trade Commission*, 26 Fed. (2d) 340, and cases cited, hold that false labeling, and advertisements which are false in fact, constitute an unfair method of competition, placed within the cognizance of the Federal Trade Commission by section 5 of the Trade Commission Act.

It is suggested by respondent Kay's report to the Commission that respondent has registered a trade-mark for his product consisting of the words "Kay-radium". Laying aside all question as to whether or not such trade-mark may not be invalid because it purports to describe the article by the word "radium", and as a descriptive term not permitted to be appropriated under the provisions of the trade-mark act, it is clear that registration of a trade-mark in the Patent Office is no protection against proceedings under

section 5 of the Federal Trade Commission Act, where such trade-mark is in fact used falsely and as a part of an unfair method of competition. Assuming that respondent has registered his trade-mark as above indicated, the test of his methods of competition is not whether a trade-mark may have been registered, but whether his methods fall within the condemnation of the Federal Trade Commission Act, which declares, "unfair methods of competition in commerce are declared unlawful". *Brougham et al.* v. *Blanton Mfg. Co.*, 249 U. S. 495.

The evidence does not disclose how extensive a business respondent has done, but it is aparent that he has been, and is engaged in, advertising and distributing his product in interstate commerce. Radium is used largely for the treatment of disease, and especially cancer, and it can hardly be gainsaid that any misrepresentation with respect to the identity of respondent's product is a matter of public interest with which the Commission is, by section 5 of the Trade Commission Act, empowered to deal.

Respondent Kay relies largely upon the testimony of a number of patients who had various ailments, and who testified to beneficial results from the use of respondent's product contained in plaques and tubes, and applied, presumably, as radium is. Witnesses for the Commission accounted for such results and testimony as due to mental suggestion. Whether that be correct or not, the proneness of lay patients to err in accrediting responsibility for benefits to health is well understood.

The substance known to science as radium, so the evidence indicates, is expensive to produce, often requiring reduction of a ton of ore to produce a milligram of radium, sells in the market at around $110 per milligram, requires a large ore refining plant for its production, and invariably responds positively to the photographic film and electroscopic tests, while the Kay product is negative under the two tests last mentioned, is produced in a laboratory in his home, and offered for sale at $10 per milligram. Granting that discovery of a new source and comparatively inexpensive method of extraction might account for some of these differences, the fact that the Kay product fails under the scientific tests, together with the other differences noted, strongly indicate a different substance rather than a difference in source and methods of extraction of radium. Opinion evidence that the [163] Kay product is not radium was also adduced. It is apparent from the foregoing, without further discussion of detail, that the findings of the Commission were amply sustained by evidence.

A considerable period of time elapsed between the time when the Commission filed its original findings and order to cease and desist, and the filing of its modified findings and order. After the original findings and order were filed a stay was applied for, which was denied on March 29, 1924. The record does not disclose any report by the respondent Kay to the first order to cease and desist, and the matter seems to have remained dormant until June 21, 1928, when the modified findings and order were made, to which response was made by the respondents as above indicated. The transcript of the record was not filed in the court until October 9, 1928. While we withhold

approval of so long delay, the question is apparently covered by the provisions of section 5 of the Trade Commission Act, which provides:

> Until a transcript of the record in such hearing shall have been filed in a Circuit Court of Appeals of the United States, as hereinafter provided, the Commission may at any time, * * * modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If more prompt action was desired by the respondent, the same section of the act permits the respondent to petition for review and requires the Commission to certify and file in court the required transcript.

Paragraph 4 of the modified order of the Commission is somewhat indefinite and uncertain, and, we believe, susceptible of a construction broader than the facts warrant. It is ordered that the said paragraph 4 be eliminated from the order of the Commission and that in lieu thereof there be inserted the following:

> Selling, offering for sale, or advertising, as and for radium, or as containing radium or possessing radioactive properties, or applying, employing, or using descriptively the word "radium" or any compound thereof implying radioactivity, in connection with the sale, offering for sale, or advertising of any such product, or making or causing to be made in any advertising matter or otherwise any representations, statements, or assertions that the product advertised or sold is radium, or contains radium or radioactive properties, unless such product is in fact radium and possesses the radioactive properties of radium as ascertained by photographic and electroscopic tests applied by generally recognized authorities such as the United States Bureau of Standards at Washington, D. C.

With the order of the Federal Trade Commission thus modified the prayer of the petition is granted.

FEDERAL TRADE COMMISSION *v.* GRAND RAPIDS VARNISH CO.[1]

(Circuit Court of Appeals, Sixth Circuit. October 8, 1929.)

No. 5195

CONSENT DECREE AFFIRMING ORDER OF THE COMMISSION REQUIRING RESPONDENT TO CEASE AND DESIST FROM THE PRACTICE OF COMMERCIAL BRIBERY, AS IN SAID ORDER SET FORTH.[2]

Application for enforcement of an order of the Federal Trade Commission.

Robert E. Healy, *Adrien F. Busick*, and *James T. Clark*, all of Washington, D. C., for petitioner.

Ring & Cobb, of Washington, D. C., for respondent.

PER CURIAM:

Consent decree affirming modified order of Federal Trade Commission.[3]

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[1] 41 F. (2d) 996.
[2] See 10 F. T. C. 339.
[3] Said decree follows:
The Federal Trade Commission having filed its verified petition for a decree affirming a modified order to cease and desist, made by it on July 19, 1926, against Grand Rapids Varnish Co., and for a decree requiring compliance by the said Grand Rapids Varnish Co. with said modified order of the Commission: notice of the filing of said petition having been duly served upon said Grand Rapids Varnish Co.; petitioner having therein alleged failure and neglect by respondent to obey said modified order and the respondent having

FEDERAL TRADE COMMISSION *v.* KLESNER [1]

(Supreme Court. Argued and submitted April 10, 1929. Decided October 14, 1929)

No. 8

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—PROCEEDING TO PROHIBIT DEFENDANT FROM USING WORDS "SHADE SHOP" AS IDENTIFICATION OF BUSINESS NOT INVOLVING PUBLIC INTEREST, ACTION BY FEDERAL TRADE COMMISSION WAS UNAUTHORIZED (FEDERAL TRADE COMMISSION ACT SEC. 5; 15 USCA SEC. 45).

Proceeding to restrain defendant from using words "Shade Shop" as identification of business conducted by him *held* to involve private controversy, so that filing of complaint before Federal Trade Commission was not in public interest, and action by Commission was unauthorized under Federal Trade Commission Act section 5 (15 USCA sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—ONE DEEMING HIMSELF AGGRIEVED BY UNFAIR COMPETITION MAY REQUEST FEDERAL TRADE COMMISSION TO FILE COMPLAINT (FEDERAL TRADE COMMISSION ACT SEC. 5; 15 USCA SEC. 45).

Person deeming himself aggrieved by use of unfair method of competition can not, under Federal Trade Commission Act section 5 (15 USCA sec. 45), institute before Commission complaint against alleged wrongdoer, nor may Commission authorize him to do so, but he may bring matter to Commission's attention and request it to file complaint.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—REQUIREMENT THAT PROCEEDING BY FEDERAL TRADE COMMISSION MUST BE TO INTEREST OF PUBLIC IS NOT SATISFIED BY PROOF OF MISAPPREHENSION AND CONFUSION OF PURCHASERS (FEDERAL TRADE COMMISSION ACT SEC. 5; 15 USCA SEC. 45).

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denied the same and no evidence thereon having been submitted to the court; and this court having jurisdiction of the proceedings; and the said Grand Rapids Varnish Co. having filed with this court its duly authorized and attested consent to the affirmance by this court of the said modified order of the Federal Trade Commission and to the entry of a decree so affirming said modified order and requiring the said Grand Rapids Varnish Co. to comply therewith; and notice of a motion by the Federal Trade Commission, for the entry of such a decree having been duly served on said Grand Rapids Varnish Co., by its president.

It is hereby ordered, adjudged and decreed, Upon the motion of the said Federal Trade Commission, due notice of the said motion having been served upon the respondent, said Grand Rapids Varnish Co., that the said order of the Federal Trade Commission, to wit:

"*It is now ordered,* That the respondent, Grand Rapids Varnish Co., its agents representatives, servants, and employees do cease and desist from directly or indirectly secretly giving, or offering to give, employees of its customers or prospective customers, or those of its competitors' customers or prospective customers, without the knowledge or consent of their employers, as an inducement to cause their employers to purchase or contract to purchase, from the respondent, varnish and kindred products, or to influence such employers to refrain from dealing, or contracting to deal, with competitors of respondent, without other consideration therefor, money or anything of value, be, and the same is hereby affirmed."

And it is hereby further ordered, adjudged and decreed, That the said Grand Rapids Varnish Co., its agents, representatives, servants, and employees, forthwith comply with the said modified order of the Federal Trade Commission; and that it, the said Grand Rapids Varnish Co., its agents, representatives, servants, and employees do forthwith cease and desist from directly or indirectly secretly giving, or offering to give, employees of its customers or prospective customers, without the knowledge or consent of their employers, as an inducement to cause their employers to purchase or contract to purchase, from the respondent, varnish and kindred products, or to influence such employers to refrain from dealing, or contracting to deal, with competitors of respondent, without other consideration therefor, money or anything of value.

[1] Reported in 280 U. S. 19, 50 Sup. Ct. Rep. 1. The case before the Commission is reported in 5 F. T. C. 24.

Under Federal Trade Commission Act section 5 (15 USCA sec. 45), providing that complaint may be filed only if it shall appear to Commission that proceeding by it would be to interest of public, such requirement is not satisfied by proof that there has been misapprehension and confusion on part of purchasers, or even that they have been deceived.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—FEDERAL TRADE COMMISSION EXERCISES BROAD DISCRETION IN DETERMINING WHETHER PROCEEDING WILL BE IN PUBLIC INTEREST (FEDERAL TRADE COMMISSION ACT SEC. 5; 15 USCA SEC. 45).

In determining whether proposed proceeding under Federal Trade Commission Act section 5 (15 USCA sec. 45), will be in public interest, Commission exercises broad discretion, but in order to justify filing of complaint public interest must be specific and substantial.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—RESOLUTION THAT FEDERAL TRADE COMMISSION HAD REASON TO BELIEVE DEFENDANT WAS VIOLATING STATUTE, AND THAT PROCEEDING BY IT WOULD BE TO INTEREST OF PUBLIC, HELD SUFFICIENT TO CONFER JURISDICTION ON COMMISSION (FEDERAL TRADE COMMISSION ACT SEC. 5; 15 USCA SEC. 45).

Resolution declaring that Federal Trade Commission had reason to believe defendant was violating Federal Trade Commission Act section 5 (15 USCA sec. 45), and that it appeared to Commission that proceeding by it in respect thereof would be to interest of public, *held* sufficient to confer on Commission jurisdiction of complaint against defendant, since such section makes Commission's finding of facts conclusive, if supported by evidence, and preliminary determination that institution of proceeding will be in public interest, while not strictly within scope of such provision, will ordinarily be accepted by courts.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—FEDERAL TRADE COMMISSION'S ACTION AUTHORIZING FILING OF COMPLAINT IS REVIEWABLE (FEDERAL TRADE COMMISSION ACT SEC. 5; 15 USCA SEC. 45).

Action of Federal Trade Commission in authorizing filing of complaint under Federal Trade Commission Act section 5 (15 USCA sec. 45), like its action in making an order thereon, is subject to judicial review.

(The syllabus is taken from 50 Sup. Ct. Rep. 1)

Petition by Federal Trade Commission against Alfred Klesner, doing business under the name of Shade Shop, etc. Judgment was entered dismissing the petition (58 App. D. C. 100, 25 F. (2d) 524), and the Federal Trade Commission brings certiorari. Affirmed.

The *Attorney General* and *Mr. Adrien F. Busick*, of Washington, D. C., for petitioner.

Mr. Clarence R. Ahalt, of Washington, D. C., for respondent.

[22]

Mr. JUSTICE BRANDEIS delivered the opinion of the court.

This case is here on certiorari, for the second time. It was brought in the Court of Appeals of the District of Columbia by the Federal

Trade Commission under section 5 of the act of September 26, 1914, c. 311, 38 Stat. 717, 719, to enforce an order entered by it. The order directs Klesner, an interior decorator, who does business in Washington under the name of Hooper & Klesner, to "cease and desist from using the words 'Shade Shop' standing alone or in conjunction with other words as an identification of the business conducted by him, in any manner of advertisement, signs, stationery, telephone, or business directories, trade lists or otherwise". That court dismissed the suit on the ground that, unlike United States circuit courts of appeals, it lacked jurisdiction to enforce orders of the Federal Trade Commission. 6 F. (2d) 701.[1] On the first certiorari, we reversed the decree and directed that the cause be remanded for further proceedings. *Federal Trade Commission* v. *Klesner*, 274 U. S. 145.[2] Then the case was reargued before the court of appeals, on the pleadings and a transcript of the record before the [23] Commission; and was dismissed on the merits, with costs. 25 F. (2d) 524.[3] This second writ of certiorari was thereupon granted. 278 U. S. 591. We are of opinion that the decree of the court of appeals should be affirmed—not on the merits, but upon the ground that the filing of the complaint before the Commission was not in the public interest.

The conduct which the Commission held to be an unfair method of competition practiced within the District had been persisted in by Klesner ever since December, 1915. The complaint before the Commission was filed on December 18, 1920. The order sought to be enforced was entered June 23, 1922. This suit was begun on May 13, 1924. The evidence before the Commission, which occupies 394 pages of the printed record in this court, is conflicting only to a small extent. The findings of the Commission are in substance as follows:

Sammons has for many years done business in Washington as maker and seller of window shades, under the name of "The Shade Shop". Prior to 1914, that name had, by long use, come to signify to the buying public of the District the business of Sammons. The concern known as Hooper & Klesner has also been in business in Washington for many years. Prior to 1915, its trade had consisted mainly of painting and of selling and hanging wall paper. It had dealt also, to some extent, in window shades, taking orders which it had executed either by Sammons or some other maker of window shades. In 1914, Hooper & Klesner leased a new store pursuant to an arrangement with Sammons, and sublet to him a part of it. There Sammons continued his business of making and selling window shades as an independent concern under the name of "The Shade Shop". His gross sales there were at the rate of $60,000 a year. On a Sunday in November, 1915, he removed all his effects from those [24] premises and established his business in another building four doors away.

Sammons's removal was in confessed violation of his agreement with Hooper & Klesner. An acrimonious controversy ensued. Threats of personal violence led to Sammons having Klesner ar-

[1] Also reported in 9 F. T. C. 650.
[2] Also reported in 11 F. T. C. 661.
[3] Also reported in 12 F. T. C. 717.

rested; and this to bitter animosity. Out of spite to Sammons, and with the purpose and intent of injuring him and getting his trade, Hooper & Klesner decided to conduct on its own account, in the premises which Sammons had vacated, the business of making and selling window shades. It placed upon its show windows, and also upon its letterheads and billheads, the words "Shade Shop"; and listed its business in the local telephone directory as "Shade Shop, Hooper & Klesner" and as "Shade Shop". A like sign was placed on its delivery trucks. This use by Hooper & Klesner of the term "Shade Shop" has caused, and is causing, "confusion to the window-shade purchasing public throughout the District;" and, on certain occasions, customers who entered Hooper & Klesner's shop were deceived by employees, being led to believe that it was Sammons's. Meanwhile, Klesner had become the sole owner of the business.

Such were the findings of the Commission. The court of appeals concluded that there was no showing either that Klesner was attempting to dispose of his goods under the pretense that they were the goods of Sammons, or that he was attempting to deceive or entice any of Sammons's customers; that the evidence introduced to show deception went no further than that some of the public may have purchased from Klesner under a mistaken belief that they were dealing with Sammons; that the words "Shade Shop" were being used by Klesner always in connection with the words Hooper & Klesner; and that the term "Shade Shop" as used by Klesner, merely indicated [25] that his store was a place where window shades were made and sold. The court of appeals ruled that these words, being descriptive of a trade or business, were incapable of exclusive appropriation as a legal trade-mark or trade-name; and that there was nothing in the facts to justify the charge of unfair competition. It therefore dismissed the suit on the merits, the ground of decision being that there was a lack of those facts which, in a court of law or of equity, are essential to the granting of relief for alleged acts of unfair competition.

We need not decide whether the court of appeals was justified in all of its assumptions of fact or in its conclusions on matters of law. For we are of opinion that the decree should be affirmed on a preliminary ground which made it unnecessary for that court to enquire into the merits. Section 5 of the Federal Trade Commission Act does not provide private persons with an administrative remedy for private wrongs. The formal complaint is brought in the Commission's name; the prosecution is wholly that of the Government; and it bears the entire expense of the prosecution. A person who deems himself aggrieved by the use of an unfair method of competition is not given the right to institute before the Commission a complaint against the alleged wrongdoer. Nor may the Commission authorize him to do so. He may of course bring the matter to the Commission's attention and request it to file a complaint.[1] But a denial of his request

[1] The rules of practice adopted by the Commission require that the application be in writing and "contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of". Rules of Practice, No. II. See Annual Report of the Federal Trade Commission for 1928, pp. 17, 18, 41, 42; and Exhibit 5, p. 132. As to changes made in the procedure and policy March 17, 1925, and September 17, 1928, see *Id.*, Exhibit 1, pp. 117–119.

is final. And if the request is granted and a proceeding is [26] instituted, he does not become a party to it or have any control over it.[1]

The provisions in the Federal Trade Commission Act concerning unfair competition are often compared with those of the Interstate Commerce Act dealing with unjust discrimination. But in their bearing upon private rights, they are wholly dissimilar. The latter act imposes upon the carrier many duties; and it creates in the individual corresponding rights. For the violation of the private right it affords a private administrative remedy. It empowers any interested person deeming himself aggrieved to file as of right, a complaint before the Interstate Commerce Commission; and it requires the carrier to make answer. Moreover, the complainant there, as in civil judicial proceedings, bears the expense of prosecuting his claim.[2] The Federal Trade Commission Act contains no such features.

[27] While the Federal Trade Commission exercises under section 5 the functions of both prosecutor and judge, the scope of its authority is strictly limited. A complaint may be filed only "if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public". This requirement is not satisfied by the proof that there has been misapprehension and confusion on the part of purchasers, or even that they have been deceived—the evidence commonly adduced by the plaintiff in "passing off" cases in order to establish the alleged private wrong. It is true that in suits by private traders to enjoin unfair competition by "passing off", proof that the public is deceived is an essential element of the cause of action. This proof is necessary only because otherwise the plaintiff has not suffered an injury. There, protection of the public is an incident of the enforcement of a private right.[3] But to justify the Commission in filing a complaint under section 5, the purpose must be protection of the public.[4] The protection thereby afforded to private persons is the incident. Public interest may exist although the practice deemed unfair does not violate any private right. In *Federal Trade Commission* v. *Beech-Nut Packing Co.*, 257 U. S. 441, a practice was suppressed as being against public policy, although no private right either of a trader or of a purchaser appears to have been invaded. In *Federal Trade Commission* v. *Winsted* [28] *Hosiery Co.*, 258 U. S. 483, an unfair practice was suppressed because it affected injuriously a substantial part of the

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[1] The sole privilege conferred upon private persons is contained in the following provision of section 3: "Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission, to intervene and appear in said proceeding by counsel or in person." (38 Stat. 719.)

[2] Prior to the act of June 18, 1910, c. 309, section 11, 36 Stat. 539, 550, which in terms conferred upon the Interstate Commerce Commission power to issue orders in proceedings initiated by it, orders were, with few exceptions, entered only on complaints filed by shippers or others. Even after the act of June 29, 1906, c. 3591, 34 Stat. 584, it was asserted that the Commission was without power to enter orders in proceedings initiated by it. Report of the House Committee on Interstate and Foreign Commerce, April 1, 1910, 61st Cong., 2d Sess., No. 923, pp. 3, 10; 45 Cong. Rec., Appendix, p. 88. Compare In the Matter of Allowances for Transfer of Sugar, 14 I. C. C. 619, 627. It had been stated earlier (*Interstate Commerce Com.* v. *Detroit, etc. Ry.*, 57 Fed. 1005, 1008) that the power existed; and its existence was assumed in *Interstate Commerce Com.* v. *Northern Pacific Ry. Co.*, 216 U. S. 538, 542.

Both the United States Shipping Board Act of September 7, 1916, c. 451, section 22, 39 Stat. 728, 736 and the Packers and Stockyards Act of August 15, 1921, c. 64, sections 308, 309, 42 Stat. 159, 165, confer upon private individuals the right to institute proceedings and upon the administrative tribunal the power to award reparations.

[3] See *American Washboard Co.* v. *Saginaw Mfg. Co.*, 103 Fed. 281, 284–285; *Border Ice Cream Co.* v. *Borden's Condensed Milk Co.*, 201 Fed. 510, 513; *Rosenberg Bros. & Co.* v. *Elliott*, 7 F. (2d) 962, 965; *Nims, Unfair Competition* (third edition), pp. 27–36.

[4] See *Royal Baking Powder Co.* v. *Federal Trade Commission*, 281 Fed. 744, 752; *Federal Trade Commission* v. *Balme*, 23 F. (2d) 615, 620; *Indiana Quartered Oak Co.* v. *Federal Trade Commission*, 26 F. (2d) 340, 342.

purchasing public, although the method employed did not involve invasion of the private right of any trader competed against.

In determining whether a proposed proceeding will be in the public interest the Commission exercises a broad discretion. But the mere fact that it is to the interest of the community that private rights shall be respected is not enough to support a finding of public interest. To justify filing a complaint the public interest must be specific and substantial. Often it is so, because the unfair method employed threatens the existence of present or potential competition. Sometimes, because the unfair method is being employed under circumstances which involve flagrant oppression of the weak by the strong. Sometimes, because, although the aggregate of the loss entailed may be so serious and widespread as to make the matter one of public consequence, no private suit would be brought to stop the unfair conduct, since the loss to each of the individuals affected is too small to warrant it.[1]

The alleged unfair competition here complained of arose out of a controversy essentially private in its nature. The practice was persisted in largely out of hatred and malice engendered by Sammons's act. It is not claimed that the article supplied by Klesner was inferior to that [29] of Sammons, or that the public suffered otherwise financially by Klesner's use of the words "Shade Shop." It is significant that the complaint before the Commission was not filed until after the dismissal, in 1920, of a suit which had been brought by Sammons in 1915, in the Supreme Court of the District, to enjoin Klesner's use of the words "Shade Shop".[2] When the Commission directed the filing of the complaint Hooper & Klesner had been using those words in its business for five years. They had been used for nearly seven years before the order here in question was made; and for nearly nine years before this suit to enforce it was begun. Whatever confusion had originally resulted from Klenser's use of the words must have been largely dissipated before the Commission first took action. If members of the public were in 1920, or later, seriously interested in the matter, it must have been because they had become partisans in the private controversy between Sammons and Klesner.

The order here sought to be enforced was entered upon a complaint which had in terms been authorized by a resolution of the Commission. The resolution declared, in an appropriate form, both that the Commission had reason to believe that Klesner was violating section 5, and that it appeared to the Commission that a proceeding by it in respect thereof would be to the interest of the public. Thus, the resolution was sufficient to confer upon the Commission jurisdiction of the complaint. Section 5 makes the Commission's finding of facts conclusive, if supported by evidence. Its preliminary determi-

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[1] Compare *Federal Trade Commission* v. *Beech-Nut Co.*, 257 U. S. 441; *Federal Trade Commissin* v. *Pacific Paper Ass'n*, 273 U. S. 52; *Wholesale Grocers' Ass'n* v. *Federal Trade Commission*, 277 Fed. 657; *Southern Hardware Jobbers' Ass'n* v. *Federal Trade Commission*, 290 Fed. 773; *Oppenheim, Oberndorf & Co., Inc.* v. *Federal Trade Commission*, 5 F. (2d) 574; *Toledo Pipe-Threading Mach. Co.* v. *Federal Trade Commission*, 11 F. (2d) 337; *Cream of Wheat Co.* v. *Federal Trade Commission*, 14 F. (2d) 40; *Arkansas Wholesale Grocers' Ass'n* v. *Federal Trade Commission*, 18 F. (2d) 866; *Kobi Co.* v. *Federal Trade Commission*, 23 F. (2d) 41.

[2] The original rule to show cause issued in the action was dismissed by the Supreme Court of the District on the 23d day of December, 1915, "upon consideration of the Bill of Complaint, the exhibits thereto, and the rule to show cause issued thereon, and the answer and exhibits to said rule, as well as the arguments of counsel thereon." No further proceedings were had in the action until its final dismissal on May 24, 1920.

nation that [30] institution of a proceeding will be in the public interest, while not strictly within the scope of that provision, will ordinarily be accepted by the courts. But the Commission's action in authorizing the filing of a complaint, like its action in making an order thereon, is subject to judicial review. The specific facts established may show, as a matter of law, that the proceeding which it authorized is not in the public interest, within the meaning of the act. If this appears at any time during the course of the proceeding before it, the Commission should dismiss the complaint. If, instead, the Commission enters an order, and later brings suit to enforce it, the court should, without enquiry into the merits, dismiss the suit.

The undisputed facts, established before the Commission, at the hearings on the complaint, showed affirmatively the private character of the controversy. It then became clear (if it was not so earlier) that the proceeding was not one in the interest of the public; and that the resolution authorizing the complaint had been improvidently entered. Compare *Gerard C. Henderson, The Federal Trade Commission*, pp. 52–54, 174, 228–229, 337. It is on this ground that the judgment dismissing the suit is

Affirmed.

LIGHTHOUSE RUG CO. v. FEDERAL TRADE COMMISSION

(Circuit Court of Appeals, Seventh Circuit. October 25, 1929) [1]

No. 4102

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—FEDERAL TRADE COMMISSION'S FINDING THAT WORD "LIGHTHOUSE" APPLIED TO RUGS HAS SECONDARY MEANING THAT RUGS WERE MADE BY BLIND HELD SUPPORTED (FEDERAL TRADE COMMISSION ACT, SEC. 5; 15 USCA SEC. 45).

Finding of Federal Trade Commission that word "lighthouse," as term applied to rugs by petitioner, has acquired amongst substantial portion of trade a secondary meaning that rugs were made by blind in charitable or quasi charitable institutions called lighthouses, *held* supported by evidence and therefore conclusive under Federal Trade Commission Act, section 5 (15 USCA sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—FEDERAL TRADE COMMISSION'S FINDING THAT RUG MANUFACTURER'S USE OF WORD "LIGHTHOUSE" CONSTITUTED UNFAIR COMPETITION, IN THAT BUYERS BELIEVED RUGS WERE MADE BY BLIND, HELD SUPPORTED (FEDERAL TRADE COMMISSION ACT SEC. 5; 15 USCA SEC. 45).

Finding of Federal Trade Commission that petitioner's use of word "lighthouse" in connection with its rugs amounted to unfair competition *held* supported by evidence showing that buyers believed rugs were made by blind, and that petitioner's agents repeatedly misrepresented that rugs were made by blind, and such finding was therefore conclusive under Federal Trade Commission Act, section 5 (15 USCA sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—USE OF WORD "LIGHTHOUSE" BY LIGHTHOUSE RUG COMPANY IN ADVERTISING, MISLEADING BUYERS, HELD PROPERLY RESTRAINED.

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[1] Reported in 35 F. (2d) 163.

Order of Federal Trade Commission requiring Lighthouse Rug Company to desist from use of word "lighthouse" in advertising its articles for distribution in interstate commerce *held* proper, though such use was in conjunction with its corporate name, where such use erroneously led buyers to believe rugs were woven by blind.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—FEDERAL TRADE COMMISSION PROPERLY RESTRAINED USE OF PICTORIAL REPRESENTATION OF LIGHTHOUSE IN CONNECTION WITH RUGS, AS AGAINST CONTENTION THAT COMPANY HAD CEASED SUCH PRACTICE.

Federal Trade Commission *held* justified under facts in restraining rug company from using [164] pictorial representation of lighthouse, which simulates emblem or symbol adopted for Chicago Lighthouse, an institution for blind, to designate its product, as against contention that rug company had ceased such practice.

(The syllabus is taken from 35 F. (2d) 163)

Petition by the Lighthouse Rug Company for review of an order of Federal Trade Commission. Decree in accordance with the Commission's order.

Mr. Samuel T. Lawton, of Chicago, Ill., for petitioner.

Mr. William A. Sweet, of Washington, D. C., for respondent.

Before EVANS and PAGE, *Circuit Judges*, and LINDLEY, *District Judge*.

LINDLEY, *District Judge*.

The petitioner seeks to review an order entered by the Federal Trade Commission on July 24, 1928,[1] ordering it to cease and desist from—

(1) Using or authorizing the use by others in interstate commerce of the word "Lighthouse" or the words "Light House" either indepently or in conjunction or combination with any other word or words, letter or letters, as a corporate or trade name or as a trade brand or designation in advertising or on labels, circulars, or other advertising matter in connection with the sale or distribution in interstate commerce of its products.

(2) Using or authorizing the use by others in interstate commerce in advertising matter, circulars, or otherwise of the words "Sole Distributors of the Chicago Lighthouse, an Institution for the Blind," so as to confuse or mislead the purchasing public as to the origin of its products or so as to import or imply that it is the sole distributor of the products made at The Chicago Lighthouse when such is not the fact.

(3) Using or authorizing the use by others in interstate commerce in advertising or upon business stationery or on labels, or otherwise, a pictorial representation of a lighthouse which simulates the emblem or symbol adopted and used by the Chicago Lighthouse to designate its product.

(4) Using or authorizing the use by others in connection with the sale or distribution of its products in interstate commerce any designation, representation, or description on labels or in advertising

[1] Reported in 12 F. T. C. 192.

matter, or otherwise so as to import or imply that its products are made by blind people when such is not the fact.

The complaint in pursuance of which this order was entered alleged that petitioner, a corporation located at Chicago, incorporated October 19, 1923, engaged in the manufacture, sale, and distribution, in interstate commerce, of rugs, is using unfair methods of competition in such commerce; that the Improvement Association for Blind People, incorporated in 1910 as a corporation not for pecuniary profit, maintains in Chicago a trade school for training blind people, designated as "The Chicago Lighthouse"; that from 1922 to 1926, with blind people as weavers it had produced rugs at the rate of approximately 250 a week; that similarly designated training schools for blind people, are being operated in other cities, including Duluth, Minneapolis, New Orleans, Syracuse, New York, and Seattle, in which rugs made by blind people are produced; and that "the word 'Lighthouse' when used in connection with rugs or other articles is understood by a substantial portion of the public to indicate that they were produced by the work of blind people".

It was further alleged that petitioner had purchased and resold the rugs of the Chicago Lighthouse until October 19, 1926, when the latter's superintendent and the sixteen blind people employed in the lighthouse in making rugs were employed by petitioner in its factory for similar work; that petitioner manufactures upon power looms, operated by people who are not blind, other rugs similar in every way to those manufactured by the blind people; that petitioner labels all of said rugs "Light House Rugs", with the depiction of a lighthouse and issues advertising matter containing the words, "Sole Distributors of the Chicago Lighthouse, an Institution for the Blind", a cut of a lighthouse, illustrations of rugs and photographs of scenes showing blind persons weaving rugs; that said labels and advertising matter falsely imply that all of said rugs are produced by the labor of blind people, deceive a substantial portion of the purchasing public into the erroneous belief that all the rugs manufactured by the petitioner are produced by the labor of blind people, induce purchasers thereof to purchase the same in that belief and divert trade from the purchasers of truthfully marked rugs.

After petitioner had filed in this court its petition to review the order above set forth, the respondent Commission filed an answer in the nature of a cross bill, asking for an order of compliance, to which the petitioner filed an answer admitting that it had not complied with the order.

The petitioner admits that it may not use the words forbidden in paragraph 2 of the order, "Sole Distributors of The Chicago Lighthouse, an Institution for the Blind", [165] and that it may not in any way imply that its products are made by blind people when such is not the fact, as forbidden in paragraph 4; but it contends that it may lawfully use the word "Lighthouse" and the symbol thereof.

Whether the use of the word "Lighthouse" alone or in combination as a corporate trade name, and the picture of the lighthouse as forbidden by paragraphs 1 and 3, is legally wrongful depends primarily upon whether or not the finding of the respondent, to the effect in substance that the word "Lighthouse", as a term applied to rugs, has acquired amongst a substantial portion of the trade a

secondary meaning, i. e., rugs made by the blind in charitable or quasi-charitable institutions for the blind, called "Lighthouses" has the substantial support by evidence required by the law. (*Philip Carey Mfg. Co.* v. *Federal Trade Commission*, 29 F. (2) 49; *Chamber of Commerce of Minneapolis* v. *Federal Trade Commission*, 280 F., 45; and *Arkansas Wholesale Grocers' Ass'n* v. *Federal Trade Commission*, 18 F. (2) 866.)

Such findings of facts, if substantially supported by the evidence, are, under section 5 of the Federal Trade Commission Act, conclusive. The Supreme Court in *Federal Trade Commission* v. *Curtis Publishing Company*, 260 U. S. 568, says:

> Manifestly, the court must inquire whether the Commission's findings of fact are supported by evidence. If so supported, they are conclusive. * * * I think it of high importance that we should scrupulously comply with the evident intention of Congress that the Federal Commission be made the fact-finding body and that the court should in its rulings preserve the board's character as such and not interject its views of the facts where there is any conflict in the evidence.

An examination of the record discloses that in 1910 the New York institute for the blind named and designated its building "The Lighthouse". Its founder later established the Paris "Lighthouse" for men blinded in the World War. Similar associations, known and designated as "Lighthouses", have been established in many cities of the United States and have come to be known by the public as workshops in which blind people are instructed in useful occupations, particularly rug weaving, as that work has been found to be the most practical and suitable for such persons. The New York institute, in connection with the word "Lighthouse", since 1910 has used the picture of a lighthouse as a symbol to designate its workshops, its summer place in Cornwall and its camp in New Jersey, all maintained for blind people. It has used the word "Lighthouse" and the symbol upon its advertising, literature, labels, stationery, folders, and rugs, which have reached apparently thousands of people.

The workshop conducted by the St. Louis County Association for the Blind, in Duluth, Minn., since 1919, and similar workshops for blind people operated in Seattle, Buffalo, and Syracuse, have used and are using the word "Lighthouse" upon labels, tags, and stationery. All of them make rugs by the work of blind people and so indicate on the tags used. These institutions have for a long time caused the word "Lighthouse" to be associated in the public mind with work for or in the interest of blind people and their products. The Improvement Association for Blind People has conducted the "Chicago Lighthouse" since 1915. It adopted, as a symbol, a picture of a lighthouse, which it placed upon its stationery, labels, and literature. Its rugs, woven by blind people, bore tags upon which were the words, "Woven by the Blind of the Chicago Lighthouse"; and until 1922 these rugs were sold through the Artists' Guild and similar outlets. Between 1922 and 1926 the rugs were sold to Morris Kline, who resold them as rugs produced by the blind at "The Chicago Lighthouse".

There was evidence that the word "Lighthouse", in the understanding of the public, has become firmly associated with blind people and the rugs made by them. Witnesses for respondent testi-

fied that they had been familiar, since 1915, with the use of the word "Lighthouse" to describe products of the blind, that "the term used in connection with the manufacture of rugs is quite generally the word 'Lighthouse'"; and that "the general public is quite generally associating the word 'Lighthouse' with the works and products of the blind". There was entensive evidence of other facts in addition to those recited, material to be considered in connection therewith.

In this situation it is obvious that the finding of the Commission as to the secondary meaning of the word "Lighthouse" has substantial support in the evidence before the Commission and under the statute and the Supreme Court's interpretation is conslusive upon this court.

There was substantial evidence to the [166] contrary offered by petitioner, and if the finding of the Commission had been to the contrary, such findings likewise would have been conclusive upon this court.

There remains the further inquiry as to whether the finding of the Commission as to unfair competition has substantial support in the evidence. The rugs produced by blind people as heretofore mentioned come in competition with petitioner's product. The record discloses that agents of petitioner and of its dealers, soliciting purchases of rugs in various districts likewise supplied by institutions for the blind, repeatedly misrepresented that the rugs made by petitioner were made by the blind at Duluth Lighthouse for the blind, or at the "Lighthouse" for the blind at Milwaukee, or by the blind at Chicago, or by the blind at Minneapolis, and made other similar representations; that in New York, Duluth, Milwaukee, Minneapolis, and elsewhere purchasers of rugs were repeatedly confused as to "Lighthouse" rugs sold by petitioner, in that they purchased rugs upon such representations as created the impressions and beliefs that they were buying the product of the blind made at "Lighthouses" for the blind maintained at various places. These latter institutions, in attempting to sell their rugs, frequently lost their sales because people solicited had previously purchased petitioner's rugs upon the belief that they were the products of the charitable "Lighthouses" of Duluth, Milwaukee, New York, Chicago, or elsewhere. After giving orders to petitioner some purchasers, discovering that petitioner's rugs were factory made at Chicago, refused to accept same. Petitioner's agents frequently did not know whether their samples were machine made or made by the blind but represented them as made by the blind or finished by the blind.

There was other and substantial evidence of confusion, deception, and unfair competition, to such an extent that the finding of the Commission is amply supported thereby and is therefore conclusive upon this court.

With conclusive findings of the Commission to the effect that the word "Lighthouse" when used in connection with the sale of rugs has acquired a secondary meaning, i. e., rugs made by blind people in institutions for the blind; and that unfair competition is being conducted by the petitioner with respect thereto; it is apparent that the order of the Commission is justified under the law, unless it be that such order is broader than is proper. (*Baglin* v.

Cusenier Co., 221 U. S., 580; *Computing Scale Co.* v. *Standard Computing Scale Co.*, 118 F. 965; *Buzby* v. *Davis*, 150 F. 275; *Trappey* v. *McIlhenny Co.*, 281 F. 23; *Photoplay Pub. Co.* v. *La Verne Pub. Co.*, 269 Fed. 730; *British-American Tobacco Co.* v. *British-American Cigar Stores Co.*, 211 F. 933; *Rosenberg* v. *Elliott*, 7 F. (2) 962; *Florence Mfg. Co.* v. *Dowd & Co.*, 178 F. 73).

Petitioner contends that it should not be enjoined from using the word "Lighthouse" in conjunction with its corporate name in advertising its articles for distribution in interstate commerce. In *British-American Tobacco Co.* v. *British-American Cigar Stores Co.*, 211 F. 933, 935, the Court of Appeals for the Second Circuit held that the defendant should be enjoined from the use of the word "British-American" in its corporate name, saying:

> If there were any valid reason for adopting the name, or if the business were other than tobacco, there might be some reason for the defendant's action, but no honest reason can be suggested for appropriating the name of the old and long established company. In the absence of any plausible explanation we have a right to assume that the reason was to secure the advantages which would result from the supposed connection with the well known company.

In *Juvenile Shoe Co.* v. *Federal Trade Commission*, 289 F. 57, 58, the Court of Appeals for the Ninth Circuit approved an order of the Commission enjoining the Juvenile Shoe Company from using the word "Juvenile" in view of the prior use of the same by the Juvenile Shoe Corporation. The court said:

> The petitioner went into the business of manufacturing and selling children's shoes and took a name so similar to a senior corporation that was engaged in precisely the same business and in the same field that confusion of the two corporations in the public mind was inevitable. The names "Juvenile Shoe Corporation" and "Juvenile Shoe Company, Inc.", are practically identical. The reported cases in which injunction has been sustained against the use of a corporate name afford few instances of names so similar and so likely to create confusion as those which these two corporations used. In assuming its name, a corporation acts at its peril.

Of similar purport is *Computing Scale Co.* v. *Standard Computing Scale Co.* 118 Fed. 965.

Here the petitioner, incorporated under the name of "The Light House Rug Com[167]pany", engages in manufacturing rugs for profit and adopted a facsimile of the symbol of The Chicago Lighthouse for the blind. This symbol it placed upon all its literature and labels. It knew that prior to such incorporation the Chicago Lighthouse had adopted said symbol; that other institutions for the blind had likewise adopted the name "Lighthouse" and a similar symbol. Of the secondary meaning, as found to exist by the Commission, it was bound to have notice. It made rugs both by sighted people and by blind people. It went into competition with institutions for the blind. Its rugs made by blind people admittedly cost more to produce than those made by looms. It produced twice as many rugs by looms operated by sighted people as it did by the work of blind people. It is obvious that inasmuch as it was not an eleemosynary institution, the employment of blind people, the deceptive name "Lighthouse", and the use of the facsimile picture of the lighthouse of the institution for the blind, were intended to and did tend to promote its competition with institutions for the blind by inducing in the minds of purchasers the belief that the product was made by the blind in an institution for the blind

known as a "Lighthouse". The reasoning of the two cases cited applies directly to the situation in the instant case; and the order to desist from the use of such corporate name is authorized and proper.

The petitioner contends that it has ceased the practice mentioned in paragraph 3 of the order, and that therefore the Commission should not have included that paragraph. Under the facts shown the Commission was justified in its action in that respect. (*Sears Roebuck & Co.* v. *Federal Trade Commission*, 258 Fed. 307).

There will be a decree in accordance with the Commission's order and providing for compliance therewith as prayed by respondent.

INTERNATIONAL SHOE CO. *v.* FEDERAL TRADE COMMISSION[1]

(Supreme Court. Argued Dec. 2, 3, 1929. Decided Jan. 6, 1930)

No. 42

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—EVIDENCE OF ACQUISITION BY SHOE MANUFACTURING COMPANY, DISTRIBUTING TO SMALL TOWN RETAILERS, OF CAPITAL STOCK OF COMPANY PRODUCING SHOES LARGELY FOR SALE IN CITIES, HELD NOT TO SUSTAIN FINDING THAT ACQUISITION RESULTED IN SUBSTANTIALLY LESSENING COMPETITION (CLAYTON ACT SEC 7; 15 USCA SEC. 18).

Evidence that shoe manufacturing company acquiring substantially all of common stock of another shoe manufacturing company sold about 95 per cent of its shoes in towns having a population of 6,000 or less, while company whose stock it acquired had made 95 per cent of its sales in larger towns or cities, and that shoes were sold to different class of dealers and found way to separate markets, *held* not to support finding of Federal Trade Commission that acquisition of stock resulted in substantially lessening competition in violation of Clayton Act section 7 (15 USCA sec. 18), though both manufacturers were engaged in producing men's dress shoes.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—COURT IN PROCEEDING BY FEDERAL TRADE COMMISSION UNDER STATUTE MAY EXAMINE ENTIRE RECORD AND ASCERTAIN FOR ITSELF ISSUES PRESENTED (CLAYTON ACT SEC. 7; 15 USCA SEC. 18).

Court in reviewing order or Trade Commission in proceedings for violation of Clayton Act section 7 (15 USCA sec. 18), has power to examine entire record and ascertain for itself the issues presented and whether there are material facts not reported by Commission.

MONOPOLIES KEY-NO. 20—ONLY THOSE ACQUISITIONS BY CORPORATION OF STOCK OF COMPETITOR WHICH WILL PROBABLY LESSEN COMPETITION SUBSTANTIALLY ARE FORBIDDEN (CLAYTON ACT, SEC. 7; 15 USCA SEC. 18), FEDERAL TRADE COMMISSION ACT (15 USCA SECS. 41–51).

Mere acquisition by one corporation of the stock of another, even though it result in some lessening of competition, is not forbidden by Clayton Act section 7 (15 USCA sec. 18), or Federal Trade Commission Act (15 USCA secs. 41–51), but Clayton Act prohibits only such acquisition of stock as probably will result in lessening competition to a substantial degree.

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[1] The case is reported in 280 U. S. 291, 50 Sup. Ct. Rep. 89. Case before Commission reported in 9 F. T. C. 441.

EVIDENCE KEY-NO. 571(1)—UNIMPEACHED AND UNCONTRADICTED TESTIMONY OF OFFICERS OF CORPORATIONS AS TO CONDITIONS OF COMPETITION SHOULD BE ACCEPTED IN ANTITRUST PROCEEDINGS (CLAYTON ACT SEC. 7; 15 USCA SEC. 18).

In proceedings for violation of Clayton Act section 7 (15 USCA sec. 18), by acquiring stock of competing corporation, uncontradicted testimony of officers skilled in the business that there was no real competition between companies in respect to product, where unimpeached, should be accepted.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—EVIDENCE REQUIRED FINDING THAT FINANCIAL CONDITION OF CORPORATION WHOSE STOCK COMPETITOR ACQUIRED ELIMINATED PROBABILITY OF SUBSTANTIAL COMPETITION (CLAYTON ACT SEC. 7; 15 USCA SEC. 18).

In proceedings against shoe manufacturing company for violation of Clayton Act section 7 (15 USCA sec. 18), by acquiring competitor's stock, evidence *held* to require finding that at time of acquisition financial condition of corporation whose stock was acquired was such as might necessitate liquidation or sale, reducing prospect of future competition or restraint.

MONOPOLIES KEY-NO. 20—CORPORATION'S PURCHASE OF COMPETITOR'S STOCK TO FACILITATE PURCHASER'S BUSINESS, WITH RESULT OF MITIGATING SERIOUS INJURIOUS CONSEQUENCES OTHERWISE PROBABLE, DOES NOT VIOLATE STATUTE (CLAYTON ACT SEC. 7; 15 USCA SEC. 18).

Corporation's purchase of capital stock of competitor, if there is no other prospective purchaser, not with a purpose to lessen competition, but to facilitate the accumulated business of the purchaser, and with the effect of mitigating seriously injurious consequences otherwise probable, is not in contemplation of law prejudicial to the public and does not substantially lessen competition or restrain commerce with intent of Clayton Act section 7 (15 USCA sec. 18).

(The syllabus is taken from 50 Sup. Ct. Rep. 89)

On writ of certiorari to the United States Circuit Court of Appeals for the First Circuit.

Proceeding by the Federal Trade Commission against the International Shoe Co. for violation of the Clayton Act. An order of the Commission requiring the defendant to divest itself of capital stock acquired in a competing company was affirmed by the Circuit Court of Appeals (29 F. (2d) 518),[1] and defendant petitions for certiorari. Judgment of Circuit Court of Appeals reversed. Mr. Justice Stone, Mr. Justice Holmes, and Mr. Justice Brandeis, dissenting.

Messrs. Charles Nagel, J. D. Williamson, and *Frank Y. Gladney*, all of St. Louis, Mo., for petitioner.

Mr. *John Lord O'Brian*, assistant to Attorney General, with whom *Solicitor General Hughes* and *Messrs. Charles H. Weston*, Special Assistant to the Attorney General, *Robert E. Healy*, Chief Counsel, Federal Trade Commission, and *Baldwin B. Bane*, Special Attorney, were on the brief for respondent.

[1]Also reported in 12 F. T. C. 732.

[293] Mr. Justice SUTHERLAND delivered the opinion of the court.

This was a proceeding instituted by complaint of the Federal Trade Commission against petitioner charging a violation of section 7 of the Clayton Act, c. 323, 38 Stat. 730, 731 (U. S. C., title 15, sec. 18), which provides:

> No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.
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> This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition.

The complaint charges that in May, 1921, while petitioner and the W. H. McElwain Co. were engaged in commerce in competition with each other, petitioner acquired all, or substantially all, of the capital stock of the McElwain company and still owns and controls the [294] same; that the effect of such acquisition was to substantially lessen competition between the two companies; to restrain commerce in the shoe business in the localities where both were engaged in business in interstate commerce; and to tend to create a monopoly in interstate commerce in such business. The last-named charge has not been pressed and may be put aside. Upon a hearing before the commission evidence was introduced from which the Commission found (*a*) that the capital stock of the McElwain company had been acquired by the petitioner at the time charged in the complaint, (*b*) that the two companies were at the time in substantial competition with one another, and (*c*) that the effect of the acquisition was to substantially lessen competition between them and to restrain commerce.

Thereupon the Commission put down an order directing petitioner to divest itself of all capital stock of the McElwain company then held or owned, directly or indirectly, by petitioner, and to cease and desist from the ownership, operation, management, and control of all assets acquired from the McElwain company subsequent to the acquisition of the capital stock, etc., and to divest itself of all such assets, etc. Upon appeal by petitioner to the court below the order of the Commission was affirmed. (29 Fed. (2d) 518.)

The principal grounds upon which the order here is assailed are (1) that there never was substantial competition between the two corporations, and, therefore, no foundation for the charge of substantial lessening of competition; (2) that at the time of the acquisition the financial condition of the McElwain company was such as to necessitate liquidation or sale, and, therefore, the prospect for future competition or restraint was entirely eliminated. Since, in our opinion, these grounds are determinative, we find it unnecessary to consider the challenge to the sufficiency of the complaint and other contentions.

[295] *First.* Prior to the acquisition of the capital stock in question the International Shoe Co. was engaged in manufacturing leather shoes of various kinds. It had a large number of tanneries and factories and sales houses located in several States. Its business was extensive, and its products were shipped and sold to purchasers

practically throughout the United States. The McElwain company, a Massachusetts corporation with its principal office in Boston, also manufactured shoes and sold and distributed them in several States of the Union. Principally, it made and sold dress shoes for men and boys. The International made and sold a line of men's dress shoes of various styles, which, although comparable in price, and to some degree in quality, with the men's dress shoes produced by the McElwain company, differed from them in important particulars. Such competition as there was between the two companies related alone to men's dress shoes.

The findings of the Commission that this competition between the two companies was substantial and, by the acquisition of the stock of the McElwain company, had been substantially lessened, the court of appeals affirmed, holding that they were fully supported by the evidence. Upon a careful review of the record we think the evidence requires a contrary conclusion.

It is true that both companies were engaged in selling dress shoes to customers for resale within the limits of several of the same States; but the markets reached by the two companies within these States, with slight exceptions hereinafter mentioned, were not the same. Certain substitutes for leather were used to some extent in the making of the McElwain dress shoes; and they were better finished, more attractive and modern in appearance, and appealed especially to city trade. The dress shoes of the International were made wholly of leather and were of a better wearing quality; but among the [296] retailers who catered to city or fashionable wear, the McElwain shoes were preferred. The trade policies of the two companies so differed that the McElwain company generally secured the trade of wholesalers and large retailers; while the International obtained the trade of dealers in the small communities. When requested, the McElwain company stamped the name of the customer (that is the dealer) upon the shoes, which the International refused to do; and this operated to aid the former company to get, as generally it did get, the trade of the retailers in the larger cities. As an important result of the foregoing circumstances, witnesses estimated that about 95 per cent of the McElwain sales were in towns and cities having a population of 10,000 or over; while about 95 per cent of the sales of the International were in towns having a population of 6,000 or less. The bulk of the trade of each company was in different sections of the country, that of the McElwain company being north of the Ohio River and east of the State of Illinois, while that of the International was in the south and west. An analysis of the sales of the International for the twelve months preceding the acquisition of the McElwain capital stock, discloses that in 42 States no men's dress shoes were sold to customers of the McElwain company; and that in the remaining six States during the same period a total of only $52\frac{1}{2}$ dozen pairs of such shoes had been sold to sixteen retailers and three wholesalers who were also customers of the McElwain company. This amounted to less than one-fourth of the production of dress shoes by the International for a single day, the daily production being about 250 dozen pairs.

It is plain from the foregoing that the product of the two companies here in question, because of the difference in appearance and

workmanship, appealed to the tastes of entirely different classes of consumers; that while a [297] portion of the product of both companies went into the same States, in the main the product of each was in fact sold to a different class of dealers and found its way into distinctly separate markets. Thus it appears that in respect of 95 per cent of the business there was no competition in fact and no contest, or observed tendency to contest, in the market for the same purchasers; and it is manifest that, when this is eliminated, what remains is of such slight consequence as to deprive the finding that there was substantial competition between the two corporations, of any real support in the evidence. The rule to be followed is stated in *Fed. Trade Comm.* v. *Curtis Co.*, 260 U. S. 568, 580:

> Manifestly, the court must inquire whether the Commission's findings of fact are supported by evidence. If so supported, they are conclusive. But as the statute grants jurisdiction to make and enter, upon the pleadings, testimony, and proceedings, a decree affirming, modifying, or setting aside an order, the court must also have power to examine the whole record and ascertain for itself the issues presented and whether there are material facts not reported by the Commission. If there be substantial evidence relating to such facts from which different conclusions reasonably may be drawn, the matter may be and ordinarily, we think, should be remanded to the Commission—the primary fact-finding body—with direction to make additional findings, but if from all the circumstances it clearly appears that in the interest of justice the controversy should be decided without further delay the court has full power under the statute so to do. The language of the statute is broad and confers power of review not found in the Interstate Commerce Act.

Section 7 of the Clayton Act, as its terms and the nature of the remedy prescribed plainly suggest, was intended for the protection of the public against the evils [298] which were supposed to flow from the undue lessening of competition. In *Standard Oil Co.* v. *Federal Trade Commission*, 282 Fed. 81, 87, the Court of Appeals for the Third Circuit applied the test to the Clayton Act, which had theretofore been held applicable to the Sherman Act, namely, that the standard of legality was the absence or presence of prejudice to the public interest by unduly restricting competition or unduly obstructing the due course of trade. In *Fed. Trade Comm.* v. *Sinclair Co.*, 261 U. S. 463, 476, referring to the Clayton Act and the Federal Trade Commission Act, this court said:

> The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain.

Mere acquisition by one corporation of the stock of a competitor, even though it result in some lessening of competition, is not forbidden; the act deals only with such acquisitions as probably will result in lessening competition to a substantial degree, *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346, 357; that is to say, to such a degree as will injuriously affect the public. Obviously, such acquisition will not produce the forbidden result if there be no preexisting substantial competition to be affected; for the public interest is not concerned in the lessening of competition, which, to begin with, is itself without real substance. To hold that the 95 per cent of the McElwain product, sold in the large centers of population to meet a distinct demand for that particular product, was sold in competition with the 95 per cent of the International product, sold in the rural

sections and the small towns to meet a wholly different demand, is to apply the word "competition" in a highly deceptive sense. And if it be conceded that the entire remaining 5 per cent of each company's product (although clearly it was materially less than that) was sold [299] in competitive markets, it is hard to see in this, competition of such substance as to fall within the serious purposes of the Clayton Act. Compare *Industrial Ass'n* v. *United States*, 268 U. S. 64, 84.

In addition to the circumstances already cited, the officers of the International testified categorically that there was in fact no substantial competition between the companies in respect of these shoes, but that at most competition was incidental and so imperceptible that it could not be located. The existence of competition is a fact disclosed by observation rather than by the processes of logic; and when these officers, skilled in the business which they have carried on, assert that there was no real competition in respect of the particular product, their testimony is to be weighed like that in respect of other matters of fact. And since there is no testimony to the contrary and no reason appears for doubting the accuracy of observation or credibility of the witnesses, their statements should be accepted.

It follows that the conclusion of the Commission and the court below to the effect that the acquisition of the capital stock in question would probably result in a substantial lessening of competition must fail for lack of a necessary basis upon which to rest.

Second. Beginning in 1920, there was a marked falling off in prices and sales of shoes, as there was in other commodities; and, because of excessive commitments which the McElwain company had made for the purchase of hides as well as the possession of large stocks of shoes and an inability to meet its indebtedness for large sums of borrowed money, the financial condition of the company became such that its officers, after long and careful consideration of the situation, concluded that the company was faced with financial ruin, and that the only alternatives presented were liquidation through a receiver or an outright sale. New orders were not coming in; losses [300] during 1920 amounted to over $6,000,000; a surplus in May, 1920, of about $4,000,000 not only was exhausted, but within a year had been turned into a deficit of $4,382,136.70. In the spring of 1921 the company owed approximately $15,000,000 to some 60 or 70 banks and trust companies, and in addition, nearly $2,000,000 on current account. Its factories, which had a capacity of 38,000 to 40,000 pairs of shoes per day, in 1921 were producing only 6,000 or 7,000 pairs. An examination of its balance sheets and statements and the testimony of its officers and others conversant with the situation, clearly shows that the company had reached the point where it could no longer pay its debts as they became due. In the face of these adverse circumstances it became necessary, under the laws of Massachusetts, to make up its annual financial statement, which, when filed, would disclose a condition of insolvency, as that term is defined by the statute and decisions of the State, General Laws 1921, c. 106, sec. 65 (3); *Holbrook* v. *International Trust Co.*, 220 Mass. 150, 155; *Steele* v. *Commissioner of Banks*, 240 Mass. 394, 397, and thus bring the company to the point of involuntary liquidation. In this situation, dividends on second preferred and common stock were

discontinued, and the first preferred stockholders were notified that the company was confronted with the necessity of discontinuing dividends on that class of stock as well.

The condition of the International company, on the contrary, notwithstanding these adverse conditions in the shoe trade generally, was excellent. That company had so conducted its affairs that its surplus stock was not excessive, and it was able to reduce prices. Instead of a decrease, it had an increase of business of about 25 per cent in the number of shoes made and sold. During the early months of 1921, orders exceeded the ability of the company to produce, so that approximately one-third of [301] them were necessarily canceled. In this situation, with demands for its products so much in excess of its ability to fill them, the International was approached by officers of the McElwain company with a view to a sale of its property. After some negotiation, the purchase was agreed upon. The transaction took the form of a sale of the stock instead of the assets, not, as the evidence clearly establishes, because of any desire or intention to thereby affect competition, but because by that means the personnel and organization of the McElwain factories could be retained, which, for reasons that seem satisfactory, was regarded as vitally important. It is perfectly plain from all the evidence that the controlling purpose of the International in making the purchase in question was to secure additional factories, which it could not itself build with sufficient speed to meet the pressing requirements of its business.

Shortly stated, the evidence establishes the case of a corporation in failing circumstances, the recovery of which to a normal condition was, to say the least, in gravest doubt, selling its capital to the only available purchaser in order to avoid what its officers fairly concluded was a more disastrous fate. It was suggested by the court below, and also here in argument, that instead of an outright sale, any one of several alternatives might have been adopted which would have saved the property and preserved competition; but, as it seems to us, all of these may be dismissed as lying wholly within the realm of speculation. The company might, as suggested, have obtained further financial help from the banks, with a resulting increased load of indebtedness which the company might have carried and finally paid, or, on the other hand, by the addition of which, it might more certainly have been crushed. As to that, one guess is as good as the other. It might have availed itself of a receivership, [302] but no one is wise enough to predict with any degree of certainty whether such a course would have meant ultimate recovery or final and complete collapse. If it had proceeded, or been proceeded against, under the bankruptcy act, holders of the preferred stock might have paid or assumed the debts and gone forward with the business; or they might have considered it more prudent to accept whatever could be salvaged from the wreck and abandon the enterprise as a bad risk.

As between these and all other alternatives, and the alternative of a sale such as was made, the officers, stockholders, and creditors, thoroughly familiar with the factors of a critical situation and more able than commission or court to foresee future contingencies, after much consideration, felt compelled to choose the latter alternative. There is no reason to doubt that in so doing they exercised a judg-

ment which was both honest and well informed; and if aid be needed to fortify their conclusion, it may be found in the familiar presumption of rightfulness which attaches to human conduct in general. *Bank of the U. S.* v. *Dandridge*, 12 Wheat. 64, 69. Aside from these considerations, the soundness of the conclusion which they reached finds ample confirmation in the facts already discussed and others disclosed by the record.

In the light of the case thus disclosed of a corporation with resources so depleted and the prospect of rehabilitation so remote that it faced the grave probability of a business failure with resulting loss to its stockholders and injury to the communities where its plants were operated, we hold that the purchase of its capital stock by a competitor (there being no other prospective purchaser), not with a purpose to lessen competition, but to facilitate the accumulated business of the purchaser and with the effect of mitigating seriously injurious consequences otherwise probable, is not in contemplation of law prejudicial to the public and does not substantially [303] lessen competition or restrain commerce within the intent of the Clayton Act. To regard such a transaction as a violation of law, as this court suggested in *United States* v. *U. S. Steel Corp.*, 251 U. S. 417, 446–447, would "seem a distempered view of purchase and result." See also *American Press Ass'n* v. *United States*, 245 Fed. 91, 93–94.

For the reasons appearing under each of the two foregoing heads of this opinion, the judgment below must be

Reversed.

Mr. Justice STONE, dissenting.

That the facts found by the Commission are a violation of section 7 of the Clayton Act is not questioned. Under sec. 11, 38 Stat. 730, (U. S. Code, Title 15, sec. 21), the findings of the Commission "if supported by testimony" and the inferences which it may reasonably draw from the facts proved or admitted, are conclusive upon us. See *Federal Trade Commission* v. *Pacific Paper Ass'n*, 273 U. S. 52. Congress has thus forbidden the substitution of the judgment of courts for that of the Commission where it is founded upon evidence. Conforming to this requirement I can not say that its conclusions here lack the prescribed support. Even without such statutory limitation this court will not set aside the findings of an administrative board or commission, upheld, as in the present case, by the reviewing court below, unless the record establishes that clear and unmistakable error has been committed. *Cincinnati, &c. Ry. Co.* v. *Interstate Commerce Comm.*, 206 U. S. 142, 154; *Cincinnati, N. O. & Texas Ry.* v. *Interstate Commerce Comm.*, 162 U. S. 184, 194; *Illinois Central R. Co. v. Interstate Commerce Comm.*, 206 U. S. 441, 466.

The opinion of the court and the general testimony of petitioner's officers of their conclusions that there was no competition between the two corporations (see *United* [304] *States* v. *Trenton Potteries Co.*, 273 U. S. 392) seem to proceed on the assumption that manufacturers, each engaged in marketing a product comparable in price and adapted to the satisfaction of the same need, do not compete if they do not sell to the same distributors.

Without stating it in detail, there appears to me to be abundant evidence that the competitive products, made by two of the largest

shoe manufacturers in the world, reached the same local communities through different agencies of distribution; the one, of petitioner, through sales directly to retailers throughout the United States, the other, of the McElwain company, through sales in thirty-eight States, chiefly to wholesalers located in cities, who in turn sold to the retail trade. From detailed evidence of this type the Commission drew, as I think it reasonably might, the inference that the rival products, through local retailers, made their appeal to the same buying public and so were competitive. From a comparative study of the statistics of sales, the Commission might also, I think, reasonably have found that the McElwain company was successfully competing, by securing by far the larger proportion of the trade in this type of shoe, its gross sales of dress shoes in 1920 being more than $33,000,000 and in 1921 more than $15,000,000, as compared with petitioner's sales of its similar dress shoes of approximately $2,500,000.

No useful purpose would be served by reviewing the evidence at length. To refer to only two of the many items which support the findings of the Commission, the fact relied upon, that petitioner, in the year ending May 31, 1921, sold only $52\frac{5}{12}$ dozen pairs of the competing shoes to dealers patronizing the McElwain company, would seem to be without significance in the light of other evidence that in one State, Missouri, where petitioner sold its product to 4,801 of the 5,150 retail shoe dealers in the State, the McElwain company sold in the same [305] year, chiefly through wholesalers and independent jobbers, 25,669 dozen pairs of the competing product. It appears that in 1921 petitioner sold its shoes to every retailer in Kentucky, Tennessee, and Texas. In that year, when the value of the gross sales of the McElwain company had been cut in half by business depression, it sold in those States 8,791 dozen pairs of its competing product, chiefly through independent jobbers, in addition to its sales in that territory through wholesale houses at Columbus, Ohio, and Chicago.

Apart from the more general testimony that both companies sold extensively in the same States and in the same cities, the inference from this evidence seems irresistible that in these States, as was the case in others [1] the competing products were not only offered through different systems of distribution to the same retailers, but were by them offered and sold to the ultimate consumers in their communities. Both products being made and suitable for the same use, the fact that each presented some minor advantages over the other, it might reasonably be inferred, would tend to increase, rather than diminish the competition. In fact, the chairman of petitioner's board of directors testified that its 500 salesmen were unsuccessful in their efforts to increase the sales of its Patriot Brand of dress shoes (the alleged competitive product) above about 3,000 pairs a day because they were unable to convince retailers of the superiority of petitioner's more serviceable dress shoes over the better [306] looking dress shoes of the type manufactured by the McElwain company.

[1] The petitioner sold to three retail dealers in every four in Illinois. The McElwain company sold 9,547 dozen pairs of competing shoes to independent jobbers and retailers in that State. In addition, an affiliated wholesale house located in Chicago sold about 18,000 dozen pairs. In California, where the International Shoe Co. sold to seven retail dealers in every ten, the McElwain company sold 1,586 dozen pairs to retailers and independent jobbers; and an affiliated wholesaler located at San Francisco sold, almost wholly within the State, about 10,000 dozen pairs of the competing shoes.

Nor am I able to say that the McElwain company, for the stock of which petitioner gave its own stock having a market value of $9,460,000, was then in such financial straits as to preclude the reasonable inference by the Commission that its business, conducted either through a receivership or a reorganized company, would probably continue to compete with that of petitioner. See *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346, 356, 357. It plainly had large value as a going concern, there was no evidence that it would have been worth more or as much if dismantled, and there was evidence that the depression in the shoe trade in 1920–1921 was then a passing phase of the business. For these reasons and others stated at length in the opinion of the court below, I think the judgment should be affirmed.

Mr. Justice Holmes and Mr. Justice Brandeis concur in this opinion.

N. FLUEGELMAN & CO., INC. *v.* FEDERAL TRADE COMMISSION[1]

(Circuit Court of Appeals, Second Circuit. Jan. 6, 1930)

No. 85

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 71—TRADE-MARKS AND LABELS USED IN MERCHANDISING PRODUCT WHICH MISLEAD PURCHASING PUBLIC ARE FORBIDDEN (FEDERAL TRADE COMMISSION ACT; 15 USCA SECS. 41–51).

Fact that words used in merchandising product have been trade-marked give no unlimited sanction to use words which will deceive, but any misleading trade-mark or label whereby purchasing public is deceived is forbidden under Federal Trade Commission Act (15 USCA secs. 41–51), which forbid unfair methods of competition in commerce.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—ORDER OF FEDERAL TRADE COMMISSION FORBIDDING LAWFUL METHODS OF MERCHANDISING CAN NOT STAND (15 USCA SEC. 45).

Order of Federal Trade Commission prohibiting lawful methods of merchandising can not stand, and may be modified by court under power given by statute 15 USCA section 45, to conform order to complaint and findings.

[60] TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 71—COMPANY MANUFACTURING COTTON FABRICS WITH SATIN WEAVE MAY USE IN CONNECTION THEREWITH TRADE-NAME "SATINMAID" AND "SATINIZED", BUT ONLY ON CONDITION THAT SUCH NAMES BE FOLLOWED BY LETTERS EQUALLY CONSPICUOUS DESIGNATING NATURE OF FABRIC (FEDERAL TRADE COMMISSION ACT; 15 USCA SECS. 41–51).

Company converting cotton fabrics, silk and cotton fabrics, rayon fabrics, combinations of cotton and artificial silk fabrics, and selling them to wholesale and retail dealers under trade-name of "Satinmaid" and "Satinized", can not be absolutely restrained from using such trade-names for its products, where products had satin weave, but could not use these words or any word or combination of words embracing word "satin" as trade-name, unless there was added in letters equally conspicuous and on the same side of the label the words "a cotton fabric", "a cotton satin", "no silk", or equivalent modifying terms, under Federal Trade Commission Act (15 USCA secs. 41–51).

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[1] Reported in 37 F. (2d) 59. Case before Commission reported in 12 F. T. C. 359.

(The syllabus is taken from 37 F. (2d) 59)

Petition by N. Fluegelman & Co., Inc., to review an order of the Federal Trade Commission entered against the petitioner, ordering it to cease and desist from selling its merchandise under the trade-name "Satinmaid" and "Satinized". Order modified and affirmed.

Mr. Henry Fluegelman, of New York City (*Mr. David Klein*, of New York City, of counsel), for petitioner.

Mr. Robert E. Healy, chief counsel, Federal Trade Commission, of Washington, D. C., and *Mr. James M. Brinson*, special attorney, of Washington, D. C., for respondent.

Covington, Burling & Rublee, of Washington, D. C., and *Hays, Hershfield, Kaufman & Schwabacher*, of New York City (*Mr. J. Harry Covington*, of Washington, D. C., and *Mr. Wolfgang S. Schwabacher*, of New York City, of counsel), for Rayon Institute of America, Inc.

Before MANTON, AUGUSTUS N. HAND, and CHASE, Circuit Judges.

MANTON, *Circuit Judge:*

The order to cease and desist directs that "the respondent * * * cease and desist, directly or indirectly, from using the word 'Satinmaid', or any word or words, or combination of words, embracing the word 'satin' as a trade name for, or to describe or designate a cotton fabric offered for sale or sold in interstate commerce."

The petitioner's business is that of converting cotton fabrics, silk and cotton fabrics, rayon fabrics, combinations of cotton and artificial silk fabrics and selling them to wholesale and retail dealers in the several States of the United States. The product complained of here is a cotton fabric made in a satin weave and has been advertised under the trade name of "Satinmaid" and "Satinized" and has also been referred to on the labels and tags as a "satinized" fabric. The petitioner has a trade-mark of the name "Satinmaid" and "Satinized". In such advertising since the 7th of December, 1925, the petitioner has used the word "Satinmaid" and in almost equally large type or letters has added "a cotton fabric". The same has been true in the use of the word "Satinized".

Prior to the addition of the words "a cotton fabric", in each instance, the Federal Trade Commission, after complaint made, entered into a stipulation on December 7, 1925, with the petitioner, in part, as follows:

> It is further stipulated and agreed that hereafter when respondent (referring to N. Fluegelman & Co.) shall use said trade name "Satinmaid" in advertising, labeling, or describing a fabric composed entirely of cotton or not containing a substantial amount of silk, it will, in every case, use in immediate conjunction with said trade name apt words clearly showing that such fabric is all cotton or contains no silk or the truth as to its silk content.

Prior to this stipulation, the Commission found that the product "when sold and delivered by respondent has had so-called board ends affixed to the cards or boards around which the fabric was wound, containing said trade name, accompanied by the words 'a satinized fabric', in one or more places, which also have appeared

on paste tickets, hanging tags, salesmen's color cards, and other descriptive matter used in connection with the sale and distribution of said fabric".

It found that after December 7, 1925, the petitioner in its advertisements and descriptive matter used in connection with the sale and distribution of this fabric the words "a cotton fabric" either below or above the word "Satinmaid" and "Satinized" but in letters considerably smaller, except in the so-called color cards used by traveling salesmen to exhibit the various colors in which petitioner offers its fabric for sale. On these color cards the words "a cotton fabric" appear in letters larger but less conspicuous than the trade name "Satinmaid" or "Satinized." The Commission found that the word "satin" described a fabric composed[61]wholly of silk woven in a peculiar manner so as to impart a high luster to the surface of the fabric; that the word "Satinmaid" composed of two words "satin" and "maid" had the same phonetic significance as if it were used with the word "made" and has a capacity and tendency to mislead and deceive buyers into the belief that this cotton fabric consisted wholly or in part of silk and thus induced purchasers to the same belief. Moreover, it found that in its selling the petitioner had paste tickets, hanging tags, board ends and color cards bearing the name "Satinmaid" and thus misled the buyers into the belief that the fabrics consisted in whole or in part of silk.

There are many definitions in the different recognized dictionaries of the word "satin," but all substantially holding it to be a silk fabric made of a thick close texture and overshot woof having a glossy surface. Much expert testimony has been adduced as to the meaning of the word "satin" but substantially agreeing that it is used in one of two senses to describe any satin woven cloth. But if the word "satin" is not alone used and there be a qualifying phrase which is descriptive of the material, there can be no deception of the public. The fact that the petitioner has trade-marked the word "Satinmaid" and "Satinized" gave it no unlimited sanction to use it when it would deceive. *Brougham et al.* v. *Blanton Mfg. Co.*, 249 U. S. 495; *Federal Trade Commission* v. *Kay*, 35 F. (2d) 160 (decided Sept. 18, 1929, 7th C. C. A.)

The test of the unfair method of competition was not whether a trade-mark may have been registered but whether the method of using it falls within the prohibition of the Federal Trade Commission Act (15 USCA, secs. 41–51), which forbids unfair method of competition in commerce and declares it to be unlawful. Any misleading trade-marks and labels used in merchandising a product which misleads the purchasing public is forbidden. *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483. But the evidence concededly shows that "satin" among other things, means the weave of the cloth and therefore may be used with or without additional qualifying words to describe fabrics or cloths woven in the satin weave. Satin may also be used with qualifying words indicating the yarn in which the fabric described is woven and such would not be misleading. Thus used, if the word "satin" makes reference to the weave as well as the yarn and the petitioner makes known that the yarn of which the fabric is woven is not silk—yarn usually employed in manufacturing satin—there can be no deception on or misleading of the public. Where cotton yarn is used, reference should be clearly made that it is used.

In December, 1925, the parties recognized this by their stipulation and agreed upon a policy of sale, with a reference to the cotton fabric, as safe to the purchasing public. Silk manufacturers, who have a great interest to prevent the sale of materials as silk made when they are not, define satin as including a weave and a silk-faced fabric. The petitioner has a satin weave and there can be no deception by the use of the word "Satinmaid" or Satinized" if it is sufficiently made known that all of the material used is not silk. Thus the petitioner would describe its "Satinmaid" and "Satinized" as a cotton fabric with a satin weave which, if thus truly made and truthfully displayed and offered to the purchasing public, will not be deceptive. An order which would forbid such merchandising prohibits that which is lawful and the order to cease and desist entered upon such a basis can not stand. *Fed. Trade Comm.* v. *Curtis Pub. Co.*, 260 U. S. 568; *Heuser* v. *Fed. Trade Comm.* 4 F. (2d) 632. This court has the power under the statute (U. S. Code Title 15 Sec. 45), to conform the order to the complaint and findings. *Fed. Trade Comm.* v. *Balme*, 23 F. (2d) 315.

Accordingly, the order to cease and desist will be modified so as to require the petitioner to cease and desist, directly or indirectly, from using the words "Satinmaid" or "Satinized" or any word or words or combination of words embracing the word "satin" as a trade name for or to describe or designate a cotton fabric offered for sale or sold in interstate commerce, unless there be added in letters equally conspicuous and on the same side of the label, advertising matter, wrapper, stationery, or board ends on which the words "Satinmaid" or "Satinized" appear, the words "a cotton fabric", "a cotton satin", "no silk", or equivalent modifying terms.

As thus modified, the order is confirmed.

MACFADDEN PUBLICATIONS, INC., *v.* FEDERAL TRADE COMMISSION[1]

(Court of Appeals of District of Columbia. Argued December 3, 1929. Decided January 7, 1930)

No. 5024

MANDAMUS KEY-NO. 4(5)—STATUTE HELD TO PROVIDE PLAIN, ADEQUATE, AND EXCLUSIVE REMEDY TO CORRECT ERRORS IF FEDERAL TRADE COMMISSION, PRECLUDING MANDAMUS AS ADDITIONAL OR ALTERNATIVE REMEDY (15 USCA SEC. 45).

Act September 26, 1914, 38 Stat. 720 (15 USCA sec. 45), giving Circuit Court of Appeals and Court of Appeals of District of Columbia exclusive jurisdiction to enforce, set aside, or modify orders of Federal Trade Commission, provides a plain, adequate, and exclusive method of judicial review for correction of any errors which Commission may make in a proceeding to require respondent to cease unfair methods of competition in interstate commerce; hence mandamus can not be granted as an alternative or additional remedy.

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[1] The case is reported in 37 F. (2d) 822.

MANDAMUS KEY-NO. 3(2)—MANDAMUS WILL NOT ISSUE, WHERE THERE IS OTHER ADEQUATE LEGAL REMEDY.

Writ of mandamus will not issue, where there is any other adequate legal remedy.

MANDAMUS KEY-NO. 4(1)—MANDAMUS CAN NOT BE USED AS SUBSTITUTE FOR APPEAL OR WRIT OF ERROR.

A writ of mandamus can not be made to perform the office of an appeal or writ of error, or be used as a substitute for either.

(The syllabus is taken from 37 F. (2d) 822)

Mandamus proceeding by the MacFadden Publications, Inc., against the Federal Trade Commission and Edgar A. McCulloch and others, as commissioners. From an adverse judgment by the Supreme Court of the District, petitioner appeals. Affirmed.

L. Rabbitt, *H. T. Lore*, and *J. H. Sykes*, all of Washington, D. C., for appellant.

Robert E. Healy and *Baldwin B. Bane*, both of Washington, D. C., for appellee.

Before MARTIN, Chief Justice, and ROBB and VAN ORSDEL, Associate Justices.

MARTIN, *Chief Justice:*

An appeal from a judgment of the lower court refusing to issue a writ of mandamus to compel the Federal Trade Commission to issue certain subpœnas duces tecum in a proceeding pending before it.

The record discloses that on April 30, 1929, a written complaint was filed with the Federal Trade Commission charging that appellant was using certain unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act [823] of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," 38 Stat. 717. The complaint charged that appellant was engaged in the business of publishing and distributing magazines, periodicals, and newspapers, and that it had adopted a practice of soliciting subscriptions therefor at prices which it falsely represented to be less than the regular subscription prices, whereas in fact the prices thus solicited were not less than such regular prices. Appellant as respondent answered, denying the charge; and the issue stood for trial.

Thereupon appellant made formal application to the Commission for the issuance of certain subpœnas duces tecum, to be used at the trial, and the same were issued. But afterwards the Commission on the petition of some of the witnesses so subpœnaed, vacated the duces tecum clause requiring the production of the papers and documents therein specified. The respondent objected to this order and moved that the subpœnas be reissued. But this motion was overruled by the Commission.

The respondent as plaintiff then filed a petition against the Commission and the various members thereof in the Supreme Court of the District of Columbia, setting out the foregoing facts, and

praying that a writ of mandamus should issue commanding the Commission to issue the writs of subpœna duces tecum, which the Commission had refused to issue as aforesaid. The case was heard by the lower court upon petition and answer, and judgment was entered against the petitioner. This appeal was then taken.

In our opinion the judgment of the lower court was correct.

Section 5 of the Federal Trade Commission Act reads in part as follows (38 Stat. 720):

> Any party required by such order of the Commission to cease and desist from using such methods of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith served upon the Commission, and thereupon the Commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Commission as in the case of an application by the Commission for the enforcement of its order, and the findings of the Commission as to the facts, if supported by testimony, shall in like manner be conclusive. * * *
>
> The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the Commission shall be exclusive.

It may be noted that similar jurisdiction is vested in this court, *Federal Trade Commission* v. *Klesner*, 280 U. S. 19.

It thus appears that the statute provides a plain, adequate, and exclusive method by judicial review for the correction of any error which the Commission may commit in such a proceeding. This being the case it follows that mandamus can not be granted as an alternative or additional remedy, for it is well settled that the writ will not issue where there is any other adequate legal remedy. Nor can the writ be made to perform the office of an appeal or writ of error or be used as a substitute for either. See 38 C. J. 558, sec. 31, with citations.

Therefore, without passing upon the merits of the case we affirm the judgment of the lower court refusing to issue a writ of mandamus upon the petition.

Judgment affirmed with costs.

FEDERAL TRADE COMMISSION *v.* AMERICAN SNUFF CO.

(Circuit Court of Appeals, Third Circuit. Feb. 13, 1930)[1]

No. 3816

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 80½—COURT'S JURISDICTION TO ENFORCE FEDERAL TRADE COMMISSION'S ORDER DEPENDS ON WHETHER RESPONDENT FAILED TO OBEY ORDER AND WHETHER ORDER IS VALID (FEDERAL TRADE COMMISSION ACT SEC. 5; 15 USCA SEC. 45.)

Jurisdiction of Circuit Court of Appeals under Federal Trade Commission Act section 5 (15 USCA sec. 45), providing commission may apply to court for enforcement of order depends on whether respondent has failed or neglected to obey order, and whether such order is valid.

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[1] Rehearing denied Mar. 24, 1930. Case reported in 38 F. (2d) 547. Case before Commission reported in 11 F. T. C. 144.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 70(1)—ORDER PROHIBITING SNUFF COMPANY FROM USING WORD "DENTAL" AND DEPICTION OF TOOTH IN BRAND NAME OR ON LABEL HELD UNLAWFUL; "DIPPING."

Order prohibiting snuff company from using word "dental" and depiction of tooth in brand [548] name or on label, *held* unlawful, where purchasers could not have been misled by changed label adopted when respondent ceased to use ingredient calculated to preserve or benefit teeth and gums, since there was no unfairness in use of word "dental" and picture of tooth because it occupies substantially same relation to snuff used by "dipping" as word "nasal" does to snuff taken through nostrils, "dipping" being practice of taking snuff by rubbing teeth or gums with stick or brush dipped in snuff.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 99—IN DETERMINING WHETHER CHANGED SNUFF LABEL MISLED PURCHASERS, FACTS AT TIME SUIT WAS BEGUN MUST BE CONSIDERED.

In determining whether purchasers of snuff were misled by changed label on snuff where change had been made years before, facts as they were when suit was begun must be considered, not facts of different condition and earlier time.

(The syllabus is taken from 38 F. (2d) 547)

Petition by Federal Trade Commission against the American Snuff Company for enforcement of an order of the Commission. Order of Commission held unlawful.

Wm. A. Sweet, *James T. Clark*, *Robert E. Healy*, chief counsel, and *Adrien F. Busick*, assistant chief counsel, Federal Trade Commission, all of Washington, D. C., for appellant.

Owen J. Roberts, of Philadelphia, Pa., *Edward S. Rogers*, of Chicago, Ill., *Morton E. Finch*, of Memphis, Tenn., and *C. Russell Phillips*, of Philadelphia, Pa., for appellee.

Before BUFFINGTON and DAVIS, Circuit Judges, and THOMSON, District Judge.

BUFFINGTON, *Circuit Judge:*

Without entering into a recital of the bulk of testimony involved and the numerous questions discussed, we limit ourselves to matters and things pertinent and decisive.

The case involves the construction and enforcement of section 5 of the Federal Trade Commission Act, which provides—

> If such person, partnership, or corporation fails or neglects to obey such order of the Commission while the same is in effect, the Commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business for the enforcement of its order * * *

As we read the statute, the jurisdiction of this court, and, therefore, its power to enforce, rests on two facts, first whether the respondent has failed or neglected to obey the order of the Commission—a question of fact, and secondly, whether such order is valid—a question of law.

The respondent is using, on packages of snuff made and sold by it, this label

The Commission made an order to cease and desist which, inter alia, provided:

(3) *It is further ordered*, That the respondent, its officers, agents, representatives, servants, and employees, cease and desist from—

(*a*) Using the word "dental" and the depiction of a tooth, or either of them, alone or in connection with any other word or words, in the brand name or on the labels on the containers of any of its snuff products to represent, describe or define such product, when its said product contains no ingredient, other than tobacco.

(*b*) Making, publishing, or circulating written or oral statements or representations in connection with the sale or distribution of any of its snuff products that such product will cure toothache, pyorrhea, bleeding gums, neuralgia, or other like maladies, when such product contains no ingredient other than tobacco.

To this the respondent answered:

With respect to paragraph 3 (*a*) of the said order, respondent asserts that the Commission has erred, exceeded its authority, and acted beyond its jurisdiction in ordering respondent to cease and desist from "using the word 'dental' and the depiction of a tooth, or either of them, alone or in connection with any other word or words, in the brand name or on the labels on the containers of any of its snuff products to [549] represent, describe, or define such product, when its said product contains no ingredient, other than tobacco", and respondent respectfully declines to comply with this part of the Commission's order.

It appearing, therefore, that the respondent has not obeyed the order, it remains for us to decide the question of law whether in view of the proofs, the order is lawful. The jurisdiction of this court to review orders made by the Trade Commission was considered by this court in *Curtis Publishing Co.* v. *Federal Trade Commission*, 270 Fed. Rep. 881, 909. We there said that Congress, in enacting that circuit courts of appeal "shall have jurisdiction of the proceeding and of the question determined therein, and shall have

power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript, a decree affirming, modifying, or setting aside the order of the Commission" was using language which aptly described the customary jurisdistion and power theretofore exercised by circuit courts of appeal in reviewing cases of alleged unfair business competition.

Considering the case in that light, we note that whatever may have been the possible interest of the public in the matter litigated, it clearly appeared, as the case proceeded, that the case was one between two competitors in the snuff business. From the proofs it will appear that the American Snuff Co., about 1900, by buying Ivey, Owen & Co., and continuing it as a subsidiary, acquired the latter's right to make a brand of snuff known as Dental Snuff, which the latter company had made since 1879 and sold thus labeled. At the time this snuff was originated, and for some time thereafter, it contained some ingredient, other than tobacco, calculated to preserve or be beneficial to the teeth and gums, and was so represented to the purchasing public. The labels on the containers of this snuff contained the word "dental", together with a depiction of a tooth, and the words "dental panacea" and "It possesses a virtue that will preserve the teeth".

After the Spanish-American War the Government placed a tax on proprietary medicines, and to avoid such liability on its snuff as a medicine, the respondent ceased to use any other ingredient in its snuff that had any supposed medicinal effect, and indeed shortly thereafter stopped using a flavoring extract, which of course had no medicinal property, and at once stopped using its earlier label and thereafter used its present one, depicted above, in which it will be noted that instead of the words "preserve the teeth" or the statement "It possesses a virtue that will preserve the teeth", there were used the words "preserves its flavor". It will also be noted that it contains the statement that it is "made from select leaf and preserves its flavor". It also contains the statement that it is "made of pure tobacco".

Referring to the composition of Scotch snuff, of which the snuff in question is made and is labeled as such, the Commission says it "consists of tobacco leaf and stems finely powdered or ground and is divided into several classes, the most important of which is strong Scotch snuff, which consists of powdered tobacco leaf and stems with nothing whatever added". It will thus be noted that respondent's statement on its label that the snuff is Scotch snuff and that it is "made of pure tobacco" was truthful and was, in effect, an averment that the snuff contained no other ingredient and necessarily that it had no medicinal quality. Such being the uncontroverted facts of the case, the Commission held that "this new label is so like the original label on said brand of snuff in arrangement of lettering and design, in coloration and general appearance, as to cause the one to be mistaken for the other, and to confuse and mislead purchasers familiar with the former product as to the character of the contents of the present containers".

We find no proof in the record which warrants any such finding. We have been referred to no testimony of a purchaser of the old snuff—one who bought prior to 1900—who avers that he or she was misled when they bought the snuff with the new marking upon it,

and, as said in *Coca Cola Co.* v. *Koke Co. of America*, 254 U. S. 143, "The plaintiff's position must be judged by the facts as they were when the suit was begun, not by the facts of a different condition and an earlier time". And it is very clear purchasers could not be misled by the present label which differs in several particulars from the old one. The old label stated it was a "dental panacea" and averred that "It possesses a virtue that will preserve the teeth". The new label makes no such statement. The old label would seem to have left the impression that there was some element or virtue in its product that had a medicinal effect. The new label makes no such statement. In addition to the above, the back of the present label negatives any possible medicinal qualities. It [550] states that the snuff is "refined tobacco"; that "it is absolutely pure"; that "it has no artificial flavor"; that it "required no artificial flavoring because it is made of the best tobacco, which is aged for two or three years and then manufactured by a process that preserves the delightful flavor of the tobacco".

We can see no unfairness in the respondent using the word "dental" and the picture of a tooth on its packages. Snuff users used it in two different ways. One class inhales it through the nostrils, and on that account it is properly styled nasal snuff. The other kind of users is under the word "dipping", described in the dictionary as "the practice of taking snuff by rubbing the teeth or gums with a stick or brush dipped in snuff".

It is quite clear from the literature quoted in the record that in "dipping" snuff simply serves as any other paste or dentifrice, as an abrasive of a desired flavor. Indeed, the derivation of the word, "dens—dentis", a tooth, and "fricure" to rub, friction, shows that the word "dental" as contrasted with "nasal" truly describes the mode of use which the respondent's product answers. In the *Journal of the American Dental Association*, January, 1928, it is said: "The modern toothbrush may not be perfect, but its present status is a matter of evolution from the 'chew stick'. One end of a wooden twig was beaten to a soft, fibrous condition in those days, and the primitive brush was ready for use."

Moreover, the proofs show that the market for dipping snuff is in the remoter regions of the South. It is described by the writer of "The Carolina Mountains":

> Nor is snuff taken after the manner of former generations of snuff takers. Here the people "dip", that is to say, a stick chewed into a brush at one end and kept for the purpose is dipped into the snuff and rubbed over the gums and teeth. It is not a pretty practice, but it seems to afford peculiar satisfaction, enormous quantities of snuff being consumed in this manner. When a mountain woman refers to her "toothbrush" the snuff stick is what she means. She says that to dip snuff preserves the teeth and strengthens the constitution.

It will thus be seen that the word "dental" as used in connection with snuff occupies substantially the same relation as the word "nasal" does, and both equally and truthfully represent the particular use to be made of the snuff.

We accordingly hold that the order to cease and desist heretofore granted was unlawful and will be so adjudged.

FEDERAL TRADE COMMISSION *v.* CASSOFF[1]

(Circuit Court of Appeals, Second Circuit. February 17, 1930)

No. 192

TRIAL KEY-NO. 368—STIPULATION THAT DEFENDANT'S SHELLAC WAS NOT ENTIRELY GENUINE DID NOT JUSTIFY REQUIREMENT THAT DEFENDANT STATE PERCENTAGES OF OTHER INGREDIENTS, BUT MERELY THAT DEFENDANT ADVERTISE SAME AS IMITATION SHELLAC NOT 100 PER CENT SHELLAC (15 USCA SEC. 45).

Stipulated statement of facts wherein it was agreed that "shellac" was composed solely of genuine shellac gum dissolved in alcohol, that defendant manufactured and sold in interstate commerce product not composed wholly of genuine shellac gum dissolved in alcohol, but advertised product as white shellac and orange shellac without indicating that product contained any other gum, and that defendant was in competition with manufacturers whose shellac was composed solely of shellac gum dissolved in alcohol, did not justify finding that defendant was engaged in unfair method of competition in violation of 38 Stat. 719 (15 USCA sec. 45), nor require defendant to state percentages of other ingredients making up content of its shellac, but merely justified requirement that defendant label goods as "shellac substitute", or "imitation shellac", accompanied by statement that it is not 100 per cent shellac.

TRADE-MARKS, TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—FEDERAL TRADE COMMISSION ACT IS INTENDED TO PREVENT FRAUD ON PURCHASING PUBLIC (15 USCA SECS. 41–51).

Purposes of Federal Trade Commission Act (15 USCA secs. 41–51) and the enforcing power of the Federal Trade Commission are directed to prevention of fraud on the purchasing public.

(The syllabus is taken from 38 F. (2d) 790)

Application by the Federal Trade Commission to enforce its order against L. F. Cassoff, as individual doing business under the names and styles of the Central Paint & Varnish Works and the Central Shellac Works, under Federal Trade Commission Act section 5 (15 USCA sec. 45). Order modified, and, as modified, enforced.

Meyer Kraushaar, of New York City, for respondent.

Robert E. Healy, chief counsel, Federal Trade Commission, *Martin A. Morrison*, assistant chief counsel, and *James T. Clark*, all of Washington, D. C., for petitioner.

Before MANTON, SWAN, and AUGUSTUS N. HAND, Circuit Judges.

PER CURIAM:

The petitioner seeks, under section 5 of the Federal Trade Commission Act, to enforce an order issued against respondent, requiring him to cease and desist from using the word "shellac" in labels or advertisements of varnish which he manufactured and sold and

[1] Reported in 38 F. (2d) 790. Case before the Commission reported in 7 F. T. C. 382.

which was not composed entirely of shellac gum dissolved in alcohol. The order permitted the use of labels and advertisements in the sale of such shellac if it were accompanied by the words clearly indicating the other ingredients used and setting forth the percentage of each.

The controversy was submitted to the Federal Trade Commission upon a stipulated statement of facts wherein it was agreed that "shellac", as commercially known, is a product composed solely of genuine shellac gum dissolved in alcohol and is thus commonly known amongst jobbers, dealers, and the purchasing public; that the respondent manufactured and sold in interstate commerce, a product not composed wholly of genuine shellac gum dissolved in alcohol and that he advertised and labeled his product as "White Shellac" and "Orange Shellac", without indicating in any way whatever on such labels, brands, and advertisements that the product contained any other gum, ingredient, or substitute for gum than genuine shellac gum. It was further stipulated that the respondent is in competition with other manufacturers of shellac varnishes whose products are branded and advertised as shellac or shellac varnishes and are composed solely of shellac gum dissolved in alcohol. The Commission found that the advertising and sale of respondent's shellac with the words "White Shellac" or "Orange Shellac" was false and had the capacity and tendency to and did mislead the purchasing public into the belief that the product so labeled, branded, and advertised was composed solely of genuine shellac gum dissolved in alcohol and that this induced the purchasers to buy in that belief. It concluded that this was an unfair method of competition in commerce and constituted a violation of the act of [791] Congress approved September 26, 1914 (38 Stat. 719). The order to cease and desist thereupon entered forbids such labeling and advertising unless accompanied by words clearly and distinctly indicating that such product contains other substances, ingredients, or gum of which the varnish is composed with the percentages of all such substances, ingredients, or gum therein used clearly stated on the label, brand, or other containers. The respondent's answer asked leave to introduce additional evidence, to be taken before the Federal Trade Commission, to show that there was no violation of its order and that there was no necessity for requiring respondent to disclose the percentages of the ingredients in his product. He argues that there is no evidence to support this requirement.

The stipulation entered into by the parties does not justify the findings and there is no evidence which requires a statement as to the percentages of the other ingredients which make up the respondent's substituted shellac. If the respondent labels his goods and advertises the same as "shellac substitute" or "imitation shellac", accompanied by the statement that it is not 100 per cent shellac, that would be sufficient to prevent a fraud upon the purchasing public. It would constitute a statement that the respondent was not selling genuine shellac and that is as far as the findings justify an order to cease and desist. The purposes of the Federal Trade Commission Act and the enforcing power of the Commission

are directed to the prevention of fraud upon the purchasing public. In the absence of evidence justifying a requirement to state the percentages of the other ingredients which make up the content of the respondent's shellac, no such order of the Commission is justified.

Section 5 of the act makes provision for either party to apply to the court for leave to adduce additional evidence which will show to the satisfaction of the court that the order is justified or complied with. We see no need of directing that such evidence be taken here, as respondent asks, for the petitioner rests upon the record as made. The respondent maintains, and we think justifiably, that by setting forth on his labels and advertising matter "This is not 100 per cent India Shellac, it is composed of substitute shellac and India Shellac", the public will be fully protected.

On this record the order to cease and desist as made was not justified. *Heuser* v. *Federal Trade Comm.*, 4 F. (2d) 632.

The order to cease and desist will be modified accordingly and as so modified, will be enforced.

APPENDIX III

RULES OF PRACTICE BEFORE THE COMMISSION

I. SESSIONS

Principal office.

The principal office of the Commission at Washington, D. C., is open each business day from 9 a. m. to 4.30 p. m. The Commission may meet and exercise all its powers at any other place, and may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Commission may exercise power elsewhere.

Hearings as ordered.

Sessions of the Commission for hearing contested proceedings will be held as ordered by the Commission.

Sessions for orders and other business.

Sessions of the Commission for the purpose of making orders and for the transaction of other business, unless otherwise ordered, will be held at the office of the Commission at Washington, D. C., on each business day at 10.30 a. m. Three members of the Commission shall constitute a quorum for the transaction of business.

Quorum.

Orders signed by secretary.

All orders of the Commission shall be signed by the secretary.

II. COMPLAINTS

Who may ask complaint.

Any person, partnership, corporation, or association may apply to the Commission to institute a proceeding in respect to any violation of law over which the Commission has jurisdiction.

Form of application.

Such application shall be in writing, signed by or in behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

Commission to investigate.

The Commission shall investigate the matters complained of in such application, and if upon investigation the Commission shall have reason to believe that there is a violation of law over which the Commission has jurisdiction, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, the Commission shall issue and serve upon the party complained of a complaint stating its charges and containing a notice of a hearing upon a day and at a place therein fixed, at least 40 days after the service of said complaint.

Issuance and service of complaint.

III. ANSWERS

Time allowed for answer.

(1) In case of desire to contest the proceeding the respondent shall, within such time as the Commission shall allow (not less than 30 days from the service of the complaint), file with the Commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegation of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.

Form of answer.

Failure to deny any allegation.

If respondent desires to waive hearing.

(2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint, to waive a hearing thereon, and to authorize the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, to make, enter, issue and serve upon respondent an order to cease and desist from the method or methods of competition charged in the complaint.

Failure to answer.

(3) Failure of the respondent to appear or to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Number of copies; signature; etc.

(4) Three copies of answers must be furnished. All answers must be signed in ink by the respondent or by his duly authorized attorney and must show the office and post-office address of the signer. All answers must be typewritten or printed. If typewritten, they must be on paper not more than 8½ inches wide and not more than 11 inches long. If printed, they must be on paper 8 inches wide by 10½ inches long.

IV. SERVICE

Complaints, orders, and other processes of the Commission may be served by anyone duly authorized by the

Commission, either (*a*) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director of the corporation or association to be served; or (*b*) by leaving a copy thereof at the principal office or place of business of such person, partnership, corporation, or association; or (*c*) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process, setting forth the manner of said service, shall be proof of the same, and the return post-office receipt for said complaint, order, or other process, registered and mailed, as aforesaid, shall be proof of the service of the same.

Personal, or

By leaving copy.

By registered mail.

Return.

V. INTERVENTION

Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which he or it claims to be interested. The Commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem just.

Form of application.

Permitted by order.

Applications to intervene must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide.

Size of paper, margin, etc., used on application.

VI. CONTINUANCES AND EXTENSIONS OF TIME

Continuances and extensions of time will be granted at the discretion of the Commission.

In discretion of Commission.

VII. WITNESSES AND SUBPŒNAS

Witnesses shall be examined orally, except that for good and exceptional cause for departing from the general rule the Commission may permit their testimony to be taken by deposition.

Examination ordinarily oral.

Subpœnas requiring the attendance of witnesses from any place in the United States at any designated place of hearing may be issued by any member of the Commission.

Subpœnas for witnesses.

Subpœnas for production of documentary evidence.

Subpœnas for the production of documentary evidence (unless directed to issue by a commissioner upon his own motion) will issue only upon application in writing, which must be verified and must specify, as near as may be, the documents desired and the facts to be proved by them.

Witness fees and mileage.

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

VIII. TIME FOR TAKING TESTIMONY

Examination of witnesses to proceed as fast as practicable.

Upon the joining of issue in a proceeding by the Commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than five days' notice shall be given by the Commission to counsel or parties of the time and place of examination of witnesses before the Commission, a commissioner, or an examiner.

Notice to counsel.

IX. OBJECTIONS TO EVIDENCE

To state grounds of objection, etc.

Objections to the evidence before the Commission, a commissioner, or an examiner shall, in any proceeding, be in short form, stating the grounds of objections relied upon, and no transcript filed shall include argument or debate.

X. MOTIONS

To briefly state nature of order applied for, etc.

A motion in a proceeding by the Commission shall briefly state the nature of the order applied for, and all affidavits, records, and other papers upon which the same is founded, except such as have been previously filed or served in the same proceeding, shall be filed with such motion and plainly referred to therein.

XI. HEARINGS ON INVESTIGATIONS

By single commissioner.

When a matter for investigation is referred to a single commissioner for examination or report, such commissioner may conduct or hold conferences or hearings thereon, either alone or with other commissioners who may sit with him, and reasonable notice of the time and place of such hearings shall be given to parties in interest and posted.

General counsel or assistant to conduct hearing.

The general counsel or one of his assistants, or such other attorney as shall be designated by the Commission, shall attend and conduct such hearings, and such hearings may, in the discretion of the commissioner holding same, be public.

XII. HEARING BEFORE EXAMINERS

Examiner to take testimony.

When issue in the case is set for trial it shall be referred to an examiner for the taking of testimony. It shall be the duty of the examiner to complete the taking of testimony with all due dispatch, and he shall set the day and hour to which the taking of testimony may from time to time be adjourned. The taking of the testimony both for the Commission and the respondent shall be completed within 30 days after the beginning of the same unless, for good cause shown, the Commission shall extend the time. The examiner shall, within 20 days after the receipt of the stenographic report of the testimony (unless the time be extended by the Commission on application within that period by the chief trial examiner stating reasons for the delay), make his report on the facts, and shall forthwith serve copy of the same on the parties or their attorneys, who, within 10 days after the receipt of same, shall file in writing their exceptions, if any, and said exceptions shall specify the particular part or parts of the report to which exception is made, and said exceptions shall include any additional facts which either party may think proper. Seven copies of exceptions shall be filed for the use of the Commission. Citations to the record shall be made in support of such exceptions. Where briefs are filed, the same shall contain a copy of such exceptions. Argument on the exceptions, if exceptions be filed, shall be had at the final argument on the merits.

Testimony to be completed within 30 days except for good cause.

Examiner to make and serve proposed findings and order.

Exceptions by parties.

Briefs and argument on exceptions.

Examiner under certain circumstances to receive from each side statement of its contentions after testimony and before his report.

When, in the opinion of the trial examiner engaged in taking testimony in any formal proceeding, the size of the transcript or complication or importance of the issues involved warrants it, he may of his own motion or at the request of counsel at the close of the taking of testimony announce to the attorneys for the respondent and for the Commission that the examiner will receive at any time before he has completed the drawing of the "Trial Examiner's Report upon the Facts" a statement in writing (one for either side) in terse outline setting forth the contentions of each as to the facts proved in the proceeding.

These statements are not to be exchanged between counsel and are not to be argued before the trial examiner.

Time allowance for submission of tentative findings.

Any tentative draft of finding or findings submitted by either side shall be submitted within 10 days after the closing of the taking of testimony and not later, which time shall not be extended.

XIII. DEPOSITIONS IN CONTESTED PROCEEDINGS

Commission may order.

The Commission may order testimony to be taken by deposition in a contested proceeding.

Before any person designated.

Depositions may be taken before any person designated by the Commission and having power to administer oaths.

Applications for depositions.

Any party desiring to take the deposition of a witness shall make application in writing, setting out the reasons why such deposition should be taken, and stating the time when, the place where, and the name and post-office address of the person before whom it is desired the deposition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the Commission will make and serve upon the parties, or their attorneys, an order wherein the Commission shall name the witness whose deposition is to be taken and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is to be taken, so specified in the Commission's order, may or may not be the same as those named in said application to the Commission.

Testimony of witness.

The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form by the officer. After the deposition has been so certified it shall, together with a copy thereof made by such officer or under his direction, be forwarded by such officer under seal in an envelope addressed to the Commission at its office in Washington, D. C. Upon receipt of the deposition and copy the Commission shall file in the record in said proceeding such deposition and forward the copy to the defendant or the defendant's attorney.

Deposition to be forwarded.

And filed. Copy to defendant or his attorney.

Size of paper, etc.

Such depositions shall be typewritten on one side only of the paper, which shall be not more than 8½ inches wide and not more than 11 inches long and weighing not

less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide.

Notice

No deposition shall be taken except after at least 6 days' notice to the parties, and where the deposition is taken in a foreign country such notice shall be at least 15 days.

Limitations as to time.

No deposition shall be taken either before the proceeding is at issue, or, unless under special circumstances and for good cause shown, within 10 days prior to the date of the hearing thereof assigned by the Commission, and where the deposition is taken in a foreign country it shall not be taken after 30 days prior to such date of hearing.

XIV. DOCUMENTARY EVIDENCE

Relevant and material matter only to be filed.

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such document will not be filed, but a copy only of such relevant and material matter shall be filed.

XV. BRIEFS

Filed with secretary.

All briefs must be filed with the secretary of the Commission, and briefs on behalf of the Commission must be accompanied by proof of the service of the same as hereinafter provided, or the mailing of same by registered mail to the respondent or its attorney at the proper address. Twenty copies of each brief shall be furnished for the use of the Commission unless otherwise ordered. The exceptions, if any, to the trial examiner's report must be incorporated in the brief. Every brief, except the reply brief on behalf of the Commission, hereinafter mentioned, shall contain in the order here stated:

Proof of service.

Number.

To contain exceptions to trial examiner's report.

Form.

(1) A concise abstract or statement of the case.

Abstract of case.

(2) A brief of the argument, exhibiting a clear statement of the points of fact or law to be discussed, with the reference to the pages of the record and the authorities relied upon in support of each point.

Brief of argument.

Every brief of more than 10 pages shall contain on its top fly leaves a subject index with page references, the subject index to be supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited.

Index.

Briefs must be printed in 10 or 12 point type on good unglazed paper 8 by 10½ inches, with inside margins

Printing.

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