FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JULY 1, 1951, TO JUNE 30, 1952

IN THE MATTER OF

MILTON W. FOLDS, JESSIE D. FOLDS, AND JESSIE MAY FOLDS, DOING BUSINESS AS KLEEREX CO.

MODIFIED ORDER TO CEASE AND DESIST

Docket 5332. Order, July 6, 1951

Order modifying prior order of Commission of June 6, 1950, 47 F. T. C. 898, in accordance with the opinion and decision of the Court of Appeals for the Seventh Circuit on March 23, 1951, in *Folds et al.* v. *Federal Trade Commission*, 187 F. (2d) 658, and the court's final decree, which modified the Commission's order by eliminating the prohibition against representing that its "said product will cause pimples to disappear or constitutes an effective treatment for pimples," and inserting, in lieu thereof, a prohibition against representing that application of the preparation "will cause pimples to disappear overnight or that the user thereof will have a clear complexion the day following its use at night," and affirmed the order as thus modified.

Before *Mr. Webster Ballinger*, trial examiner.
Mr. B. G. Wilson for the Commission.
Frank E. & Arthur Gettleman, of Chicago, Ill., for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision and supplemental recommended decision of the trial examiner, and the exceptions filed thereto, and briefs filed in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act and issued its order to cease and desist on June 6, 1950; and

Respondents Jessie D. Folds and Jessie May Folds, surviving copartners of Kleerex Co., having filed in the United States Court of Appeals for the Seventh Circuit their petition to review and set aside the order to cease and desist issued herein, and that court having heard the matter on briefs and oral argument and fully considered

the matter, and having, thereafter, on April 18, 1951, entered its final decree modifying and affirming, as modified, the aforesaid order to cease and desist pursuant to its opinion announced on March 23, 1951:

Now, therefore, it is hereby ordered, That respondents Jessie D. Folds and Jessie May Folds, individually and as surviving copartners of Kleerex Co., their officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of a preparation for the treatment of pimples known as Kleerex, under that name or under any other name, or of any product of substantially the same composition as said product Kleerex, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or by implication that the application of said product Kleerex will cause pimples to disappear overnight or that the used thereof will have a clear complexion the day following its use at night.

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

It is further ordered, That respondents Jessie D. Folds and Jessie May Folds shall, within 90 days after the entry of the aforesaid decree by the United States Court of Appeals for the Seventh Circuit, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

CONSOLIDATED CIGAR CORP. AND G. H. P. CIGAR CO., INC.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (D) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5865. Complaint, Mar. 27, 1951—Decision, July 7, 1951

Where a corporate manufacturer and its wholly owned selling subsidiary, engaged in the sale and distribution of cigars, including their "El Producto" brand, directly to many large chain stores and large wholesalers and through their branches to thousands of independent retailers and small wholesalers;

Paid and contracted to pay money, goods or other things of value to or for the benefit of some of their customers as compensation for display services and facilities furnished by such customers in connection with the processing, handling, sale, or offering for sale of their said cigars, without making such payments or considerations available on proportionally equal terms to all other of their customers competing in the sale and distribution of said cigars, in that some customers received nothing; and others, as determined by individual negotiations, received different percentages of purchases, or varying lump sums; and thus made available such allowances, among others, to seven chain-store customers including some of the largest retail and retail cigar store chains, and included, among payments therefor, over a 4-year period, $10,000 a year in the case of one, and $4,000 in that of another; without making available, in any amount, such allowances to thousands of other customer chain stores and small independent retailers which competed with those thus favored:

Held, That such acts and practices, in the particulars noted, violated subsection (d) of section 2 of the Clayton Act as amended.

Before *Mr. Frank Hier*, trial examiner.

Mr. R. E. Schrimsher for the Commission.

Maass, Davidson, Levy & Friedman, of New York City, for respondents.

COMPLAINT

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

PARAGRAPH 1. Respondent Consolidated Cigar Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 67–73 West Forty-fourth Street, New York, N. Y.

Respondent G. H. P. Cigar Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at Third and Brown Streets, Philadelphia, Pa. All of its capital stock is owned by, and all of its acts and practices are under the direction and control of respondent Consolidated Cigar Corp.

PAR. 2. Respondents are now and, since prior to June 19, 1936, have been engaged in the business of manufacturing and selling cigars. Certain of these cigars are being, and have been sold under the brand name El Producto by and through the respondent G. H. P. Cigar Co., Inc. Said El Producto cigars were sold directly to many large chain stores and large wholesalers and were sold through respondent's distributing branches to thousands of independent retailers and small wholesalers.

PAR. 3. In the course and conduct of said business, respondents engaged in commerce, as commerce is defined in the Clayton Act as amended by the Robinson-Patman Act, having shipped said cigars or caused them to be transported from their various plants, and from Philadelphia, Pennsylvania, and other places where such cigars are stored, to their customers having places of business located in the same and other States of the United States and the District of Columbia. Said cigars were sold by respondents to said customers for resale within the United States.

PAR. 4. In the course of said business in commerce respondents paid, and/or contracted to pay, money, goods, or other things of value to or for the benefit of some of their customers as compensation or in consideration for services and facilities furnished, or contracted to be furnished, by or through such customers, in connection with the processing, handling, sale, or offering for sale, of said cigars which respondents manufacture, sell, or offer for sale; and respondents did not make, or contract to make, such payments or considerations available on proportionally equal terms to all other of their customers competing in the sale and distribution of said cigars.

PAR. 5. Illustrative of and included among the payments alleged in paragraph 4 hereof were the payments of money for display services or facilities in connection with the offering for sale and sale of El Producto cigars, hereinafter referred to as display allowances. Said display allowances were available from respondents, and respondents paid or contracted to pay them, upon the following proportionally unequal terms:

Said display allowances were available in some amount to some customers, but said allowances were not available to all other and competing customers in any amount.

As to those customers to which said allowances were available in some amount, the amounts were different percentages or proportions of the dollar amount of purchases among competing customers, the amounts paid in some cases being predetermined as different percentages of purchases, and in other cases being lump sums, the amounts in each case being arbitrarily determined in individual negotiations with individual customers.

The display services or facilities furnished by said customers to which said display allowances were available in some amount, were indeterminate in number, kind, and amount, they being, like said display allowances, arbitrarily determined in individual negotiations with individual customers.

PAR. 6. Included among the customers receiving display allowances from respondents in the manner alleged in paragraph 5 hereof were seven chain-store customers, including some of the largest chain retail drug stores and chain retail cigar stores. Said customers received said display allowances in each of the years 1946 to 1949, inclusive. One such customer received $10,000 and another received $5,000 in each of those years.

Said display allowances were not available in any amount to thousands of respondents' other customers, including chain stores and small independent retail stores, many of which compete with said chain-store customers that received display allowances.

PAR. 7. The acts and practices of the respondents as above alleged violate subsection (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. title 15, sec. 13).

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated July 7, 1951, the initial decision in the instant matter of trial examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936 (15 U. S. C., sec. 13), the Federal Trade Commission on March 27, 1951, issued and subsequently served its complaint in this proceeding upon Consolidated Cigar Corp., a corporation, and upon G. H. P. Cigar Co., Inc., a cor-

poration, charging them with violation of subsection (d) of section 2 of said act as amended, and fixing May 15, 1951, as the time for hearing on the charges in said complaint. On May 14, 1951, respondents filed their joint answer, admitting, for the purposes of this proceeding only, all the material allegations of fact set forth in said complaint, except two, to which respondents admitted the facts to be slightly different than alleged, and counsel in support of the complaint agreed that the facts stated in said answer were the facts. Said answer waived the filing of proposed findings and conclusion and all intervening procedure and further hearing as to the facts but reserved the right to appeal under rule XXIII of the Rules of Practice of the Commission.

The initial hearing set in the complaint was thereupon canceled and the record closed by the trial examiner. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner theretofore duly designated by the Commission upon said complaint and answer thereto and said trial examiner, having duly considered the record herein, makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Consolidated Cigar Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 67–73 West Forty-fourth Street, New York, N. Y.

Respondent G. H. P. Cigar Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 647 Fifth Avenue, New York, N. Y. All of its capital stock is owned by, and all of its acts and practices are under the direction and control of, respondent Consolidated Cigar Corp.

PAR. 2. Respondent Consolidated Cigar Corp. is now and since prior to June 19, 1936, has been engaged in the business of manufacturing and selling cigars. Respondent G. H. P. Cigar Co., Inc., since January 1941, has been and is now selling cigars but has not and does not manufacture cigars. Certain of these cigars are being, and have been sold under the brand name El Producto by and through respondent G. H. P. Cigar Co., Inc. Said El Producto cigars were sold directly to many large chain stores and large wholesalers and were sold through respondent's distributing branches to thousands of independent retailers and small wholesalers.

PAR. 3. In the course and conduct of said business, respondents engaged in commerce, as commerce is defined in the Clayton Act as

amended by the Robinson-Patman Act, having shipped said cigars or caused them to be transported from their various plants, and from Philadelphia, Pennsylvania, and other places where such cigars are stored, to their customers having places of business located in the same and other States of the United States and the District of Columbia. Said cigars were sold by respondents to said customers for resale within the United States.

PAR. 4. In the course of said business in commerce respondents paid, and/or contracted to pay, money, goods, or other things of value to or for the benefit of some of their customers as compensation or in consideration for services and facilities furnished, or contracted to be furnished, by or through such customers, in connection with the processing, handling, sale, or offering for sale, of said cigars which respondents manufacture, sell, or offer for sale; and respondents did not make, or contract to make, such payments or considerations available on proportionally equal terms to all other of their customers competing in the sale and distribution of said cigars.

PAR. 5. Illustrative of and included among the payments alleged in paragraph 4 hereof were the payments of money for display services or facilities in connection with the offering for sale and sale of El Producto cigars, hereinafter referred to as display allowances. Said display allowances were available from respondents, and respondents, paid or contracted to pay them upon the following proportionately unequal terms:

Said display allowances were available in some amount to some customers, but said allowances were not available to all other and competing customers in any amount.

As to those customers to which said allowances were available in some amount, the amounts were different percentages or proportions of the dollar amount of purchases among competing customers, the amounts paid in some cases being predetermined as different percentages of purchases, and in other cases being lump sums, the amounts in each case being arbitrarily determined in individual negotiations with individual customers.

The display services or facilities furnished by said customers to which said display allowances were available in some amount, were indeterminate in number, kind, and amount, they being, like said display allowances, arbitrarily determined in individual negotiations with individual customers.

PAR. 6. Included among the customers receiving display allowances from respondents in the manner alleged in paragraph 5 hereof were seven chain-store customers, including some of the largest chain retail drug stores and chain retail cigar stores. Said customers received said

display allowances in each of the years 1946 to 1949, inclusive. One such customer received $10,000 and another received $5,000 in each of those years.

Said display allowances were not available in any amount to thousands of respondents' other customers, including chain stores and small independent retail stores, many of which compete with said chain-store customers that received display allowances.

CONCLUSIONS

1. Respondents herein, having the free choice whether to make or not to make payments for advertising services, and the equally free choice as to the terms or basis upon which such payments would be made, determined to make payments for display services or facilities, upon the basis in some instances of the customer's volume of purchases, in other instances upon no basis at all, the payments being merely lump sums determined by separate negotiation between respondents and particular customers.

2. The statute requires that the terms or basis be proportionally equal for all customers competing in the resale of respondents' cigars. This requirement has been violated in three particulars; some customers received nothing at all, while others did. The latter did not receive the same proportion or percentage of the basis selected by respondents, namely, purchase volume, but received different proportions. Still others were not paid on the basis selected, but received lump sums determined by individual negotiation, on terms varying with each individual case. Thus respondents have paid some but not all their customers, have paid different proportions of the same term, and have paid on different terms, each available only to the particular customer; all classes of these customers being admittedly in competition with each other in the resale of respondents' products.

3. Such acts and practices, in the particulars noted, have violated subsection (d) of section 2 of the said Clayton Act as amended by the Robinson-Patman Act.

ORDER

It is ordered, That respondents Consolidated Cigar Corp., a corporation, and G. H. P. Cigar Co., Inc., a corporation, their officers, employees, agents, and representatives, directly or through any corporate or other device, in connection with the sale, or offering for sale, of cigars in commerce, as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

1. Paying, or contracting to pay or allow, anything of value to, or for the benefit of, any one customer for advertising or display services

or facilities furnished by or through such customer, unless such payment or consideration is available on proportionally equal terms to all other customers of respondents, who in fact compete with the favored customer in the resale of respondents' products.

2. Paying, or contracting to pay or allow, anything of value to, or for the benefit of, any customer for advertising or display services or facilities furnished by or through such customer as an agreed percentage or proportion of dollar volume of purchases by such customer, different from the agreed percentage or proportion granted any other customer where both such customers compete in fact in the resale of respondents' products and where such payments are based on the amount of purchases made.

3. Paying, or contracting to pay or allow, anything of value, such as lump sum payments arrived at by negotiation with individual customers to, or for the benefit of, any customer for advertising or display services or facilities furnished by or through such customer on terms not available to, or not proportionally equal for, all other customers competing with such customer and among themselves in the resale of respondents' products.

4. Paying, or contracting to pay or allow, anything of value to, or for the benefit of, a customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, processing, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by respondents unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

Provided, however, That nothing contained in or relating to this order shall be construed to affect the duty, authority or power of the Federal Trade Commission to reopen this proceeding and alter, modify or set aside, in whole or in part, any provision of this order whenever in the opinion of the Federal Trade Commission conditions of fact or of law shall require such action nor to prevent representatives of either the Federal Trade Commission or of the respondents or any of them from moving to so alter, modify or set aside, in whole or in part, any provision of this order.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of July 7, 1951].

IN THE MATTER OF

DAVID BERNSTEIN DOING BUSINESS AS AFFILIATED CREDIT EXCHANGE AND BUSINESS RESEARCH

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

Docket 5804. Complaint, Sept. 5, 1950—Decision, July 9, 1951

Where an individual engaged in California in collecting business and professional accounts upon a contingent basis, including many sent to him from other states;

In attempting to ascertain the current addresses of persons owing money to his clients, the names and addresses of their employers and other information concerning them, through "skip tracing," involving the use of double post cards upon which was set forth, "Return to BUSINESS RESEARCH," (followed by the Washington address of his agent who mailed the cards out and received and forwarded the replies to him), together with the advice that "the information requested on the attached card" was necessary "to enable us to complete our records;"

Falsely and misleadingly represented that he was engaged in conducting a business research bureau or office or in compiling business and labor statistics, and that the information requested was for such purposes, through the use of the name "Business Research" and the form and phraseology of the cards, upon the side of which was included a box of figures similar to the arrangement appearing on "punch cards" commonly used for statistical purposes;

The facts being his sole purpose and business was the obtaining of information for use in connection with the collection of unpaid accounts; he had no Washington office; and his sole purpose in employing said agent and in making use of said subterfuge was to locate the debtors and get as much information as possible in order to recover money for the creditors who employed him;

With capacity and tendency to mislead and deceive many persons to whom said cards were sent into the erroneous belief that said individual was engaged in conducting a research bureau or office or in compiling business and labor statistics, and to induce the recipients thereof to give information to him which otherwise they would not supply;

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

Before *Mr. Everett F. Haycraft*, trial examiner.
Mr. J. W. Brookfield, Jr., for the Commission.
Mr. Carl J. Mooslin, of Los Angeles, Calif., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that David Bernstein,

an individual trading and doing business as Affiliated Credit Exchange and Business Research, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent David Bernstein is an individual trading and doing business under the names Affiliated Credit Exchange and Business Research, with his office and principal place of business located at 326 West Third St., in the city of Los Angeles, Calif.

PAR. 2. Respondent is now, and for more than 2 years last past, has been engaged in conducting a collecting agency and in collecting accounts owed to others upon a commission basis contingent upon collection. Many of these accounts are sent to respondent from persons residing in States other than California.

PAR. 3. In the course and conduct of his business, respondent frequently desires to ascertain the current addresses of persons from whom he is endeavoring to collect moneys due to his clients, the names and addresses of the employers of such persons and other information about such persons. For this purpose he uses, and has used, post cards of the type commonly referred to as "double post cards." These cards are mailed in bulk by respondent to his agent in Washington, D. C., and are in turn mailed by said agent at Washington, D. C., to the addresses located in various States. One part of the card is addressed to and contains a message for the debtor. On the other side of the debtor's address there appears the following:

Return to
BUSINESS RESEARCH
703 Albee Building,
Washington 5, D. C.

The card reads:

Washington, D. C.

To Addressee:

To enable us to complete our records it is necessary that you furnish the information requested on the attached card.

Do this at once and mail to us.

BUSINESS RESEARCH
By D. Bernstein.

The other, or "reply" part of the post card, is addressed to "Business Research, 703 Albee Building, Washington 5, D. C." and is intended to be detached, filled out and mailed by the debtor. The following is a copy:

Subject _____
Subject's Address _____
Subject's Employer _____
Address: _____
Monthly Salary: _____ Does this include room, board or services? _____
Employed Since (Approximate Date): _____
Own Home? _____ Rent? _____ Own Auto? _____
If married, spouse's name: _____
Spouse's employment, if any: _____
Number of dependents: _____
Your name: _____

Along the right side of the card a box of figures similar to the arrangement appearing on "punch cards" commonly used for statistical purposes, is printed. Such cards as are completed and mailed to the Washington, D. C., address are forwarded from Washington, D. C., to respondent in the State of California, by his said agent.

PAR. 4. Through the use of the name "Business Research" and the form and phraseology of the cards, respondent represents that he is engaged in conducting a business research bureau or office, or in compiling business and labor statistics and that the information requested is for such purposes.

PAR. 5. The aforesaid representations and the implications arising therefrom are false and misleading.

In truth and in fact, respondent is not conducting and is in no way connected with any research bureau, business or labor statistical office. His business and the sole purpose in sending said cards is in connection with the collection of accounts, and he is not engaged in business or labor research or the compiling of statistics of any nature.

PAR. 6. The uses hereinabove set forth of the aforesaid cards has, and has had, the capacity and tendency to mislead and deceive, and has misled and deceived, many persons to whom the said cards were sent into the erroneous and mistaken belief that the trade name used by respondent indicated the true nature of his business; that he was engaged in conducting a research bureau or office or in compiling business and labor statistics, and induced the recipient thereof to give information to respondent which otherwise they would not have supplied.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 5, 1950, issued and subsequently served its complaint in this proceeding upon the respondent, David Bernstein, an individual trading and doing business as "Affiliated Credit Exchange" and as "Business Research," charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the respondent's answer thereto, hearings were held at which testimony and other evidence in support of the complaint were introduced before a trial examiner of the Commission theretofore designated by it, and a stipulation by and between counsel was entered on the record to the effect that the material allegations of fact set forth in the complaint were correct. The aforesaid testimony and other evidence were duly recorded and filed in the office of the Commission, and on December 26, 1950, the trial examiner filed his initial decision.

Within the time permitted by the Commission's Rules of Practice the respondent filed with the Commission an appeal from said initial decision; and thereafter this proceeding regularly came on for final consideration by the Commission upon the record herein, including the respondent's brief in support of its appeal and the brief in opposition thereto filed by counsel in support of the complaint (oral argument not having been requested); and the Commission, having issued its order sustaining in part and denying in part the respondent's appeal, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the findings as to the facts, conclusion, and order included in the initial decision of the trial examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent David Bernstein is an individual trading and doing business under the names of Affiliated Credit Exchange and Business Research, with his office and principal place of business located at 326 West Third Street in the city of Los Angeles, State of California.

PAR. 2. Said respondent is now, and for more than 2 years last past has been, engaged in operating a collection agency and in collecting accounts owed to business and professional individuals, partnerships, and corporations, including doctors, dentists, garages, and grocery stores, upon a commission basis contingent upon collection.

Many of these accounts are sent to respondent from persons residing in States other than California. Most of respondent's said accounts are in the western States of Oregon, Washington, Wyoming, and California, and the creditors are scattered about in many States.

PAR. 3. Said respondent, in the course and conduct of his said business, attempts to ascertain the current addresses of persons from whom he is endeavoring to collect money due his clients, the names and addresses of the present employers of such persons and other information about such persons. For this purpose he has used and now uses double post cards which are mailed in bulk by said respondent to his agent in Washington, D. C., who, in turn, mails said post cards to the addressees located in various States of the United States. One part of the card is addressed to the debtor with the following message:

Return to
BUSINESS RESEARCH
703 Albee Building,
Washington 5, D. C.

The card reads:

Washington, D. C.

To Addressee:

To enable us to complete our records it is necessary that you furnish the information requested on the attached card.

Do this at once and mail to us.

BUSINESS RESEARCH
By D. Bernstein.

The other or "reply" part of the post card is addressed to "Business Research, 703 Albee Building, Washington 5, D. C.," and is intended to be detached, filled out and mailed by the debtor. The following is a copy:

Subject_____
Subject's Address_____
Subject's Employer_____
Address_____
Monthly Salary_____ Does this include room, board or services?_____
Employed Since (Approximate Date)_____
Own Home?_____ Rent?_____ Own Auto?_____
If married, spouse's name_____
Spouse's employment, if any_____
Number of dependents_____
Your name_____

Along the right side of the card a box of figures similar to the arrangement appearing on "punch cards" commonly used for statistical purposes is printed. Such cards as are completed and mailed to the

Washington, D. C., address are forwarded from Washington, D. C., by the respondent's agent to respondent in the State of California.

Through the use of the name "Business Research" and the form and phraseology of the cards, respondent represents that he is engaged in conducting a business research bureau or office or in compiling business and labor statistics and that the information requested is for such purposes.

PAR. 4. The aforesaid representations and the implications arising therefrom are false and misleading. In truth and in fact, respondent is not conducting and is in no way connected with any research bureau or any business or labor statistical office. The respondent's sole purpose in sending the post cards is to obtain information for use in connection with the collection of unpaid accounts. The respondent is not engaged in any other business.

PAR. 5. The method used by respondent in ascertaining the location of debtors is known as "skip tracing." Said respondent has no office in Washington, D. C., and employs an agent for the sole purpose of distributing the double post cards, hereinbefore described, to locate the debtors and to get as much information as possible in order to make a recovery of money for the creditor who has employed said respondent for that purpose. This subterfuge is used to get the desired information because if respondent should write to them in the name of the creditor or in the name of Affiliated Credit Exchange the debtor never would answer.

PAR. 6. The use by said respondent, as hereinabove set forth, of the false, deceptive and misleading representations and designations has the capacity and tendency to mislead and deceive many persons to whom the said cards are sent into the erroneous and mistaken belief that the respondent is engaged in conducting a research bureau or office or in compiling business and labor statistics, and to induce the recipients thereof to give information to said respondent which otherwise they would not supply.

CONCLUSION

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

ORDER

It is ordered, That the respondent, David Bernstein, an individual trading and doing business as Affiliated Credit Exchange and as Business Research, or trading under any other name or trade designa-

tion, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the use of post cards or other written or printed material in carrying on the business of collecting or aiding in the collection of debts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Business Research," or any other word or words of similar import, to designate, describe or refer to the respondent's business; or otherwise representing, directly or by implication, that the respondent is engaged in research in business or in other forms of research.

2. Representing, directly or by implication, that the respondent's said business is other than that of collecting accounts or debts, or that the information sought by means of the respondent's devices is for any purpose other than for use in the collection of accounts or debts.

3. Representing, for the purpose of misleading debtors or others as to the respondent's place of business, that his business is located in Washington, D. C., or any place other than its actual location.

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

Complaint

IN THE MATTER OF

CLIFTWOOD COATS, INC., AND MAX SHAPIRO

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5855. Complaint, Mar. 1, 1951—Decision, July 11, 1951

Where a corporation and its president, engaged in the introduction into commerce and in the offer, sale and distribution therein of wool products as defined in the Wool Products Labeling Act—

(a) Misbranded certain of said wool products in that they (1) were falsely and deceptively labeled "100% wool", notwithstanding the fact they contained substantial quantities of rayon fiber; and (2) did not have affixed thereto tags or labels showing their constituent fibers and the percentages thereof as required by said act and the rules and regulations promulgated thereunder; and

(b) Misbranded certain of said wool products in that (1) the interlinings were falsely and deceptively labeled as "100% wool" or as "all wool" when they contained 100% reused wool or substantial quantities of other fibers; and (2) they similarly did not have affixed thereto the tags or labels supplying the aforesaid required information:

Held, That such acts, practices and methods, under the circumstances set forth, were in violation of sections 3 and 4 of the Wool Products Labeling Act of 1939, and Rule 24 of the rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices.

Before *Mr. Frank Hier*, trial examiner.
Mr. Jesse D. Kash for the Commission.
Mr. Robert S. Olnick, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Cliftwood Coats, Inc., a corporation, and Max Shapiro, individually and as an officer of said corporation, have violated the provisions of said acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Cliftwood Coats, Inc., is a corporation organized, existing, and doing business under and by virtue of the

laws of the State of New York, with its principal place of business located at 252 West Thirty-seventh Street, New York, N. Y.

Respondent Max Shapiro is president of corporate respondent and in such capacity he formulates and executes its policies and practices. His business address is the same as that of corporate respondent.

PAR. 2. Subsequent to July 15, 1941, respondents have introduced into commerce, manufactured for introduction, and offered for sale, sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein.

PAR 3. Certain of said wool products were misbranded within the intent and meaning of the said act and the rules and regulations promulgated thereunder in that they were falsely and deceptively labeled "100% wool," whereas in truth and in fact said products did not contain 100 percent wool but contained substantial quantities of rayon fiber. The said wool products so labeled were further misbranded in that their constitutent fibers and the percentages thereof were not shown on the tags or labels thereon as required by said Act, in the manner and form as required by the said rules and regulations.

Certain of said wool products were misbranded within the intent and meaning of the said act and rules and regulations promulgated thereunder in that the interlinings were falsely and deceptively labeled as 100 percent wool or as all wool. Whereas in truth and in fact said interlinings did not contain 100 percent wool but contained 100 percent reused wool or substantial quantities of other fibers. The said wool products' interlinings so labeled were further misbranded in that their constitutent fibers and the percentages thereof were not shown on the tags or labels thereon as required by said act in the manner and form as required by the said rules and regulations.

PAR. 4. The aforesaid acts and practices and methods of respondents as alleged were and are in violation of sections 3 and 4 of the Wool Products Labeling Act of 1939 and rule 24 of the rules and regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated July 11, 1951, the initial decision in the instant matter of Trial Examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission on March 1, 1951, issued and subsequently served its complaint in this proceeding upon the respondents Cliftwood Coats, Inc., a corporation, and Max Shapiro, individually and as an officer of such corporation, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of those acts. On April 4, 1951, respondents filed their answer to said complaint admitting all of the material allegations of fact set forth therein, but alleging that the misbranding arose through an unintentional, unwitting and innocent mistake and requesting dismissal of the complaint on this ground. This motion for dismissal was denied by the trial examiner on April 6, 1951, and proposed findings and conclusions were directed to be filed, if desired, before April 17, 1951. No proposed findings and conclusions were filed by either counsel. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner theretofore duly designated by the Commission upon said complaint and respondents' answer thereto; and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Cliftwood Coats, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal place of business located at 252 West Thirty-seventh Street, New York, N. Y.

Respondent Max Shapiro is president of corporate respondent and in such capacity he formulates and executes its policies and practices. His business address is the same as that of corporate respondent.

PAR. 2. Subsequent to July 15, 1941, respondents have introduced into commerce, manufactured for introduction, and offered for sale, sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of the said act and the rules and regulations promulgated thereunder in that they were falsely and deceptively labeled "100% wool," whereas in truth and in fact said products did not contain 100 percent wool but contained substantial quantities of rayon

fiber. The said wool products so labeled were further misbranded in that their constituent fibers and the percentages thereof were not shown on the tags or labels thereon as required by said act, in the manner and form as required by the said rules and regulations.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of the said act and rules and regulations promulgated thereunder in that the interlinings were falsely and deceptively labeled as 100 percent wool or as all wool. Whereas in truth and in fact said interlinings did not contain 100 percent wool but contained 100 percent reused wool or substantial quantities of other fibers. The said wool products' interlinings so labeled were further misbranded in that their constituent fibers and the percentages thereof were not shown on the tags or labels thereon as required by said act in the manner and form as required by the said rules and regulations.

CONCLUSION

The aforesaid acts and practices and methods of respondents as found were and are in violation of sections 3 and 4 of the Wool Products Labeling Act of 1939 and Rule 24 of the rules and regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Cliftwood Coats, Inc., a corporation, its officers, and Max Shapiro, individually and as an officer of said corporation, their agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, transportation or distribution of wool products in commerce, as "commerce" is defined in the aforesaid acts, do forthwith cease and desist from misbranding such wool products, as defined in and subject to the Wool Products Labeling Act of 1949, which contain, or purport to contain, or in any way are represented as containing "wool," "reprocessed wool" or "reused wool" as those terms are defined in said act:

1. By falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products;

2. By failing to securely affix to or place on such products a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool products, exclusive of ornamentation not exceeding 5 percent of said total fiber

weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 percent or more and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939;

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; and

Provided further, That nothing contained in this order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of July 11, 1951].

IN THE MATTER OF

HENRY J. HANDELSMAN, JR. ET AL. DOING BUSINESS AS THE CAMERA MAN; AND HENRY J. HANDELSMAN, JR. INC.

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

Docket 5386. Complaint, Oct. 3, 1945—Decision, July 12, 1951

Where three individuals engaged in interstate sale and distribution at retail of cameras and other merchandise, and their advertising agency, through advertisements in newspapers and magazines—

(a) Falsely represented that their cameras were equipped with fast lenses, and would take sharp, clear pictures of persons and things in motion or still; had the appearance, performance, and durability of much higher-priced cameras; would take pictures in color with ordinary films; were nationally advertised by the manufacturers; and that a simulated leather carrying case was given free with each camera;

The facts being that the reproduction of color is a property of the color film and not the camera, and almost any camera can be used for taking color pictures; charge for the case was included in the price of the camera; and other aforesaid claims were likewise false;

(b) Falsely represented that the prices for which they offered their cameras were special prices; and

(c) Represented that the purchase price would be refunded immediately without question to dissatisfied customers and that the cameras were guaranteed to give a lifetime of service, notwithstanding which they failed and refused to make such refunds and to replace broken and defective cameras;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby into the purchase of a substantial number of their products:

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

Mr. Joseph Callaway for the Commission.

Mr. Joseph J. Merensky, of Chicago, Ill., and *Mr. John L. Ingoldsby, Jr.*, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Henry J. Handelsman, Jr., Birdye Handelsman and William Handelsman, individually and as copartners, trading and doing business as The Camera Man and Henry J. Handelsman, Jr., Inc., a corporation, hereinafter re-

ferred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Henry J. Handelsman, Jr., Birdye Handelsman and William Handelsman, are individuals, whose address is 139 North Clark Street, Chicago, Ill. Respondent Henry J. Handelsman, Jr., Inc., 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 at 139 North Clark Street, Chicago, Ill.

PAR. 2. Respondent Henry J. Handelsman, Jr., individually, for more than 1 year prior to January 17, 1943, was, and respondents Henry J. Handelsman, Jr., Birdye Handelsman and William Handelsman, as copartners, are now, and for more than 2 years last past have been, engaged in the retail sale and distribution of cameras and other articles of merchandise under the trade name of The Camera Man.

In the course and conduct of their said business, the respondents cause said cameras and other merchandise, when sold, to be transported from their place of business in the State of Illinois, to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cameras and other merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The respondent Henry J. Handelsman, Jr., Inc., is now, and for more than 3 years last past has been, conducting an advertising agency and as such engaged in formulating, editing, testing, selling advertising matter and advising its clients in regard thereto. Said corporate respondent prepared and placed for the individual respondents the advertising representations hereinafter mentioned.

PAR. 4. The respondents act, and at all times mentioned herein have acted, in conjunction and cooperation with one another in performance of the acts and practices hereinafter alleged.

PAR. 5. In the course and conduct of the business of the individual respondent, Henry J. Handelsman, Jr., and of the said partnership, and for the purpose of inducing the purchase of their cameras in commerce, the respondents have made and are now making certain false, deceptive, and misleading statements and representations in regard to their said cameras through the medium of radio broadcasts, by means of advertisements inserted in newspapers and magazines circulated generally among the purchasing public, and in various other ways. Typical representations are as follows:

Nationally advertised Photo Master candid camera.
Extremely fast lens.
It's equipped with a high speed lens.
Takes 16 sharp, clear pictures indoors or out—in action or "stills".
If you act quickly you will also receive a smart simulated leather carrying case with arm sling absolutely free! As a gift.
Positively $5.00—appearance—performance and durability, all for only $1.00.
This is the only $1.00 camera and carrying case of this high quality being offered anywhere. However, the supply is limited. You must act now if you want to take advantage of this special offer.
Nationally radio advertised Metro-Cam color candid camera.
Sensational color camera.
Takes full color pictures.
Positively $10.00—appearance—performance and durability, all for only $3.98.

PAR. 6. Through the use of the term "candid camera" and the foregoing statements and representations and others similar, not specifically set out herein, the respondents have represented, and are now representing that their cameras are equipped with fast lenses; that they take sharp, clear pictures of persons and things in motion or still; that they are nationally advertised by the manufacturers; that a simulated leather carrying case is given free with each camera; that their cameras have the appearance, performance, and durability of much higher priced cameras; that the prices for which respondents offer their cameras are special prices; that their cameras will take pictures in color with the use of ordinary films.

PAR. 7. The foregoing representations are false, deceptive, and misleading in the following respects:

Respondents' cameras are not equipped with fast lenses. They will not take sharp, clear pictures of persons or things either in motion or still because of the kind of lenses with which they are equipped. The manufacturers of respondents' cameras do not now, nor have they ever advertised them nationally over the radio or otherwise. The carrying case is not given free with purchase of a camera. Its cost is included in the price of the camera. The cameras have neither the appearance, performance, nor durability of higher priced cameras. The prices for which respondents have offered and now offer these cameras for sale are not special prices. On the contrary, these cameras and camera cases were and are regularly offered for sale, when available, at these prices by the respondents and by others. All of respondents' cameras are identical in construction. No camera will take color pictures without the use of special films treated so as to reproduce color pictures. The reproduction of actual color is a property of the color film and not the camera. Color films are now made in such form that almost any camera can be used for taking color pictures.

PAR. 8. In addition to the false and misleading representations mentioned above, the respondents have failed and refused to make refunds to dissatisfied customers and failed and refused to replace broken and defective cameras after having advertised that the purchase price would be refunded immediately without question to dissatisfied customers and that the cameras were guaranteed to give a lifetime of service.

PAR. 9. The use by the respondents of the foregoing false, deceptive and misleading statements and representations disseminated as aforesaid in connection with the offering for sale and sale of their cameras in commerce has had, and now has, the capacity and the tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and into the purchase of substantial numbers of such cameras in commerce because of such erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 3, 1945, issued and thereafter served its complaint in this proceeding upon the respondents, Henry J. Handelsman, Jr., Birdye Handelsman, and William Handelsman, individuals, and Henry J. Handelsman, Jr., Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On November 19, 1945, the respondents filed their answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for the respondents and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding in lieu of testimony in support of or in opposition to the charges stated in the complaint, and that the Commission might proceed upon said complaint, the answer of respondents, and said statement of facts to make its report stating its findings as to the facts (including inferences which might be drawn from said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the filing of a report upon the evidence by the trial examiner, the presentation of argument, or the filing of briefs. Thereafter,

this proceeding regularly came on for final hearing before the Commission on said complaint, the answer of respondents, and the stipulation, said stipulation having been approved, accepted, and filed by the Commission; and the Commission, having duly considered the matter, made and issued on June 7, 1946, its findings as to the facts and its conclusion drawn therefrom, and its order to cease and desist disposing of said proceeding.

Thereafter, this matter came on for reconsideration by the Commission upon a motion by Daniel J. Murphy, Chief, Division of Litigation, to reopen this proceeding for the purpose of modifying the findings as to the facts and order to cease and desist issued herein, and the answer of respondent Henry J. Handelsman, Jr., stating that he had no objection to said motion (no answer having been filed by the other respondents in response to a notice of said motion served on each said respondent by the Commission together with leave to show cause why the action requested in said motion should not be taken); and the Commission, having reconsidered the matter and being of the opinion that the aforesaid findings as to the facts, conclusion, and order to cease and desist should be modified in certain respects, reopened the proceeding, and said findings, conclusion, and order were set aside. In lieu of said findings as to the facts and conclusions, the Commission now makes this its modified findings as to the facts and its conclusion drawn therefrom.

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Henry J. Handelsman, Jr., Birdye Handelsman, and Wiliam Handelsman are individuals whose address is 139 North Clark Street, Chicago, Ill. Respondent Henry J. Handelsman, Jr., Inc., 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 at 139 North Clark Street, Chicago, Ill. Respondent Henry J. Handelsman, Jr., individually, for more than 1 year prior to January 17, 1943, was engaged, and respondents Henry J. Handelsman, Jr., Birdye Handelsman, and William Handelsman during the years 1944, 1945, and 1946 were engaged, as copartners in the retail sale and distribution of cameras and other articles of merchandise, under the trade name of The Camera Man.

PAR. 2. In the course and conduct of their aforesaid business, respondents caused their cameras and other merchandise, when sold, to be transported from their place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents at all times mentioned herein have maintained a course of trade in said

cameras and other merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent Henry J. Handelsman, Jr., Inc., during the years 1943 through 1946 conducted an advertising agency, and as such engaged in formulating, editing, testing, and selling advertising matter, and advising its clients in regard thereto. Said corporate respondent prepared and placed for the individual respondents the advertising representations hereinafter mentioned.

PAR. 4. At all times mentioned herein the several respondents have acted in conjunction and cooperation with one another in performance of the acts and practices hereinafter described.

PAR. 5. In the course and conduct of the business of the individual respondent Henry J. Handelsman, Jr., and of the said partnership, and for the purpose of inducing the purchase of their cameras in commerce, the respondents have made certain false, deceptive, and misleading statements and representations in regard to their said cameras through the medium of radio broadcasts, by means of advertisements inserted in newspapers and magazines circulated generally among the purchasing public, and in various other ways. Typical representations are as follows:

Nationally advertised Photo Master candid camera.

* * * * *

Extremely fast lens.

* * * * *

It's equipped with a high speed lens.

* * * * *

Takes 16 sharp, clear pictures indoors or out—in action or "stills."

* * * * *

If you act quickly you will also receive a smart simulated leather carrying case with arm sling absolutely free! As a gift.

* * * * *

Positively $5.00—appearance—performance and durability, all for only $1.00.

* * * * *

This is the only $1.00 camera and carrying case of this high quality being offered anywhere. However, the supply is limited. You must act now if you want to take advantage of this special offer.

* * * * *

Nationally radio advertised Metro-Cam color candid camera.

* * * * *

Sensational color camera.

* * * * *

Takes full color pictures.

* * * * *

Positively $10.00—appearance—performance and durability, all for only $3.98.

PAR. 6. Through the use of the foregoing statements and representations and others similar thereto but not specifically set out herein, the respondents have represented that their cameras were equipped with fast lenses; that they would take sharp, clear pictures of persons and things in motion or still; that they were nationally advertised by the manufacturers; that a simulated-leather carrying case was given free with each camera; that their cameras had the appearance, performance, and durability of much higher priced cameras; that the prices for which respondents offered their cameras were special prices; and that their cameras would take pictures in color with the use of ordinary films.

PAR. 7. The aforesaid representations were false, misleading, and deceptive. Respondents' cameras were not equipped with fast lenses. They would not take sharp, clear pictures of persons or things, either in motion or still, because of the kind of lenses with which they were equipped. The manufacturers of respondents' cameras do not now advertise, nor have they ever advertised them nationally over the radio or otherwise. The carrying case was not given free with purchase of a camera; its cost was included in the price of the camera. The cameras have neither the appearance, performance, nor durability of higher priced cameras. The prices for which respondents have offered these cameras for sale were not special prices. On the contrary, these cameras and camera cases were regularly offered for sale, when available, at these prices by the respondents and by others. All of respondents' cameras were identical in construction. No camera will take color pictures without the use of special films treated so as to reproduce color pictures. The reproduction of actual color is a property of the color film and not the camera. Color films are now made in such form that almost any camera can be used for taking color pictures.

PAR. 8. In addition to the false, misleading, and deceptive representations mentioned above, the respondents have failed and refused to make refunds to dissatisfied customers, and failed and refused to replace broken and defective cameras after having advertised that the purchase price would be refunded immediately without question to dissatisfied customers and that the cameras were guaranteed to give a lifetime of service.

PAR. 9. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations, disseminated as aforesaid in connection with the offering for sale and sale of their cameras in commerce, has had the capacity and the tendency to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and rep-

resentations were true, and, because of such erroneous and mistaken belief, into the purchase of substantial numbers of such cameras in commerce.

CONCLUSION

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

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, and a stipulation as to the facts entered into between counsel for the respondents herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which stipulation provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding; and

The Commission, after having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act, on June 7, 1946, issued and subsequently served upon the respondents said findings as to the facts, conclusion, and its order to cease and desist; and

This proceeding having been reopened and said findings as to the facts, conclusion, and order to cease and desist having been set aside; and the Commission having made its modified findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the individual respondents, Henry J. Handelsman, Jr., Birdye Handelsman, and William Handelsman, jointly or severally, their representatives, agents, and employees, and Henry J. Handelsman, Jr., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cameras or other merchandise in commerce, as "commerce' 'is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication:

(*a*) That cameras which are not equipped with fast lenses are so equipped.

(*b*) That cameras which will not take sharp, clear pictures of things or persons in motion or still will take such pictures.

(*c*) That cameras not nationally advertised are so advertised.

(*d*) That any article the cost of which is included in the purchase price of other merchandise in connection with which such article is offered is given free.

(*e*) That cameras which do not have the appearance, performance, or durability of higher priced cameras have such appearance, performance, or durability.

(*f*) That cameras or other articles of merchandise are being offered at a reduced or special price, when in fact such price is not lower than respondents' usual and customary price for such merchandise.

(*g*) That cameras will take color pictures, without revealing that the reproduction of actual color is a property of the film and not of the camera.

2. Representing that refunds will be made to dissatisfied customers unless such refunds are in fact made.

3. Representing that cameras are guaranteed to give a lifetime of service unless cameras broken because of defective materials or workmanship are replaced by respondents.

Complaint

IN THE MATTER OF

HAROLD EISENBERG AND SAM EISENBERG DOING BUSINESS AS PLYMOUTH TEXTILES

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

Docket 5869. Complaint, Apr. 4, 1951—Decision, July 12, 1951

Where two partners engaged in conducting a mail-order business in the interstate sale of remnants and patches of cloth to the general public; in advertising in newspapers and periodicals and otherwise—

(*a*) Misleadingly and erroneously represented that assortments of cloth included pieces of sufficient size to be made into aprons and children's sun suits, through such statements as "Ideal for aprons, children's sun suits, patchwork quilts," etc.; when in fact only one piece of cloth in the assortment was of such size and the remainder consisted of scraps, trimmings, and small irregular pieces; and

(*b*) Represented that thread and a buttonhole maker were furnished to purchasers of the assortments without cost or obligation of any nature, through such statements as "FREE 100 yds. Thread VALUE FREE! With your First Order * * * Amazing New Button Hole Maker x x all this free to introduce our BIG PATCH and REMNANT assortment," etc.;

The facts being that the cost of such articles was included in the charge for the assortment and the only instances in which the articles were furnished without cost were those in which the other merchandise, namely, the remnants and patches, was returned by the purchaser;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their merchandise and the articles purportedly offered without cost, and thereby cause it to purchase their products:

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

Before *Mr. William L. Pack*, trial examiner.

Mr. Morton Nesmith and *Mr. John C. Williams* for the Commission.

Mr. Sidney H. Asch, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Harold Eisenberg and Sam Eisenberg, copartners, doing business as Plymouth Textiles, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Harold Eisenberg and Sam Eisenberg, are copartners doing business as Plymouth Textiles, with their office and principal place of business located at 195 Plymouth Street, Brooklyn, N. Y. Said respondents are now and for several years last past have been engaged, among other things, in conducting a mail-order business in the sale of patches and remnants to the general public.

PAR. 2. In connection with said business respondents cause and have caused said products, when sold, to be shipped from their place of business in the city of Brooklyn, N. Y., into and through other States of the United States to purchasers located in said other States. Respondents maintain and have maintained a course of trade in said products, in commerce, among and between the various States of the United States. Their volume of trade in said products in such commerce is and has been substantial.

PAR. 3. In the course and conduct of the aforesaid business, and for the purpose of promoting the sale of their said products, in commerce, respondents make and have made certain statements, representations and claims concerning said products and the use to which the same may be put, by means of advertisements inserted in newspapers and periodicals and other advertising literature. Among and typical of said statements and representations are the following:

BIG PATCH and REMNANT Assortment
4 lbs. only $1.98
Plus C. O. D. Postage

FREE	1,000 yds. Thread	Value
	Button Hole Maker	$1.70

FREE! With Your First Order! 1,000 yds. White No. 50 thread, equals 14—5¢ spools (70¢ value). Amazing, new Button Hole Maker, fits any machine. Sells elsewhere for $1.00. All this free to introduce our BIG PATCH and REMNANT Assortment of 18–22 yds. of new, color-fast, cotton print goods. Ideal for aprons, children's sun suits, patchwork quilts * * *

PAR. 4. By means of the aforesaid statements respondents represented that there were included in their said assortment pieces of cloth of sufficient size out of which aprons and children's sun suits could be made.

PAR. 5. The said representation was false, misleading and deceptive. In truth and in fact, only one piece of the assortment was of sufficient size out of which an apron or a child's sun suit could be made. The balance of said assortment consisted of scraps, trimmings, and small irregular pieces of material.

PAR. 6. Respondents further represent, through the use of the word "free" in connection with the thread and buttonhole maker, that such

articles were furnished to the purchasers of their assortments without cost or obligation of any nature. In truth and in fact, such articles were not furnished "free" or without cost or obligation as the cost thereof was included in the charge made for the assortment.

PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public to believe that such representations are true and into the purchase of substantial quantities of respondents' said products in reliance on such erroneous belief.

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

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated July 12, 1951, the initial decision in the instant matter of Trial Examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 4, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondents of their answer to the complaint, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by counsel supporting the complaint and counsel for respondents might be taken as the facts in this proceeding and in lieu of evidence in support of and in opposition to the charges stated in the complaint, and that such statement of facts might serve as the basis for findings as to the facts and conclusion based thereon and an order disposing of the proceeding, without presentation of proposed findings and conclusions or oral argument. The stipulation further provided that upon appeal to or review by the Commission such stipulation might be set aside by the Commission and this matter remanded for further proceedings under the complaint. Thereafter the proceeding regularly came on for final consideration by the trial examiner upon the

complaint, answer, and stipulation, the stipulation having been approved by the trial examiner, who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Harold Eisenberg and Sam Eisenberg, are copartners doing business as Plymouth Textiles, with their office and principal place of business located at 195 Plymouth Street, Brooklyn, N. Y. Respondents are now and for several years last past have been engaged in conducting a mail-order business in the sale of remnants and patches of cloth to the general public.

PAR. 2. Respondents cause and have caused their merchandise, when sold, to be shipped from their place of business in the State of New York to purchasers located in various other States of the United States. Respondents maintain and have maintained a course of trade in their merchandise in commerce among and between the various States of the United States. Their volume of trade in such commerce has been substantial.

PAR. 3. In the course and conduct of their business, respondents have advertised their merchandise by means of advertisements inserted in newspapers and periodicals, and by means of other advertising material. Among and typical of such advertisements is the following:

To Introduce 18–22 Yd. New Print

BIG PATCH & REMNANT

Assortment

4 lbs.

ONLY $1.98

Plus C. O. D. postage.

FREE 1,000 yds. Thread VALUE

Button Hole Maker $1.70

FREE! With your First Order 1,000 yds. White, No. 50 Thread, equals 14–5¢ spools (70¢ value). Amazing new Button Hole Maker, fits any machine, sells elsewhere for $1.00. All this free to introduce our BIG PATCH and REMNANT assortment of 18–22 yards of new, color-fast, cotton print goods. Ideal for aprons, children's sun suits, patchwork quilts, doll dresses, pin cushions, pot holders, etc. A use for every patch. Complete with patterns, instructions. Yes, only $1.98 plus postage and C. O. D. handling $1.98 back if not satisfied, but you keep the FREE GIFTS, regardless! Order today!

PLYMOUTH TEXTILES

Dept. K1, 195 Plymouth Street, Brooklyn 1, N. Y.

PAR. 4. This advertisement was erroneous and misleading in that it represented, directly or by implication, that the assortment of merchandise referred to included pieces of cloth which were of sufficient size to be made into aprons and children's sun suits. Actually only one piece of cloth in the assortment was of that size. The remainder of the assortment consisted of scraps, trimmings and small, irregular pieces of material.

PAR. 5. Respondents' advertisement was erroneous and misleading for the further reason that it represented through the use of the word "free" in connection with the thread and buttonhole maker that such articles were furnished to the purchasers of such assortments without cost or obligation of any nature. Actually, such articles were not generally furnished free or without cost or obligation, as the cost thereof was included in the charge made for the assortment. The only instances in which the articles were furnished without cost were those in which the other merchandise (remnants and patches) was returned by the purchaser.

PAR. 6. The use by respondents of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' merchandise and with respect to the articles purportedly offered without cost, and the tendency and capacity to cause such portion of the public to purchase respondents' merchandise as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

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

ORDER

It is ordered, That the respondents, Harold Eisenberg and Sam Eisenberg, individually and as copartners trading under the name Plymouth Textiles, or trading under any other name, and their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of remnants and patches of cloth in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that assortments of remnants and patches include pieces of cloth sufficiently large to be made into aprons or children's sun suits, unless such assortments do in fact consist in substantial part of pieces of cloth which are of sufficient size for such purposes.

2. Using the word "free" or any other word or words of similar import, to designate or describe articles the cost of which is included in the price of other merchandise, or which are not in fact gifts or gratuities furnished without cost or obligation to the recipient thereof.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of July 12, 1951].

Syllabus

IN THE MATTER OF

AMASIA IMPORTING CORPORATION, SILK SKIN, INC. AND GEORGE LACKS AND HAROLD G. LACKS

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

Docket 4459. Complaint, Aug. 9, 1948[1]*—Decision, July 13, 1951*

Silk has been and is understood to be a product of the silk worm by the purchasing public which has held in high public esteem for a great many years, garments composed of silk, and there is a preference among purchasers particularly for feminine silk undergarments.

Lacking the force and effect of law, as trade practice rules do, their prime objective is to express the requirements of the statutes administered by the Commission and its decisions in terms particularly addressed to the problems and practices of industry members. In the instant proceeding, the practices alleged to be engaged in were charged as in violation of law, namely, the Federal Trade Commission Act; thus the proceeding was not based on transgression of the trade practice rules and no decision as to said matter was made or required under the issues presented by the pleadings.

In said connection as regards the expressions contained in rule 11 (a) of the Trade Practice Rules for the Silk Industry, promulgated by the Commission on November 4, 1938, which state that it is an unfair practice to use the word "silk" as a part of a trade or corporate name unless a substantial part of the business concerned is devoted to silk or silk products and there is full and nondeceptive disclosure in immediate conjunction with such name as to any merchandise which is not silk: Such expressions serve merely to define one particular area in which the Commission has reason to believe that use of the word "silk" as a part of the trade or corporate name is deceptive and in violation of the law, and obviously do not constitute a determination that in all other circumstances the use of such name is not in violation of law. Hence they present no bar to Commission action intended to remove a capacity and tendency to deceive, where found.

Where one of two corporations (directed and controlled by the same two officers), engaged in the manufacture of women's corsets, girdles, and foundation garments, and in the interstate sale and distribution thereof to department stores and retailers throughout the United States, and, after the war, in thus selling its said products through the second concern until about November 1947, when it ceased to manufacture; and one of the aforesaid individuals, its managing director—

(*a*) Represented that their garments were composed of silk, the product of the cocoon of the silkworm, through using and featuring the product name "Silk Skin" to designate and refer thereto in their advertisements and in advertising mats furnished for the use of stores, on containers of their products, and through labels and tags attached thereto in which the statement of the constituent fibers was relatively inconspicuous; and

[1] Amended.

Where said second concern and the aforesaid individuals—

(*b*) Represented that their garments were composed of silk, as aforesaid, through use of the words "Silk Skin" in the expression "Full Fashioned and Seamless by Silk Skin, Inc." to designate the same on price lists in which, under the caption "Advertising Cooperation Policy," they offered to supply without charge mats and suggested advertising, and allow 50 percent of a store's net local space rate, providing that the advertisement prominently display the legend "FULL-FASHIONED and SEAMLESS by SILK SKIN, INC." (in which the terms "by" and "Inc." appeared in much smaller print and lighter type than the words "SILK SKIN"); through a mat and suggested advertising in which such names were similarly featured; and through featuring the corporate name "Silk Skin, Inc." in advertisements in publications, on letterheads, on containers of their merchandise, and on tags and labels including those on its nonsilk, rayon products, in which were stated the constituent fibers and in which the name's first two words were made relatively prominent;

The facts being that none of their garments was made exclusively of silk; an elastic yarn covered with lisle and knitted together with rayon or nylon, or with silk, was used in their manufacture; when silk was used, the silk content constituted about one-third of the garment's weight; and about 85 percent of their merchandise contained no silk whatsoever, and were constituted in major part of rayon;

With capacity and tendency to mislead and deceive a substantial portion of the consuming public with respect to the constituent fibers of their garments and thereby induce the purchase thereof; and with result of placing in the hands of dealers purchasing such products from them for resale a means to mislead and deceive the public with respect thereto:

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

Contention of respondents that no deception stemmed from the use of the corporate name "Silk Skin, Inc.," in connection with the sale of their garments, since it was used only to identify the manufacturer of the article, and information with respect to the fiber content of the products appeared on the labels and tags affixed thereto was not tenable in view of their reference to their "Silk Skin Foundations" in pamphlets distributed by them to the trade; of the fact that their policy relating to cooperative advertising, as announced to dealers, contained no requirement that the use of the words "Silk Skin" be limited exclusively to identifying the corporate respondent as the source of the products offered; and the fact that their representative advertisements relating to their mat service for dealers and store use contained no suggestion that the great bulk of their line was constituted of garments which contained no silk, or contained any fiber other than silk.

The deception which stemmed from respondents' prior use of the product name "Silk Skin," and the manner of their current use of the word "silk" in the corporate name "Silk Skin, Inc." to designate garments which contained no silk was not cured by the information relating to fiber content in the advertising and on the garments, since, in view of the great esteem in which silk garments are held by the public, the purchaser might not be impelled

to inspect the labeling to corroborate the impression necessarily engendered by the prominent display of the word "silk" in the product or corporate name; and in instances in which the garment contained no silk, the labeling would not serve to amplify or explain the impressions thus engendered, but might serve only as a confusing contradiction. The Commission, accordingly, was of the opinion that only a prohibition against the use of the word in any manner, including the corporate name as a designation for or in reference to those of respondents' garments which were not composed in part of silk, would eliminate adequately the deception which the word had the capacity and tendency to engender.

As to the contention of respondents that the advertising of respondents' "Silk Skin, Inc." complied with the Trade Practice Rules for the Silk Industry, promulgated by the Commission on November 4, 1938, rule 11 (a) set forth that it was an unfair trade practice to use the word "silk" as a part of a trade or corporate name unless a substantial part of the business in question was devoted to silk or silk products, and there was full and nondeceptive disclosure in immediate conjunction, with the name, of the fact as to any merchandise advertised and sold which was not composed wholly of silk; and rule 11 (b) condemned the use of the word "silk" in any trade-mark indicative of silk when the merchandise concerned was not in fact composed thereof. Such expressions afforded no support for a conclusion that under the statute misrepresentation inuring to the use of deceptive trade-marks might be perpetuated through the medium of a subsequently adopted firm or corporate name, and there was no dispute that respondents' purpose was to perpetuate and continue use of the word "silk," in connection with the sale of garments theretofore so designated, through adopting the corporate name "Silk Skin, Inc.," in order to preserve what was deemed to be a valuable asset, namely the product name "Silk Skin."

Before *Mr. Miles J. Furnas* and *Mr. Henry P. Alden*, trial examiners.

Mr. Joseph Callaway for the Commission.

Gainsburg, Gottlieb, Levitan & Cole, of New York City, for respondents.

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Amasia Importing Corp., a corporation, Silk Skin, Inc., a corporation and George Lacks and Harold G. Lacks, individually and as president and secretary, respectively, of both corporations, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Amasia Importing Corp. and Silk Skin, Inc., are both corporations organized, existing and doing business under and by virtue of the laws of the State of New York and both have their offices and places of business at 10 East Thirty-ninth Street in the city and State of New York.

PAR. 2. The individual respondent George Lacks is president of both Amasia Importing Corp. and Silk Skin, Inc., and respondent Harold G. Lacks is secretary of both corporations. These individual respondents also have their offices and principal places of business at 10 East Thirty-ninth Street, New York, N. Y., and formulate, direct, and control the acts, policies, and business affairs of both corporate respondents.

PAR. 3. For a number of years prior to and during the early part of World War II, respondent Amasia Importing Corp. was engaged in the manufacturing, sale, and distribution of corsets and foundation garments for women. In 1943, respondent Silk Skin, Inc., was organized and for a time acted as the selling agent for respondent Amasia Importing Corp. In November 1947, respondent Amasia Importing Corp. ceased to manufacture such garments which are now made, advertised, sold, and distributed by respondent Silk Skin, Inc.

Respondents sell and have sold their products to department stores and other retail dealers and have caused and now cause such products when sold to be transported from their place of business in the State of New York to the purchasers thereof located in various other States in the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in said merchandise in commerce among and between the various States of the United States and in the District of Columbia. The respondents' volume of business in said articles in such commerce is substantial.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the purchase of their products, respondents have since March 21, 1938, made and caused to be made representations regarding the materials of which said garments were made, in advertisements published in newspapers, magazines, and other publications for distribution to the purchasing public. Respondents Amasia Importing Corp. in such advertisements used the trade name "Silk Skin" to designate and describe all of its garments, irrespective of the materials from which the garments were made. Respondent Silk Skin, Inc., prominently displays its corporate name on letterheads, billheads, and other advertising matter. Among and typical of the representations made and used by respondent Silk Skin, Inc., since the end of World War II, with regard to said corsets and foundation garments is the following:

At Last
Silk Skin, Inc.,
Bring You
Pre-War
Full-Fashioned
Quality.

We've waited five long years for this day—for the fine quality yarns that would allow us to offer you the world-famous Full-Fashioned Panty and Girdle by Silk Skin, Inc.

PAR. 5. Through the use of the trade name Silk Skin to designate their products, and through the prominent display of the corporate name Silk Skin, Inc., on letterheads, billheads, and other advertising matter, and through the representations set forth above and others similar thereto, respondents have represented directly and by implication that their garments were and are composed of silk, the product of the cocoon of the silkworm.

PAR. 6. The foregoing representations were and are deceptive and misleading. In truth and in fact none of respondents' garments have ever been made exclusively of silk and many of them contain no silk at all. In fact, approximately 85 percent of the business of respondents is and always has been in garments containing no silk.

PAR. 7. Over a period of many years the word silk has had and still has in the minds of the purchasing and consuming public generally a definite and specific meaning as being the product of the cocoon of the silkworm. Silk products for many years have held and still hold great public esteem and confidence for their preeminent qualities.

PAR. 8. The use by the respondents of the foregoing misleading and deceptive representations, disseminated as aforesaid, with respect to their products has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the consuming public into the erroneous and mistaken belief that such representations were and are true and to cause and does cause a substantial portion of the public to purchase respondents garments under such mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 4, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Amasia Importing Corp., charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation

of the provisions of that act. After the filing by said respondent of its answer, testimony and other evidence were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence, together with a stipulation as to the facts entered into on January 26, 1943, between counsel supporting the complaint and counsel for respondent under which respondent Amasia Importing Corp. waived further intervening procedure and consented to issuance by the Commission of findings as to the facts and order disposing of the proceeding, were duly recorded and filed in the office of the Commission. This proceeding thereafter came on to be heard before the Commission upon the complaint, answer, and the testimony and other evidence, including the aforesaid stipulation as to the facts. After the issuance on September 16, 1946, by the Commission of its findings as to the facts and order to cease and desist, respondent Amasia Importing Corp. on November 25, 1946, filed petition requesting that the proceedings be reopened and that said order to cease and desist be modified or, in the alternative, that the respondent be relieved of the stipulation of facts received into the record on January 26, 1943. It appearing to the Commission, among other things, that there had been a misconception and misunderstanding by counsel for respondent and there being reason to believe that changes in the factual situation had occurred, said findings as to the facts and order to cease and desist as theretofore issued by the Commission were on December 3, 1947, vacated and set aside and the matter was reopened for such further proceedings as appeared appropriate with leave being granted to respondent Amasia Importing Corp. to withdraw or amend the stipulation of facts referred to above. After the filing by respondent Amasia Importing Corp. of its statement withdrawing said stipulation of facts, the Commission on August 9, 1948, issued and subsequently served its amended complaint in this proceeding upon the respondents named in the caption hereof. Following the filing of respondents' answers to the amended complaint, testimony and other evidence in support of and in opposition to the allegations of the amended complaint were introduced before a trial examiner of the Commission theretofore duly designated by it and such testimony and other evidence were recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing by the Commission upon the record including the amended complaint, respondents' answers, testimony, and other evidence, recommended decision of the trial examiner and the exceptions thereto filed by respondents, briefs in support of and in opposition to the amended complaint, and oral argument; and the Commission, having duly considered the matter and being now fully advised in the

premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Amasia Importing Corp. and Silk Skin, Inc., are New York corporations with their principal place of business at 10 East Thirty-ninth Street, New York, N. Y. Respondent Harold G. Lacks has been an officer and a managing director of respondent Amasia Importing Corporation since 1938, and an officer and a director of respondent Silk Skin, Inc., since its organization in 1943. Respondent George Lacks has been an officer and a managing director of both of the corporate respondents since 1944. Respondents Harold G. and George Lacks are the only officers of the respondent corporations and they have directed and controlled the acts and policies and business affairs of both respondent corporations.

PAR. 2. From prior to August 1938 until after the beginning of World War II, respondent Amasia Importing Corp. engaged in the manufacture and sale of women's corsets, girdles, and foundation garments to department stores and other retail dealers throughout the United States. Respondent Amasia Importing Corp. resumed the manufacture of these garments at the end of the war, but the merchandise produced thereafter was sold and distributed to retail stores by respondent Silk Skin, Inc. On or about November 1, 1947, Amasia Importing Corp. ceased to manufacture respondents' garments and since that date respondents' merchandise has been manufactured, sold, and distributed by respondent Silk Skin, Inc.

PAR. 3. In connection with the sale of their girdles, corsets, and foundation garments to dealers, respondents have caused their merchandise to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents, during the periods mentioned herein, have maintained a course of trade in their merchandise in commerce among and between the various States of the United States and in the District of Columbia, the volume of which has been substantial.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the purchase of their products, respondents have made and caused to be made representations concerning such merchandise in advertisements published in newspapers, magazines, and other publications for distribution to the purchasing public.

(*a*) In the advertising of respondent Amasia Importing Corp. disseminated prior to World War II, respondents' garments were desig-

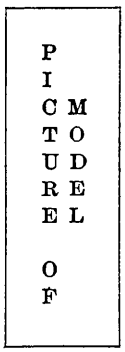
nated and described by the product name "Silk Skin," which name was displayed prominently and conspicuously in advertisements and on the garments when offered for sale to the purchasing public. Typical of such advertisements is one which appeared on August 24, 1938, in The New York Sun over the name of a store engaged in the resale of such garments. This advertisment was reproduced from an advertising mat furnished by respondent Amasia Importing Corp. to such store and read:

SILK SKIN

Trademark Reg. No. 323812
U. S. Pat. Off.

* * * *your new,*
free "n" easy girdle

Gives you wonderful feeling of ease and comfort. Quick to slip into, with its zipped front panel. Keeps you sleeked, without a wrinkle, into lovely curves. 80% elastic yarn with 20% rayon. * * *

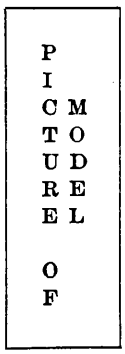


Another typical advertisement used by respondent Amasia Importing Corp. appeared in The New York Times on October 23, 1938, wherein the display was in single column width and the words "Silk Skin" appeared variously in large script and prominent type, which advertisement read:

You'll be
SLIMMER
SMOOTHER
SMARTER
Full-fashioned, Free as Air

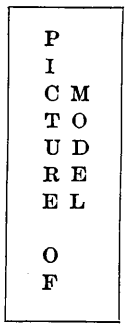
SILK SKIN

80% to 100% elastic yarn combined with lisle, rayon or silk

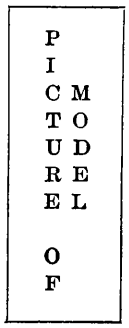


You'd have to pay two and three times the price for expensive French hand-fashioned girdles to look as lusciously smooth and slim as you do in a SILK SKIN.

* * * *



You can wear the new romantic fashions with distinction, and yet be perfectly comfortable, in a SILK SKIN pantie-corset. The highly resilient, unique elastic fabric (it actually improves with washing) molds you naturally, with not a seam to bulk or bind. * * *



You look chic as a fashion model in a SILK SKIN all-in-one because the powerful elastic molds you into today's smart fashion figure.

* * * *

SILK SKIN

girdles, panties and all-in-one, with and without zipper panel, at all leading stores, $3.50 to $15
Write for illustrated Brochure T–7

SILK SKIN—10 EAST 39, N. Y.

(*b*) Among the advertisements used in promoting the sale of respondents' products by Silk Skin, Inc., has been a price list, effective October 1, 1947, in which, among other things, appears the following:

ADVERTISING COOPERATION POLICY

We will supply without charge matrix and suggested advertising copy to stores desiring same. We will allow 50% of a store's net local space rate for any newspaper advertisement to cover actual lineage used provided that the advertisement is separately enclosed and prominently displays the legend

FULL-FASHIONED and
SEAMLESS

by SILK SKIN, Inc.

* * * * * *

In the foregoing, the terms "by" and "Inc." appear in much smaller print and in lighter type than the words "SILK SKIN." A matrix and suggested advertising referred to, as offered by respondents in 1947, are the following:

---

at last
SILK
SKIN
Inc.

SILK
SKIN
Inc.
presents

brings you

PRE-WAR
FULL FASHIONED
QUALITY

We've waited five long years for this day—for the fine quality yarns that would allow us to offer you the world-famous Full-Fashioned Pantie and Girdle by SILK SKIN, inc.

PICTURE OF MODEL

the ONLY full fashioned seamless pantie in the world

FREE AS AIR—real comfort, with not a single seam to bulk or bind.

FULL FASHIONED—under a patented process comparable to expensive hand-woven French elastic—to shape you with real corset control.

$00.00

PICTURE
OF
MODEL

STORE NAME STORE NAME

(*c*) To the merchandise sold by Amasia Importing Corp. there were attached two woven tab labels. These were affixed at the same place on the top seam of the garments in such manner that one was superimposed over the other. In large script on the outer face of the upper label were imprinted the words "Silk Skin" in flowing script, and on the reverse face appeared information relating to patents. The under or less conspicuous label had imprinted on its outer face the style number and size and on the under side appeared a statement in small but discernible type relating to the constituent fibers of such garment. To these garments respondents also affixed a cardboard tag on which the term "Silk Skin" appeared in very large letters, and on the back, in small but relatively discernible type, there was imprinted, among other things, laundering instructions together with a statement in reference to constituent fibers.

To its garments containing rayon but no silk, respondent Silk Skin, Inc. causes to be attached cardboard tags on which there is imprinted, among other things, the words "By Silk Skin, Inc. Cotton Lastex * * * Rayon Yarn." On such tag the term "Inc." appears in extremely small type. A single woven tab label also is affixed which reads "Cotton Lastex and Bemberg Rayon * * * By Silk Skin Inc." The letters in the words "Silk Skin" appear in script. The word "By" and the expression "Inc." appear in somewhat smaller type.

PAR. 5. Through the use of the product name "Silk Skin" to designate, describe and refer to all of their garments in advertisements appearing in various publications and in other advertising matter, including the boxes in which their merchandise was packaged and the labels and tags attached to such garments, respondents Amasia Importing Corporation and Harold G. Lacks represented directly and by implication that the garments so designated were composed of silk, the product of the cocoon of the silk worm. Through use of the words "Silk Skin" in the expression "Full Fashioned and Seamless by Silk Skin, Inc." to designate their merchandise, and through prominent display of the corporate name "Silk Skin, Inc." in advertisements appearing in publications, on letterheads and in other advertising matter, including the boxes in which their merchandise is packed and on labels and tags attached to such garments, respondents Silk Skin, Inc., George Lacks and Harold G. Lacks have represented and now represent directly and by implication that all of the garments so designated and offered for sale and sold by them are composed of silk, the product of the cocoon of the silk worm.

PAR. 6. The representations of respondents referred to in Paragraph Five above are false and misleading. None of respondents'

garments ever has been made exclusively of silk. An elastic yarn, the covering of which is composed of lisle, is used in the manufacture of respondents' girdles, corsets and foundation garments. The yarn is knitted together with rayon or nylon, or with silk. When silk is used as plating or facing in the knitting of respondents' garments, the silk content of the article so produced constitutes approximately 33⅓ percent of garment weight. Approximately 85 percent of the merchandise sold by respondents contains no silk whatsoever, and garments containing rayon which resembles silk in appearance constitute the major part of this category of merchandise in which no silk fiber is present.

PAR. 7. Silk has been and is understood by the purchasing public to be the product of the cocoon of the silk worm and garments composed of silk have been held in high public esteem for a great many years. There is a preference among purchasers particularly for feminine silk undergarments.

PAR. 8. In the course of these proceedings, respondents have urged that no deception stems from the use of the corporate name "Silk Skin, Inc." in connection with the sale of their garments for the reason that the name is used only to identify the manufacturer of the articles being offered for sale and for the further reason that information respecting fiber content of the products appears on labels and tags affixed thereto. Respondents' contention that the advertising of respondent Silk Skin, Inc., has been limited to identifying the corporate respondent as the maker of the product offered for sale is not tenable. Statements in reference to respondents' "Silk Skin foundations" have appeared in pamphlets distributed by respondents to the trade. Pertinent and considered in this connection also is the fact that respondents' policy relating to cooperative advertising with dealers, as announced by respondent Silk Skin, Inc., to the trade, has contained no express requirement that use of the words "Silk Skin" be limited exclusively to identifying the corporate respondent as the source of the products offered for sale. One of the representative advertisements depicted in respondents' promotional matter relating to the mat service available in 1947 to dealers contains no suggestion that the great bulk of respondents' line of merchandise constitutes garments containing no silk or that respondents' garments contain any fiber other than silk. The mats referred to were adaptable to store use merely through insertion of the name of the store in which they are being offered for sale.

In the opinion of the Commission, the deception stemming from respondents' prior use of the product name "Silk Skin" and the manner

of their current use of the word "Silk" in the corporate name "Silk Skin, Inc." to designate garments containing no silk is not cured by the information relating to fiber content appearing in the advertising and on such garments. Silk has been used widely in the manufacture of women's corsets, girdles, and foundation garments. Silk garments are held in great esteem by the purchasing public and where, as in the circumstances here, the product name or corporate name suggests that the garments are composed of this fiber the purchaser may not be impelled to inspect the labeling of the garment to corroborate thereby the impressions necessarily engendered by prominent display of the word "Silk" in a product or corporate name. In instances in which the garments offered for sale contain no silk fiber, the labeling would not serve to amplify or explain the impressions engendered by the presence of the word "Silk" in such product name or business name, but may serve only as a confusing contradiction thereto. In considering the remedy to be applied here, the Commission is of the opinion, therefore, that only a prohibition against use of the word "silk" in any manner including the corporate name as a designation for, or in reference to, those of respondents' garments which are not comprised in part of silk, adequately will eliminate the deception which this word has the capacity and tendency to engender.

PAR. 9. It is urged by respondents that the advertising of respondent Silk Skin, Inc., complies with the Trade Practices Rules for the Silk Industry promulgated by the Commission on November 4, 1938. Rule 11 (*a*) of such rules contains an expression to the effect that it is an unfair trade practice to use the word "silk" as part of the trade or corporate name unless a substantial part of the business conducted by such user is devoted to silk or silk products, and that as to any merchandise of the business which is not composed wholly of silk, full and nondeceptive disclosure is made in immediate conjunction with such trade or corporate name of the fact that the merchandise advertised and sold is not silk but is composed of or contains other fibers. Rule 11 (*b*) states that it is an unfair trade practice to use the word "silk" in any trade-mark indicative of silk when the merchandise which bears such mark, or which is advertised and sold thereunder, is not in fact composed of silk, or to use said trade-mark, in any other manner, or under any other condition, which is misleading or deceptive.

It is not correct, as respondents contend, that the advertising of respondent Silk Skin, Inc., has complied with the Trade Practice Rules. This conclusion, in part, is based on the Commission's consideration of the advertising matter used by Silk Skin, Inc., offering

to dealers its mat service which contained the suggested advertising described hereinbefore in paragraph 4 (*b*).

In 1943, prior to the issuance of the amended complaint in this proceeding but during the time when this proceeding was pending, respondent Silk Skin, Inc., was organized by the same interests who theretofore had conducted the affairs of Amasia Importing Corp. It is asserted by respondents that the corporate name under consideration here was adopted in order to preserve what was deemed to be a valuable asset, namely, the product name "Silk Skin" and there is no dispute, therefore, that respondents' purpose was to perpetuate and continue use of the word "silk" in connection with the sale of garments theretofore so designated. The expressions contained in Rule 11 (*a*) afford no support for a conclusion that under the statute misrepresentation inhering in the use of deceptive trade-marks, referred to in Rule 11 (*b*), may be perpetuated through the medium of the subsequently adopted firm or corporate name.

Lacking as they do the force and effect of law, the prime objective of trade practice rules is to express the requirements of the statutes administered by the Commission and decisions in terms particularly addressed to the problems and practices of industry members. The amended complaint in this proceeding, therefore, charges that the practices alleged to have been engaged in are in violation of law, namely, the Federal Trade Commission Act, and the proceeding is not based on transgression of the Trade Practice Rules. Therefore, whether such part of respondents' business as relates to the offering for sale of garments actually containing silk constitutes a substantial part of the business of Silk Skin, Inc., is not being decided by the Commission and a decision in this respect is not necessary to determination of the issues presented under the pleadings.

The expressions contained in Rule 11 (*a*), moreover, serve merely to define one particular area in which the Commission has reason to believe that use of the word "silk" as part of a trade or corporate name is deceptive and in violation of the law. Obviously, these statements do not constitute a determination that in all other circumstances the use of such name is not in violation of the law, and where, as here, the use of the name is found to have the capacity and tendency to deceive, Rule 11 (*a*) presents no bar to Commission action intended to remove such capacity and tendency.

PAR. 10. The use by the respondents of the foregoing representations has had and now has the capacity and tendency to mislead and deceive a substantial portion of the consuming public with respect

to the constituent fibers of respondents' garments, and to cause a substantial portion of the public to purchase respondents' garments as a result of the erroneous and mistaken belief so engendered. Respondents' acts and practices have served and now serve also to place in the hands of dealers purchasing such merchandise from respondents for resale a means and instrumentality whereby they are enabled to mislead and deceive the public with respect to respondents' garments.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record including the amended complaint, the answers of respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner and the exceptions thereto, briefs filed in support of and in opposition to the amended complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent Amasia Importing Corp., a corporation, and respondent Silk Skin, Inc., a corporation, and said respondents' officers, agents, representatives, and employees, and respondents George Lacks and Harold G. Lacks, individually and as officers of Amasia Importing Corp. and Silk Skin, Inc., and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of wearing apparel not composed of silk, do forthwith cease and desist from:

Using the product name "Silk Skin" or the corporate name "Silk Skin, Inc.," or the word "silk" or any simulation thereof, either alone or with other words or as part of any product or corporate name; *provided, however*, That nothing herein shall be construed to prohibit use of such product name or corporate name or other word or words indicative of silk content in connection with the offering for sale, sale, or distribution, as aforesaid, of garments composed in substantial part

of silk and in part of another fiber or fibers if, whenever such terms or words appear, there are used in immediate conjunction therewith, in letters of equal conspicuousness, words truthfully describing such other fiber or fibers.

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

Syllabus

IN THE MATTER OF

ATLAS SUPPLY CO., STANDARD OIL CO. (OHIO), STANDARD OIL CO. (KENTUCKY), STANDARD OIL CO. OF CALIFORNIA, AND STANDARD OIL COS. (OF INDIANA AND NEW JERSEY), ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SUBSECS. (C) AND (F) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936, AND OF SEC. 5 OF AN ACT APPROVED SEPT. 26, 1914

Docket 5794. Complaint, July 10, 1950—Decision, July 19, 1951

Where a corporation through which, as their controlled intermediary, the Standard Oil companies of Ohio, Kentucky, California, Indiana, and New Jersey had engaged increasingly since 1930 in purchasing "TBA" products, namely, tires, batteries, and other automobile products and accessories; and in selling the same through a substantial percentage of all the service stations located throughout the United States—

(*a*) Received and accepted commissions, brokerages, or other compensation in lieu thereof on purchases of "TBA" products made through it by said oil companies in transactions in which the supply company acted as an intermediary subject to the control of the oil companies; and

Where said oil companies—

(*b*) Received and accepted in the form of dividends on their common stock in said supply company and in the form of services and facilities furnished by it in the marketing of their "TBA" products, and in various other ways, compensation which said supply company thus received and transmitted to them:

Held, That such acts and practices of said corporations in receiving and accepting commissions, brokerages, and other compensation or allowance, or discount in lieu thereof, as above set forth, violated the provisions of subsec. (c) of sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act; and

Where said supply company, in connection with the purchase of "TBA" products from sellers or vendors who were in competition with other sellers for its business—

(*a*) Knowingly induced and knowingly received and accepted discriminatory prices from some of such sellers or vendors which were lower than prices paid to the same "TBA" sellers for commodities of like grade and quality by other purchasers competing with the oil companies in their resale; and

Where said oil companies, in the purchase of certain of their requirements of such products through and from the supply company, in the resale of which they were in competition with distributors, wholesalers, jobbers, and others—

(*b*) Knowingly received and accepted discriminatory prices from some of such sellers or vendors which were lower than those paid to the same "TBA" sellers as aforesaid;

Effect of which discriminations in price and of the practices and activities above set forth in connection with said various companies' purchases of "TBA" products, might be and was substantially to lessen competition in the lines of commerce in which they were engaged, and to injure, destroy, or prevent competition between their suppliers who granted them lower prices and those suppliers who did not grant such discriminatory prices, and also to injure, destroy, and prevent competition between said companies and other marketers, including distributors, wholesalers, jobbers, and others, who did not receive said discriminatory prices:

Held, That such acts and practices of said various companies in knowingly inducing and receiving and knowingly accepting the discriminations in price as above set forth were in violation of the provisions of subsec. (f) of sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act; and

Where the aforesaid oil companies, which since 1930 either directly or through their wholly owned subsidiaries owned all the common stock of said supply company, and operated the same in connection with their aforesaid purchases of "TBA" products (sales of which by them grew from 1930 to 1949 to about 10 percent of the total replacement sales of such products in the United States)—

Agreed and combined among themselves, through their uninterrupted ownership, control, and operation of said "Supply Company" since 1930 and its use as an intermediary in the purchase of "TBA" products, to utilize the influence of their combined purchasing power in jointly buying said products, and thereby to purchase the same at illegally discriminatory prices; to receive illegal commissions, brokerages, or other compensation in connection with purchases of said products; and to obtain other preferential treatment from sellers or vendors which was preferential to that allowed, afforded, or made available by such sellers to competitors of said various companies;

Effects of which practices and activities, under the circumstances set forth, were to—

1. Injure, lessen, and prevent competition between them and other oil companies and distributors, wholesalers, and jobbers of "TBA" products in the purchase and resale thereof;

2. Eliminate competition between respondent "Oil Companies" in the purchase of "TBA" products through respondent "Supply Company";

3. Foreclose a large market to those manufacturers and vendors of the aforesaid products who refused to grant illegal discriminatory prices or to pay illegal commissions, brokerage, or other compensation to respondents; and

4. Increase substantially the size, power, and market control of respondents in the purchase and resale of "TBA" products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, and had a dangerous tendency to hinder, lessen, and restrain competition in the purchase and resale of "TBA" products in commerce; and to create in respondents a monopoly in the purchase, sale, and distribution thereof; and constituted unfair methods of competition in commerce.

Before *Mr. Everett F. Haycraft*, trial examiner.

Mr. Earl W. Kintner, *Mr. J. Wallace Adair*, *Mr. L. E. Creel, Jr.*, and *Mr. James I. Rooney* for the Commission.

Mr. William W. Nottingham, of New York City, and *Covington & Burling*, of Washington, D. C., for Atlas Supply Co., and along with—

McAfee, Grossman, Taplin, Hanning, Newcomer & Hazlett, of Cleveland, Ohio, for Standard Oil Co. (Ohio);

Middleton, Seelbach, Wolford, Willis & Cochran, of Louisville, Ky., for Standard Oil Co. (Kentucky);

Pillsbury, Madison & Sutro, of San Francisco, Calif., for Standard Oil Co. of California;

Kirkland, Fleming, Green, Martin & Ellis and *Mr. Thomas E. Sunderland* and *Mr. Albert L. Green*, of Chicago, Ill., for Standard Oil Co. (Indiana); and

Davis, Polk, Wardwell, Sunderland & Kiendl, of New York City, for Standard Oil Co. (New Jersey).

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, as amended by the Robinson-Patman Act, and by virtue of the authority vested in it by said acts, the Federal Trade Commission having reason to believe that the parties named in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated the provisions of subsections (c) and (f) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U. S. C., title 15, sec. 13), and section 5 of the Federal Trade Commission Act (U. S. C., title 15, sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

COUNT I

Charging violation of section 2 (c) of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. Each of the following-named respondents is a corporation, organized, existing, and doing business under the laws of the State and with its principal office and place of business located as hereinafter set forth:

Name	State of incorporation	Principal office and place of business
Atlas Supply Co	Delaware	744 Broad St., Newark, N. J.
Standard Oil Co. (Ohio)	Ohio	Midland Bank Bldg., Cleveland, Ohio.
Standard Oil Co. (Kentucky)	Kentucky	Starks Bldg., 4th and Walnut Sts., Louisville, Ky.
Standard Oil Co. of California	Delaware	Standard Oil Bldg., San Francisco, Calif.
Standard Oil Co. (Indiana)	Indiana	910 South Michigan Ave., Chicago, Ill.
Standard Oil Co. (New Jersey)	New Jersey	30 Rockefeller Plaza, New York 20, N. Y.

Respondent, Atlas Supply Co., is hereinafter referred to as the "Supply Company." The other above-named respondents, when referred to collectively hereinafter, will be referred to as the "Standard Oil companies."

PAR. 2. The "Standard Oil companies," either directly or through their wholly owned subsidiaries, are now, and for many years have been, engaged in the business of producing, refining, and selling petroleum products. Beginning in 1929, and with increasing emphasis since that date, they have engaged in the business of purchasing and selling tires, batteries, and other automobile parts and accessories, which products are generally referred to in the trade as "TBA" products and will sometimes hereinafter be referred to as "TBA" products. The sale of "TBA" products now constitutes a large and profitable portion of their business.

The "Standard Oil companies," respectively, sell their petroleum products and resell "TBA" products to or through service stations operated by them or by persons, firms, and corporations whose buying, selling, and operating policies the "Standard Oil companies" are able to greatly influence or control. These said service stations constitute a substantial percentage of the total number of service stations in the United States. The influence or control of the "Standard Oil companies" over these service stations was acquired through ownership, leases, or subleases of the service stations, leasing of pumps and fixtures, dealer contracts, agreements, promotional and marketing assistance, and many other factors.

PAR. 3. The "Standard Oil companies" purchase "TBA" products through the "Supply Company" and have been doing so continuously since its organization and incorporation which was effected, directly or indirectly, by the "Standard Oil companies" on February 27, 1929. All of the common stock in the "Supply Company" is now, and since the time of its organization has been, owned in equal amounts of 100,000 shares each by the "Standard Oil companies" either directly or through their wholly owned subsidiaries. The holders of the common stock have the sole voting power. Part of the net profits or net earnings of the "Supply Company" have been paid to the "Standard Oil companies" as dividends on its common stock. Such dividends have not been paid on the number of shares of common stock owned by each of the "Standard Oil companies," but the net profits or earnings on each class of products handled have been divided among the "Standard Oil companies," respectively, in proportion to their purchases of "TBA" products of that class.

The "Supply Company" in each of the transactions hereinafter referred to acted as the agent, representative, or intermediary acting in fact for, or in behalf of, and subject to the control of, the "Standard Oil companies."

PAR. 4. In the course and conduct of said business since 1929, said purchases of "TBA" products have been made continuously from vendors located in the several States of the United States; and respondents have caused said products so purchased to be transported from said States to destinations in other States and the District of Columbia in a regular current and flow of commerce.

PAR. 5. In the course of said business in commerce since June 19, 1936, the "Standard Oil companies" have purchased certain of their requirements of "TBA" products through the "Supply Company" from "TBA" vendors, some of whom paid the "Supply Company" commissions, brokerage fees, or other compensations on said purchases.

The "Supply Company" received and accepted said compensations and transmitted and paid them to, and they were received and accepted by the "Standard Oil companies" in the form of dividends on the common stock of the "Supply Company," and in the form of services and facilities furnished them by the "Supply Company" in the marketing of their "TBA" products and in various other ways.

In all of the aforesaid transactions where the "Supply Company" received commissions, brokerage fees, or other compensations, it acted as agent, representative, or other intermediary therein acting in fact for or in behalf, or subject to the direct or indirect control of the "Standard Oil companies," and in some of said transactions it also purported to act as agent of the vendor.

Among the transactions in which the "Supply Company" received and accepted said valuable considerations were those made under agreements entered into by the "Supply Company" with Westinghouse Electric Corp. and General Electric Co. In said transactions the "Supply Company" agreed to act as sales agent for each of these two companies in the sale and distribution of electric lamps and related items, and the said two companies agreed to pay and paid the "Supply Company" a commission on purchases thereof made through it by the "Standard Oil companies."

PAR. 6. The foregoing acts and practices of the respondents, and each of them, in receiving and accepting commissions, brokerages, or other compensation or allowances or discounts in lieu thereof, in the manner and form aforesaid, are in violation of the provision of subsection (c) of section 2 of the Clayton Act, as amended.

COUNT II

Charging violation of section 2 (f) of the Clayton Act, as amended, the Commission alleges:

PAR. 7. Paragraphs 1 to 4, inclusive, of count I are hereby repeated and made a part of this charge as fully and with the same effect as though here again set forth in full.

PAR. 8. In the course of said business in commerce since June 19, 1936, the "Standard Oil companies" have purchased certain of their requirements of "TBA" products through the "Supply Company" from "TBA" vendors, in the resale of which the Standard Oil companies were in competition with distributors, wholesalers, jobbers, and others, except to the extent that this competition has been lessened or eliminated by the methods, practices, and policies of respondents described herein. In certain of these purchases the respondents have knowingly induced or knowingly received discriminatory prices from certain "TBA" vendors which were lower than prices paid to the same "TBA" vendors for commodities of like grade and quality by other purchasers competing with the "Standard Oil companies" in their resale.

In each of the purchases referred to in this paragraph made by the "Standard Oil companies," a sale was made by a "TBA" vendor which transferred title to the products to the "Supply Company" and said products, in turn, were resold and title to them was transferred by the "Supply Company" to one of the "Standard Oil companies." At all times the "Supply Company" has been wholly owned and controlled by the "Standard Oil companies," and in each of these transactions the "Supply Company" was an intermediary acting for, or in behalf of, and subject to, the control of the "Standard Oil companies."

Among the transactions in which respondents have knowingly induced or knowingly received discriminatory prices from their vendors are: (1) Purchases of tires and tubes from the United States Rubber Company at cost plus 6 percent, while at the same time other competing distributors who purchased tires and tubes from United States Rubber Company, directly or through its wholly owned subsidiary were required to and did pay higher prices for tires and tubes of like grade and quality; (2) purchases of batteries from Auto-Lite Battery Corp. at discriminatory prices which were approximately 25 percent lower than the prices paid by competing distributors to Auto-Lite Battery Corp. for batteries of like grade and quality; and (3) purchases of fan belts and radiator hose from Raybestos-Manhattan, Inc., at discriminatory prices which were approximately 28 percent lower

than the prices paid by competing distributors to Raybestos-Manhattan, Inc., for products of like grade and quality.

PAR. 9. The effect of said discriminations in price, knowingly induced or received by respondents, as above alleged, may be substantially to lessen competition with or tend to create a monopoly in the "Standard Oil companies," in the line of commerce in which the "Standard Oil companies" are engaged, or to injure, destroy or prevent competition with the "Standard Oil companies" or with their customers.

PAR. 10. The foregoing acts and practices of the respondents, and each of them, in knowingly inducing or in knowingly receiving the aforesaid discriminations in price are in violation of the provisions of subsection (f) of section 2 of the Clayton Act, as amended.

COUNT III

Charging violation of section 5 of the Federal Trade Commission Act, the Commission alleges:

PAR. 11. Paragraph 1 to 10, inclusive, of counts I and II are hereby repeated and made a part of this charge as fully and with the same effect as though here again set forth in full.

PAR. 12. Respondent, the Standard Oil Co. (New Jersey), prior to December 1, 1911, owned substantially all of the capital stock of respondent Standard Oil Co. (Kentucky), respondent Standard Oil Co. (Indiana), respondent Standard Oil Co. (Ohio), and Standard Oil Co. (California). All of the assets and liabilities of the Standard Oil Co. (California) were later acquired by respondent Standard Oil Co. of California (incorporated in Delaware on January 27, 1926).

Respondent Standard Oil Co. (New Jersey) and its subsidiaries were held by the Circuit Court of the United States for the Eastern District of Missouri to have illegally monopolized the production and sale of petroleum products. Acting under the court's decree of December 1, 1911, respondent Standard Oil Co. (New Jersey) distributed to its stockholders all of its stock in all of the other above-named Standard Oil companies and thereby withdrew from the direct control and direction of these companies.

PAR. 13. Beginning in 1929 and continuing to the present date, all of these respondents combined to monopolize trade in the purchase, sale, and distribution of "TBA" products in interstate commerce. The respondents, as parties to this unlawful combination, have agreed and conspired among themselves to purchase the said commodities at illegally discriminatory prices and to receive illegal commissions, brokerage, or other compensation in connection with purchases of the

said commodities. The effects of this combination and conspiracy are to hinder, lessen, frustrate, suppress, restrain, and eliminate competition and tend to create a monopoly in the sale and distribution of these commodities in interstate commerce.

PAR. 14. On February 27, 1929, the "Standard Oil companies," acting in concert, either directly or indirectly, organized the "Supply Company." This company has, at all times, been managed, controlled, and operated by the "Standard Oil companies" to serve as a medium or instrumentality by, through, or in conjunction with which said "Standard Oil Companies" exert the influence of their combined purchasing power on their vendors of "TBA" products.

Prior to 1929 the percentage of total sales of tires, batteries, and other automobile parts and accessories sold in the United States for replacement by the "Standard Oil companies" was negligible. In the 20 years from 1929 to 1949, their percentage of total sales has grown to where it now constitutes a substantial portion of the total replacement sales of these commodities made in the United States.

Among these commodities in which respondents' percentage of the total replacement sales in the United States has tremendously increased are tires, tubes, batteries, fan belts, radiator hose, electric lamps, and spark plugs. The "Standard Oil companies" purchasing collectively through the "Supply Company" are at the present time the largest or one of the largest buying units purchasing these commodities for resale in the United States. Their sales for each of these items purchased through the "Supply Company" has increased from a negligible amount prior to 1929 to from about 5 percent to 10 percent or more of the total replacement sales made in the United States.

PAR. 15. Among the acts, methods, practices, and policies engaged in by respondents pursuant to and in furtherance of their combination and conspiracy which have resulted in this tendency toward monopoly and restraint of trade and commerce, hereinabove described, respondents have:

(1) Directed the attention of their vendors to the purchasing power possessed by them acting in concert and, by reason of such, have demanded and have received discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale from their vendors on their individual purchases which were not offered or granted by said vendors on purchases by others of commodities of like grade and quality;

(2) Replaced those vendors which would not accede to such demands with vendors which did grant the said discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale;

(3) Entered into contracts with their vendors whereby said vendors agreed not to sell to respondents' competitors at prices lower than those charged respondents.

(4) Applied part of the savings secured by the aforesaid illegal purchasing methods to finance a very large and effective merchandising and sales promotional organization;

(5) Passed on to the "Standard Oil companies," in the form of dividends on the common stock of the "Supply Company," rebates on their purchases of the said commodities through the "Supply Company";

(6) Agreed between, and among themselves not to compete in the resale of commodities purchased through the "Supply Company," and the "Standard Oil companies," with few exceptions, carried out a planned common course of action whereby each sold commodities purchased through the "Supply Company" in mutually exclusive areas, although one or more of the "Standard Oil companies," or their subsidiaries, do compete in the sale of like commodities purchased otherwise than through the "Supply Company" in many of the States of the United States.

PAR. 16. The effects of the adoption and use by respondents of the practices and activities hereinabove alleged are that they have:

(1) Tended to create a monopolistic power in the purchase and resale of "TBA" products;

(2) Injured, lessened, prevented, and destroyed competition between respondents and other oil companies and distributors, wholesalers, and jobbers of "TBA" products in the resale of the aforesaid commodities;

(3) Eliminated competition between themselves in the resale of aforesaid commodities purchased through the "Supply Company";

(4) Foreclosed a large market to those manufacturers and vendors of the aforesaid commodities who refuse to grant illegally discriminatory prices or to pay illegal commissions, brokerage, or other compensation to the respondents;

(5) Increased substantially the size, power, and market control of respondents.

PAR. 17. The acts, practices, methods, agreements, combination, and conspiracy of the respondents, as hereinabove alleged, are all to the prejudice of the public, have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the purchase and sale of "TBA" products in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably and have

restrained unreasonably such commerce in said products; have a dangerous tendency to create in respondents a monopoly in the purchase, sale, and distribution of said products, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

Commissioner Ayres not participating.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated July 19, 1951, the initial decision in the instant matter of trial examiner Everett F. Haycraft, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EVERETT F. HAYCRAFT, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act (U. S. C. title 15, sec. 45) and the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), and by virtue of the authority vested in it by said acts, the Federal Trade Commission on the 10th day of July 1950, issued and subsequently served its complaint in this proceeding upon respondents Atlas Supply Co., Standard Oil Co. (Ohio), Standard Oil Co. (Kentucky), Standard Oil Co. of California, Standard Oil Co. (Indiana), and Standard Oil Co. (New Jersey), corporations, their officers and directors, charging them with violation of subsections (c) and (f) of section 2 of the said Clayton Act as amended, and section 5 of the said Federal Trade Commission Act. After the filing of answers to the complaint in November 1950, negotiations were conducted between counsel in support of the complaint and counsel for respondents for a stipulation of the facts, or other disposition of the case, without formal hearings. On April 25, 1951, counsel for respondents and counsel in support of the complaint filed with the trial examiner joint motions for initial decision on the pleadings which would allow counsel for respondents to be permitted to file substitute answers in lieu of the original answers, which, solely for the purpose of disposing of the proceeding, admitted the allegations of fact set forth in the complaint which they deemed necessary for the disposition of all the issues in the case; waived hearings and consented that the trial examiner and the Commission may, without trial, without the taking of evidence, and without other intervening procedure, make and enter

findings as to the facts from the pleadings herein, including inferences which may be drawn therefrom and conclusions based thereon and issue and serve upon respondents the order set forth as appendices to the substitute answers, it being understood that in the event the trial examiner denies said motions, this proceeding will revert to its former status. Counsel in support of the complaint and counsel for respondents also filed, in connection with said motions, supplemental memoranda explanatory thereof. On May 15, 1951, the trial examiner entered an order granting the said motions for initial decision on the pleadings, the filing of substitute answers and closing the record before the trial examiner. Thereafter the proceeding regularly came on for final consideration by said trial examiner on the complaint, the substitute answers thereto, all intervening procedure having been waived, and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Each of the following named respondents is a corporation, organized, existing and doing business under the laws of the State and with principal office and place of business or principal business office as hereinafter set forth:

Name	State of incorporation	Principal office and place of business or principal business office
Atlas Supply Co	Delaware	744 Broad St., Newark, N. J.
The Standard Oil Co., an Ohio corporation.	Ohio	Midland Bldg., Cleveland, Ohio.
Standard Oil Co. (Kentucky)	Kentucky	Starks Bldg., 4th and Walnut Sts., Louisville, Ky.
Standard Oil Co. of California	Delaware	Standard Oil Bldg., San Francisco, Calif.
Standard Oil Co., an Indiana corporation.	Indiana	910 South Michigan Ave., Chicago, Ill.
Standard Oil Co. (New Jersey)	New Jersey	30 Rockefeller Plaza, New York 20, N. Y.

Respondent Atlas Supply Co. is sometimes hereinafter referred to as the "Supply Company" and the other above-named respondents. when referred to collectively hereinafter, will sometimes be referred to as the "Oil Companies."

PAR. 2. The "Oil companies," either directly or through their wholly owned subsidiaries, are now, and for many years have been, engaged in the business of selling petroleum products. Beginning in 1930, and with increasing emphasis since that date, said "Oil companies" have engaged in the business of purchasing and selling tires, batteries, and other automobile parts and accessories, which products are generally referred to in the trade, and will sometimes

hereinafter be referred to, as "TBA" products, and the respective "Oil companies" have sold said petroleum and "TBA" products to or through a substantial percentage of the total number of service stations located throughout the United States.

PAR. 3. The "Oil companies" purchase "TBA" products through and from the "Supply Company" and have been doing so continuously since 1930. All of the common stock of the "Supply Company" is now and since 1930 has been owned in equal amounts by the "Oil companies" either directly or through their wholly owned subsidiaries. As holders of this common stock, the aforesaid "Oil companies" have the sole voting power and control of the "Supply Company." In the exercise of this power the "Oil companies" have paid out part of the net profits or earnings of the "Supply Company" to themselves as dividends on this common stock. With certain exceptions, these dividends have not been based on the number of shares of common stock owned by each of the "Oil companies" but have been based upon the net profits or earnings of the "Supply Company" on each class of products handled and have been divided among the "Oil companies" respectively in proportion to their purchases of "TBA" products of that class from the "Supply Company."

The "Supply Company" in the purchase of "TBA" products now acts and has acted since 1930 as an intermediary subject to the control of the "Oil companies," this control being in part exercised through the exercise of said voting power.

PAR. 4. In the course and conduct of its business since 1930 the "Supply Company" has made purchases of "TBA" products from sellers or vendors located in the several States of the United States and has caused said products so purchased to be transported from said States to destinations in other States and the District of Columbia in a regular current and flow of commerce, and certain of the purchases of "TBA" products made by each of the "Oil companies" have been made through and from the "Supply Company" in such interstate commerce.

PAR. 5. In the course of said business and commerce since June 19, 1936, the "Oil companies" have purchased "TBA" products through the "Supply Company" from "TBA" sellers or vendors, some of whom paid the "Supply Company" commissions, brokerages, or other compensation in lieu thereof on said purchases. In all of these purchase transactions the "Supply Company" acted as an intermediary subject to the control of the "Oil companies."

The "Supply Company" since June 19, 1936, received and accepted said compensations and transmitted and paid them to, and they were received and accepted by, the "Oil companies" in the form of divi-

dends on the common stock of the "Supply company" and in the form of services and facilities furnished them by the "Supply Company" in the marketing of their "TBA" products and in various other ways.

PAR. 6. In the course of said business and commerce since June 19, 1936, the "Oil companies" have purchased certain of their requirements of "TBA" products through and from the "Supply Company" in the resale of which the respondents were in competition with distributors, wholesalers, jobbers and others. The "Supply Company" has purchased "TBA" products from sellers or vendors competing with other sellers for its business and in certain of these purchases the "Supply Company" has knowingly induced and knowingly received and accepted, and in certain purchases through and from the "Supply Company" the "Oil companies" have knowingly received and accepted discriminatory prices from some "TBA" sellers or vendors which were lower than prices paid to the same "TBA" sellers for commodities of like grade and quality by other purchasers competing with the "Oil companies" in their resale.

PAR. 7. The effect of the discriminations in price knowingly induced, received or accepted by the respondents and of the practices and activities hereinbefore found in connection with their purchases of "TBA" products, may be and is substantially to lessen competition in the lines of commerce in which the respondents are engaged and to injure, destroy, or prevent competition between respondents' suppliers of the aforesaid products who grant respondents lower prices on the one hand and those suppliers who do not grant such discriminatory prices on the other, and also to injure, destroy, or prevent competition between respondents and other marketers, including distributors, wholesalers, jobbers, and others who do not receive the said discriminatory prices.

PAR. 8. Respondent Standard Oil Co. (New Jersey), prior to December 1, 1911, owned substantially all the capital stock of respondent Standard Oil Co. (Kentucky), respondent Standard Oil Co. (Indiana), respondent Standard Oil Co. (Ohio), and Standard Oil Co. (California). All of the assets and liabilities of the Standard Oil Co. (California) were later acquired by respondent Standard Oil Co. of California (incorporated in Delaware on January 27, 1926).

Respondent Standard Oil Co. (New Jersey) and its subsidiaries were held by the Circuit Court of the United States for the Eastern District of Missouri to have illegally monopolized the production and sale of petroleum products. (The opinion of the court is recorded in 173 Federal Reporter at p. 177.) Acting under the court's decree of December 1, 1911, respondent Standard Oil Co. (New Jersey) distributed to its stockholders all of its stock in all of the other above-named

Standard Oil companies and thereby withdrew from the control and direction of said companies. Thereafter respondent Standard Oil Co. (New Jersey) has at no time possessed or exercised any control or direction over the above-named Standard Oil companies.

PAR. 9. The "Supply Company" and the "Oil companies" on purchases through and from the "Supply Company" have received and accepted commissions, brokerages, and other compensation in lieu thereof in connection with the purchase of "TBA" products as hereinbefore found in paragraph 5; have purchased "TBA" products at discriminatory prices as hereinbefore found in paragraphs 7 and 8; and have obtained other preferential treatment from "TBA" sellers which was preferential to that allowed, afforded, or made available by such sellers to competitors of the respondents.

Since 1930 all the common stock of the "Supply Company" has been owned in equal amounts by the "Oil companies" either directly or through their wholly owned subsidiaries. In connection with the aforesaid purchases of "TBA" products through and from the "Supply Company," the "Supply Company" has been operated by and subject to the control of the "Oil companies" whereby the "Oil companies" have utilized the influence of their combined purchasing power on "TBA" sellers in the purchase of "TBA" products.

PAR. 10. The respondents have agreed and combined among themselves, through their uninterrupted ownership, control and operation of the "Supply Company" since 1930 and its use as an intermediary in the purchase of "TBA" products, to utilize the influence of their combined purchasing power in jointly buying "TBA" products and thereby to purchase the said products at illegally discriminatory prices; to receive illegal commissions, brokerages, or other compensation in connection with purchases of the said products, and to obtain other preferential treatment from sellers or vendors which was preferential to that allowed, afforded, or made available by such sellers to competitors of the respondents.

PAR. 11. Prior to 1930 the percentage of total sales of "TBA" products sold in the United States for replacement by the Oil companies was negligible. In the period from 1930 to 1949 the combined percentage of total sales of said Oil companies has grown to approximately 10 percent of the total replacement sales of "TBA" products in the United States.

PAR. 12. The effects of the adoption and use by respondents of the practices and activities hereinbefore found in paragraphs 8 through 11 hereof are as follows:

1. Injured, lessened, and prevented competition between respondents and other oil companies and distributors, wholesalers, and jobbers of "TBA" products in the purchase and resale thereof.

2. Eliminated competition between the "Oil companies" in the purchase of "TBA" products through the "Supply Company."

3. Foreclosed a large market to those manufacturers and vendors of the aforesaid products who refused to grant illegally discriminatory prices or to pay illegal commissions, brokerages, or other compensation to the respondents.

4. Increased substantially the size, power, and market control of respondents in purchase and resale of "TBA" products.

CONCLUSION

The aforesaid acts and practices of respondents in receiving and accepting commissions, brokerages, and other compensation or allowance or discount in lieu thereof in a manner and form as found in paragraph 5 herein are in violation of the provisions of subsection (*c*) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

The aforesaid acts and practices of the said respondents in knowingly inducing and receiving and knowingly accepting the discriminations in price as found in paragraphs 6 and 7 herein are in violation of the provisions of subsection (f) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

The aforesaid acts and practices of respondents as hereinbefore found in paragraphs 8, 9, 10, and 11 herein are all to the prejudice of the public and have a dangerous tendency to hinder, lessen, and restrain competition in the purchase and resale of "TBA" products in commerce within the intent and meaning of the Federal Trade Commission Act; and a tendency to create in respondents a monopoly in the purchase, sale, and distribution of "TBA" products, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, Under the authority vested in the Federal Trade Commission by section 2 (*c*) and section 11 of the Clayton Act, as amended, that the respondent, Atlas Supply Co., a corporation, its officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase or sale of automobile tires, tubes, batteries or other automobile parts or

accessories, in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

(*a*) Receiving or accepting, directly or indirectly, from any seller anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon any purchase in connection with which the respondent, Atlas Supply Co., is the buyer or acts for, or in behalf of, or subject to the direct or indirect control of the buyer.

(*b*) Transmitting, paying, or granting, directly or indirectly, in the form of money, dividends, or credits or in the form of services or benefits provided or furnished, or otherwise to any buyer any commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, received on such buyer's purchases.

It is further ordered, Under the authority vested in the Federal Trade Commission by section 2 (*c*) and section 11 of the Clayton Act, as amended, that the respondents, Standard Oil Co. (Ohio), Standard Oil Co. (Kentucky), Standard Oil Co. of California, Standard Oil Co. (Indiana), and Standard Oil Co. (New Jersey), and their respective officers, directors, agents, representatives, and employees, when acting directly or through any intermediary (including Atlas Supply Co.) in connection with the purchase of automobile tires, tubes, batteries, or other automobile parts or accessories, in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting from any seller, or from any agent, representative, or other intermediary acting for, on in behalf of, or subject to the direct or indirect control of said respondents, in the form of money, dividends or credits or in the form of services or benefits provided, or furnished, or otherwise, any commission, brokerage, or other compensation, or allowance or discount in lieu thereof, upon purchases for their own accounts.

It is further ordered, Under the authority vested in the Federal Trade Commission by section 2 (f) and section 11 of the Clayton Act, as amended, that the respondent, Atlas Supply Co., a corporation, its officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of automobile tires, tubes, batteries, or other automobile parts or accessories, in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Knowingly inducing or knowingly receiving or accepting any discrimination in the price of such products, by directly or indirectly inducing, receiving, or accepting a net price from any seller known by respondent or its representatives to be below the net price at which

said products of like grade and quality are being sold by such seller to other customers, where the seller is competing with any other seller for respondent's business, or where respondent is competing with other customers of the seller: *Provided, however*, That the foregoing shall not be construed to preclude the respondent from defending any alleged violation of this order by showing that a lower net price received or accepted from any seller makes only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are by such seller sold or delivered to respondent, and when differentials are thus shown by respondent to be so justified they are not to be construed as in violation of this order; and *Provided further*, That nothing herein contained shall prevent respondent from rebutting a prima facie case of alleged violation of this order based upon discriminations which may be practiced subsequent to the date of this order by showing that its seller's lower price or the furnishing of services or facilities to respondent was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions, or other terms and conditions of sale by which net prices are effected.

It is further ordered, Under the authority vested in the Federal Trade Commission by section 2 (f) and section 11 of the Clayton Act, as amended, that the respondents, Standard Oil Co. (Ohio), Standard Oil Co. (Kentucky), Standard Oil Co. of California, Standard Oil Co. (Indiana), and Standard Oil Co. (New Jersey), corporations, and their respective officers, directors, agents, representatives, and employees, in connection with the purchase of automobile tires, tubes, batteries, or other automobile parts or accessories from or through any medium (including Atlas Supply Co.) which is owned in any degree or controlled by one or more of said respondent Standard Oil Cos., in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Knowingly inducing or knowingly receiving or accepting any discrimination in the price of such products, by directly or indirectly inducing, receiving, or accepting a net price from any seller known by the respondent or its representatives, who so induces, receives, or accepts such discrimination in price, to be below the net price at which said products of like grade and quality are being sold by such seller to other customers, where the seller is competing with any other seller for said respondent's business, or where said respondent is competing

with other customers of the seller: *Provided, however*, That the foregoing shall not be construed to preclude the said respondent from defending any alleged violation of this order by showing that a lower net price received or accepted from any seller makes only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are by such seller sold or delivered to said respondent, and when differentials are thus shown by said respondent to be so justified they are not to be construed as in violation of this order; and *Provided further*, That nothing herein contained shall prevent said respondent from rebutting a prima facie case of alleged violation of this order based upon discriminations which may be practiced subsequent to the date of this order by showing that its seller's lower price or the furnishing of services or facilities to such respondent was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions or other terms and conditions of sale by which net prices are effected.

It is further ordered, Under the authority vested in the Federal Trade Commission by the Federal Trade Commission Act, that respondents, Atlas Supply Co., Standard Oil Co. (Ohio), Standard Oil Co. (Kentucky), Standard Oil Co. of California, Standard Oil Co. (Indiana), and Standard Oil Co. (New Jersey), corporations, their officers, agents, representatives, and employees, in connection with the purchase of automobile tires, tubes, batteries or other automobile parts or accessories in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between any two or more of said respondents to do or perform any of the following things:

Exerting the influence of their combined purchasing power, directly or indirectly, in jointly buying said products so as to obtain any price, discount, rebate, allowance or any other treatment from a seller which is preferential to that allowed, afforded or made available by such seller to competitors of the respondents or any of them.

It is further ordered, That the provisions set forth in the last foregoing paragraph shall become effective on and after 12 months from the date this order is issued.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of July 19, 1951].

IN THE MATTER OF

ARNOLD A. SALTZMAN AND IRVING SALTZMAN TRADING AS PREMIER KNITTING COMPANY

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

Docket 4659. Complaint, Dec. 15, 1941—Decision, July 20, 1951

The term "Shetland" has long been applied to a particular type of wool fiber taken from the fleece of Shetland sheep raised on the Shetland Islands or on the adjacent mainland of Scotland, and has long been well and favorably known to the purchasing public, and, when used to designate or describe a product made of yarns having the general appearance of wool fibers, is understood by it as denoting a product made entirely from the fleece of the aforesaid sheep.

The words "Angora Wool" have long been applied to particular types of wool fiber taken from the hair of the Angora goat and are well and favorably known to the purchasing public.

The term "Gora" is a contraction of "Angora" and, even though combined with the coined word "Kittn," implies to the purchasing public that products so labeled and designated are made of yarns composed entirely of the hair of the Angora goat or its young.

Where two individuals engaged in the interstate sale and distribution of sweaters—

(a) Made use of the term "Imported Shetland" on labels of certain sweaters which were knitted from yarn spun of wool from African Merino sheep; and

(b) Made use of the trade name "Kittn-Gora" on the labels of sweaters knitted from yarn composed of 50 percent lambs wool and 50 percent hair of young Angora goats;

With tendency and capacity to mislead and deceive a substantial portion of the public with respect to their said products and thereby cause its purchase thereof:

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

As respects respondents' contention that the allegations of the complaint as to their use of the term "Imported Shetland" should be dismissed because the yarn concerned was purchased by them from a reputable company which so represented it, and also because they discontinued such markings in 1942:

The Commission was of the opinion from the facts of record that because of the appearance and price of the yarn respondents knew or should have known that it was not made of genuine Shetland wool; and,

It appearing further that respondents believed that the term might properly be applied to wool of that type, even though the sheep were raised in other localities, and that they discontinued the use of the term only after the issuance of the complaint, and so as to comply with the Commission's interpretation of the term as there shown:

The Commission was of the opinion that there was not sufficient assurance that respondents would not reinstitute the practice if the allegations of the complaint relating thereto were dismissed.

As regards the charge that respondents represented through use of the trade name "Premier Knitting Company" that they were the owners of and conducted a factory in which their products were manufactured; that they did not own, operate or control the factory; and that members of the purchasing public prefer to buy merchandise directly from the manufacturer in the belief that by doing so a more uniform line of goods, superior quality, lower price and other advantages can be obtained;

It appearing that while they did not own such a mill, they did control completely the manufacture of their products, which were made to rigid specifications under their own supervision; that they furnished the raw materials, set the machines to produce the style of garment desired, and actually employed and paid the operators of the machines; that under agreements with the owner of the mills the entire output of the machines thus operated belonged to respondents upon their payment of a specified amount per piece knitted; and that they represented that they were manufacturers only through their use of said trade name:

The Commission was of the opinion that they exercised sufficient control over the knitting of their products to occupy the same relationship to their purchasers as respects their ability to furnish uniformity of quality in their products as they would if they owned a knitting mill; that the record did not show that through their use of said trade name or otherwise they represented that a lower price could be obtained from them because they were manufacturers; and,

Accordingly, was of the opinion and found that the allegations of the complaint with respect to the unfair and deceptive nature of their use of the name "Premier Knitting Company" were not sustained by the greater weight of the evidence.

Before *Mr. John W. Addison*, trial examiner.
Mr. R. A. McOuat and *Mr. Jesse D. Kash* for the Commission.
Rothstein & Korzenik, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Arnold A. Saltzman and Irving Saltzman, individually and trading as Premier Knitting Co. have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondents, Arnold A. Saltzman and Irving Saltzman, are individuals trading as Premier Knitting Co., with their principal place of business located at 1410 Broadway in the city of New York, State of New York.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of various kinds and types of sweaters. Respondents cause their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in their said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the purchase of their said products, the respondents have engaged in the practice of falsely representing the constituent fiber or material of which their products are made, and the nature of their business, such false representations being made by means of statements appearing on labels attached to their said products and in other printed and written material which they have distributed among customers and prospective customers located in the various States of the United States and in the District of Columbia.

Typical of the aforesaid practices is the use by the respondents of the words "Imported Shetland" on labels attached to certain of their sweaters, which sweaters are not made of yarns composed entirely of wool fibers taken from the fleece of Shetland sheep, but, on the contrary, contain only approximately 5 percent of Shetland wool and approximately 95 percent of other wools.

The word "Shetland" has long been applied to a particular type of wool fiber taken from the fleece of Shetland sheep raised on the Shetland Islands or on the adjacent mainland of Scotland and has for a long time been well favorably known to the purchasing public. The word "Shetland," when used to designate or describe a product made of yarns having the general appearance of wool fibers, is understood by the purchasing public as denoting a product made entirely from the fleece of the aforesaid Shetland sheep.

A further example of respondents' practices is the use of the words "Kittn-Gora" on labels attached to certain of their sweaters, which sweaters are not made of yarns composed of wool fibers taken from the hair of the Angora goat, but, on the contrary, are composed of rabbit hair and wool other than Angora.

The term "Gora" is a contraction of "Angora" and even though combined with the coined word "Kittn" implies that the sweaters so labeled and designated are made of yarn composed entirely of the hair of the Angora goat. The word "Angora" has long been applied to a particular type of wool fiber taken from the hair of the Angora

goat and has for a long time been well and favorably known to the purchasing public. When such term, or a simulation or contraction thereof, is used to designate or describe a product made of yarns having the appearance of wool fibers, such term is understood by the purchasing public as denoting a product made entirely from the hair of the Angora goat.

PAR. 4. The respondents have also misrepresented the nature of their business by using the trade name "Premier Knitting Company" on their letterheads, thereby representing that they are the owners of and conduct a factory in which their said sweaters are manufactured. In truth and in fact, respondents do not own, operate or control, a plant or factory for the manufacture of their products but their said sweaters are knitted for them by independent contractors.

PAR. 5. Members of the purchasing public have a preference for buying merchandise, including the products sold by respondents, directly from the manufacturer thereof, believing that by so doing, a more uniform line of goods, superior quality, lower prices, and other advantages can be obtained.

PAR. 6. The use by the respondents of the foregoing acts and practices has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and that respondents truthfully represent the constituent fiber and material of which their products are made as well as the nature of their business. As a result of such erroneous and mistaken belief, engendered as herein set forth, the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondents' products.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 15, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, Arnold A. Saltzman and Irving Saltzman, individually and trading as Premier Knitting Co., charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' answer, testimony and other evidence in support of and in opposition

to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondents' answer thereto, the testimony and other evidence, the recommended decision of the trial examiner and exceptions thereto by counsel for respondents, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having entered its order ruling on the exceptions to the recommended decision of the trial examiner, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Arnold A. Saltzman and Irving Saltzman, are individuals trading as Premier Knitting Company, with their principal place of business at 1410 Broadway in the city of New York, State of New York.

PAR. 2. Respondents at all times mentioned in the complaint have been engaged in the sale and distribution of various kinds and types of sweaters. Respondents cause their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned in the complaint have maintained a course of trade in the said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their said products the respondents for many years prior to and including the year 1942 have used the term "Imported Shetland" in connection with certain of their said products and for many years have been and are now using the trade name "Kittn-Gora" in connection with certain other of their said products, said terms appearing on labels attached to the said products distributed by respondents to their customers located in the various States of the United States and in the District of Columbia.

The word "Shetland" has long been applied to a particular type of wool fiber taken from the fleece of Shetland sheep raised on the Shetland Islands or on the adjacent mainland of Scotland and has for a long time been well and favorably known to the purchasing public. The word "Shetland," when used to designate or describe a

product made of yarns having the general appearance of wool fibers, is understood by the purchasing public as denoting a product made entirely from the fleece of the aforesaid Shetland sheep.

The term "Gora" is a contraction of "Angora" and, even though combined with the coined word "Kittn," implies to the purchasing public that products so labeled and designated are made of yarn composed entirely of the hair of the Angora goat or its young. The words "Angora wool" have long been applied to a particular type of wool fiber taken from the hair of the Angora goat that is well and favorably known to the purchasing public.

PAR. 4. Respondents' products which were labeled as "Imported Shetland" were knitted from yarn spun of wool from African Merino sheep. Respondents' products which are labeled "Kittn-Gora" are knitted from yarn which is composed of 50 percent lamb's wool and 50 percent hair of young Angora goats.

PAR. 5. Respondents contend that the allegations of the complaint relating to their use of the term "Imported Shetland" should be dismissed because the yarn from which the products so marked were knitted was purchased by them from a reputable company which represented the yarn as being "Imported Shetland," and also because they discontinued this marking in 1942. The Commission is of the opinion from the facts of record, however, that because of the appearance and price of the yarn, the respondents knew or should have known that it was not yarn made of genuine Shetland wool. Also it is clear from the record: that respondents believe that the term "Imported Shetland" may properly be applied to wool of that type of sheep raised in the Shetland Islands even if raised in other localities; that they discontinued the use of this term only after the issuance of the complaint in this proceeding; and that they discontinued its use so as to comply with the Commission's interpretation of this term as shown by this complaint. Upon this record the Commission is of the opinion that there is not sufficient assurance that respondents would not reinstitute this practice if the allegations of the complaint relating thereto were dismissed.

PAR. 6. The complaint in this procedure further alleges: That respondents, by using the trade name "Premier Knitting Company," have represented that they are the owners of and conduct a factory in which their products are manufactured; that respondents do not own, operate or control a factory; and that members of the purchasing pub lic have a preference for buying merchandise directly from the manufacturer thereof, believing that by so doing a more uniform line of goods, superior quality, lower prices and other advantages can be obtained. The record shows that, while respondents do not own a

knitting mill, they do control completely the manufacturing of their products, which are made to rigid specifications under their own supervision. Respondents furnish the raw materials, set the machines to produce the style of garment desired, and actually employ and pay the persons operating the machines. Under agreements with the owners of the knitting mills, the entire output of the machines so operated belongs to respondents upon their payment of a specified amount per piece knitted. Respondents have represented that they were manufacturers only through their use of the trade name Premier Knitting Co. Upon this record the Commission is of the opinion that respondents exercise sufficient control over the knitting of their products to occupy the same relationship to their purchasers with respect to ability to furnish uniformity of quality in their products as they would if they owned a knitting mill. The Commission is further of the opinion that the record does not show that respondents, through their use of the trade name Premier Knitting Co. or otherwise, have represented that lower prices could be obtained from them because they were manufacturers. Therefore, the Commission is of the opinion, and finds, that the allegations of the complaint with respect to the unfair and deceptive nature of respondents' use of the name "Premier Knitting Company" are not sustained by the greater weight of the evidence.

PAR. 7. The use by the respondents of the false, misleading and deceptive statements and representations referred to in paragraphs 3 to 5, inclusive, has had the tendency and capacity to mislead and deceive a substantial portion of the public with respect to respondents' products, and has had the tendency and capacity to cause such portion of the public to purchase said products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents as herein found (excluding those referred to in par. 6) are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial

examiner's recommended decision and exceptions thereto by counsel for respondents, and briefs and oral argument of counsel, and the Commission having ruled on the exceptions to the trial examiner's recommended decision and having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Arnold A. Saltzman and Irving Saltzman, individually and trading under the name of Premier Knitting Company, or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of sweaters or other knitwear in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Shetland," or any simulation thereof, either alone or in connection with other words, to designate, describe, or refer to any product which is not composed entirely of wool of Shetland sheep raised on the Shetland Islands or the contiguous mainland of Scotland: *Provided*, *however*, That in the case of a product composed in part of wool of Shetland sheep and in part of other fibers or materials, such word may be used as descriptive of the Shetland wool content if there are used in immediate connection therewith, in letters of at least equal conspicuousness, words truthfully describing such other constituent fibers or materials.

2. Using the term "Kittn-Gora" or the word "Angora," or any simulation thereof, either alone or in connection with other words, to designate, describe or refer to any product which is not composed entirely of hair of the Angora goat: *Provided*, *however*, That in the case of a product composed in part of hair of the Angora goat and in part of other fibers or materials, such term or word may be used as descriptive of the Angora fiber content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

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

213840—54——9

IN THE MATTER OF

LEROY MILLER TRADING AS MASTER COPYING STUDIO; AND BERNARD ROBINSON

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

Docket 5668. Complaint, June 22, 1949—Decision, July 20, 1951

Where an individual engaged in the solicitation and interstate sale and distribution of colored photographic enlargements and of frames therefor with glass, for a charge of $3.98, with $1 down, and balance payable on delivery, and in issuing upon receipt of the order, with initial payment and picture to be enlarged, a "certificate" which described the proposed enlargement and stated that "this order cannot be cancelled because we ask you for the right subject in the beginning"—

(*a*) Displayed good samples of colored enlargements to prospective purchasers in their homes and assured them that from any small print "we make you this nice picture * * * exactly like this picture * * *";

The facts being that his colored enlargements were by no means comparable in workmanship, photographic quality, or finish with his selling samples; were not even good reproductions of the original; and colored enlargements of the same size but of better quality and workmanship were available to the public at various photo-finishing studios and stores for substantially less;

With effect of deceiving prospective purchasers into accepting his proposition, with its noncancelable order and initial payment, under the erroneous belief that such representations were true, and with capacity and tendency so to do;

(*b*) Represented falsely that the pictures would be colored in oil, through oral statements in his solicitations to purchasers, of whom a substantial number bought his enlargements in said definite impression or belief, notwithstanding the inclusion of a clause "finished in colors or sepia (not oil)" in the certificate given the purchaser;

(*c*) At various times, directly or by inference, represented falsely to prospective purchasers that the glass in the picture frames sold by him was "unbreakable";

(*d*) Failed to reveal, in soliciting the order—in which the certificate given the customer stated, "Octagon style (convexed) * * * $3.98 (without frame) * * * We handle a large selection of Frames suitable for these portraits. However, you are not obligated to order frame * * *. This order cannot be cancelled"—that no frame ordinarily available at stores would be "suitable," and, upon delivery of the enlargement, for the first time directed the buyer's attention to the kind of frame required, purchase of which he solicited at prices varying from $6.90 to $12.90, according to material and finish;

With the result that through such bait merchandising and unfair trade practice involved in withholding or concealment of needful information, purchasers intending to use a store frame were impelled to buy something which they did not anticipate and which cost more than the picture itself:

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

While it appeared that during two brief periods of about a week each, respondent in his house-to-house canvassing employed a scheme to arouse the prospective customer's interest by having her draw one of several envelopes in his hand and then, regardless of the selection, informed her that she was "lucky" and thus entitled to a colored enlargement at a cost or at a reduced price; said practice was voluntarily abandoned prior to the Commission's first contact with said respondent through its investigators, and in the absence of any resumption thereof, the public interest did not appear to call for corrective action in the matter in the present proceeding.

As respects other charges of the complaint, including alleged false representations that the finished enlargement would have a value as high as $15, that respondents employed geniuses, Negroes, females, and cripples in connection with their business, and that when a customer refused to buy a frame respondents stated the deal was at a special price, and they would not deliver the enlargement or redeliver the original photograph unless a frame was purchased: probative evidence was lacking to sustain the same.

As respects the charges in the complaint that respondent Robinson, as a sales agent for respondent Miller, participated in the acts, practices, and policies set forth in the complaint: no evidence was introduced to show that he ever actually so participated and complaint was dismissed insofar as it related to him.

Before *Mr. Clyde M. Hadley*, trial examiner.
Mr. William L. Taggart for the Commission.
Mr. John Edward Sheridan, of Philadelphia, Pa., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Leroy Miller, trading as Master Copying Studio, and Bernard Robinson, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Leroy Miller, trading as Master Copying Studio, has been and now is engaged in the business of soliciting the sale of and the sale and distribution of colored photographic enlargements together with frames and glasses therefor. His place of business is located at 2433 Kensington Ave., Philadelphia, Pa. Respondent Bernard Robinson is the agent of the said Leroy Miller and as such agent has been and now is engaged in the business of soliciting the sale, on behalf of his principal, of colored photographic enlargements

together with frames and glasses therefor. His address is 2250 North Gratz Street, Philadelphia, Pa.

PAR. 2. In the course and conduct of the business conducted under the name of Master Copying Studio, respondent Leroy Miller causes and at all times mentioned herein has caused said products sold by him to be transported from the State of Pennsylvania to purchasers thereof located in the various other States of the United States. This respondent maintains and at all times mentioned herein has maintained a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondents, in soliciting the sale of the aforesaid products, call upon prospective purchasers in their homes and have adopted and use a sales plan or method which is as follows:

(*a*) In approaching a prospective customer, respondents exhibit several small envelopes and urge the prospective customer to select an envelope stating that if he is lucky he will receive a photographic enlargement colored in oil of any photograph which he may desire, either free or at a great reduction from the usual price. Prospects are sometimes informed that the finished enlargement will have a value as high as $15.

(*b*) If the prospect agrees to have an enlargement made and submits a photograph for such purpose, respondents state that a small charge of $3.95 is made for the oils and other materials used. If this is agreeable, all or a part of said sum is collected and a certificate is filled out and delivered. This certificate lists the total charge, the amount paid and the balance due. The certificate is in the following form:

READ THIS CERTIFICATE
MASTER COPYING STUDIO

Registered under the State Laws of Pa.

2433 Kensington Ave., Phila., Pa.

This Certificate entitles

M _____

To one reproduction of subject given to our representative to be finished in colors or sepia (not oil) Rectangular style (convexed) 10 x 16 inches in size UNFRAMED at the cost of $3.95 for the purpose of advertising and extending our business.

Charge of $1.00 Extra for Regrouping Extra Heads.

Our representative will call in a short time to show the Black and White print of the subject, and will at this time display our large assortment of finished portraits in the very latest design for your selection of colors and background, at which time

THE COST OF $3.95 MUST BE PAID.

We Carry a Large Selection of Frames

No verbal agreement or changes other than herein stated shall be recognized. Deposits paid our agents will be credited below:

DEPOSIT_____ BALANCE when print is shown_____
Represented by_____

This order positively cannot be countermanded.

(*c*) After the enlargement of the photograph is made, it is taken to the customer by one of the respondents in an uncolored condition and the customer is asked to designate the colors in which he wishes it to be finished. In this connection respondents exhibit several framed pictures artistically colored and state that the enlargement will be comparable to those shown and that many artists consisting of geniuses, Negroes, females, and cripples are employed by the company. When the information as to color is obtained, request is made for the payment of the balance due, if any, for the enlargement. Upon the completion of this transaction, the matter of a frame for the enlargement is first mentioned, samples of frames are exhibited and the customer is told that the enlargement is useless without a frame. It is further stated and pointed out by respondents at this time that the enlargement is convex in shape and for this reason it would be difficult, if not impossible, for the customer to obtain a frame and glass in which the enlargement would fit from any source other than respondents, since most stores do not sell frames and glasses of the size and shape required for such a picture, and respondents at this time solicit the sale of a frame and a glass for said enlargement. In this connection the representation is made that the glass is unbreakable. In some instances when a customer refuses to buy a frame, respondents state that the deal is at a special price and that they will not deliver the enlargement or redeliver the original photograph unless a frame is purchased.

(*d*) When a frame is purchased, a down payment is secured and afterwards the framed colored enlargement is delivered and the balance due for the frame and glass is collected.

PAR. 4. The sales plan used by the respondents and the representations made in connection therewith constitute misleading and deceptive acts and practices in the following particulars: No matter which envelope is drawn by the prospective purchaser, he is always told that it is a lucky number. The colored enlargement is not given free or at a reduced or special price and the sum of $3.95 is not the cost of the oils and other materials. On the contrary, said sum is the usual and customary price charged to all persons for the colored enlarge-

ment. The sum of $15 is greatly in excess of the reasonable value of the colored enlargement. The enlargements are not colored in oil and while the certificate so states, the customer does not receive the certificate until he has agreed to purchase the colored enlargement and has made the payment of $3.95 or a substantial portion thereof. Respondents at the time of soliciting the sale of the enlargement do not inform the customer that it will be of an odd convex shape and that a frame and glass in which it will fit can only be secured from them but postpone the disclosure of such fact until the enlargement has been purchased and paid for. Respondents do not employ geniuses, Negroes, females, and cripples in connection with their business, the enlargements being purchased from others on a contract basis and only one person is employed for the purpose of coloring the pictures. The finished colored enlargements do not compare in quality and artistry to those exhibited as samples but are greatly inferior thereto. The glass for the frames is not unbreakable. The practices of refusing to deliver the colored enlargement and the original photograph unless a frame is purchased constitutes an unfair act and practice. In truth and in fact, the entire scheme and plan and the statements and representations used by the respondents in connection therewith is designed and put into operation for the purpose of selling picture frames and glasses therefor at a handsome profit to the respondent Leroy Miller, instead of the sale of the enlargements as customers are led to believe in which transactions the said Leroy Miller makes no profit but actually suffers a financial loss.

PAR. 5. The use by the respondents of the aforesaid plan, acts, practices, and methods in connection with the offering for sale and sale of said products in commerce, as aforesaid, including the failure to reveal essential and important facts in connection therewith, has had, and now has, the tendency and capacity to, and does mislead and deceive the purchasing public concerning the actual character and purpose of the original offer made by respondents, including the identity of the actual product respondents propose to sell and concerning the quality, value, and usual selling price of said enlargements. The aforesaid acts and practices have led, and do lead, purchasers erroneously to believe that the representations so made and used by the respondents and the implications arising therefrom are true, and cause and have caused a substantial number of the purchasing public to purchase substantial quantities of said products.

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

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated July 20, 1951, the initial decision in the instant matter of trial examiner Clyde M. Hadley, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY CLYDE M. HADLEY, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 22, 1949, issued and subsequently served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of respondents' answer to said complaint, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, the answer thereto, testimony and other evidence, and oral argument by counsel, proposed findings and conclusions having been waived by both counsel; and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Leroy Miller, trading as Master Copying Studio, has been and now is engaged in the business of soliciting the sale of and the sale and distribution of colored photographic enlargements and of frames therefor with glass. His place of business is located at 2433 Kensington Avenue, Philadelphia, Pa.

In the course and conduct of his business, under the name of Master Copying Studio, said respondent causes, and at all times mentioned herein has caused, such products sold by him to be transported from the State of Pennsylvania to purchasers thereof located in other States of the United States; maintaining a course of trade in said products between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent Miller, in soliciting the sale of his aforesaid products, calls upon prospective purchasers in their homes, making oral representations with respect thereto. In connection with his oral

presentations, he displays good samples of colored enlargements, and assures the prospective customer that from any small print "we make you this nice picture * * * we will make it exactly like this picture, and we show them the sample * * * we tell them that the picture is going to be finished like this." His charge for the colored reproduction, according to the sample, is $3.98, with $1 down and balance payable on delivery. Upon receiving the order, with initial payment and the picture to be enlarged, he issues what is designated a certificate, describing the proposed enlargement and stating that "This order cannot be cancelled because we ask you for the right subject in the beginning."

Although a clause, "finished in colors or sepia (not oil)," appears in such certificate given to the purchaser, a substantial number of persons have bought said enlargements under the definite impression or belief, induced by the respondent's oral statements in his personal solicitations, that the same would in fact be colored in oil.

Said respondent has at various times directly or inferentially represented to prospective purchasers that the glass in the picture frames sold by him is "unbreakable."

At the time the enlargement is delivered and the balance of the purchase price has been paid, respondent thereupon directs the buyer's attention to the fact that the picture, being printed in a peculiar convex manner, requires a specific kind of frame with curved glass to make it look right, since no ordinary glassed frame could fit it; and he then solicits the purchase of one of his special frames at prices varying from $6.90 to $12.90, acording to material and finish. The certificate which the customer had received when ordering the enlargement states, "Octagon style (convexed) 10 x 16 inches in size for $3.98 (without frame) * * * We handle a large selection of frames suitable for these portraits. However you are not obliged to order frame * * * This order cannot be cancelled." When taking such noncancellable order, respondent fails to reveal, however, that no frame ordinarily available at stores would be "suitable."

PAR. 3. In truth and in fact, respondent's colored enlargements in evidence are by no means comparable in workmanship, photographic quality, or finish with his selling samples in evidence; nor are they even good reproductions of the originals, also in evidence, from which the same were made; having, through poor workmanship, lost their photographic quality, being blurred or out of focus, with detail lacking, and with the coloring carelessly applied. Colored enlargements the same size but of better quality and workmanship are available to the public at various photofinishing studios and stores at approximately $2.50.

Respondent's use of such samples superior in tone, coloring and photographic quality to the reproductions actually furnished by him, with his assurance that, contrary to fact, the enlargement ordered would be the same as said sample, has the capacity to and does deceive prospective purchasers into accepting his proposition (with non-cancellable order and initial payment) under the erroneous impression or belief that such representations are true.

Respondent's colored enlargements are concededly not done in oil; and the convex glass in his picture frames, while it might withstand a somewhat sharper rap or jolt than ordinary flat glass, is admittedly not unbreakable.

Such withholding or concealment of needful information regarding adequate frames until after the purchaser has bought and paid for respondent's photographic enlargement—namely, that none but his own peculiar and expensive frames could be used—is a form of bait merchandising, an unfair trade practice, in that purchasers intending to use a store frame are thus impelled to buy something not anticipated and costing much more than the picture itself.

PAR. 4. For two brief periods of about a week each, in April and September 1948, respondent Miller, in his house-to-house canvassing, employed a scheme to arouse the prospective customer's interest by having her draw one of several envelopes in his hand; then, regardless of the one selected, would inform her that she was "lucky" and thereby entitled to have a colored enlargement made of some picture for cost or at a reduced price. According to the record, however, this practice was abandoned on or prior to September 11, 1948, and has not been resumed. The Commission's first contact with said respondent, through its investigators, was November 4, 1948.

PAR. 5. Regarding other charges included in the complaint not mentioned herein, probative evidence is lacking to sustain the same.

CONCLUSIONS

The acts and practices of the respondent, Leroy Miller, as herein found, have all been to the prejudice of the public and have constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

However, concerning the respondent's use of purported lucky chance cards in connection with his merchandising, since this had been voluntarily abandoned by him some time prior to the Commission's first contact with him, and there has been no resumption of such practice, the public interest would not at the present time appear to call for corrective action with respect thereto.

The complaint in this procedure also named Bernard Robinson as a respondent, alleging that as a sales agent for respondent Leroy Miller, he has participated in the acts, practices and policies set forth therein, but no evidence was introduced to show that he ever actually participated in the practices described; and the complaint insofar as it relates to said Bernard Robinson should be dismissed.

ORDER

It is ordered, That the respondent, Leroy Miller, trading as Master Copying Studio, or under any other name or designation, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of photographic enlargements and picture frames, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, by statement or inference, that the photographic enlargements offered for sale by him are colored in oil, or that the glass in the picture frames which he sells is unbreakable.

2. Exhibiting to prospective customers as samples of respondent's products any photographs or pictures which are not in fact representative of the pictures sold by him; or representing, directly or by implication, that a picture to be made and delivered will be equal in type, quality, or workmanship to the samples displayed to the customer, unless the picture delivered is in fact equal in type, quality, or workmanship to such samples.

3. Concealing from or failing to disclose to customers at the time such pictures are ordered that the finished picture when delivered will be so shaped and designed that it can be used only in an odd-style frame which cannot ordinarily be obtained in stores accessible to the consuming public, and that such frame can procured from him only, generally at prices in excess of those already charged for the pictures.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondent, Bernard Robinson.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent, Leroy Miller, trading as Master Copying Studio, shall, within 60 days after service upon him of this order, file with the Commission in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said declaratory decision and order of July 20, 1951].

Complaint

IN THE MATTER OF

CLARENCE LITTLEFIELD DOING BUSINESS AS PLYMOUTH WOOLEN MILL

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5846. Complaint, Feb. 5, 1951—Decision, July 21, 1951

Where an individual engaged in the manufacture, for introduction into commerce, and in the distribution therein, of blankets which were made for it by a certain corporation on a contract basis, and were wool products as defined in the Wool Products Labeling Act—

Misbranded said blankets in that, (1) labeled "100 percent wool, exclusive of ornamentation," they were not composed entirely of wool, as "wool" is defined in said act, but contained substantial amounts of "reused wool" and "reprocessed wool"; and (2) they did not have affixed thereto tags or labels showing their constituent fibers and the percentages thereof as required by said act:

Held, That such acts and practices, under the circumstances set forth, were in violation of sections 3 and 4 of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. James A. Purcell*, trial examiner.
Mr. R. L. Banks, Jr. and *Mr. Jesse D. Kash* for the Commission.
Mr. Shirley Berger, of Bangor, Me., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Clarence Littlefield, an individual, doing business as Plymouth Woolen Mill, hereinafter referred to as respondent, has violated the provisions of said acts and rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Clarence Littlefield, is an individual doing business as Plymouth Woolen Mill with his office and principal place of business located at Plymouth, Me.

PAR. 2. Subsequent to January 1, 1949, respondent manufactured for introduction into commerce, introduced into commerce, and dis-

tributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein. The said wool products consisted of blankets which were manufactured for Arluck Blanket Corp. by respondent on a contract basis.

PAR. 3. Upon the labels affixed to the said blankets appeared the following:

Medical blanket
100% wool exclusive of ornamentation
MFR 7088

PAR. 4. The said blankets were misbranded within the intent and meaning of the said act, and the rules and regulations promulgated thereunder in that they were falsely and deceptively labeled with respect to the character and amount of their constituent fibers. In truth and in fact, the said blankets were not composed entirely of wool, as "wool" is defined in said act, but contained substantial amounts of "reused wool" and "reprocessed wool," as those terms are defined in said act. The said articles were further misbranded in that the labels affixed thereto did not show the percentage of the total fiber weight thereof, exclusive of ornamentation not exceeding 5 percent of said total fiber weight, of: "wool," "reused wool," and "reprocessed wool," as those terms are defined in said act; each fiber, other than wool, constituting 5 percent or more of such total fiber weight; and the aggregate of all other fibers, each of which constituted less than 5 percent of such total fiber weight.

PAR. 5. The aforesaid acts and practices of respondent as herein alleged were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated July 21, 1951, the initial decision in the instant matter of Trial Examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the

authority vested in it by said Acts, the Federal Trade Commission on February 5, 1951, issued and subsequently served its complaint in this proceeding upon the respondent, Clarence Littlefield doing business as Plymouth Woolen Mill, charging the respondent with the use of unfair and deceptive acts and practices in commerce in violation of those Acts. On March 15, 1951, respondent filed his answer to said complaint denying all of the material allegations of fact set forth therein. Initial hearing for the taking of testimony and reception of evidence was set for April 6, 1951, at Bangor, Maine, at which time respondent filed his formal motion to withdraw the original answer and to file a substitute answer. Said motion was granted by the above-named trial examiner, whereupon respondent filed his substitute answer admitting all of the material allegations of fact charged in the complaint and waiving all intervening procedure and further hearing as to said facts. On April 20, 1951, the matter was formally closed for the reception of testimony and said order fixed May 16, 1951, for the filing of proposed findings and conclusions. Proposed findings and conclusions, as also a proposed order to cease and desist were filed by the attorney in support of the complaint; none were submitted by respondent.

Thereafter the proceeding regularly came on for final consideration by the above-named trial examiner, theretofore duly designated by the Commission, upon said complaint and the substitute answer thereto; and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Clarence Littlefield, is an individual doing business as Plymouth Woolen Mill, with his office and principal place of business located at Plymouth, Maine.

PAR. 2. Subsequent to January 1, 1949, respondent manufactured for introduction into commerce, introduced into commerce, and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein. The said wool products consisted of blankets which were manufactured for Arluck Blanket Corp. by respondent on a contract basis.

PAR. 3. Upon the labels affixed to said blankets appeared the following:

Medical blanket
100% wool exclusive of ornamentation
MFR 7088.

PAR. 4. The said blankets were misbranded within the intent and meaning of the said act, and the rules and regulations promulgated thereunder, in that they were falsely and deceptively labeled with respect to the character and amount of their constituent fibers, said products being labeled "100% wool, exclusive of ornamentation," whereas in truth and in fact, said blankets were not composed entirely of wool, as "wool" is defined in said act, but contained substantial amounts of "reused wool" and "reprocessed wool," as those terms are defined in said act. Said manufactured articles were further misbranded in that the labels affixed thereto did not show the percentage of the total fiber weight thereof, exclusive of ornamentation not exceeding 5 percent of said total fiber weight, of: "wool," "reused wool," and "reprocessed wool," as those terms are defined in said act; each fiber, other than wool, constituting 5 percent or more of such total fiber weight; and the aggregate of all other fibers, each of which constituted less than 5 percent of such total fiber weight.

CONCLUSION

The aforesaid acts and practices of respondent as herein found were and are in violation of sections 3 and 4 of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent, Clarence Littlefield, an individual doing business as the Plymouth Woolen Mill, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, transportation or distribution of wool products in commerce, as "commerce" is defined in the aforesaid acts, do forthwith cease and desist from misbranding such wool products, as defined in and subject to the Wool Products Labeling Act of 1939, which contain, or purport to contain, or in any way are represented as containing "wool," "reprocessed wool" or "reused wool" as those terms are defined in said act:

(1) By falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products;

(2) By failing to securely affix to or place on such products a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

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

(b) The maximum percentage of the total weight of the wool product of any nonfibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool products into commerce, or in the offering for sale, sale, transportation or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939;

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; and

Provided further, That nothing contained in this order shall be construed as limiting any applicable provisions of said act or of the rules and regulations promulgated thereunder.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said declaratory decision and order of July 21, 1951].

IN THE MATTER OF

THE MASONITE CORP.

MODIFIED ORDER TO CEASE AND DESIST

Docket 2614. Order, Aug. 3, 1951

Order modifying original order of November 6, 1937, 25 F. T. C. 1320, so as to require respondent, in connection with the offer, etc. of its wall board and wall covering in commerce, to cease and desist from the use of the words "Temprtile" or "tile" as below set forth and subject to the qualifications therein stated.

Before *Mr. Charles F. Diggs*, *Mr. John J. Keenan*, and *Mr. John L. Hornor*, trial examiners.

Mr. Morton Nesmith and *Mr. George M. Martin* for the Commission.

Dyke & Schaines, of New York City, and *Mr. David W. Knight*, of Chicago, Ill., for respondents.

Hines, Rearick, Door & Hammond, of New York City, for Tile Manufacturers' Association, Inc., amicus curiae.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence in support of the allegations of the complaint and in opposition thereto, taken before a trial examiner of the Commission theretofore duly designated by it, no briefs being filed and oral argument not having been requested, and the Commission, having made its findings as to the facts and its conclusion that said respondent had violated the provisions of the Federal Trade Commission Act, on November 6, 1937, issued and subsequently served upon the respondent said findings as to the facts, conclusion, and its order to cease and desist.

Thereafter, pursuant to a motion filed by counsel in support of the complaint and agreed to by respondent, the Commission reconsidered the matter, and being of the opinion that its order to cease and desist issued on November 6, 1937, should be modified in certain respects:

It is ordered, That the respondent, The Masonite Corp., a corporation, its officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of its wallboard and wall covering in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

Directly or indirectly, by the use of the words "Temprtile" or "tile" that its products are "tile," unless either the true composition of said products or the fact that they are not ceramic products is plainly disclosed.

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

NOTE.—In the original order, respondent, its officers, etc., were required to cease and desist from representing in connection with the offer, etc., of its said products (made from wood chips and other substances, through a process which resulted in a hard, durable sheeting upon which were scored or stamped squares, which, when painted or lacquered by others, resembled the mortar lines upon completely installed ceramic surface)—

"1. Directly or indirectly, by the use of the words, 'Temprtile' or 'tile' that its products are 'tile' unless in immediate conjunction with the words 'Temprtile' or 'tile' wherever used, in the same conspicuous type, there appear a word or words designating the material or substance of which the products are made, such as wood tile, glass tile, rubber tile, asbestos tile, copper tile, cork tile, or metal tile."

IN THE MATTER OF

QUAKER DISTRIBUTORS, INC., ET AL.

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

Docket 5673. Complaint, July 1, 1949—Decision, Aug. 6, 1951

Where a corporation and its five officers, engaged in the intersale and distribution of "Honor-Craft Aluminum Cookware" and "American Healthcraft Aluminum Ware" through house-to-house canvassers—usually under a crew manager, working on a commission basis; in delivering products ordered, through deliverymen whom it paid on a straight salary basis; and in carrying on their business, under a procedure and in accordance with a practice whereby the initial deposit—refunded in most cases, with cancellation of the order, in the event misrepresentation was claimed and the deliveryman was unable to induce the customer to accept the ware on its merits—was in most cases not refunded after delivery, and irrespective of whether there was misrepresentation in effecting the sale—

(*a*) Represented falsely through their salesmen, in order to obtain an interview and an opportunity to sell the merchandise concerned, that they were conducting surveys or polls for the Philadelphia Inquirer or some other newspaper, or in connection with the sale of nationally advertised merchandise on behalf of Procter & Gamble, Lever Bros., and the Campbell Soup Co.;

(*b*) Represented falsely that the prospective purchaser could obtain a set of their said ware at a greatly reduced price by clipping coupons from newspapers or by sending in box tops or wrappers taken from designated merchandise such as Ivory soap; and

(*c*) Represented falsely to prospective purchasers that the price charged for their said ware was a substantial reduction from the retail price and made for the purpose of saving income taxes;

With the result that a substantial number of purchasers were thereby induced to purchase their said aluminum ware in the belief that they were participating in a survey or poll and were obtaining it at a substantial reduction in price;

(*d*) Represented that their aluminum ware could be used for the preparation of food without the addition of water and that it, therefore, was of substantial value in protecting health by saving vitamins and minerals;

The facts being that while less water is needed in cooking vegetables with their products than when cooking in an open pot or lighter weight pot, and there was some saving in vitamins and minerals, it is necessary, with some exceptions, to add water to obtain satisfactory results; and

(*e*) Made use of the address "Veterans Administrative Mgr." etc., in an advertisement placed in the Philadelphia Inquirer in connection with the obtaining of salesmen to sell their said ware;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby induce its purchase of substantial quantities of their said products:

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

As respects the issue, as apprehended by respondents, as to whether or not respondents' use of the terms "Waterless cookware" or "Waterless cooker" alone, without other affirmative statements that food could be prepared in utensils so designated without the addition of water, was misleading and deceptive: it was not the Commission's intention to raise such issue, and it did not consider said question in the determination of the instant matter.

With regard to the advertisement which contained the address for reply, "Veteran's Administrative Mgr." etc., in seeking salesmen, it appeared that it was placed twice by an employee for the purpose of hiring veterans for such purpose, and did not come to the attention of any of the respondents until after its second insertion, when it was canceled and discontinued; and in view of such voluntary discontinuance and nonresumption of the practice there was not sufficient public interest involved to warrant further corrective action.

As concerns evidence of meetings of salesmen on several occasions at which one of respondents advised them that the use of the so-called "soap and survey method of selling," above described, must be discontinued: it appeared that the salesmen continued to make the false representations concerned, that respondents were notified continually to such effect, that in their capacity as employers they had available effective means of eliminating the use of such false representations by their employees, and that they not only made no determined effort to stop the practice but on the contrary, took advantage of their salesmen's misrepresentations by attempting to complete sales thus made through their instructions to their deliverymen to attempt to persuade purchasers to take delivery; so that, while ostensibly objecting to said misrepresentations, they were making no determined effort to stop the practice and were benefiting from it.

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

Mr. William L. Pencke for the Commission.

Sundheim, Folz, Kamsler & Goodis, of Philadelphia, Pa., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Quaker Distributors, Inc., a corporation, and Jack Weinstock, Nathan Loesberg, Robert Bertin, Jack Gerstel, and Louis Tafler, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Quaker Distributors, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 1649 North Broad Street, Philadelphia 22,

Pa.; respondents Jack Weinstock, Jack Gerstel, and Louis Tafler are president, secretary, and treasurer, respectively, and Nathan Loesberg and Robert Bertin are vice presidents of said corporation, and control the management, policies, and operation thereof, particularly in respect to the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for more than 1 year last past, have been engaged in the sale and distribution of aluminum cooking utensils, designated Honor-Craft Aluminum Cookware and American Healthcraft Aluminum Ware in commerce between and among the various States of the United States and in the District of Columbia. Respondents have caused and do now cause said merchandise, when sold, to be transported from their said place of business in the State of Pennsylvania to purchasers thereof located in other States of the United States and in the District of Columbia. There is now and has been at all times mentioned herein a constant course of trade in said cooking utensils sold by respondents between and among the various States of the United States and in the District of Columbia, Respondents' volume of business in said utensils in such commerce has been and is substantial.

PAR. 3. In the course and conduct of said business, as aforesaid, and for the purpose of inducing the purchase of said cooking utensils, respondents, through the medium of sales agents and sales representatives, have made and are making many statements and representations to the purchasing public to the effect that respondents are conducting surveys and polls for newspapers and other publications, such as the Philadelphia Inquirer and the Philadelphia Bulletin, and also for manufacturers selling and distributing nationally known and advertised merchandise, such as Proctor & Gamble, Lever Bros., Campbell Soups, and others; and that in connection therewith, respondents have been authorized to sell assembled sets of Honor-Craft and American Healthcraft aluminum kitchenware at a reduced price; that in consideration of participating in said surveys and polls, and for the further purpose of increasing subscriptions and sales, respondents have been authorized to offer said aluminum ware regularly sold at $119 for the price of $49.50, plus a service charge of $2; and that payment therefor could be made by making a small deposit, followed by weekly remittances of $1, together with coupons clipped from comic strips or advertisements, or with box tops and wrappers of specified articles.

Respondents, in the manner aforesaid, have made and are making further representations to the effect that certain manufacturers offer said aluminum kitchenware for half of its actual value in order to

reduce tax liabilities; that said cooking utensils are of superior quality, enabling purchasers thereof to prepare food without the need of adding water, and that food thus prepared guards the health of the user; that if purchasers do not desire to keep said utensils, they can return them to respondents who will return the deposits paid thereon.

PAR. 4. All of the aforesaid representations and statements, and many others similar thereto, but not herein specifically set forth, are grossly false, deceptive and misleading. In truth and in fact, respondents are engaged in the sale of aluminum cooking ware solely for their own profit. None of them is connected, or affiliated in any manner whatsoever, with any newspaper or other publication nor with any manufacturer, distributor or seller of merchandise. Respondents do not conduct surveys or public opinion polls and have not been authorized to do so by, or to act as representatives for, any manufacturer, newspaper, publisher, or any other person or organization. The representations made by respondents through their agents and salesmen that said aluminum ware may be obtained at a reduced price by mailing coupons, box tops or wrappers with installment payments are false and made solely to create the belief in the mind of the purchasing public that respondents are duly authorized representatives of said newspapers, publishers or manufacturers and as such are authorized to offer said aluminum ware at reduced prices.

In truth and in fact, the sum of $49.50 is the price at which said aluminum ware is regularly sold by respondents and not $119, as represented. Respondents have never been authorized by any individual, firm or corporation to represent to the purchasing public that said aluminum ware is offered at a reduced price for the purpose of saving or avoiding taxes.

Said aluminum ware does not guard or necessarily improve the health of the user, and in order to prepare most articles of food properly without burning, it is necessary to add water.

Respondents refuse to make refunds of deposits and accept the return of said aluminum ware in many cases. Whenever refunds have been made it was done only after purchasers had complained to Better Business Bureaus or made persistent and repeated demands for adjustments.

PAR. 5. To further the scheme of selling said aluminum ware, as described in paragraphs 3 and 4 hereof, respondents have published advertisements in the Philadelphia Inquirer and other newspapers having a national circulation, of which the following is a typical example:

YOUR HEALTH COMES FIRST

The manufacturer guarantees that the metal of this cast aluminum utensil bearing the symbol (CS) conforms to Commercial Standard CS134.46 as issued by the National Bureau of Standards of the United States Department of Commerce.

Cast Division
Aluminum Wares Association
WITH AMERICAN HEALTHCRAFT.

By means of said advertisement respondents represent and imply that said American Healthcraft Aluminum Ware is conducive to the protection of the user's health and that it has been manufactured to conform to the standards established by the National Bureau of Standards and the Aluminum Wares Association.

In truth and in fact, the sole purpose of publishing said advertisement is to support the false and misleading representations made by respondents' agents and salesmen as described in paragraphs 3 and 4 hereof and to serve as a coupon or means of enabling said purchasers to take advantage of the alleged reduced price of said ware as hereinabove set forth.

PAR. 6. In the Philadelphia Inquirer of November 23, 1948, and other issues of said newspaper, respondents published the following advertisement:

MEN (2)
$35.00 Salary
Plus Comm.

America's leading housewares organization is prepared to train two ambitious men to assist Sales Director. Good references required. Reply ready for work.

Veterans Administrative Mgr.
1321 Arch Street,
Suite 807.

By employing the phrase "Veterans Administrative Mgr." in said advertisement respondents imply that the Veterans' Administration, a branch of the United States Government, has caused the publication of said advertisment or that respondents' business is in some way connected with the Veterans' Administration for the purpose of aiding war veterans.

In truth and in fact, the use of said phrase is wholly unwarranted, false and misleading. Neither the Veterans' Administration nor any other branch of the United States Government published said advertisement and respondents' business is not connected in any manner with the Veterans' Administration. The sole purpose of using the words "Veterans' Administrative Mgr." is to lead applicants for said positions into the belief that such Government connection exists, and

to induce men seeking employment to respondent to said advertisements on account thereof.

PAR. 7. The aforesaid false, misleading and deceptive statements and representations made by respondents, have had the tendency and capacity to and do mislead and deceive a substantial part of the purchasing public into the false and erroneous belief that said statements and representations are true and induce a substantial number of the public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said merchandise.

PAR. 8. The methods, acts, and practices of respondents, as hereinabove alleged, are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 1, 1949, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondents' answer thereto, the testimony and other evidence, and the recommended decision of the trial examiner and exceptions thereto by counsel for respondents and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having ruled on the exceptions to the recommended decision of the trial examiner, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Quaker Distributors, Inc., is a corporation organized, existing and doing business under the laws of the Commonwealth of Pennsylvania with its principal office and place of business at 1649 North Broad Street, Philadelphia, Pa. Respondent Jack Weinstock is president and general manager of said corporate

respondent. Respondent Louis Tafler is treasurer and delivery manager for said corporate respondent. Respondent Robert Bertin was at the time complaint was filed in these proceedings vice president of said corporate respondent. Respondent Nathan Loesberg is vice president and sales manager of said corporate respondent. Respondent Jack Gerstel is secretary of said corporate respondent. The individual respondents hereinabove named control the management, policies, and operation of the respondent corporation.

PAR. 2. Respondents have since 1947 been engaged in the sale and distribution of aluminum cooking utensils, designated Honor-Craft Aluminum Cookware and American Healthcraft Aluminum Ware, in commerce among and between the various States of the United States. Respondents have caused and do now cause said merchandise when sold by them to be transported from their office in the city of Philadelphia, State of Pennsylvania, to purchasers thereof located in other States of the United States. Respondents maintain and during the times mention herein have maintained a course of trade in said aluminum ware in commerce between and among the various States of the United States. Respondents' volume of business in said utensils in such commerce has been substantial.

PAR. 3. In the course and conduct of their business, the respondents sell their aluminum ware direct to the purchasing public by means of salesmen or agents who go from house to house and are usually under the supervision of a crew manager. These agents or salesmen are employees of the respondent corporation and work entirely upon a commission basis amounting to approximately 22 percent of the gross sales price. Salesmen for respondent corporation since the commencement of operations in 1947 have sold approximately 17,000 sets of aluminum ware and of these sales, delivery was made of 13,144 sets. The respondents maintain an average sales force of 35 salesmen and in order to maintain this sales force hire approximately 400 salesmen during the course of 1 year.

PAR. 4. In making their initial approach to a prospective customer, the respondents through their sales agents represent to such prospective customers that the respondents are engaged in conducting surveys or polls for newspapers and other publications such as the Philadelphia Inquirer and the Philadelphia Bulletin and also for manufacturers selling and distributing nationally known and advertised merchandise such as Procter & Gamble, Lever Bros., Campbell Soups, and others and that in connection therewith respondents have been authorized to sell assembled sets of Honor-Craft Aluminum Cookware and American Healthcraft Aluminum Ware at a reduced price on condition that the purchasers participate in such survey or poll by

clipping certain advertisements or coupons from newspapers or furnishing box tops or wrappers from designated merchandise when installment payments are made.

PAR. 5. Respondents by and through their salesmen have also represented to purchasers and prospective purchasers that certain manufacturers offer said aluminum ware for half its actual value or at a substantial reduction from the purchase price in order to reduce tax liabilities; that said cooking utensils are of superior quality enabling purchasers thereof to prepare food without the need of adding water.

PAR. 6. During the early part of the period beginning 1947, the respondents sold their aluminum ware at a price of $51.90 but during the greater portion of respondents' business operation said aluminum ware has been sold at the price of $55.90 payable $2.90 at the time order is taken and $3 at the time of delivery and $2 per week or $2 every other week at the customer's option.

PAR. 7. When respondents' salesman is successful in inducing a prospect to purchase respondents' aluminum ware he causes her to sign a contract setting out the terms of payment as hereinabove described. When such sales contract has been entered into but before delivery is effected, respondents send a confirmation letter to the customer.

PAR. 8. The respondents deliver their aluminum ware through their delivery department and such deliveries are made by delivery men who are paid on a straight salary basis. In making a delivery, respondents' delivery man first goes to the customer's door without the set of aluminum ware and confirms the purchase. The set is then carried in to the customer's house, opened in her presence, and the cook book, guarantee, and at least one utensil is exhibited to the customer. The delivery slip is then completed in the presence of the customer and said customer is requested to sign the slip receipting for delivery and to pay the additional deposit of $3 as provided for in the contract of sale.

PAR. 9. At the time delivery is made by respondents' delivery man, if any objection is made to accepting the merchandise and the customer cannot be induced to accept, the merchandise is returned to respondents' place of business. In such instances where no claim for misrepresentation or fraud has been made, the original deposit taken at the time of the placing of the order is retained by the respondents and no refund made.

If, at the time of delivery, the customer indicates or claims that any misrepresentation has been employed by the salesman in effecting the sale, the delivery man explains that the respondents have no affilia-

tion with any other concern, directs the customer's attention to the terms of sale as set forth in the contract, and urges the customer to accept the aluminum ware on its own merits. If not successful in inducing the purchaser to accept delivery, the order is canceled and the respondents in most cases refund the deposit made at the time of taking the original order.

Where complaint was made after delivery, respondents refused to cancel the order or to refund the deposit in most cases. Even in cases where the sale had been made through misrepresentation, if delivery had been made, cancellation of the order usually was refused. In some of these cases involving misrepresentation a satisfactory adjustment was finally arrived at but only after the purchasers had made persistent and repeated demands therefor.

PAR. 10. Based upon the testimony of a number of purchasers who appeared as witnesses in this proceeding and also based upon the testimony of the various respondents with reference to their sales practices, it is found that respondents' salesmen have, from time to time for the purpose of obtaining an interview and endeavoring to sell respondents' merchandise, represented that they were conducting a survey or poll on behalf of the Philadelphia Inquirer or some other newspaper or that they were conducting a survey or poll in connection with the sale of nationally advertised merchandise on behalf of, or in connection with, Procter & Gamble, Lever Bros., and the Campbell Soup Co. In connection with the representations as to such survey or poll, the salesmen of respondents have represented that the prospective purchaser could obtain a set of respondents' aluminum ware at a greatly reduced price by clipping coupons from the Philadelphia Inquirer or other newspapers or by sending in box tops or wrappers taken from certain designated merchandise such as Ivory soap and other items of merchandise. In addition, respondents' salesmen have variously represented to prospective purchasers that the price charged for respondents' aluminum ware was a substantial reduction from the retail price and was made for the purpose of making a saving in income tax.

PAR. 11. The respondents are not connected with the Philadelphia Inquirer or any other newspaper, or with any manufacturer of nationally advertised merchandise such as Procter & Gamble, Lever Bros., or Campbell Soup Co., and have never been authorized to conduct any advertising campaign for or in their behalf. Respondents do not conduct surveys or public opinion polls and have not been authorized to do so by any manufacturer, newspaper publisher, or any other person or organization. A substantial number of purchasers by reason of such representations have been induced to pur-

chase respondents' aluminum ware in the belief that they were participating in a survey or poll and that they were obtaining said aluminum ware at a substantial reduction in price when in fact the usual and customary price for which the respondents sold their aluminum ware was $55.90 in 1949 and $51.90 approximately 2 years prior thereto.

PAR. 12. In addition to the representations hereinabove described, the respondents through their salesmen have also represented that their aluminum ware could be used for the preparation of food without the addition of water and that therefore their aluminum ware was of substantial value in protecting the health by saving vitamins and minerals. With the exception of the leafy vegetables, such as spinach, to which a substantial amount of water adheres in washing or soaking, it is necessary to add some water to obtain satisfactory results under ordinary cooking conditions. In view of the fact, however, that less water is needed in cooking vegetables with respondents' aluminum ware than when cooked in an open pot or lighter weight pots, there is some saving in vitamins and minerals, but the water requirements necessary for satisfactory cooking in respondents' aluminum ware is such as to require discontinuance of affirmative representations that respondents' aluminum ware can be used to cook vegetables generally without the use of water. Respondents have indicated by the content of their brief and oral argument that they consider the complaint herein to have raised the issue of whether or not respondents' use of the terms "waterless cookware" or "waterless cooker" alone without other affirmative statements that food can be prepared in utensils so designated without the addition of water, is misleading and deceptive. The Commission in issuing this complaint did not intend to raise this issue and has not considered this question in the determination of this matter.

PAR. 13. In connection with obtaining salesmen to sell their aluminum ware, the respondents placed an advertisement in the Philadelphia Inquirer on November 23, 1948, which appeared twice in such paper. This advertisement contained the address for reply "Veterans Administrative Mgr., 1321 R Street, Suite 807." According to the testimony of the respondents, this advertisement, which was placed by an employee for the purpose of hiring veterans to act as salesmen, did not come to the attention of any of the respondents until after its second insertion, at which time the advertisement was canceled and discontinued. As this practice was discontinued voluntarily by the respondents and has not been resumed, there is not sufficient public interest involved to warrant further corrective action in connection therewith.

PAR. 14. In the course of their defense in this proceeding, the respondents introduced evidence as to measures taken by them to cause salesmen to discontinue the use of the so-called soap and survey method of selling hereinabove described. On several occasions Jack Weinstock addressed meetings of salesmen and advised them that the use of such method of selling must be discontinued or orders would be canceled and no commission paid. However, respondents' salesmen have continued to make the above described false representations and respondents have been notified continually that their salesmen are so misrepresenting. In their capacity as employers respondents have available effective means of eliminating the use of these false representations by their employees. Respondents have not made a determined effort to stop this practice. In fact respondents have taken advantage of their salesmen's misrepresentations by attempting to complete sales made by such misrepresentations. Respondents have instructed their delivery men to attempt to persuade purchasers complaining of such misrepresentation to take delivery of the merchandise. Respondents, while ostensibly objecting to their salesmen's misrepresentations, are making no determined effort to stop the practice and are benefiting from it.

PAR. 15. The aforesaid false, misleading, and deceptive statements and representations made by the respondents as hereinbefore described have had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that the said statements and representations are true and to induce a substantial number of the public because of such erroneous and mistaken belief to purchase substantial quantities of respondents' aluminum ware.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and exceptions thereto of counsel for respondents, briefs and oral argument of counsel, and the

Commission having ruled on the exceptions to the trial examiner's recommended decision and having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent Quaker Distributors, Inc., a corporation, and its officers, representatives, agents and employees and the individual respondents Jack Weinstock, Nathan Loesberg, Robert Bertin, Jack Gerstel, and Louis Tafler and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of aluminum ware or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication:

1. That they are conducting a poll or survey;

2. That the purchasers of the said merchandise are being given a reduced price for such merchandise or any other valuable consideration as a premium or reward for their collection of box tops, clipping of advertisements, cooperation in furnishing information or participation in any other similar project or activity;

3. That the said merchandise is being sold at a substantial discount or reduction in price when the price so charged is the usual and customary price at which they sell the said merchandise in the ordinary course of business;

4. That respondents' aluminum ware can be used for cooking foods in general without the use of water.

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