

Complaint

48 F. T. C.

IN THE MATTER OF

## ARLUCK BLANKET CORP. AND ELMER M. ARLUCK

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 5847. Complaint, Feb. 5, 1951—Decision, Aug. 7, 1951*

Where a corporation and its president, who controlled its operations, engaged in the introduction into commerce and in the offer, sale, and distribution therein of blankets which were made for them on a contract basis, from materials which they supplied to the manufacturer; and were wool products as defined in the Wool Products Labeling Act—

Misbranded said blankets in that, (1) labeled "100% Wool exclusive of ornamentation," they were not composed entirely of "wool" as 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:

*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. Jesse D. Kash* for the Commission.

*Mr. Milton Lerner*, 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 Elmer M. Arluck, an individual, and Arluck Blanket Corp., a corporation, hereinafter referred to as respondents, have 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 Elmer M. Arluck is an individual and Arluck Blanket Corp. is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 257 Fourth Avenue, New York, N. Y. Respondent Elmer M. Arluck is president of Arluck Blanket Corp. and in control of its operations, and said respondent corporation is in fact an instrumentality through which the said Elmer M. Arluck conducts his business.

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## Decision

PAR. 2. Subsequent to January 1, 1949, respondents have introduced into commerce, offered for sale in commerce, and 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. The said wool products consisted of blankets, which were manufactured for respondents by Clarence Littlefield, doing business as Plymouth Woolen Mill, located at Plymouth, Maine, on a contract basis from materials supplied by respondents.

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 per centum 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 per centum or more of such total fiber weight; and the aggregate of all other fibers, each of which constituted less than 5 per centum of such total fiber weight.

PAR. 5. The aforesaid acts and practices of respondents 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 August 7, 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 respondents, Arluck Blanket Corp. and Elmer M. Arluck, charging the respondents with the use of unfair and deceptive acts and practices in commerce in violation of those acts. After issuance of said complaint and the filing of respondents' answer thereto, hearing was held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named trial examiner therefore 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, proposed findings as to the facts and conclusions presented by counsel in support of the complaint (none such having been filed by respondents), oral argument not having been requested; 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 Arluck Blanket Corp. is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 257 Fourth Avenue, New York, N. Y. Respondent Elmer Arluck is president of Arluck Blanket Corp. and in control of its operations, said respondent corporation being in fact an instrumentality through and by which Elmer M. Arluck conducted his business. Said corporation is now in a state of liquidation and although having been inactive in the sale of its products since April or May of the year 1950, yet remains *in esse*.

PAR. 2. Subsequent to January 1, 1949, respondents have introduced into commerce, offered for sale in commerce, and 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. Said wool products consisted of blankets which were manufactured upon the order, and at the instance, of the respondents by one Clarence Littlefield, doing business as Plymouth Woolen Mill, located at Plym-

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## Order

outh, Maine, on a contract basis from materials supplied by respondents to said Littlefield.

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

Medical blanket  
100% wool exclusive of ornamentation  
MFR 7088

PAR. 4. Said blankets were misbranded within the intent and meaning of said Wool Products Labeling Act of 1939, and of 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." 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 per centum 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 per centum or more of such total fiber weight; and the aggregate of all other fibers, each of which constituted less than 5 per centum of such total fiber weight.

## CONCLUSION

The aforesaid acts and practices of respondents as herein found were and are in violation of sections 3 and 4 of the Wool Products Labeling Act of 1939, and 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, Arluck Blanket Corp., a corporation, its officers, and Elmer M. Arluck, individually and as an officer of said corporation, their agents, representatives, and employees, directly or through any corporate or other device, or any other name, in connection with the introduction into commerce, or the sale, transportation, or distribution of wool products in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, and the Federal Trade Commission Act, do forthwith cease and desist from misbranding such wool products as defined 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 per centum of said weight of: (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage of weight of such fiber is 5 per centum 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 percentage in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool.

*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 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 August 7, 1951].

## Complaint

IN THE MATTER OF

W. H. BRADY &amp; CO., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5298. Complaint, Mar. 27, 1945—Decision, Aug. 8, 1951*

Where a corporation and a number of its officers and directors, engaged in the manufacture and interstate sale and distribution of push cards which, bearing appropriate explanatory legends (or spaces therefor), were designed for use in the sale and distribution of merchandise at retail to the public by means of a game of chance, under a plan whereby the purchaser of a push, who, by chance, selected a concealed winning number, secured an article of merchandise, without additional cost at much less than its normal retail price, others receiving an article of less value than the price of the push or nothing for their money—

Sold and distributed such devices to manufacturers of and dealers in candy, cigarettes, clocks, razors, cosmetics, clothing, and other merchandise, assortments of which, along with said devices, were made up by said dealers and exposed and sold by the retailer purchasers to the purchasing public in accordance with the aforesaid sales plan, involving sale of a chance to procure articles at much less than their normal retail price; and

Thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale and distribution of their merchandise, contrary to an established public policy of the United States Government and in violation of criminal laws;

With the result that many members of the public were thereby induced to deal with retailers who thus sold or distributed such merchandise; many retailers were induced to deal with suppliers of the same; and substantial trade was unfairly diverted from certain competitors of such suppliers, who, because of said lottery features and the public policy concerned, did not thus sell or distribute such products and refrained from supplying such devices to others:

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

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

*Mr. John C. Kelley*, of Chicago, Ill., and *Mr. George R. Perrine*, of Aurora, Ill., for respondents.

*Taylor, Miller, Busch & Magner*, of Chicago, Ill., also represented Richard H. Brady and M. Moliter.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that W. H. Brady & Co.,

a corporation, Frederick W. Brady, Elizabeth A. Brady, Mildred J. Brady, Richard H. Brady, William H. Brady, Jr., and Max M. Molitor, individuals and officers of the W. H. Brady & Co., a corporation, all hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent W. H. Brady & Co., hereinafter referred to as corporate respondent, is a corporation organized and doing business under and by virtue of the laws of the State of Wisconsin, having its office and principal place of business located at 510 Water Street, in the city of Eau Claire, Wis.; and respondents Frederick W. Brady, Elizabeth A. Brady, Mildred J. Brady, Richard H. Brady, William H. Brady, Jr., and Max M. Molitor, are officers and directors of said corporate respondent, and they formulate, direct, dictate, and control the acts, practices, and policies of said corporate respondent.

Respondents are now, and for more than 4 years last past have been, engaged in the manufacture of devices commonly known as push cards, and in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of said devices to manufacturers of, and dealers in, various other articles of merchandise.

Respondents cause and have caused said devices, when sold, to be transported from their aforesaid place of business in Eau Claire, Wis., to purchasers thereof at their respective points of location in various States of the United States, other than the State of Wisconsin and in the District of Columbia. There is now, and for more than 4 years last past has been, a course of trade in such push-card devices by said respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and distribute and have sold and distributed to said manufacturers and dealers push cards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. One of said push cards has 60 small partially perforated disks on the face of which is printed the word "Push." concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card bears the legend as follows:

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5¢  
Each  
No Blanks

CANDY SALE

5¢  
Each  
20 Big Prizes

EVERYBODY WINS

Numbers 2-4-6-8-10-12-14-16-18-20-22-24-26-28-30-32

RECEIVE \* ONE LARGE NOUGAT LOAF

Number 25

RECEIVES \* ONE EXTRA LARGE NOUGAT LOAF

The Last Number in Each Section

RECEIVES \* ONE EXTRA LARGE NOUGAT LOAF

All Other Numbers Receive a Regular Bar

NOTE: Only One Bar, Loaf or Package with Each 5¢ Purchase.

Many others of said push cards have printed on the faces thereof other labels or instructions that express the manner in which said devices are to be used or may be used in the sale or distribution of various other specified articles of merchandise. The prices of the sales on said push cards vary in accordance with the individual devices. Each purchaser pays a specified price, usually from 1 to 5 cents a push and is entitled to one push from the push card and when a push is made a disk is separated from the push card and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until the selection has been made and the push completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing, by their push, lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such winning numbers receive in some cases a small piece of candy of less value than the price paid for the push, or in other cases receive nothing for their money. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Other of said push card devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards the purchasers thereof place instructions or labels which have the same or similar import or meaning as the instructions or labels placed by the respondents on said push card devices first hereinabove described.

Respondents sell and distribute and have sold and distributed many kinds of push cards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of candy or other merchandise and vary only in detail. The only use to be made of said push card devices and the only manner in which

they are used by the ultimate purchasers thereof is in combination with other merchandise so as to enable said ultimate purchasers to sell and distribute said other merchandise by means of lot or chance as hereinabove alleged.

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

from said competitors who do not sell or use said devices to persons, firms, and corporations who purchase and use said devices of the respondents.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or method in the sale of merchandise and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States and constitutes unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

PAR. 5. The aforesaid acts and practices of respondents as hereinabove alleged are all to the prejudice and injury of the public, and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 27, 1945, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents with the use of unfair acts and practices in commerce in violation of the provisions of that act. After the issuance of said complaint and the filing of respondents' answer thereto, respondents filed a motion with the Commission requesting permission to withdraw their said answer and to substitute therefor their answer admitting all of the material allegations of the complaint and waiving all intervening procedure and further hearings as to said facts but reserving the right to file briefs, present oral argument, and appeal from any order entered herein by

the Commission, said motion being made upon the condition that the Commission would enter no order herein until after orders were entered by the Commission in the matters of Leo Lichtenstein, et al., trading as Harlich Manufacturing Co., Docket No. 4879, Hamilton Manufacturing Co., Docket No. 3944, and Everett J. Granger, et al., trading as Gardner & Co., Docket No. 4278. The Commission granted said motion and, on April 18, 1947, respondents filed their answer admitting all of the material allegations of the complaint and waiving all intervening procedure upon the conditions and with the reservations stated in their motion. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondents' answer admitting all of the material allegations thereof, briefs in support of and in opposition to the said complaint, and oral argument thereon (the Commission in the meantime having disposed of each of the above-entitled matters); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent W. H. Brady & Co., hereinafter referred to as the corporate respondent, is a corporation organized and doing business under and by virtue of the laws of the State of Wisconsin with its office and principal place of business located at 510 Water Street, in the city of Eau Claire, State of Wisconsin. Respondents Frederick W. Brady, Elizabeth A. Brady, Mildred J. Brady, and Richard H. Brady are now and for many years last past have been officers and directors of said corporate respondent, and respondents William H. Brady, Jr., and M. Molitor (erroneously named in the complaint as Max M. Molitor) for several years prior to and including 1947 have been officers and directors of said corporate respondent. Said respondents formulated, directed, dictated and controlled the acts, practices, and policies of said corporate respondent.

The respondents (with the exception of William H. Brady, Jr., and M. Molitor during the year 1948 and thereafter) are now and for many years last past have been engaged in the manufacture of devices commonly known as push cards and in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of said devices to manufacturers of and dealers in various other articles of merchandise.

Respondents have caused said devices, when sold, to be transported from their aforesaid place of business in Eau Claire, Wis., to purchasers thereof at their respective points of location in various States of the United States other than the State of Wisconsin and in the District of Columbia. There is now and for many years last past there has been a course of trade in such push card devices by said respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business, respondents have sold and distributed to said manufacturers and dealers push cards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. One of said push cards has 60 small partially perforated disks on the face of each of which is printed the word "Push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card bears the following legend:

	<b>CANDY SALE</b>	
5¢		5¢
Each		Each
No Blanks		20 Big Prizes
EVERYBODY WINS		
Numbers 2-4-6-8-10-12-14-16-18-20-22-24-26-28-30-32		
RECEIVE * ONE LARGE NOUGAT LOAF		
Number 25		
RECEIVES * ONE EXTRA LARGE NOUGAT LOAF		
The Last Number in Each Section		
RECEIVES * ONE EXTRA LARGE NOUGAT LOAF		
All Other Numbers Receive a Regular Bar		
NOTE: Only One Bar, Loaf or Package with Each		
5¢ Purchase.		

Many others of said push cards have printed on the faces thereof other labels or instructions that express the manner in which said devices are to be used or may be used in the sale or distribution of various other specified articles of merchandise. The prices of the sales on said push cards vary in accordance with the individual devices. Each purchaser pays a specified price, usually from 1 to 5 cents a push, and is entitled to one push from the push card. When a push is made a disk is separated from the push card and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until the selection has been made and the push completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing, by their push, lucky or winning numbers receive articles of merchandise without additional



cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such winning numbers receive in some cases a small piece of candy of less value than the price paid for the push, and in other cases receive nothing for their money. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Other of said push card devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards the purchasers thereof place instructions or labels which have the same or similar import or meaning as the instructions or labels placed by the respondents on said push card devices first hereinabove described.

Respondents have sold and distributed many kinds of push cards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of candy or other merchandise and vary only in detail. The only use to be made of said push card devices and the only manner in which they are used by the ultimate purchasers thereof is in combination with other merchandise so as to enable said ultimate purchasers to sell and distribute said other merchandise by means of lot or chance as hereinabove described.

PAR. 3. Many persons, firms, and corporations who sell and distribute candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia have purchased respondents' said push card devices, and have packed and assembled assortments comprised of various articles of merchandise together with said push card devices. Retail dealers who have purchased said assortments, either directly or indirectly, and retail dealers who have purchased said devices directly from respondents and made up their own assortments, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards in accordance with the sales plan as described hereinabove. Because of the element of chance involved in the sale and distribution of said merchandise by means of said push cards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof, many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute said merchandise together with said devices and who have many competitors who sell or distribute like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Said competitors are faced with the alternative of using said push

card devices or other similar devices in connection with the sale or distribution of their merchandise, or of suffering the loss of substantial trade. Certain of these said competitors do not sell or distribute their merchandise by means of push cards or punchboard devices or similar devices because of the element of chance or lottery features involved therein and because such practices are contrary to the public policy of the Government of the United States. Such competitors also refrain from supplying to others push card or punchboard devices which are to be used or which may be used in connection with the sale or distribution of the merchandise of such competitors to the general public by means of a lottery, game of chance or gift enterprise. As a result thereof, substantial trade in commerce among and between the various States of the United States and in the District of Columbia has been unfairly diverted from said competitors who do not sell or use said devices, to persons, firms and corporations who purchase and use said devices of the respondents.

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

The sale or distribution of said push card devices by respondents, as hereinabove described, supplies to and places in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of their merchandise.

#### CONCLUSION

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

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer admitting all of the material allegations thereof, briefs and oral argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission act:

Order

48 F. T. C.

*It is ordered,* That the respondent W. H. Brady & Co., a corporation, and its officers, agents, representatives, and employees, and the respondents Frederick W. Brady, Elizabeth A. Brady, Mildred J. Brady, Richard H. Brady, William H. Brady, Jr., and M. Molitor, individually, and their respective agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, push cards, punchboards, or other lottery devices, which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.

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

Commissioner Mason concurring in the findings as to the facts and conclusion, but not concurring in the form of order to cease and desist, for the reasons stated in his opinion concurring in part and dissenting in part in Docket 5203—Worthmore Sales Co.<sup>1</sup>

<sup>1</sup> March 10, 1950. See 46 F. T. C. 606 at 622.

## Syllabus

## IN THE MATTER OF

## AMERICAN IRON &amp; STEEL INSTITUTE, ET AL.

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

*Docket 5508. Complaint, Nov. 13, 1947<sup>1</sup>—Decision, Aug. 10, 1951*

Where the Iron & Steel Institute; and a large number of member corporations, which produced more than 85 percent of the steel products produced and sold in the United States—including products regularly used in the production of automobiles, agricultural implements, tools and machinery, hardware, plumbing supplies, metal cans and containers, railroad equipment, homes, buildings, public buildings, bridges, dams and others, and products purchased in large quantities by the Federal, State, and municipal governments—and each of which directly or through an affiliate, and in cooperation with one another, actively participated in or supported said Institute and its activities; and which, engaged in the interstate sale and production of their products, were in competition with one another except as it was thereby restrained, lessened or destroyed;

- Following the close of NRA in May 1935 (or date of organization, if later) and the adoption, on June 6, 1935, by the members of the Iron and Steel Industry, of a formal resolution ratifying a similar resolution adopted by the Board of Directors of respondent Institute on June 3, 1935, to the effect that each of said members declared its intention of maintaining "the standards of fair competition", which had been described in the N. R. A. Steel Code—
- (a) Defined and described, through Committees of the Institute and otherwise, the limits of steel product groups, and the ranges of products within said groups, and classified ranges of products, quantities, and services; and made use of the said definitions, descriptions, and classifications in the pricing of their products, and in determining what products would be sold at base prices, and for which products and services extra charges or deductions would be made; and, in the case of any particular concern, announced "base prices," "extras," and "deductions" applicable to a particular product at a particular place and time (as distinguished from the actual selling prices which were nearly always the same as those announced as applicable under similar conditions by other respondent concerns;
  - (b) Prior to 1940 jointly compiled averaged industry-wide costs of producing products, performing services, and handling quantities different from those sold at base prices; actual costs of which different functions varied, depending upon efficiency, size of the particular product run, and other factors;
  - (c) Made use of said averaged industry-wide cost factors as a basis for determining and announcing the additional amounts (which were nearly always the same during any given period for any service, characteristic, or quantity), to be added to or deducted from their "base" or "based prices";
  - (d) Specified in the case of each, in announcing its base prices, not only an amount of dollars and cents for a specified steel product but also that such amount was applicable to such product at a specified geographical point or "basing point," and either announced prices at each of said points, or a willingness to equalize its prices with prices announced;

<sup>1</sup> Amended.

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- (e) Failed, in numerous instances, in the case of some of said concerns, to specify that their "base" or "based price" had application at one or more geographical points at which they produced and from which they shipped steel products;
- (f) Collected and compiled through the Institute, lists of freight rate factors, from certain basing points to many of the consuming points, and through the use of freight rate books in which said lists were printed and which were sold by said Institute, were enable to and did, quote identical amounts for the delivery cost factor of their delivered quotations, notwithstanding the complexities and uncertainties concerned in the freight rate tariffs published by the ecommon carriers; and calculated delivered prices for their products, with some exceptions, by adding to the base price, plus extras or minus deductions, a freight rate factor thus arrived at;
- (g) Beginning during the period of the N. R. A. Steel Code and continuing until the time of the complaint, imposed a charge equal to 35 percent of the applicable all-rail freight rate to the railroad station nearest to the point of use of purchasers desiring to use truck facilities for transportation when delivery was taken at the plant, and used arbitrary identical switching charges on purchases of steel products for delivery at basing points, which in some instances were more and in other instances less than the actual switching charges, which were practically impossible to determine in advance;
- (h) Attempted through the Traffic Committee of the Institute, to restrict the extension by the Interstate Commerce Commission of the fabrication in transit privileges available to purchasers of steel products;
- (i) In many instances made identical quotations, with respect to any given delivery point, in sealed bids submitted to State and Federal agencies, in which each bidder represented expressly or impliedly that its sealed bid was made on the basis of independent action, through use of such identical base prices, extra charges, terms and conditions of sale, basing points and delivery charges; notwithstanding the fact that the place of production of the steel products, proposed for delivery to the points concerned, varied widely among the different bidders:

*Held*, That such acts and practices, taken together and under the circumstances set forth, tended to lessen competition, were oppressive to the public interest, and unfair within the intent and meaning of the Federal Trade Commission Act, and if not checked, would unduly suppress competition; and that the public interest and the provisions of the aforesaid act required that the respondents should be restrained as in the cease and desist order provided.

Before *Mr. Frank Hier*, trial examiner.

*Mr. Lynn C. Paulson*, *Mr. Robert R. MacIver*, *Mr. Elmer F. Bennett*, and *Mr. Joseph J. Gercke* for the Commission.

*Davis, Polk, Wardwell, Sunderland & Kiendl*, of New York City, for American Iron & Steel Institute and numerous respondents, and along with—

*Mr. Fred Farrar*, of Denver, Colo., and *Rathbone, Perry, Kelley & Drye*, of New York City, for Colorado Fuel and Iron Corp.;

*Morgan, Lewis & Bockius*, of Philadelphia, Pa., and *Mr. John P. Bracken*, of Washington, D. C., for Alan Wood Steel Co. and The Midvale Co.;

*Essington, McKibbin, Beebe & Pratt*, of Chicago, Ill., for Acme Steel Co.;

*Curtis, Mallet-Prevost, Colt & Mosle*, of New York City, for Agaloy Tubing Co.;

*Smith, Buchanan & Ingersoll*, of Pittsburgh, Pa., for Allegheny Ludlum Steel Corp. and A. M. Byers Co.;

*Mr. Frederick S. Duncan*, of New York City, for American Chain & Cable Co., Inc.;

*Jones, Williams, Dorsey & Hill*, of Atlanta, Ga., for Atlantic Steel Co.;

*Kittelle & Lamb*, of Washington, D. C., for The Atlantic Wire Co. and John A. Roebling's Sons Co.;

*Sullivan & Cromwell*, of New York City, for The Babcock & Wilcox Tube Co. and The National Supply Co.;

*Gordon, Brady, Caffrey & Keller*, of New York City, for Continental Cooper & Steel Industries, Inc.;

*Kenefick, Bass, Letchworth, Baldy & Phillips*, of Buffalo, N. Y., for Buffalo Eclipse Corp.;

*Mr. Alton W. Lick*, of Harrisburg, Pa., for Central Iron & Steel Co.;

*O'Connor & Farber*, of New York City, for Compressed Steel Shafting Co.;

*Cabaniss & Johnston*, of Birmingham, Ala., for Connors Steel Co.;

*Black, McCuskey, Souers & Arbaugh*, of Canton, Ohio, for Continental Steel Corp. and The Cuyahoga Steel & Wire Co.;

*Mr. Frank R. S. Kaplan* and *Mr. Maurice J. Mahoney*, of Pittsburgh, Pa., for Copperweld Steel Co.;

*Gilfillan, Gilpin & Brehman*, of Philadelphia, Pa., for Henry Disston & Sons, Inc.;

*Mullikin, Stockbridge & Waters*, of Baltimore, Md., for Eastern Stainless Steel Corp.;

*McCloskey, Best & Leslie*, of Pittsburgh, Pa., for Firth Sterling Steel & Carbide Corp.;

*Paul, Lawrence & Rock*, of Pittsburgh, Pa., for Follansbee Steel Corp. and Reeves Steel & Manufacturing Co.;

*Shepley, Kroeger, Fisse & Ingamells*, of St. Louis, Mo., for Granite City Steel Co.;

*Jones, Day, Cockley & Reavis (Earl J. Lefever)*, of Cleveland, Ohio, for Griffin Manufacturing Co. and The Thomas Steel Co.;

*Benton, Benton & Luedeke*, of Newport, Ky., for Newport Steel Corp.;

*Mr. Joseph P. Gaffney*, of Philadelphia, Pa., for Keystone Drawn Steel Co.;

*Lewis, Rice, Tucker, Allen & Chubb*, of St. Louis, Mo., for Laclede Steel Co.;

*McDermott, Will & Emery*, of Chicago, Ill., for National Standard Co.;

*Bingham, Collins, Porter & Kistler*, of Washington, D. C., for Northwestern Steel & Wire Co.;

*Fitzgerald, Abbott & Beardsley*, of Oakland, Calif., for Pacific States Steel Corp.;

*Mr. Harold K. Brooks*, of Pittsburgh, Pa., for Pittsburgh Tube Co.;

*Poole, Warren & Littell*, of Detroit, Mich., for The Standard Tube Co.;

*Day, Cope, Ketterer, Raley & Wright*, of Canton, Ohio, for The Timken Roller Bearing Co.;

*J. M. Stoner & Sons*, of Pittsburgh, Pa., for Vulcan Crucible Steel Co.;

*Acheson, Davidson & Fergus*, of Washington, Pa., for Washington Steel Corp.; and

*Rathbone, Perry, Kelley & Drye*, of New York City, *Morgan, Lewis & Bockius*, of Philadelphia, Pa., and *Mr. John P. Bracken*, of Washington, D. C., for Claymont Steel Corp.

*Mr. Nathan L. Miller*, of New York City, and *Mr. Roger M. Blough*, and *Reed, Smith, Shaw & McClay*, of Pittsburgh, Pa., for United States Steel Corp., American Bridge Co., The American Steel & Wire Co. of New Jersey, United States Steel Co., Columbia Steel Co., Geneva Steel Co., National Tube Co., Tennessee Coal, Iron & Railroad Co., and Virginia Bridge Co.

*Cravath, Swaine & Moore*, of New York City, for Bethlehem Steel Corp., Bethlehem Pacific Coast Steel Corp., and Bethlehem Steel Co.

*Mr. Thomas F. Patton*, of Cleveland, Ohio, for Republic Steel Corp. and Truscon Steel Co.

*Thorp, Reed & Armstrong*, of Pittsburgh, Pa., for National Steel Corp., Weirton Steel Co., and Great Lakes Steel Co., and along with—

*Breed, Abbott & Morgan*, of New York City, for Sheffield Steel Corp. of Ohio.

*Mr. Edgardo A. Correa*, of Middletown, Ohio, and *Breed, Abbott & Morgan*, of New York City, for Armco Steel Corp.

*Mayer, Meyer, Austrian & Platt*, of Chicago, Ill., for Inland Steel Co. and Inland Steel Products Co.

*Andrews, Hadden & Putnam*, of Cleveland, Ohio, for The Youngstown Sheet & Tube Co.

*Mr. Richard L. Barnes, Mr. H. Parker Sharp, and Brandt, Riester & Brandt*, of Pittsburgh, Pa., for Jones & Laughlin Steel Corp.

*Wickes, Riddle, Bloomer, Jacobi & McGuire*, of New York City, and *Schmidt, Hugus & Laas* and *Mr. J. E. Bruce*, of Wheeling, W. Va., for Wheeling Steel Corp.

*Reed, Smith, Shaw & McClay*, of Pittsburgh, Pa., for Crucible Steel Co. of America, Pittsburgh Steel Co., Sharon Steel Co., Columbia Steel & Shafting Co., Latrobe Electric Steel Co., Superior Steel Corp., Vanadium-Alloys Steel Co., and Wyckoff Steel Co.

*Knapp, Cushing, Hershberger & Stevenson* of Chicago, Ill., for Columbia Tool Steel Co.

*Pam, Hurd & Reichmann*, of Chicago, Ill., for Bliss & Laughlin, Inc.

*Beaumont, Smith & Harris*, of Detroit, Mich., for Bundy Tubing Co.

*Stryker, Tams & Horner*, of Newark, N. J., for The Carpenter Steel Co.

*Gardner, Carton & Douglas*, of Chicago, Ill., for Chicago Steel & Wire Co.

*Cooke, Beake, Miller, Wrock & Cross*, of Detroit, Mich., for Detroit Steel Corp.

*Thorp, Reed & Armstrong*, of Pittsburgh, Pa., for Edgewater Steel Co., Moltrup Steel Products Co., and Pittsburgh Tool Steel Wire Co.

*Paul, Lawrence & Rock*, of Pittsburgh, Pa., for Empire Steel Corp. and E. S. Liquidating Co.

*Henninger, Shumaker & Kiester*, of Butler, Pa., for Fretz-Moon Tube Co., Inc.

*Mr. Charles Garside*, of New York City, for Harrisburg Steel Corp.

*Daily, Dines, White & Fiedler*, of Chicago, Ill., for Joslyn Manufacturing & Supply Co.

*Athearn, Chandler & Hoffman*, of San Francisco, Calif., for Judson Steel Corp.

*Baer, Davis & Witherell*, of Peoria, Ill., for Keystone Steel & Wire Co.

*Norris, Lew, Hart & Eldredge*, of Philadelphia, Pa., for Lukens Steel Co.



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*Mr. Robert M. Bozeman*, of New York City, for The Mahoning Valley Steel Co.

*Fordyce, Mayne, Hartman, Renard & Stribling*, of St. Louis, Mo., for The Medart Co.

*Mr. Louis J. Wiesen*, of Sharon, Pa., and *Reed, Smith, Shaw & McClay*, of Pittsburgh, Pa., for Mercer Tube & Manufacturing Co.

*Mr. Joseph A. Patrick*, of New York City, for The Phoenix Iron Co.

*Mr. Leonard H. Freiberg*, of Cincinnati, Ohio, for The Pollak Steel Co.

*Dickinson, Wright, Davis, McKean & Cudlip*, of Detroit, Mich., for Rotary Electric Steel Co.

*Mr. Vincent P. McDevitt* and *Mr. Warren W. Holmes*, of Philadelphia, Pa., for Sweet's Steel Co.

*Blaxter, O'Neill & Houston*, of Pittsburgh, Pa., for Universal Cyclops Steel Corp.

*Mr. Mark J. Ryan*, of New York City, for Western Automatic Machine Screw Co.

*Mr. Grover C. Richman*, of Camden, N. J., for Wheatland Tube Co.

*Mr. Forest D. Siefkin* and *Mr. W. Wadsworth Watts*, of Chicago, Ill., for Wisconsin Steel Co.

#### AMENDED COMPLAINT<sup>1</sup>

Pursuant to the provisions of an act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, and commonly known as the Federal Trade Commission Act, the Commission having reason to believe that the respondents herein named have violated the said act of Congress, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its amended complaint stating its charges in that respect as follows:

#### ORGANIZATION AND DESCRIPTION OF RESPONDENTS

PARAGRAPH 1. Each of the parties named below in this paragraph 1 is hereby named as a respondent herein.

<sup>1</sup>The Commission on September 3, 1948, issued an order dismissing amended complaint as to respondent E. S. Liquidating Co., formerly Empire Steel Corp., as follows:

This matter came on to be heard in regular course upon motion filed March 16, 1948, amended May 10, 1948, by respondent E. S. Liquidating Co., formerly Empire Steel Corp., to dismiss the amended complaint as to it and a statement of counsel supporting the complaint, filed June 25, 1948, by which said motion is not opposed.

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Company name	State of incorporation	Principal place of business
American Iron & Steel Institute, its directors and officers.	New York.....	350 5th Avenue, New York, N. Y.
United States Corp., and the following of its subsidiaries:	New Jersey.....	71 Broadway, New York, N. Y.
American Bridge Co.....	.....do.....	Frick Bldg., Pittsburgh, Pa.
The American Steel & Wire Co. of New Jersey.....	.....do.....	Rockefeller Bldg., Cleveland Ohio.
Carnegie-Illinois Steel Corp.....	.....do.....	Carnegie Bldg., Pittsburgh, Pa.
Columbia Steel Co.....	Delaware.....	Russ Bldg., San Francisco, Calif.
Geneva Steel Co.....	.....do.....	Geneva, Utah.
National Tube Co.....	.....do.....	Frick Bldg., Pittsburgh, Pa.
Tennessee Coal, Iron & Railroad Co.....	Tennessee.....	Brown-Marx Bldg., Birmingham, Ala.
Virginia Bridge Co.....	New Jersey.....	Roanoke, Va.
Bethlehem Steel Corp. and the following of its subsidiaries:	Delaware.....	25 Broadway, New York, N. Y.
Bethlehem Pacific Coast Steel Corp.....	.....do.....	20th and Illinois St., San Francisco, Calif.
Bethlehem Steel Co.....	Pennsylvania.....	Bethlehem, Pa.
Republic Steel Corp. and its controlled company: Truscon Steel Co.....	New Jersey.....	Republic Bldg., Cleveland, Ohio.
The Youngstown Sheet & Tube Co.....	Michigan.....	Do.
Jones & Laughlin Steel Corp.....	Ohio.....	Stambaugh Bldg., Youngstown, Ohio.
American Rolling Mill Co., and its subsidiary: Sheffield Steel Corp. of Ohio.....	Pennsylvania.....	Jones & Laughlin Bldg., Pittsburgh, Pa.
National Steel Corp. and the following of its subsidiaries:	Ohio.....	703 Curtis St., Middletown, Ohio.
Weirton Steel Co.....	.....do.....	Sheffield Station, Kansas City, Mo.
Great Lakes Steel Co.....	Delaware.....	Grant Bldg., Pittsburgh, Pa.
Inland Steel Co. and its subsidiary	West Virginia.....	1935 Stillwell St., Weirton, W. Va.
Milcor Steel Co.....	Delaware.....	Tecumseh Rd., Ecorse, Detroit, Mich.
Wheeling Steel Corp.....	.....do.....	38 South Dearborn St., Chicago, Ill.
Colorado Fuel & Iron Corp.....	.....do.....	36th and Burnham Sts., Milwaukee, Wis.
Crucible Steel Co. of America.....	.....do.....	Wheeling, W. Va.
Pittsburgh Steel Co.....	Colorado.....	Continental Oil Bldg., Denver, Colo.
Sharon Steel Corp.....	New Jersey.....	405 Lexington Ave., New York, N. Y.
Alan Wood Steel Co.....	Pennsylvania.....	Grant Bldg., Pittsburgh, Pa.
Acme Steel Co.....	.....do.....	Sharon, Pa.
Agaloy Tubing Co.....	.....do.....	Conshohocken, Pa.
Allegheny Ludlum Steel Corp.....	Illinois.....	2840 Archer Ave., Chicago, Ill.
American Chain & Cable Company, Inc.....	Place of incorporation unknown.	1027 Newark Ave., Elizabeth, N. J.
Atlantic Steel Co.....	Pennsylvania.....	Brackenridge, Pa.
The Atlantic Wire Co.....	New York.....	230 Park Ave., New York, N. Y.
The Babcock & Wilcox Tube Co.....	Delaware.....	Atlanta 1, Ga.
Bliss & Laughlin, Inc.....	Connecticut.....	1 Church St., Bramford, Conn.
Continental-United Industries Co., Inc.....	Pennsylvania.....	Beaver Falls, Pa.
Buffalo Bolt Co.....	Delaware.....	Harvey, Ill.
Bundy Tubing Co.....	.....do.....	345 Madison Ave., New York, N. Y.
A. M. Byers Co.....	New York.....	North Tonawanda, N. Y.
The Carpenter Steel Co.....	Place of incorporation unknown.	Hern at Springfield, Detroit 13, Mich.
Central Iron & Steel Co.....	Pennsylvania.....	Clark Bldg., Pittsburg 22, Pa.
Chicago Steel & Wire Co.....	New Jersey.....	101 West Bern, Reading, Pa.
Columbia Steel & Shafting Co.....	Pennsylvania.....	Harrisburg, Pa.
	Illinois.....	10257 Torrence Ave., Chicago 17, Ill.
	Pennsylvania.....	P. O. Box 1557, Pittsburg 30, Pa. (works at Carnegie, Pa.).

It appears to the Commission that said respondent on December 19, 1948, sold all of its assets of any and every nature to the Studebaker Corp. and since said date has not owned any property capable of producing steel, has produced no steel, does not presently intend to produce steel at any time in the future, and has not been a member of the American Iron & Steel Institute since April 29, 1948.

It is ordered, That the amended complaint herein be, and the same hereby is, dismissed as to respondent E. S. Liquidating Co., formerly Empire Steel Corp.

The Commission on February 15, 1949, issued an order dismissing amended complaint as to respondent The Phoenix Iron Co., as follows:

This matter came to be heard in regular course upon motion filed December 22, 1947, by counsel for respondent The Phoenix Iron Co. to dismiss the complaint as to it; a supplemental statement in support of said motion, filed January 22, 1948; and a statement of counsel supporting the complaint, filed January 23, 1948, together with supplemental statements, by said counsel, filed October 12 and December 16, 1948, respectively, by which said motion is not now opposed.

It appears to the Commission that said respondent, on or about September 30, 1947, sold all its steel-producing facilities; that since said date it has ceased to engage in the production of steel and has existed solely as a holding company owning shares of stock in other corporations, none of which are engaged in the production of steel; that it does not presently intend to resume the production of steel; and that on or about October 9, 1947, it withdrew from membership in the American Iron & Steel Institute.

It is therefore ordered, That the amended complaint herein be, and the same hereby is, dismissed as to respondent The Phoenix Iron Co.

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Company name	State of incorporation	Principal place of business
Columbia Tool Steel Co.....	Illinois.....	Lincoln Highway and State St., Chicago Heights, Ill.
Compressed Steel Shafting Co.....	Massachusetts.....	1587 Hyde Park Ave., Readville, Mass.
Connors Steel Co.....	Delaware.....	Birmingham 1, Ala.
Continental Steel Corp.....	Indiana.....	Kokomo, Ind.
Copperweld Steel Co.....	Pennsylvania.....	Glassport, Pa.
The Cuyahoga Steel & Wire Co.....	Ohio.....	Longwood Ave., Maple Heights, Cleveland 5, Ohio.
Detroit Steel Corp.....	Michigan.....	1025 South Oakwood Ave., Detroit 9, Mich.
Henry Disston & Sons, Inc.....	Pennsylvania.....	Tacony, Philadelphia 35, Pa.
Eastern Stainless Steel Corp.....	Maryland.....	Box 1975, Baltimore 3, Md.
Edgewater Steel Co.....	Pennsylvania.....	P. O. Box 478, Pittsburgh 30, Pa. (works at Oakmont, Pa.)
Empire Steel Corp.....	Ohio.....	Mansfield, Ohio.
Firth Sterling Steel & Carbide Corp.....	Pennsylvania.....	McKeespirt, Pa.
Follansbee Steel Corp.....	Delaware.....	3d and Liberty Ave., Pittsburgh, Pa.
Fretz-Moon Tube Co., Inc.....	Pennsylvania.....	Butler, Pa.
Granite City Steel Co.....	Delaware.....	20th and Madison Ave., Granite City, Ill.
Griffin Manufacturing Co.....	Pennsylvania.....	Cherry and Huron Sts., Erie, Pa.
Harrisburg Steel Corp.....	do.....	Harrisburg, Pa.
International Detrola Corp.....	Indiana.....	Beard Ave. at Chaffield, Detroit 9, Mich.
Joslyn Manufacturing & Supply Co.....	Illinois.....	20 North Wacker Dr., Chicago, Ill.
Judson Steel Corp.....	California.....	4200 Eastshore Highway, Emeryville, Calif.
Keystone Drawn Steel Co.....	Pennsylvania.....	Spring City, Pa.
Keystone Steel & Wire Co.....	Illinois.....	Peoria 7, Ill.
Laclede Steel Co.....	Missouri.....	Arcade Bldg., St. Louis, Mo.
Latrobe Electric Steel Co.....	Pennsylvania.....	Latrobe, Pa.
Lukens Steel Co.....	do.....	Coatesville, Pa.
The Mahoning Valley Steel Co.....	Ohio.....	McKees Lane, Niles, Ohio.
The Medart Co.....	Missouri.....	100 Potomac St., St. Louis, Mo.
Mercer Tube & Manufacturing Co.....	Delaware.....	200 Clark St., Sharon, Pa.
The Midvale Co.....	do.....	4320 Wissahickon Ave., Nicetown, Philadelphia, Pa.
Moltrup Steel Products Co.....	Pennsylvania.....	Beaver Falls, Pa.
National Standard Co.....	Michigan.....	Niles, Mich.
The National Supply Co.....	Pennsylvania.....	330 Grant St., Pittsburgh 30, Pa.
Northwestern Steel & Wire Co.....	Illinois.....	Sterling, Ill.
Pacific States Steel Corp.....	California.....	Niles, Calif.
The Phoenix Iron Co.....	Pennsylvania.....	121 Bridge St., Phoenixville, Pa.
Pittsburgh Tool Steel Wire Co.....	do.....	Monaca, Pa.
Pittsburgh Tube Co.....	Delaware.....	323 4th Ave., Pittsburgh 22, Pa.
The Pollak Steel Co.....	Ohio.....	820 Temple Bar Bldg., Cincinnati, Ohio.
Reeves Steel & Manufacturing Co.....	do.....	Dover, Ohio.
John A. Roebing's Sons Co.....	New Jersey.....	640 South Broad St., Trenton 2, N. J.
Rotary Electric Steel Co.....	Delaware.....	21400 Mound Rd., Warren Township, Mich.
The Standard Tube Co.....	Michigan.....	14600 Woodward Ave., Highland Park, Mich.
Superior Steel Corp.....	Virginia.....	Grant Bldg., Pittsburgh, Pa.
Sweets Steel Co.....	Pennsylvania.....	Williamsport, Pa.
The Thomas Steel Co.....	Ohio.....	Delaware Ave., Warren, Ohio.
The Timken Roller Bearing Co.....	do.....	1835 Deuber Ave. SW., Canton 6, Ohio.
Universal-Cyclops Steel Corp.....	Pennsylvania.....	Bridgeville, Pa.
Vanadium-Alloys Steel Co. and its subsidiary: Anchor Drawn Steel Co.....	Place of incorporation unknown	Do.
Vulcan Crucible Steel Co.....	New Jersey.....	West Aliquippa, Pa.
Washington Steel.....	Place of incorporation unknown.	Washington, Pa.
Western Automatic Machine Screw Co.....	do.....	117 Main St, Flemington, N. J.
Wheatland Tube Co.....	Pennsylvania.....	Real Estate Trust Bldg., Philadelphia, 7, Pa.
Wisconsin Steel Co.....	Place of incorporation unknown.	180 North Michigan Ave., Chicago, Ill.
Worth Steel Co.....	Delaware.....	Claymont, Del.
Wyckoff Steel Co.....	Pennsylvania.....	First National Bank Bldg., Pittsburgh, Pa.

Sometimes hereinafter the aforesaid American Iron & Steel Institute will be referred to as respondent Institute. Its officers and directors sometimes will be referred to as officers and directors of respondent Institute. Each of the other parties named above in this paragraph 1 sometimes will be referred to as a producer respondent and, sometimes collectively, they will be referred to as producer respondents.

The following producer respondents are members of respondent Institute, and they are sometimes hereinafter referred to as members: Acme Steel Co., Agaloy Tubing Co., Alan Wood Steel Co., Allegheny Ludlum Steel Corp., The American Rolling Mill Co., Anchor Drawn Steel Co., Atlantic Steel Co., The Atlantic Wire Co., The Babcock & Wilcox Tube Co., Bethlehem Steel Co., Bliss & Laughlin, Inc., Buffalo Bolt Co., Bundy Tubing Co., A. M. Byers Co., The Carpenter Steel Co., Central Iron & Steel Co., Chicago Steel & Wire Co., Colorado Fuel & Iron Corp., Columbia Steel & Shafting Co., Columbia Tool Steel Co., Compressed Steel Shafting Co., Connors Steel Co., Continental Steel Corp., Copperweld Steel Co., Crucible Steel Co. of America, The Cuyahoga Steel & Wire Co., Detroit Steel Corp., Henry Disston & Sons, Inc., Eastern Stainless Steel Corp., Edgewater Steel Co., Empire Steel Corp., Firth Sterling Steel & Carbide Corp., Follansbee Steel Corp., Fretz-Moon Tube Co., Inc., Granite City Steel Co., Griffin Manufacturing Co., Harrisburg Steel Corp., Inland Steel Co., Jones & Laughlin Steel Corp., Joslyn Manufacturing & Supply Co., Judson Steel Corp., Keystone Drawn Steel Co., Keystone Steel & Wire Co., Laclede Steel Co., Latrobe Electric Steel Co., Lukens Steel Co., The Mahoning Valley Steel Co., The Medart Co., Mercer Tube & Manufacturing Co., The Midvale Co., Moltrup Steel Products Co., National Standard Co., National Steel Corp., Northwestern Steel & Wire Co., Pacific States Steel Corp., The Phoenix Iron Co., Pittsburgh Steel Co., Pittsburgh Tool Steel Wire Co., Pittsburgh Tube Co., The Pollak Steel Co., Reeves Steel & Manufacturing Co., Republic Steel Corp., John A. Roebling's Sons Co., Rotary Electric Steel Co., Sharon Steel Corp., The Standard Tube Co., Superior Steel Corp., Sweet's Steel Co., The Thomas Steel Co., United States Steel Corp., Universal Cyclops Steel Corp., Vanadium-Alloys Steel Co., Vulcan Crucible Steel Co., Washington Steel Corp., Western Automatic Machine Screw Co.,

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Wheatland Tube Co., Wheeling Steel Corp., Wisconsin Steel Co.,  
Wyckoff Steel Co., The Youngstown Sheet & Tube Co.

DESCRIPTION OF THE INDUSTRY AND THE INTERSTATE CHARACTER  
OF RESPONDENTS' BUSINESS

PAR. 2. The steel industry is one of the basic industries of the Nation. Respondent producers produce and sell substantially all of the steel that is produced and sold in the country. According to reports of respondent Institute, its members produce more than 96 percent of the country's total output of steel. The total dollar volume of their sales of the products involved herein in 1946 was approximately \$5,000,000,000. The steel products which they produce and sell are regularly used in the production of automobiles, agricultural implements, tools and machinery, hardware, plumbing supplies, metal cans, and containers, railroad equipment, homes, buildings, public buildings, bridges, dams, and other products and things and are of great importance to the public generally. The Federal, State, and municipal governments of the Nation purchase large quantities of steel annually.

Producer respondents, in the regular course of their business, are engaged in interstate commerce, as "commerce" is defined in the Federal Trade Commission Act, and in that connection have used the acts, policies, and methods hereinafter alleged. They sell and deliver across State boundary lines and in the District of Columbia large quantities of their products and supplies, and, in addition, sell and export steel products to purchasers thereof in foreign countries.

Respondents have the power to dominate and manipulate the markets in which their unorganized customers and consumers must buy their products and to frustrate, destroy, suppress, and eliminate competition between themselves. The American Iron & Steel Institute is made use of by producer respondents as a vehicle or medium for collective action and it assists the producer respondents in dominating and manipulating markets and in the carrying on of the unfair methods of competition hereinafter alleged. Collective action taken by producer respondents through respondent Institute in connection with the increase in steel prices which was announced during July 1947 is an instance in point.

OFFENSES CHARGED

PAR. 3. For many years last past and continuing to the present time, respondents have combined, conspired and agreed to act collusively

and have acted collusively, and are now acting collusively, in restraining, suppressing, frustrating, and destroying competition in the sale of steel products, including but not restricted to (1) ingots; (2) semi-finished rolled products (e. g. blooms, billets, tube rounds, sheet bars, tin-plate bars, and slabs); (3) finished rolled products (e. g. rails and accessory rail supplies, structural shapes, bars, wire rods, skelp, sheet steel piling, sheets, strip steel, and tin mill block plate); and (4) further finished steel products (e. g. cold finished bars, rods, sheets and strips, galvanized sheet and strip, terneplate and other coated sheet and strip tin plate, pipe and tubes, nails, wire and wire products) in commerce, as "commerce" is defined in the Federal Trade Commission Act and in violation of section 5 of the Federal Trade Commission Act (15 U. S. C. A. 45) in the commission of acts and the promulgation and use of policies, methods, and practices hereinafter more particularly set forth in subparagraphs 1 to 3, inclusive, of this paragraph 3 and in each of the succeeding paragraphs, namely, paragraph 4, paragraph 5, paragraph 6, and paragraph 7.

1. They have collusively composed, established and announced prices—

(a) Through the maintenance and use of the basing point practices and methods particularly described, set forth and alleged in paragraph 4;

(b) Through the collective compilation of pricing factors more particularly described, set forth and alleged in paragraph 5; and

(c) Through collective designation of certain steel products as "base products" for pricing purposes as is more particularly described, set forth and alleged in paragraph 6.

2. They have directly and indirectly through the offices and organization of respondent Institute, and otherwise, collectively furthered their designs and plans to restrain, suppress, frustrate, and lessen competition in the sale of steel products—

(a) Through agreements and collective action, including those particularized, set forth and alleged in paragraph 7;

(b) Through discussions by representatives of producer respondents in group meetings where they have reached a meeting of their minds that it would be to the self-interest of each of the producer respondents to so act as to forestall increases in steel production facilities and acting thereafter in accordance with such understandings;

(c) Through agreements, methods, and practices with respect to making quotations to railroads;

(*d*) Through taking collective and collusive action from time-to-time to promote the making of delivered price quotations by producer respondents to customers at any given destination and in the promotion of adherence to such quotations;

(*e*) Through collective action with respect to resale price maintenance plans to further frustrate price competition and in so doing requiring jobbers to sell various steel products at the delivered price quotations adopted and specified by the producer respondents which were calculated in accordance with the basing point practices and methods referred to in paragraph 4 herein;

(*f*) Through taking collective action for establishment of a classification of customers designated as "jobbers" and the designation of particular persons, firms, and individuals to be listed within that classification as provided in joint action by members of one or more of the various "groups" of Respondents referred to in paragraph 7 herein;

(*g*) Through collective action in establishing and maintaining uniform terms and conditions of sale, including free credit periods and maximum cash discounts for prompt payment.

3. They have collusively acted to prevent deviations from their collusively announced prices—

(*a*) Through the taking of collective action to prevent diversions of shipments in transit;

(*b*) Through the taking of collective action to forestall and prevent reductions in railroad rates;

(*c*) Through the taking of collective action to curtail fabrication in transit;

(*d*) Through the taking of collective action to curtail price quotations on an f. o. b. mill basis when unrelated to or calculated in accordance with the basing point practices particularized in paragraph 4; and

(*e*) Through the taking of collective action to arrive at the establishment of uniform quotations on extras as is more particularly described, set forth and alleged in paragraph 6.

PAR. 4. Producer respondents have followed and do now follow a planned common and cooperative course of action in their employment and use of basing point practices, as hereinafter particularized, set forth and alleged in this paragraph 4. The practices involve the designating of a certain location or a limited number of locations as basing points for pricing purposes. Such locations will hereinafter

sometimes be referred to as basing points. For each such basing point a factor "base price" is announced. Such factor will hereinafter sometimes be referred to as "base price" or "basing point price." The factor of "base price" thus used is announced by respondents as f. o. b. Pittsburgh, Pa., on some products. On other steel products with respect to a given delivered price quotation, the factor "base price," as announced by producer respondents, is announced as f. o. b. one or two or more locations (namely, a basing point) plus "freight applicator" therefor to said destination. Regularly, and in many instances, producer respondent produce steel at and make shipments from locations other than those designated and used as basing points in calculating the applicable delivered price quotations.

In calculating, arriving at and announcing delivered price quotations, Producer Respondents use a formula, including the factor "base price" and a factor designated by respondents as "freight rate." The latter factor, when used by producer respondents for pricing purposes, is taken from a compilation cooperatively and collectively produced by respondents through respondent Institute. The factor thus designated by respondents as "freight rate" is herein sometimes referred to as "freight applicator." Thus, the delivered price quotations of producer respondents involve the use of a formula, namely, "base price" plus "freight applicator." The factor "freight applicator" thus utilized purports to represent the applicable freight rate on a given shipment. However, in no instance except by happenstance does it represent the sum of the applicable freight rate on a shipment by a producer respondent where the delivered price therefor was based on the basing point price f. o. b. a location other than that from which shipment was made. Furthermore, variances thus arising in many instances on some steel products occur because producer respondents making quotations in such instances have utilized the factor "base price" at a basing point plus the factor "freight applicator" supposedly representing freight charges from the basing point thus selected to the destination involved, although shipment is actually made from a production point much nearer freight-wise and at substantially lower actual transportation cost than the sum represented by said "freight applicator" used as a part of the formula for the delivered price. In other instances, producer respondents, although making shipments from one of the aforesaid basing points calculates delivered price quotations with respect thereto through the use of the formula of base price plus freight applicator applicable from an entirely different basing point than the point of shipment.



PAR. 5. As a part of their common purposes and plan to lessen price competition, respondents have agreed upon a common list of charges to be added to base prices in lieu of switching, shipping, and freight charges. Such charges have been compiled and published by the respondent Institute, ostensibly for the purpose of determining shipping charges, and are employed by the producer respondents in the calculation of delivered price quotations. Each producer respondent maintains a traffic department for determining actual shipping charges, including rates and routes. Such calculations are difficult and technical and traffic experts frequently differ as to the proper rate or route involved in a particular shipment. Such calculations often differ through changes in rates or routes which may not become known to different shippers at the same time. To avoid differences in delivered price quotations through employment of different rates, routes or switching charges by different producer respondents, the respondents have employed in the calculation of delivered price quotations, only the rates which have been published and promulgated by the respondent Institute. Thus, Institute freight rate books are in reality price books.

In computing and calculating their delivered price quotations in accordance with the aforesaid compilation or schedule of factors purporting to be all-rail freight rates and rail-ocean freight rates compiled and disseminated collectively through respondent Institute, respondents frequently assess and charge amounts for delivery that are higher than those available according to official published tariffs and frequently deny purchasers the benefit of lower rates otherwise available for water or truck haul; likewise, respondents include in delivered price quotations arbitrary amounts in lieu of actual switching charges made by the railroads for switching cars, which said arbitrary charges respondents have made available to themselves by collective collusive action through respondent Institute and otherwise.

PAR. 6. Producer respondents produce and sell thousands of steel products which vary in size, shape, chemical composition, physical treatment and otherwise from one another. Thus, the potentiality for price competition among these respondents is very great. To prevent this potential competition from finding expression and in furtherance of their general combination, respondents have adopted common methods of pricing and selling their great variety of products as follows: They have collectively and collusively classified their products making certain products "base" products for pricing purposes, and variations therefrom "extras" or "deductions." An

"extra" or "deduction" is any variation in quality, size, chemical composition, physical treatment or otherwise from the "base" product. They have collectively and concertedly classified "extras" and "deductions" for pricing purposes and have concertedly and collusively established and maintained uniform prices for the aforesaid "extras" and "deductions," usually in terms of monetary amounts per hundred pounds or per pound or in terms of percent of the applicable base price factor. The said monetary amounts or percentum are added to or deducted from the applicable "base price" factor as provided for by the aforesaid collective and collusive action of respondents. Respondents have also collusively and concertedly established and maintained a system of uniform "extras" and "deductions" applicable to size or quantity of shipment or services rendered.

From time to time through agreement among themselves, respondents have arbitrarily increased the price of "extras" by substantial amounts aggregating a high percentage of the "base" product price factor and without relation to the cost of the "extra" involved.

PAR. 7. For several years last past producer respondents have been conducting their business and carrying on their activities under an agreement embodied in a formal resolution adopted on June 6, 1935, by producer members of respondent Institute representing more than 90 percent of the steel producing capacity of the country. Under the terms of said resolution, which ratified a similar resolution adopted by respondent Institute's board of directors on June 3, 1935, each of the producer respondents declared its intention of maintaining "the standards of fair competition which are described in the Steel Code." Said resolutions were adopted and have continued in effect after the invalidation of the National Industrial Recovery Act by the Supreme Court of the United States. Among other things said Code provided that "each member of the Code, by becoming such member, agrees with every other member thereof that the Code constitutes a valid and binding contract by and among all members of the Code." The board of directors of respondent American Iron & Steel Institute was the Code Authority which was entrusted by respondents with and exercised the functions of enforcing, administering, interpreting, and applying the provisions of the Code regarding "the standards of fair competition" incorporated therein. Said Institute, its board of directors, committees, and members have exercised similar functions since adoption of the aforesaid resolutions and have continued the Code in effect as a voluntary agreement among the members of the Institute.

As recently as July 1947, the Institute was used by respondents to collusively support an increase in the price of steel which the producer respondents had announced. Respondent producers have continuously collaborated in the promotion, establishment and conduct within the membership of respondent Institute of a number of separate groups each composed of members who produce and sell similar and competing kinds of steel products, and have promoted and held frequent meetings, conferred, and systematically exchanged and interchanged information among and between themselves to carry out a noncompetitive price policy. Many of the producer respondents are producers of more than one kind of steel product and accordingly affiliated with more than one of the separate groups referred to. Among such groups are those composed of the respective producers of rolled steel products, rails, structural shapes, plates, bars, sheets, strips, tubular goods and wire products.

PAR. 8. Each of the producer respondents have contributed to the accomplishment of the acts and the effects flowing therefrom, as alleged in this complaint, by—

(1) Use of the basing point practices as particularized, set forth and alleged in paragraph 4;

(2) The practice of discrimination between and among its customers by demanding, charging, accepting, and receiving higher net prices from its customers located near its plant than from its customers more distantly located for goods of like grade, quality and quantity, and whereby it is enabled to and does match its quotations on a delivered basis with the quotations of other respondent members;

(3) Action in quoting prices to customers located in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, which are arrived at through the application of basing point practices as particularized in paragraph 4, and in so doing quotes prices as though shipments were being made from mills east of the Rocky Mountains, although deliveries are actually made from mills west of the Rocky Mountains and in some instances near the location of the customer's business;

(4) Use of the compilations more particularly described, set forth and alleged in paragraph 5;

(5) Use of the designations of "base products" for pricing purposes in the manner more particularly set forth and alleged in paragraph 6;

(6) Use of compilations of "extras" or "deductions" more particularly described, set forth and alleged in paragraph 6;

(7) Acting in accordance with the understandings, agreements, plans, methods, policies, and practices more particularly described, set forth and alleged in paragraphs 3 and 7.

PAR. 9. The inherent effects of the adoption and maintenance by the respondent members of the practices described and alleged in paragraph 4 herein and of the collective action alleged in subparagraph 3 (d) of paragraph 3 herein include all and singularly the following, to-wit:

(1) Substantial lessening of competition among respondent members;

(2) Unfair and oppressive discrimination against portions of the purchasing public in large areas by depriving such purchasers of the advantage which would otherwise accrue to them as a result of their proximity to the factories of respondent members, and by requiring such purchasers to pay increases over what the net prices to such purchasers would have been if such net prices had been fixed by competition among respondents; and

(3) Deprivation of equal opportunities for buyers to secure supplies of steel in times of short supply when respondent producers refuse to quote and sell f. o. b. mill.

PAR. 10. The combination, agreements, and understandings of the respondents and the acts, practices, pricing methods, systems, devices, and policies as hereinbefore alleged, all and singularly, are unfair and to the prejudice of the public, deprive the public of the benefit of competition, promote discrimination against some buyers and users of respondents' products, have a dangerous tendency and capacity to restrain unreasonably competition in the sale of such products in commerce; have actually hindered, frustrated, restrained, suppressed, and prevented competition in such products in commerce; and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the meaning of section 5 of the Federal Trade Commission Act, as amended.

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

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on November 13, 1947, issued and subsequently served its amended complaint upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce, in violation of the provisions of that act. After the filing of respondents' answers to said complaint, testimony and other evidence in support of the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly

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designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. After counsel supporting the complaint rested their case, a proposal for the settlement of this proceeding was submitted by all of the respondents herein except those as to whom the Commission has determined the complaint should be dismissed, said proposal for settlement having been accepted and recommended by the Director, Bureau of Antimonopoly, and the Assistant Director of that Bureau and Chief of the Division of Investigation and Litigation, of the Commission. The Commission, being of the opinion that said proposal for settlement provided for an adequate and appropriate disposition of this proceeding, and that it would be in the public interest to accept same, on June 15, 1951, entered an order "tentatively accepting proposal for settlement; rejecting previously submitted proposal for settlement, providing for the issuance of a tentative decision and affording interested parties an opportunity to file memoranda or briefs with respect thereto, denying motion for leave to adduce additional evidence, withdrawing case from trial examiner and closing the record for the reception of evidence, and dismissing the complaint as to certain respondents" and issued its tentative decision consisting of findings as to the facts, conclusion, and order to cease and desist in the form submitted with said proposal for settlement. No reasons having been presented, within the time provided therefor, as to why said tentative decision should not be entered as the Commission's final decision herein, and the aforesaid tentative order becoming by its terms an order of the Commission upon the issuance by the Commission of said tentative decision as its final decision herein, this matter came on for final hearing before the Commission upon the amended complaint, answers thereto, testimony and other evidence in support of the allegations of the complaint, and the proposal for settlement, which by agreement of the parties was amended to give effect to a change in the corporate name of one of the respondents and to correct an error as to the State of incorporation of another of the corporate respondents; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The States of incorporation and locations of an office or principal place of business of the following-named corporate respondents are, respectively, as follows:

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Name of corporation	State of incorporation	Office or principal place of business
American Iron & Steel Institute.....	New York.....	350 5th Ave., New York, N. Y.
United States Steel Corp.....	New Jersey.....	71 Broadway, New York, N. Y.
The American Steel & Wire Co. of New Jersey.....	do.....	Rockefeller Bldg., Cleveland, Ohio.
United States Steel Co. (designated in the complaint as Carnegie-Illinois Steel Corp., but which corporate name was changed on Dec. 30, 1950, to that of United States Steel Co.).....	do.....	Carnegie Bldg., Pittsburgh, Pa.
Columbia Steel Co.....	Delaware.....	Russ Bldg., San Francisco, Calif.
Geneva Steel Co.....	do.....	Geneva, Utah.
National Tube Co.....	New Jersey.....	Frick Bldg., Pittsburgh, Pa.
Tennessee Coal, Iron & Railroad Co.....	Alabama.....	Brown-Marx Bldg., Birmingham, Ala.
Bethlehem Steel Corp.....	Delaware.....	Wilmington, Del.
Bethlehem Pacific Coast Steel Corp.....	do.....	27th and Illinois Sts., San Francisco, Calif.
Bethlehem Steel Co.....	Pennsylvania.....	Bethlehem, Pa.
Republic Steel Corp.....	New Jersey.....	Republic Bldg., Cleveland, Ohio.
Truscon Steel Co.....	Michigan.....	Do.
The Youngstown Sheet Tube Co.....	Ohio.....	Stambaugh Bldg., Youngstown, Ohio.
Jones & Laughlin Steel Corp.....	Pennsylvania.....	Jones & Laughlin Bldg., Pittsburgh, Pa.
Armco Steel Corp. (name formerly The American Rolling Mill Co.).....	Ohio.....	703 Curtis St., Middletown, Ohio.
Sheffield Steel Corp. of Ohio.....	do.....	Sheffield Station, Kansas City, Mo.
National Steel Corp.....	Delaware.....	Grant Bldg., Pittsburgh, Pa.
Weirton Steel Co.....	West Virginia.....	Weirton, W. Va.
Great Lakes Steel Corp.....	Delaware.....	Detroit, Mich.
Inland Steel Co.....	do.....	38 South Dearborn St., Chicago, Ill.
Inland Steel Products Co. (name formerly Milcor Steel Co.).....	do.....	38th and Burnham Sts., Milwaukee, Wis.
Wheeling Steel Corp.....	do.....	Wheeling, W. Va.
The Colorado Fuel & Iron Corp.....	Colorado.....	Continental Oil Bldg., Denver, Colo.
Claymont Steel Corp. (name formerly Worth Steel Co.).....	Delaware.....	Claymont, Del.
Crucible Steel Co. of America.....	New Jersey.....	New York, N. Y.
Pittsburgh Steel Co.....	Pennsylvania.....	Pittsburgh, Pa.
Sharon Steel Corp.....	do.....	Sharon, Pa.
Alan Wood Steel Corp.....	do.....	Conshohocken, Pa.
Ace Steel Co.....	Illinois.....	2840 Archer Ave., Chicago, Ill.
Allegheny Ludlum Steel Corp.....	Pennsylvania.....	Brackenridge, Pa.
American Chain & Cable Co., Inc.....	New York.....	230 Park Ave., New York, N. Y.
Atlantic Steel Co.....	Delaware.....	Fulton County, Ga.
The Babcock & Wilcox Tube Co.....	Pennsylvania.....	Beaver Falls, Pa.
Bliss & Laughlin, Inc.....	Delaware.....	Harvey, Ill.
Continental Copper & Steel Industries, Inc. (name formerly Continental-United Industries Co., Inc.).....	do.....	345 Madison Ave., New York, N. Y.
Buffalo Eclipse Corp. (name formerly Buffalo Bolt Co.).....	New York.....	North Tonawanda, N. Y.
A. M. Byers Co.....	Pennsylvania.....	Clark Bldg., Pittsburgh, Pa.
The Carpenter Steel Co.....	New Jersey.....	101 West Bern St., Reading, Pa.
Central Iron & Steel Co.....	Pennsylvania.....	Harrisburg, Pa.
Columbia Steel & Shafting Co.....	do.....	East Carnegie, Pa.
Columbia Tool Steel Co.....	Illinois.....	Lincoln Highway and State St., Chicago Heights, Ill.
Compressed Steel Shafting Co.....	Massachusetts.....	1557 Hyde Park Ave., Readville, Mass.
Connors Steel Co.....	Delaware.....	Birmingham, Ala.
Continental Steel Corp.....	Indiana.....	Kokomo, Ind.
Copperweld Steel Co.....	Pennsylvania.....	Warren, Ohio.
The Cayahoga Steel & Wire Co.....	Ohio.....	Longwood Ave., Maple Heights, Cleveland, Ohio.
Detroit Steel Corp.....	Michigan.....	1025 South Oakwood Ave., Detroit, Mich.
Henry Disston & Sons, Inc.....	Pennsylvania.....	Tacony, Philadelphia, Pa.
Edgewater Steel Co.....	do.....	Borough of Oakmont, Allegheny County, Pa.
Firth Sterling Steel & Carbide Corp.....	do.....	McKeesport, Pa.
Follansbee Steel Corp.....	Delaware.....	3d and Liberty Aves., Pittsburgh, Pa.
Fretz-Moon Tube Co.....	Pennsylvania.....	Borough of East Butler, Pa.
Granite City Steel Co.....	Delaware.....	20th and Madison Aves., Granite City, Ill.
Griffin Manufacturing Co.....	Pennsylvania.....	Cherry and Union Sts., Erie, Pa.
Newport Steel Corp. (name formerly International Detrola Corp.).....	Indiana.....	Beard Ave. at Chatfield, Detroit, Mich.
Joslyn Manufacturing & Supply Co.....	Illinois.....	20 North Wacker Dr., Chicago, Ill.
Judson Steel Corp.....	California.....	4200 Eastshore Highway, Emeryville, Calif.
Keystone Drawn Steel Co.....	Pennsylvania.....	Spring City, Pa.
Keystone Steel & Wire Co.....	Illinois.....	Peoria, Ill.
Laclede Steel Co.....	Missouri.....	Arcade Building, St. Louis, Mo.
Latrobe Electric Steel Co.....	Pennsylvania.....	Latrobe, Pa.
Lukens Steel Co.....	do.....	Coatesville, Pa.

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Name of corporation	State of incorporation	Office or principal place of business
Mahoning Valley Steel Co.....	Ohio.....	Niles, Ohio.
The Medart Co.....	Missouri.....	100 Potomac St., St. Louis, Mo.
Mercer Tube & Manufacturing Co.....	Delaware.....	200 Clark Ave., Sharon, Pa.
The Midvale Co.....	do.....	4320 Wissahickon Ave., Nicetown, Philadelphia, Pa.
Moltrup Steel Products Co.....	Pennsylvania.....	Beaver Falls, Pa.
National-Standard Co.....	Michigan.....	Niles, Mich.
The National Supply Co.....	Pennsylvania.....	330 Grant St., Pittsburgh, Pa.
Northwestern Steel & Wire Co.....	Illinois.....	Sterling, Ill.
Pacific States Steel Corp.....	California.....	Niles, Calif.
Pittsburgh Tool Steel Wire Co.....	Pennsylvania.....	Monaca, Pa.
Pittsburgh Tube Co.....	Delaware.....	323 4th Ave., Pittsburgh, Pa.
The Pollak Steel Co.....	Ohio.....	820 Temple Bar Bldg., Cincinnati, Ohio.
Reeves Steel & Manufacturing Co.....	do.....	Dover, Ohio.
John A. Roebling's Sons Co.....	New Jersey.....	640 South Broad St., Trenton, N. J.
Rotary Electric Steel Co.....	Delaware.....	21400 Mound Rd., Warren Township, Mich.
The Standard Tube Co.....	Michigan.....	14600 Woodward Ave., Highland Park, Mich.
Superior Steel Corp.....	Virginia.....	Pittsburgh, Pa.
Sweet's Steel Co.....	Pennsylvania.....	Williamsport, Pa.
The Thomas Steel Co.....	Ohio.....	Warren, Ohio.
The Timken Roller Bearing Co.....	do.....	1835 Deuber Ave., SW., Canton, Ohio.
Universal-Cyclops Steel Corp.....	Pennsylvania.....	Bridgeville, Pa.
Vanadium-Alloys Steel Co.....	do.....	Latrobe, Pa.
Anchor Drawn Steel Co.....	do.....	Do.
Vulcan-Crucible Steel Co.....	do.....	Alquippa, Pa.
The Western Automatic Machine Screw Co.....	Connecticut.....	900 Foster Ave., Elyria, Ohio.
Wheatland Tube Co.....	Pennsylvania.....	Philadelphia, Pa.
Wisconsin Steel Co.....	Illinois.....	180 North Michigan Ave., Chicago, Ill.
Wyckoff Steel Co.....	Pennsylvania.....	Pittsburgh, Pa.

The above-listed corporations are hereinafter referred to as the respondents.

The Commission has dismissed this proceeding as to the respondent The Phoenix Iron Co., a Pennsylvania corporation with its offices and principal place of business at 121 Bridge Street, Phoenixville, Pa., which, on September 30, 1947, sold all its steel producing facilities and withdrew permanently from the business of producing and selling steel products.

The Commission has also dismissed this proceeding as to respondent E. S. Liquidating Co. (formerly Empire Steel Corp.), an Ohio corporation with its offices and principal place of business in Mansfield, Ohio, which is in the process of dissolution.

The record does not show that the following-named respondent companies have participated in the practices hereinafter found, and they are not included hereinafter in the term, respondents:

Name of corporation	State of incorporation	Office or principal place of business
Agaloy Tubing Co., Inc.....	New Jersey.....	Wheel St., Springfield, Ohio.
American Bridge Co.....	do.....	Frick Bldg., Pittsburgh, Pa.
Atlantic Wire Co.....	Connecticut.....	1 Church St., Branford, Conn.
Bundy Tubing Co.....	Michigan.....	Hern at Springfield, Detroit 13, Mich.
Chicago Steel & Wire Co.....	Illinois.....	10257 Torrence Ave., Chicago, Ill.
Eastern Stainless Steel Corp.....	Maryland.....	Baltimore, Md.
Harrisburg Steel Corp.....	Pennsylvania.....	Harrisburg, Pa.
Virginia Steel Co.....	New Jersey.....	Roanoke, Va.
Washington Steel Corp.....	Pennsylvania.....	Washington, Pa.

PAR. 2. With the exception of the American Iron & Steel Institute, the respondents, or one or more of their respective subsidiaries named in paragraph 1, are engaged in the production, sale, and distribution of one or more of the steel products listed below, and, in the course of the sale and distribution thereof, each of them competes with others of said respondents, except to the extent that competition may have been restrained, lessened or destroyed by the acts, practices, methods, policies, and other matters hereinafter described, and each of them in the regular course and conduct of its business sells and delivers one or more of such steel products or causes them to be sold and delivered or transports them or causes them to be transported from the State in which such steel products are produced to purchasers thereof at locations outside the State in which such steel products are produced and each of them regularly has maintained and now maintains a constant course of trade and commerce in one or more steel products in and among various States of the United States and is engaged in interstate commerce within the meaning and intent of section 5 of the Federal Trade Commission Act.

The following steel products (not including stainless steel products) are involved in this proceeding:

Alloy steel:	High-strength low alloy—Continued
Ingots.	Cold-rolled strip.
Billets, blooms, slabs.	Bars and small shapes.
Bar shapes.	Plates.
Hot-rolled strip.	Standard structural shapes.
Cold-rolled strip.	Wide flange beams.
Hot-rolled bars.	Pipe and tubing:
Cold-finished bars.	Pipe, including oil country.
Plates.	Seamless mechanical tubing.
Standard structural shapes.	Seamless pressure tubing.
Seamless mechanical tubing.	Mechanical electric-weld tubing.
Seamless pressure tubing.	Plates, structural, carbon:
Bars, carbon:	Plates.
Hot-rolled and small shapes.	Floor plates.
Reinforcing (new billet).	Standard structural shapes.
Reinforcing (rail steel).	Wide flange beams.
Cold-finished.	Sheet piling.
Merchant (rail steel).	Bearing piles.
Clad steel:	Rails and railroad accessories:
Nickel, inconel, monel—carbon plates.	Light (new billet).
High-strength low alloy:	Light (rail steel).
Hot-rolled sheets.	Track spikes.
Cold-rolled sheets.	Semifinished, carbon:
Galvanized sheets.	Ingots—forging.
Hot-rolled strip.	Billets, blooms, slabs—rerolling quality.



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Semifinished, carbon—Continued	Strip carbon:
Billets, blooms, slabs — forging quality.	Hot-rolled.
Skelp.	Cold-rolled.
Tube rounds.	Electrical, coils.
Wire rods.	Tin, terne, and black plate.
	Tool steel.
Sheets, carbon:	Wire and related products:
Hot-rolled, 18 gauge and heavier.	Manufacturers bright, low carbon.
Hot-rolled annealed, 19 gauge and lighter.	Spring, high carbon.
Cold-rolled.	Nails and staples.
Galvanized.	Merchant quality wire.
Enameling.	Barbed wire.
Long ternes.	Woven fence.
Electrical.	Bale ties.
	Fence posts.
	Flat wire.

The term "steel products" as hereinafter used shall be deemed to mean some or all of such steel products.

PAR. 3. Each respondent, through its direct membership or through the membership of a wholly owned subsidiary or its parent corporation, or a wholly owned subsidiary of its parent corporation, as of July 1, 1947, actively participated in or supported, in cooperation with other respondents, the respondent Institute and its plants, programs, and activities.

The steel industry is one of the basic industries of the Nation. At the time that the amended complaint was filed, the producer respondents in the aggregate produced and sold more than 85 percent of the steel products that were produced and sold in the United States. Such producer respondents include substantially all of the corporate members of the respondent Institute which own, control or operate steel producing facilities in the United States. Steel products which they produce and sell are regularly used in the production of automobiles, agricultural implements, tools and machinery, hardware, plumbing supplies, metal cans and containers, railroad equipment, homes, buildings, public buildings, bridges, dams, and other products and things, and are of great importance to the public generally. The Federal, State, and municipal governments of the Nation purchase large quantities of steel products annually.

PAR. 4. Respondents, from the close of NRA in May 1935 (or, if organized thereafter, from the respective dates of their organization), to the issuance of the amended complaint in this matter on November 13, 1947, in connection with the interstate sale of steel products, have engaged in the acts and practices as set out in the following paragraphs, paragraph 5 through paragraph 21. In making the following findings, the Commission recognizes that some of the respondents may

not have engaged in all the separate acts, practices, methods, and policies hereinafter described.

PAR. 5. Steel products are, and for many years have been, manufactured and sold in many thousands of different combinations of size, gauge, chemical composition, finish, quality and other characteristics. The respondent Institute, some of the producer respondents, and also various public and private agencies—among them the National Bureau of Standards, the Army Bureau of Ordnance, the Society of Automotive Engineers, the American Society for Testing Materials, and the American Society for Metals—have for many years studied the various qualities, grades, and uses of steel and steel products and have classified and described and published information concerning the various steel products and their nature and characteristics. In large part, the information so published consists of analytical statements of matters which have been developed and established over the years through usage, custom and practice among steel producers and users. Technical committees of the respondent Institute have also developed and published information concerning many new steels which has been made available to the consuming public.

PAR. 6. Steel products are commonly classified into product groups related to the size and shape of the product, such as bars, structural shapes, plates, and sheets. Product groups are generally subdivided between carbon steel products and alloy steel products. Each steel product group has a common name which is generally understood and used not only by steel producers, but also by steel consumers. Similarly, there are common names and commonly accepted standards for all significant variations in steel product classifications. The names and standards thus used by steel producers and steel consumers have been developed, improved and made more precise and useful by technical committees of the respondent Institute and by other public and private agencies such as those named or referred to above in paragraph 5. In selling their respective steel products, steel producers, including the producer respondents, have long made use of such common names and standards.

PAR. 7. Generally speaking, the announced price of any particular steel product is made up of two principal elements. The first is the "base price" or "price base," which is the announced price of a defined classification of products. The other element consists of the "extras" and "deductions" announced as additions to or deductions from the base price in respect of certain variations of the steel product.

PAR. 8. Respondents, through committees of respondent Institute and otherwise, defined and described the limits of steel product groups.

The respondents used and followed those definitions and descriptions in the pricing of the products sold by them, respectively.

PAR. 9. Respondents, through committees of respondent Institute, defined and described the ranges of steel products within product groups. The respondents used and followed those definitions and descriptions in determining what products would be sold by them, respectively, at base prices without any extra charge or deduction.

PAR. 10. Respondents, through committees of respondent Institute, classified ranges of products, quantities, and services. The respondent used and followed such classification in their respective price announcements as the definitions and descriptions of products and services for which extra charges or deductions would be made.

PAR. 11. The "base prices" and the "extras" and "deductions" announced by a respondent as applicable to any particular product at any particular place and time (as distinguished from the prices at which steel products were actually sold) were nearly always the same as those announced as applicable to steel products of the same classification at the same time and place by other respondents.

PAR. 12. Prior to 1940, respondents jointly compiled with respect to various steel products average industry-wide costs of performing the operations necessary to produce products not within the range of products sold at base prices, the costs of performing services other than those included in the production and handling of products sold at base prices, and averaged industry-wide costs of producing and handling steel products in quantities different from those sold at base prices. The actual costs of performing these different functions varied from mill to mill depending upon the efficiency of the mill and varied from time to time depending upon the size of the particular product run and other cost factors.

PAR. 13. The "extras" or "deductions" factors as announced by respondents were nearly always the same during any given period of time for any service, characteristic or quantity. Whenever the afore-said averaged industry-wide cost factors relating to different services or differences in material, necessary to produce different services, quantities or characteristics, were compiled, they have been used by respondents as a basis for determining and announcing their extra charges to be added to or deductions to be made from their "base" or "base prices."

PAR. 14. Each respondent in its announcements of base prices has specified, not only an amount in terms of dollars and cents for a specified steel product, but has also specified that such amount was applicable to such product at a specified geographical point. Such geographical point or points were commonly referred to and used as

"basing points." Each respondent did not necessarily announce prices at each of the points, but each did announce prices at or announce a willingness to equalize its prices with prices announced at certain of these points. Furthermore, in numerous instances, some respondents did not in their price announcements specify that their "base" or "base prices" had application at one or more geographical points at which they produced for sale and from which they shipped steel products.

PAR. 15. Respondents quoted their prices of steel products on a basis of what they would cost the purchasers thereof at delivery points. These delivered quotations were, with exceptions, calculated by adding to the base price plus extras or minus deductions a freight rate factor to the place of delivery from the basing point nearest freight-wise to the place of delivery.

PAR. 16. Respondents, through the respondent Institute, collected and compiled lists of freight rate factors, which included freight rate factors from certain of the basing points to many of the consuming points for steel products. These lists of freight rate factors were printed in the form of books, designated freight rate books, which were sold to the respondents and others by the respondent Institute for use in calculating the amount to be added to the base price plus extras or minus deductions to determine the delivered quotation. The freight rate tariffs published by the common carriers are complex. Due to these complexities, including alternate routes, switching charges, etc., experts in the field will often arrive at different rates for the same shipment. Respondents, by the use of these books, could quote, and generally did quote, identical amounts for the delivery cost factor of their delivered quotations.

PAR. 17. Beginning during the period of the NRA Steel Code and continuing until the time of the complaint herein respondent sellers have imposed a charge equal to 35 percent of the applicable all rail freight rate to the railroad freight station nearest to the point of use of purchasers desiring to use truck facilities for the transportation of steel products when delivery was taken at the plant.

PAR. 18. Beginning during the period of the NRA Steel Code and continuing until the time of the complaint herein, producer respondents have used arbitrary identical switching charges on purchases of steel products for delivery at basing points. These charges were made in lieu of actual switching charges and in some instances were more than, and in other instances less than, the actual switching charges. In most cases, such actual switching charges were practically impossible to determine in advance.

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PAR. 19. Respondents, through the traffic committee of the respondent Institute, attempted to restrict the extension by the Interstate Commerce Commission of the fabrication in transit privileges available to purchasers of steel products.

PAR. 20. Producer respondents which bid for governmental business in many instances have made identical delivered quotations for steel products to governmental agencies, State and Federal. These identical quotations have been made in sealed bids submitted to State and Federal agencies, each bidder representing, expressly or impliedly, that its sealed bid was made on the basis of independent action without knowledge of the prices, terms, and conditions of sale which other bidders would submit, except knowledge of the previous prices and terms, methods and practices of selling of other potential bidders. Such identity has prevailed in the submission of bids, with respect to any given delivery point, although the place of production of the steel products, proposed for delivery to such point, varied widely among the respondent bidders. Use of the acts, practices, methods, and policies hereinbefore found and described promoted and otherwise contributed to such identity. The calculation of these quotations involved the use of identical base prices, extra charges, terms and conditions of sale, basing points, and delivery charges.

PAR. 21. On June 6, 1935, the members of the Iron & Steel Industry adopted a formal resolution pursuant to the terms of which they ratified a similar resolution adopted by the board of directors of respondent Institute on June 3, 1935, to the effect that each of said members declared its intention of maintaining as stated therein "the standards of fair competition" which had been described in the NRA Steel Code. The standards of fair competition thus referred to provided for and included the practices which are hereinbefore described in paragraphs 5 through 20.

The resolution of June 3, 1935, referred to above is quoted as follows:

Whereas the Chairman of the National Industrial Recovery Board has issued a statement with regard to the decision of the United States Supreme Court in the Schechter Poultry Corp. case in which he expressed the hope "that all employers heretofore operating under approved codes and all their employees will cooperate in maintaining those standards of fair competition in commercial and labor relations which have been written into the codes with practically universal sanction, and which represent a united effort to eliminate dishonest, fraudulent trade practices and unfair competition in overworking and under paying labor";

*Resolved*, That it is hereby declared to be the sentiment of the board of directors of the American Iron & Steel Institute that the individual members of the Iron & Steel Industry, acting voluntarily, during the present uncertainty, maintain the present rates of pay and maximum hours of labor and the standards of fair competition which are set forth in the Steel Code, and that the members of the Industry continue to protect the employees' rights of collective bargaining;

The resolution of June 6, 1935, referred to above is quoted as follows:

*Resolved*, That the members of the Iron & Steel Industry in general meeting assembled this sixth day of June 1935, hereby unanimously ratify the resolution of the board of directors of American Iron & Steel Institute, adopted June 3, 1935, and each of us hereby declares that the company which he represents is in favor of supporting the position taken by such resolution and that it is the intention of such company, acting individually and voluntarily, in so far as it may do so, during the present uncertainty to maintain the present rates of pay and maximum hours of labor and the standards of fair competition which are described in the Steel Code, and that such company will continue to protect the employees' rights of collective bargaining.

At said meeting held on June 6, 1935, among those present were officers of the respondent Institute and an officer or representative of each of the following of its members:

Alan Wood Steel Co.  
Armco Steel Corp.  
Atlantic Steel Co.  
Bethlehem Steel Co.  
A. M. Byers Co.  
Columbia Steel & Shafting Co.  
Edgewater Steel Co.  
Firth Sterling Steel & Carbide Corp.  
Granite City Steel Co.  
Inland Steel Co.  
Jones & Laughlin Steel Corp.  
Keystone Steel & Wire Co.  
Laclede Steel Co.  
The Midvale Co.  
Moltrup Steel Products Co.  
National Steel Corp.  
Pittsburgh Tube Co.  
Republic Steel Corp.  
The Timken Roller Bearing Co.  
United States Steel Corp.  
Vulcan-Crucible Steel Co.  
Wheeling Steel Corp.  
Wyckoff Steel Co.  
The Youngstown Sheet & Tube Co.

In addition to those named above, there were also present at said meeting an officer or representative of each of the following respondents which were not members of the respondent Institute on June 6, 1935:

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The American Steel & Wire Co. of New Jersey.  
Bethlehem Steel Corp.  
United States Steel Co. (designated in the complaint as Carnegie-Illinois Steel Corp., but which corporate name was changed on December 30, 1950, to that of United States Steel Co.).  
Columbia Steel Co.  
Great Lakes Steel Co.  
Lukens Steel Co.  
Mahoning Valley Steel Co.  
National Tube Co.  
Northwestern Steel & Wire Co.  
Sheffield Steel Corp. of Ohio.  
Tennessee Coal, Iron & Railroad Co.  
Truscon Steel Co.  
Weirton Steel Co.

PAR. 22. The acts and practices hereinbefore described and found, taken together under the circumstances stated, have tended to lessen competition, are oppressive to the public interest and unfair within the intent and meaning of the Federal Trade Commission Act.

## CONCLUSION

The acts and practices hereinbefore described and found, if not checked, would unduly suppress competition. Therefore, the public interest and the provisions of the Federal Trade Commission Act require that the respondents should be restrained as provided in the annexed order.

ORDER TO CEASE AND DESIST<sup>1</sup>

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answers

<sup>1</sup>The order is published as modified through the deletion of respondent Inland Steel Products Co. (name formerly Milcor Steel Co.) by order dated September 5, 1951, as follows:

This matter having come on to be heard by the Commission upon the joint motion of counsel supporting the complaint and counsel representing all the respondents, that the order to cease and desist issued herein on August 10, 1951, be modified by striking therefrom Inland Steel Products Co. (name formerly Milcor Steel Co.), a corporation, as a respondent against which said order was directed; and

The Commission having duly considered said motion and the record herein and it appearing that the evidence taken in this proceeding shows that Inland Steel Products Co. (name formerly Milcor Steel Co.) has not engaged in the sale of the products involved in this proceeding and by virtue of that fact has not participated in the practices found and described in the findings as to the facts entered in this proceeding but through inadvertence said company was named as a party against which the order to cease and desist entered herein was directed:

*It is ordered*, That the order to cease and desist heretofore entered in this proceeding be, and it hereby is, modified by striking therefrom Inland Steel Products Co. (name formerly Milcor Steel Co.), a corporation, as a respondent against which said order was directed.

*It is further ordered*, That the complaint herein be, and it hereby is, dismissed as to Inland Steel Products Co. (formerly Milcor Steel Co.), a corporation.

thereto of the respondents, and upon testimony and other evidence to support the allegations of said complaint taken before an examiner of the Commission theretofore duly designated; and, the Commission having made its findings as to the facts and its conclusion and being of the opinion that it is in the public interest that it issue its order under the Federal Trade Commission Act, the Commission hereby does so, as follows:

I. *It is ordered*, That respondents American Iron & Steel Institute, a membership corporation organized under the laws of the State of New York, and its directors, its officers, and United States Steel Corp., a corporation; The American Steel & Wire Co. of New Jersey, a corporation; United States Steel Co. (designated in the complaint as Carnegie-Illinois Steel Corp., but which corporate name was changed on December 30, 1950, to that of United States Steel Co.), a corporation; Columbia Steel Co., a corporation; Geneva Steel Co., a corporation; National Tube Co., a corporation; Tennessee Coal, Iron & Railroad Co., a corporation; Bethlehem Steel Corp., a corporation; Bethlehem Pacific Coast Steel Corp., a corporation; Bethlehem Steel Co., a corporation; Republic Steel Corp., a corporation; Truscon Steel Co., a corporation; The Youngstown Sheet & Tube Co., a corporation; Jones & Laughlin Steel Corp., a corporation; Armco Steel Corp., (name formerly The American Rolling Mill Co.), a corporation; Sheffield Steel Corp. of Ohio, a corporation; National Steel Corp., a corporation; Weirton Steel Co., a corporation; Great Lakes Steel Corp., a corporation; Inland Steel Co., a corporation; Wheeling Steel Corp., a corporation; The Colorado Fuel & Iron Corp., a corporation; Claymont Steel Corp. (name formerly Worth Steel Co.), a corporation; Crucible Steel Co. of America, a corporation; Pittsburgh Steel Co., a corporation; Sharon Steel Corp., a corporation; Alan Wood Steel Co., a corporation; Acme Steel Co., a corporation; Allegheny Ludlum Steel Corp., a corporation; American Chain & Cable Co., Inc., a corporation; Atlantic Steel Co., a corporation; The Babcock & Wilcox Tube Co., a corporation; Bliss & Laughlin, Inc., a corporation; Continental Cooper & Steel Industries, Inc. (name formerly Continental-United Industries Co., Inc.), a corporation; Buffalo Eclipse Corp. (name formerly Buffalo Bolt Co.), a corporation; A. M. Byers Co., a corporation; The Carpenter Steel Co., a corporation; Central Iron & Steel Co., a corporation; Columbia Steel & Shafting Co., a corporation; Columbia Tool Steel Co., a corporation; Compressed Steel Shafting Co., a corporation; Connors Steel Co., a corporation; Continental Steel Corp., a corporation; Copperweld Steel Co., a corporation; The



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Cuyahoga Steel & Wire Co., a corporation; Detroit Steel Corp., a corporation; Henry Disston & Sons, Inc., a corporation; Edgewater Steel Co., a corporation; Firth Sterling Steel & Carbide Corp., a corporation; Follansbee Steel Corp., a corporation; Fretz-Moon Tube Co., Inc., a corporation; Granite City Steel Co., a corporation; Griffin Manufacturing Co., a corporation; Newport Steel Corp. (name formerly International Detrola Corp.), a corporation; Joslyn Manufacturing & Supply Co., a corporation; Judson Steel Corp., a corporation; Keystone Drawn Steel Co., a corporation; Keystone Steel & Wire Co., a corporation; Laclede Steel Co., a corporation; Latrobe Electric Steel Co., a corporation; Lukens Steel Co., a corporation; Mahoning Valley Steel Co., a corporation; The Medart Co., a corporation; Mercer Tube & Manufacturing Co., a corporation; The Midvale Co., a corporation; Moltrup Steel Products Co., a corporation; National-Standard Co., a corporation; The National Supply Co., a corporation; Northwestern Steel & Wire Co., a corporation; Pacific States Steel Corp., a corporation; Pittsburgh Tool Steel Wire Co., a corporation; Pittsburgh Tube Co., a corporation; The Pollak Steel Co., a corporation; Reeves Steel & Manufacturing Co., a corporation; John A. Roebling's Sons Co., a corporation; Rotary Electric Steel Co., a corporation; The Standard Tube Co., a corporation; Superior Steel Corp., a corporation; Sweet's Steel Co., a corporation; The Thomas Steel Co., a corporation; The Timken Roller Bearing Co., a corporation; Universal-Cyclops Steel Corp., a corporation; Vanadium-Alloys Steel Co., a corporation; Anchor Drawn Steel Co., a corporation; Vulcan-Crucible Steel Co., a corporation; The Western Automatic Machine Screw Co., a corporation; Wheatland Tube Co., a corporation; Wisconsin Steel Co., a corporation; and Wyckoff Steel Co., a corporation; and their respective officers, agents, representatives, and employees, in, or in connection with, the offering for sale, sale and distribution in interstate commerce of the steel products involved in this proceeding (hereinafter called steel products) do forthwith cease and desist from entering into any planned common course of action, understanding, or agreement between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, and from cooperating in, carrying out or continuing any such planned common course of action, understanding or agreement, to do or perform any of the following things:

(1) Adopting, establishing, fixing, or maintaining prices or any element thereof at which steel products shall be quoted or sold, including but not limited to base prices, the extras which shall be added to, or the deductions which shall be made from, any base price for any

specified characteristic, or loading charge or delivery charge or terms of discount, credit, or other conditions of sale.

(2) Collecting, compiling, circulating, or exchanging between or among respondents, or any of them, a list or lists of base prices or of prices by any other designation, or extra charges thereto or deductions therefrom for any specified characteristic or quantity of steel products or services connected therewith used or to be used in computing prices or price quotations of steel products; or using, directly or indirectly, as a factor in computing price quotations or in making, quoting, or charging prices any such list or lists so collected, compiled, circulated, or exchanged.

(3) Collecting, compiling, circulating, or exchanging between or among respondents, or any of them, a list or lists of freight rate factors, transportation charges or other charges relating to transportation or loading or other services connected therewith, used or to be used in computing prices or price quotations of steel products, or using, directly or indirectly, as a factor in computing price quotations any such list or lists so collected, compiled, circulated, or exchanged.

(4) Formulating, devising, adopting, establishing, fixing, or maintaining methods or practices of quoting and selling steel products to railroads or other particular classes of customers.

(5) Quoting or selling steel products at prices calculated or determined pursuant to, or in accordance with, any system or formula which produces identical price quotations or prices or delivered costs, or which establishes a fixed relationship among price quotations or prices or delivered costs, or which prevents purchasers from securing any advantage in price in dealing with one or more of the respondents as against any of the other respondents.

(6) Failing to quote or to sell and deliver any steel products f. o. b. at the plant of manufacture thereof.

(7) Causing to be done any of the things described in the preceding subparagraphs (1) through (6) through action of respondent American Iron & Steel Institute or any subdivision or committee of said Institute or any individual, or other corporation or organization.

II. *It is further ordered,* That each of the respondents do forthwith cease and desist from acting, individually or otherwise, so as knowingly to contribute to the maintenance or operation of any planned common course of action, understanding or agreement between and among any two or more of the respondents or between any one or more of them and others not parties hereto through the

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commission of any of the acts, practices or things prohibited by subparagraphs (1) through (6) of paragraph I of this order.

III. *Provided, however*, That, in interpreting and construing the foregoing provisions of this order, it is understood that:

(1) The Federal Trade Commission is not considering evidence of uniformity of prices or any element thereof of two or more sellers at any destination or destinations alone and without more as showing a violation of law.

(2) The Federal Trade Commission construes the phrase "planned common course of action" and the word "continuing" contained in this order as interpreted by the Supreme Court in *F. T. C. v. Cement Institute*, 333 U. S. 683, at page 728, and by the Court in *American Chain & Cable Co. v. F. T. C.* (C. A. 4th 1944), 139 F. (2d) 622.

(3) The Federal Trade Commission is not acting to prohibit or interfere with delivered pricing or freight absorption as such when innocently and independently pursued, regularly or otherwise, with the result of promoting competition.

(4) The findings and the conclusion which the Federal Trade Commission has made in this case have been expressly set forth in the Findings as to the Facts and Conclusion that precede this order and are complete.

(5) Nothing contained in this order or the understandings in connection herewith shall be construed to affect (a) the duty, authority, or power of the Federal Trade Commission under the provision of section 5 (b) of the Federal Trade Commission Act 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 have so changed as to require such action or if the public interest shall so require, 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; or (b) any such right as the respondents, or any of them, may have under the law to question or contest any such action by the Commission in so reopening this proceeding or in so altering, modifying or setting aside this order, either before the Commission or upon review or otherwise in any competent court.

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

## Complaint

## IN THE MATTER OF

## PUROFIED DOWN PRODUCTS CORP., ET AL.

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

*Docket 5820. Complaint, Oct. 23, 1950—Decision, Aug. 14, 1951*

There is a preference on the part of the purchasing public for pillows containing new feathers as distinguished from those containing used feathers or a combination of new and used, and it is its understanding and belief, in buying feather pillows, that the feathers are new and unused unless the labeling states otherwise.

Where a corporation, and its five officers, engaged in the interstate sale and distribution of pillows—

- (a) Inaccurately and misleadingly labeled their pillows in that the true proportions of a product labeled "50% Grey Duck Down, 50% Grey Duck Feathers," were 27 and 73 percent; and in that pillows labeled respectively "Grey Duck Down" and "White Goose Down" contained only 64 and 65 percent duck down and were not, as represented, composed entirely of said substances;
- (b) Sold pillows containing substantial amounts of used or second-hand feathers without disclosing the fact that they were used rather than new;

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

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

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

*Mr. Russell T. Porter* for the Commission.

*Mr. Harry Heller*, of Brooklyn, N. Y., 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 Purofied Down Products Corp., a corporation, and Louis Puro, Sam Puro, Jack Puro, Joe Puro, and Arthur Puro, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Purofied Down Products Corp. is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business at 1027 Met-

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ropolitan Avenue, Brooklyn, N. Y. Respondents Louis Puro, Sam Puro, Jack Puro, Joe Puro, and Arthur Puro are the president, secretary-treasurer, vice president, vice president, and sales manager, respectively, of said corporate respondent. Said individual respondents in their respective individual and official capacities have dominated, directed, and controlled and now dominate, direct and control the policies, affairs, and activities of corporate respondent. The addresses of the individual respondents are the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for several years last past, have engaged in the sale of pillows to dealers for resale to the public.

Respondents cause and have caused their said pillows when sold to be shipped from their place of business in the State of New York to dealers in various other States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in their said pillows, in commerce, among and between the several States of the United States.

PAR. 3. In the course and conduct of their business respondents cause labels to be attached to their pillows purporting to state and set out the percentages of down and feathers therein. Typical, but not all inclusive of these labels are the following:

50% Grey Duck Down, 50% Grey Duck Feathers  
Grey Duck Down  
White Goose Down

PAR. 4. By means of the labels aforesaid, respondents represented that the pillow labeled "50% Grey Duck Down, 50% Grey Duck Feathers" was filled with grey duck down and grey duck feathers in the percentages set out on the label and that the fillings of the pillows labeled "Grey Duck Down" and "White Goose Down" were composed entirely of grey duck down and white goose down, respectively.

PAR. 5. Said labels were false, misleading, and deceptive. In truth and in fact, the filling of the pillow labeled "50% Grey Duck Down, 50% Grey Duck Feathers" was composed of 27 percent grey duck down and 73 percent grey duck feathers. The fillings of the pillows labelled "Grey Duck Down" and "White Goose Down" were not composed entirely of grey duck down and white goose down, respectively, but on the contrary, contained 36 percent duck feathers and 35 percent goose feathers, respectively. In addition, the pillows labeled "50% Grey Duck Down, 50% Grey Duck Feathers," "Grey Duck Down" and a pillow labeled "10% Grey Duck Down, 90% Grey Duck Feathers" and others, contained substantially in excess of 5 percent feather fiber.

Some of respondents' pillows, particularly those labeled "Grey Duck Down," "10% Grey Duck Down and 90% Grey Duck Feathers," "10% White Goose Down, 90% White Goose Feathers" and "Grey Duck Down" and others, contained substantial amounts of second-hand or used feathers. This fact was not disclosed on the labels or otherwise.

PAR. 6. In buying pillows represented to be filled with feathers, the purchasing public understands and believes that the feathers are new and unused, unless the labeling states otherwise. There is a preference on the part of the purchasing public for pillows containing new feathers as distinguished from those containing used feathers or a combination of used and new feathers.

PAR. 7. By attaching false, misleading, and deceptive labels to their pillows, respondents placed in the hands of dealers, means and instrumentalities by and through which they may mislead the purchasing public as to the content of said pillows.

PAR. 8. The use by the respondents of the false, misleading, and deceptive labels had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public as to the content of their said pillows, and to induce a substantial portion of the purchasing public to purchase respondents' said pillows because of such erroneous belief.

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

#### 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 August 14, 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 October 23, 1950, 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 conclusions based thereon and an order disposing of the proceeding. While counsel for respondents reserved in the stipulation the right to file proposed findings and conclusions and to argue the matter orally before the trial examiner, such reservations were subsequently waived. 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. Respondent Purofied Down Products Corp. is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 1027 Metropolitan Avenue, Brooklyn, N. Y. Respondents Louis Puro, Sam Puro, Jack Puro, Joe Puro, and Arthur Puro are president, secretary-treasurer, vice president, vice president, and sales manager, respectively, of respondent corporation. The individual respondents dominate, direct and control the policies, affairs and activities of the corporation.

PAR. 2. Respondents are now and for several years last past have been engaged in the sale of pillows, the pillows being sold to dealers for resale to the public. Respondents cause and have caused their pillows when sold, to be shipped from their place of business in the State of New York to purchasers in various other States of the United States. Respondents maintain and have maintained a course of trade in their products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business respondents attach to their pillows labels purporting to state or set forth the materials of which such pillows are made. In some instances such labels have been inaccurate and misleading. In one instance a pillow labeled

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"50% Grey Duck Down, 50% Grey Duck Feathers" actually contained only 27 percent duck down, the undercoating of ducks, and 73 percent duck feathers. In another instance the label on a pillow read "Grey Duck Down" thereby representing that such pillow was composed entirely of down, whereas the pillow was in fact composed of 64 percent down and 36 percent duck feathers. In a third instance a pillow labeled "White Goose Down" was found to contain only 65 percent down and 35 percent feathers.

PAR. 4. Respondents have also sold pillows containing substantial amounts of used or second-hand feathers, without disclosing that such feathers were used rather than new feathers.

In buying pillows containing feathers the purchasing public understands and believes that the feathers are new and unused, unless the labeling states otherwise. There is a preference on the part of the purchasing public for pillows containing new feathers as distinguished from those containing used feathers or a combination of new and used feathers.

PAR. 5. The acts and practices of respondents as set forth above have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' products, and the tendency and capacity to cause such portion of the public to purchase respondents' products 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, Purofied Down Products Corp., a corporation, and its officers, and Louis Puro, Sam Puro, Jack Puro, Joe Puro, and Arthur Puro, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of pillows in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting in any manner or by any means, directly or by implication, the materials of which respondents' pillows are made.



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2. Selling or distributing pillows composed in whole or in part of used or secondhand feathers, without clearly disclosing on labels attached to such pillows the fact that such feathers are used or secondhand.

## 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 August 14, 1951].

## Order

## IN THE MATTER OF

## THE CURTISS CANDY CO.

MODIFIED ORDER TO CEASE AND DESIST IN REGARD TO VIOLATIONS OF SEC. 3, AND SUBSECS. (a), (d), (e), (f) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936; TOGETHER WITH SPECIAL CONCURRING OPINION OF COMMISSIONER MASON

*Dockets 4556 and 4673. Order, Aug. 15, 1951*

Order modifying cease and desist order issued on November 12, 1947, 44 F. T. C. 237 at 274, so as to require respondent, in connection with the purchase of corn sirup or glucose or other candy ingredients, and in the sale of candy or other candy products to cease and desist from the various unlawful and discriminatory practices as in said modified order set out.

Before *Mr. John L. Hornor* and *Mr. J. Earl Cox*, trial examiners.  
*Mr. Austin H. Forkner* for the Commission.

*Walker, Atwood, Zukowski & McFarland*, of Chicago, Ill., for respondent.

*Mr. William A. Quinlan* and *Mr. Richard F. Wilkins*, of Washington, D. C., for National Candy Wholesalers Association, Inc., intervenors.

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and answer of the respondent filed in Docket No. 4556, and upon the amended and supplemental complaint of the Commission and answer of the respondent filed in Docket No. 4673 (which proceedings were consolidated by the Commission on October 11, 1944), testimony and other evidence in support of and in opposition to the allegations of said complaints taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaints and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondent had violated the provisions of section 3 of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, and subsections (a), (d), (e), and (f) of section 2 of said Clayton Act, as amended by an act of Congress approved June 19, 1936, commonly known as the Robinson-Patman Act, on November 12, 1947, issued, and on November 14, 1947, served upon said respondent its order

to cease and desist. Thereafter, this matter came on for hearing before the Commission upon a motion, filed on behalf of the respondent, requesting certain modifications in the aforesaid order to cease and desist, the answer to such motion filed by counsel in support of the complaint, and a brief in opposition to the motion filed on behalf of National Candy Wholesalers Association, Inc., as intervenor; and the Commission, having considered said motion answer, brief, and the record herein, and being of the opinion that its order to cease and desist issued November 12 1947, should be modified in certain respects:

I. *It is ordered*, That the respondent, The Curtiss Candy Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the purchase of corn sirup or glucose or other candy ingredients in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Knowingly receiving or accepting from any seller, or knowingly inducing any seller to grant, any discrimination in price set forth and described in paragraph 7 of the findings as to the facts herein or any discrimination in price substantially similar thereto.

2. Knowingly receiving or accepting from any seller, or knowingly inducing any seller to grant, any discrimination in price prohibited by section 2 of the Clayton Act, either directly or by means of any discount or allowance made by means of any booking practice, extension of time of delivery, or otherwise.

II. *It is further ordered*, That the respondent, The Curtiss Candy Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in the sale of candy bars or other candy products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality as among purchasers when the differences in price are not justified by differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such products are sold or delivered:

1. By selling such products to some vending-machine operators at prices lower than the prices charged other vending-machine operators who in fact compete with the favored purchasers in the sale and distribution of such products.

2. By selling such products to some wholesalers or jobbers thereof at prices lower than the prices charged other wholesalers or jobbers who in fact compete with the favored purchasers in the sale and distribution of such products.

3. By selling such products to some retailers thereof at prices lower than the prices charged other retailers who in fact compete with the favored purchasers in the sale and distribution of such products.

4. By selling such products to some purchasers thereof at prices lower than the prices charged other purchasers who in fact compete with the favored purchasers in the sale and distribution of such products, either directly or by means of discount deals, fall booking practices, or other similar plans.

5. By selling such products to any retailer at prices lower than prices charged wholesalers or jobbers whose customers compete with such retailer.

For the purposes of comparison, the term "price" as used in this order takes into account discounts, rebates, allowances, and other terms and conditions of sale.

III. *It is further ordered*, That the respondent, The Curtiss Candy Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale or offering for sale of candy bars or other candy products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Paying or contracting to pay anything of value to, or for the benefit of, any purchaser for advertising services or facilities furnished by such purchaser, unless such payment or consideration is available to all other competing purchasers on proportionally equal terms.

2. Paying or contracting to pay anything of value to any purchaser either directly or by granting allowances or discounts upon purchases made, upon the condition that such purchaser prominently display respondent's candy products in said purchaser's place of business or display only respondent's candy or candy products on said purchaser's display racks or display any advertising designs, insignia, or posters advertising respondent's products in said purchaser's place of business or for any other similar advertising service or facility where such payments, discounts, or allowances are not made available to all other competing purchasers of respondent's candy bars or candy products on proportionally equal terms.

IV. *It is further ordered*, That the respondent, The Curtiss Candy Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of candy or other products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Discriminating, directly or indirectly among competing purchasers of respondent's candy or candy products by furnishing, or contributing to the furnishing of, demonstrator services to any retailer purchasing respondent's products when such services are not accorded on proportionally equal terms to other retailer-purchasers located in the same city or other retailer-purchasers who in fact resell such products in competition with retailers who receive such services.

2. Discriminating, directly or indirectly, among competing purchasers of respondent's candy or candy products by furnishing, or contributing to the furnishing of, any newspaper, billboard, radio, or other advertising to any purchaser in connection with the sale of offering for sale of products purchased from respondent when such services or facilities are not accorded to competing purchasers upon proportionally equal terms.

3. Discriminating in favor of one purchaser against another purchaser or purchasers of respondent's candy or candy products bought for resale by contracting to furnish or furnishing any services or facilities in connection with the offering for sale or sale of such candy or candy products so purchased upon terms not accorded to all purchasers on proportionally equal terms.

V. *It is further ordered*, That the respondent, The Curtiss Candy Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale, or making any contract for the sale, of respondent's candy or candy products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Selling, or making any contract for the sale of, respondent's candy products on the condition, agreement, or understanding that the purchaser thereof shall not use or deal in candy or candy products supplied by any competitor of the respondent.

2. Enforcing or continuing in operation or effect any condition, agreement, or understanding in or in connection with any existing contract of sale which condition, agreement, or understanding is to the effect that the purchaser of respondent's candy or candy products will deal in and sell only candy and candy products supplied by the respondent.

SPECIAL CONCURRING OPINION OF COMMISSIONER LOWELL B. MASON

I concur in the Commission's order granting in part and denying in part the respondent's motion for modification of the order to cease and desist in this proceeding, but wish to make my position clear with respect to the denial of the request for a provision per-

mitting the respondent to justify a price discrimination by showing that its lower price was granted to meet an equally low price of a competitor.

As pointed out in my dissent from the Commission's action in the Standard Oil Co. case (Docket No. 4389),<sup>1</sup> it has always been my view that under the provisions of section 2 (b) of the Clayton Act, as amended, a seller may realistically meet in good faith a price offered by a competitive seller, without necessarily changing his price to customers other than those to whom the competitive offer was made. This is still my view of the law. It does not follow, however, that in every case in which the Commission finds that a respondent has unlawfully discriminated in price, it must include in its order prohibiting the discriminations an affirmation of the respondent's right in this respect. As the United States Court of Appeals for the Second Circuit pointed out in the Ruberoid case (decision rendered June 4, 1951), a seller's right to meet in good faith a competitive offer is a statutory right which the Commission could not take away from him even if it tried, thus making it wholly unnecessary for the order to contain any reference to the right; and, furthermore, the provision, if included in the order, may be actually misleading as suggesting the possible retrial in contempt proceedings of issues already settled. By way of illustration, a respondent against whom a prima facie case of price discrimination has been established has an opportunity in the Commission's proceeding to justify his discriminations by showing that his lower price was granted to meet an equally low price of a competitor. If in the proceeding before the Commission the respondent seeks to so justify his discriminations and fails, or if he does not see fit to attempt to so justify the discriminations, the questioned practices raised by the attendant facts are condemned once and for all. If it were otherwise, Government and business would be chasing each other on a merry-go-round, trying and retrying before Commission and court the same old charges on the same old facts.

In the event of a definite change of circumstances, a respondent has his rights protected under section 5 (b) if the order be under the Federal Trade Commission Act, and under section 11 if the order be under the Clayton Act.

NOTE.—Part II of the original order to cease and desist, the only part modified, required respondent, its officers, etc., in the sale of candy bars or other candy products in commerce, to cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality as among purchasers when the differences in price are not justified by differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such products are sold or delivered:

<sup>1</sup> See 43 F. T. C. 56 at 59.

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1. By selling such products to some vending-machine operators at prices different from the prices charged other vending-machine operators who in fact compete in the sale and distribution of such products: *Provided, however,* That this shall not prevent price differences of less than one-half cent per case, based upon 24-count, which do not tend to lessen, injure, or destroy competition among such vending-machine operators or between respondent and its competitors.

2. By selling such products to some wholesalers or jobbers thereof at prices different from the prices charged other wholesalers or jobbers who in fact compete in the sale and distribution of such products: *Provided, however,* That this shall not prevent price differences of less than one-half cent per case, based upon 24-count, which do not tend to lessen, injure, or destroy competition among such wholesalers or jobbers or between respondent and its competitors.

3. By selling such products to some retailers thereof at prices different from prices charged other retailers who in fact compete in the sale and distribution of such products: *Provided, however,* That this shall not prevent price differences of less than one-half cent per case, based upon 24-count, which do not tend to lessen, injure, or destroy competition among such retailers or between respondent and its competitors.

4. By selling such products to some purchasers thereof at prices different from the prices charged other purchasers who in fact compete in the sale and distribution of such products, either directly or by means of discount deals, fall booking practices, or other similar plans: *Provided, however,* That this shall not prevent price differences of less than one-half cent per case, based upon the 24-count, which do not tend to lessen, injure, or destroy competition among such purchasers or between respondent and its competitors.

5. By selling such products to any retailer at prices lower than prices charged wholesalers or jobbers whose customers compete with such retailer.

For the purposes of comparison, the term "price" as used in this order takes into account discounts, rebates, allowances, and other terms and conditions of sale.

## Syllabus

IN THE MATTER OF  
THE WANDER CO.

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

*Docket 5316. Complaint, May 11, 1945—Decision, Aug. 16, 1951*

While a significant prevalence of undernutrition among the people of the United States has been reported in official United States Government publications in the past, the statement that three out of four are undernourished is not justified, the facts being that the present extent of such undernutrition is indeterminate, and that the present state of knowledge of nutrition does no permit an accurate statistical statement of the specific percentage of people in the United States who are undernourished.

Where a corporation engaged in the interstate sale and distribution of its "Ovaltine" food preparation; through advertisements in newspapers, periodicals, radio broadcasts, and in other ways, directly and by implication—

- (a) Falsely represented that the consumption of Ovaltine would reduce the emptying time of the stomach after a starchy meal and thereby induce the return of hunger more quickly;
- (b) Represented falsely that its consumption would increase weight, correct nervous conditions, preserve and assure strength and health and stimulate appetite;
- (c) Represented that people who were under par, run-down, thin, tired, underweight, or lacking in energy or strength suffered such conditions because of vitamin and mineral deficiencies, which could be corrected and eliminated by the use of Ovaltine; and that consumption thereof would significantly aid in the correction and prevention of subnutritional states caused by vitamin or mineral deficiency;

The facts being that such symptoms are not always or generally caused by mineral or vitamin deficiency; when so caused said preparation would not constitute an adequate treatment therefor except in the milder forms, in which continued use over a long period of time might be of benefit; and in severe cases of deficiency, such as beri beri, pellagra, and scurvy, the vitamin and mineral content thereof was insufficient to produce any beneficial effect;

- (d) Represented that the use of Ovaltine as directed would correct iron deficiency anemia and its symptoms; and that loss of appetite was due to lack of vitamin B<sub>1</sub>, which Ovaltine supplied in sufficient quantities to correct.

The facts being that while consumption thereof in the quantities recommended might prevent, it would not cure iron deficiency anemia or its symptoms; and while it would supply slightly more than the minimum daily requirement of vitamin B<sub>1</sub>, loss of appetite—while it may result from a lack of such vitamin—is more frequently caused by illnesses which have no relation with such a deficiency;

- (e) Represented that three out of four people in this country are so deficient in vitamins and minerals that they have developed symptoms of fatigue, under par, underweight, and nervousness;

Notwithstanding the fact that the present state of knowledge of such matters did not permit an accurate statistical statement with regard thereto;



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- (f) Represented that Ovaltine aided in digesting milk and starchy foods and that it contained a variety and scope of food elements not to be found in any other food product;
- The facts being that its use in conjunction with milk as directed would not aid in such digestion except to the extent that it might serve to speed digestion of such foods; and there were other food products on the market which contained the same variety of nutriments;
- (g) Represented that use thereof would enable one to successfully fight off colds and sore throat, and would assure good eyesight;
- The facts being that it had no value as a treatment for or preventive of colds or sore throat; and no effect upon one's eyesight in the daytime or in artificial light; though, consumed over a prolonged period of time, it might prevent night blindness resulting from vitamin A deficiency, or serve to avoid a narrowing of the field of vision resulting therefrom;
- (h) Represented that health and well-being required vitamins and minerals in addition to the supply thereof contained in a well-balanced diet, and that nightly consumption of Ovaltine would enable one to wake up in morning feeling fresh, vigorous, and buoyant;
- The facts being that a well-balanced diet provides a person with all the vitamins and minerals required for his physical well-being, and the addition of Ovaltine to such a diet would have no effect whatever upon the consumer's health; and while its use might be beneficial before retiring in producing sound sleep, it would not assure one of waking up in the morning feeling fresh and buoyant; and
- (i) Represented falsely that two glasses of Ovaltine daily added to three average good meals would assure excellent health, and that it could be depended upon to assist in providing extra endurance, strength, stamina and energy, would build muscles, and constitute an all-round strengthening food:
- Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Abner E. Lipscomb*, trial examiner.

*Mr. R. P. Bellinger* for the Commission.

*Mr. Isaac W. Digges*, of New York City, for respondent.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that The Wander Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Wander Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and head-

quarters located at 360 North Michigan Avenue, in the city of Chicago, Ill., and a factory in Villa Park, Ill.

PAR. 2. This respondent is now, and for several years last past has been, engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia, of a food preparation designed to be consumed as a beverage and designated as Ovaltine.

Respondent causes the aforesaid preparation Ovaltine when sold, to be transported from one or the other of its said places of business in the State of Illinois to the purchasers thereof in various other States of the United States and in the District of Columbia.

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

PAR. 3. In furtherance of the sale and distribution of its aforesaid preparation Ovaltine the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among, and typical of, the false and misleading statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by insertions in newspapers, magazines, and other periodicals, by means of leaflets, pamphlets, and circulars, and by radio continuities, are the following:

. . . These X-Rays show two stomachs 2 hours after a starchy meal. Notice that one stomach is nearly empty due to the way OVALTINE is helping to digest the starch. WHEN A CHILD'S STOMACH EMPTIES SOONER, HUNGER CAN RETURN QUICKER.

NEW IMPROVED OVALTINE FOR THE CHILD WHO IS THIN, NERVOUS OR UNDERWEIGHT

. . . it gives children an extra supply of food elements they've got to have to keep really strong and healthy and have good appetites.

. . . The way he's polishing off those vegetables you'd never believe what struggles we used to have trying to make him eat.

Ovaltine has always been the source of the precious vitamins A, B, D and G and the minerals calcium, phosphorus and iron. . . .

. . . if your child tends to be thin or under par—we urge you to start giving him new, enriched Ovaltine.

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. . . Ovaltine contains Vitamin B, without which good appetite cannot exist. It also aids in the digestion of starchy foods and makes milk more digestible.

. . . Ovaltine should never be confused with preparations which serve as mere flavoring for milk. It is a scientific food concentrate containing a variety and scope of food elements not found in any other single food product in the entire world, so far as we know.

. . . When a child is tired, Ovaltine provides quick-acting energy in a form that gets into the blood stream rapidly.

#### SPRINGTIME AGAIN

for Susan

She was fagged and under par, looking old before her time . . .

#### RUNDOWN, THIN or EXHAUSTED

If so, don't fail to try new improved Ovaltine.

If you seem to be aging too rapidly—If your freshness and sparkle seem to be steadily slipping away—here's important news . . . you may be suffering from a shortage of Vitamin A that's needed for resistance to disease. Or from a lack of Vitamin B that's so essential for healthy nerves. Or a lack of iron may be impoverishing the blood, making you listless, pale and weak.

. . . When you feel exhausted and fagged out, it may be because you are temporarily short on certain food elements needed to keep the blood sugar reserves at a proper level. This is a common cause of tiredness and fatigue.

. . . Ovaltine is high in nutritive value . . . clinical tests show it increases the energy fuel in the blood in as little as 15 minutes—thus helping to ward off attacks of fatigue.

So, if you tire easily—if you feel nervously fagged and rundown—try taking the new, improved Ovaltine three times a day, including a cup at bedtime as an aid to restful sleep—and to rebuild vitality, while you sleep.

#### DON'T WORRY

ABOUT IRON

Without iron, you can't have good red blood. Ovaltine supplies all the extra iron you need—in the way you can use it.

#### DON'T WORRY

About

VITAMIN A

. . . You need it to fight off colds, for good eyesight. With Ovaltine you get all the extra "A" you need.

#### DON'T WORRY

About

VITAMIN B<sub>1</sub>

You eat poorly—and you're tired, listless, nervous, "low"—if you don't get enough B<sub>1</sub>. The Ovaltine way you get plenty!

Government authorities say today that 3 out of 4 people are under par—sub-marginal—nervous, underweight, easily fatigued—even well-fed people—because they don't get enough vitamins and minerals! Result, millions of people taking pills!

. . . Thousands of tired, nervous people and thin, underweight children have shown remarkable improvement in health when Ovaltine is added to their regular meals

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## WARNING

Authorities say you can't completely trust good meals to supply all the vitamins and minerals you need for good health—even with careful meal-planning.

Many children eat poorly because they don't get enough of the appetite Vitamin B<sub>1</sub>—which Ovaltine supplies.

. . . With a glass of Ovaltine added to each meal, you don't have to worry—your child's practically certain to get all of these food elements he needs for hearty appetite, sturdy growth, sound nerves—for vigorous, glowing health.

. . . Results are often so remarkable when Ovaltine is added to the daily diet of those who are thin, nervously exhausted, under par or who are lacking in energy . . . Ovaltine . . . often produces such surprising changes in growing children who can't seem to build up naturally and lack normal appetite.

Vitamin A is essential to maintain resistance against infections. If you don't get enough of it, you become much more susceptible to sore throats and colds.

When you don't get enough iron you become pale and listless and tire easily. When there has been a shortage of iron in the diet, an additional supply usually has a very noticeable "tonic effect." Healthy color returns to the face—and the feeling of listlessness is rapidly dispelled. Ovaltine not only furnishes a rich supply of available iron, but also contains an important companion mineral that provides the "booster action" needed for complete utilization of iron.

Remarkable results have been reported, especially in the case of children who were thin—or nervous and underweight. . . . One mother reports that her child gained 5 lbs. in five weeks after she started giving her Ovaltine. Another mother reports a 6 lb. gain in seven weeks. And still another mother writes that her son put on 12 lbs. in only six weeks' time.

New improved Ovaltine . . . can make a significant contribution . . . in the correction as well as the prevention of subnutritional states.

If you drink just two glasses of Ovaltine, a day, and add three average good meals, including fruit juice, you will be getting all the extra vitamins and minerals any normal person needs for tip-top health! So if you're doing a job that's vital to victory—if you're working hard, and want to keep on working, feeling right up to your best in vigor and vitality, why not try this modern Ovaltine way of getting all the extra vitamins and minerals you need?

Well, folks, this is war! And whatever your part may be you're probably working harder at it than you have ever worked before. Whether you are in business, on the farm or in a war plant . . . whether you are wearing a uniform, running a war-time home or going to school—whatever you are doing, you are undoubtedly feeling—as we all are—the added pressure of war-time living! To withstand this pressure . . . we must have the foods that give us energy, staying power and also the important vitamins and minerals so very essential to good health. Now isn't it good to know that you can rely on Ovaltine as an aid to extra endurance for these strenuous times! Extra strength for your harder war-time work—added stamina to keep you at your best for your job! Thousands today in important jobs are finding Ovaltine helps to carry them through the day and get more work done! Gives them extra energy to ward off fatigue . . . Ovaltine is a highly nourishing, all-around strengthening food. . . . Ovaltine is not only rich in quick-acting food energy—but also provides important protein for muscle building.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others of the same import but not spe-

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cifically set out herein, respondent represents and has represented, directly and by implication, that the consumption of Ovaltine will reduce the emptying time of the stomach after a normal meal and thereby induce hunger more quickly; that the consumption of Ovaltine will increase weight, correct nervous conditions, preserve and assure strength and health, and stimulate one's appetite; that persons who are under par, run-down, thin, weak, exhausted, pale, listless, tired, fatigued, nervous, underweight and lacking in energy, suffer such symptoms and conditions because of vitamin and mineral deficiencies which can be corrected by the use of Ovaltine, thus eliminating the said symptoms and conditions; that the use of Ovaltine, as directed, will correct iron deficiency anemia and its resultant symptoms; that the loss of appetite is due to a lack of vitamin B<sub>1</sub>, which Ovaltine supplies in sufficient quantities to correct; that three out of four people in this country are so deficient in vitamins and minerals that they have developed symptoms of fatigue, under par, underweight, and nervousness; that Ovaltine aids in digesting milk and starchy foods; that Ovaltine contains a variety and scope of food elements not to be found in any other food product; that the use of Ovaltine will enable one to successfully fight off colds and sore throat, and will assure good eyesight; that human health and well-being require vitamins and minerals in addition to the supply thereof obtained in a well-balanced diet; that the nightly consumption of Ovaltine will enable one to wake up in the morning feeling fresh, vital, vigorous, and buoyant; that the consumption of Ovaltine will significantly aid in the correction and prevention of subnutritional states caused by vitamin or mineral deficiency; that two glasses of Ovaltine daily added to three average good meals, including fruit juices, will assure excellent health, and Ovaltine can be depended upon to assist in providing extra endurance, strength, stamina, and energy, will build muscles, and constitutes an all-round strengthening food.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false, deceptive, and misleading. The consumption of Ovaltine will not reduce the emptying time of the stomach after a normal meal, and will neither induce nor aid in inducing hunger more quickly; it will not increase weight; it will not correct or improve nervous conditions; it will not preserve and assure strength and health; it will not stimulate one's appetite.

Persons under par, run-down, thin, weak, exhausted, pale, listless, tired, fatigued, nervous, underweight, and lacking in energy, do not usually develop such symptoms and conditions because of vitamin and mineral deficiencies, but such conditions and symptoms most frequently occur as a result of some disease which bears no relationship

whatever to vitamin or mineral deficiency, and which can not be corrected or relieved by the administration of vitamins and minerals in any dosages. Moreover, the amounts of vitamins and minerals provided in Ovaltine, taken as directed, are insufficient to correct or relieve deficiencies and their attendant symptoms and conditions. Ovaltine, taken as directed, will not correct iron deficiency anemia and its resultant symptoms, and will provide only the minimum daily nutritional requirement of iron, which is only a very small fraction of the quantity of iron necessary to correct iron deficiency anemia or to have a "tonic effect" in such cases.

Although vitamin B<sub>1</sub> deficiency may be the cause of a poor appetite, nevertheless, loss of appetite is a manifestation of a wide variety of diseases and other conditions which are in no way related to vitamin B<sub>1</sub> deficiency and which cannot be corrected by the administration of vitamin B<sub>1</sub> in any amounts. Furthermore, the amount of vitamin B<sub>1</sub> furnished by the recommended daily intake of Ovaltine is not sufficient to correct any of the symptoms of vitamin B<sub>1</sub> deficiency, including loss of appetite.

Three out of four people in this country have not developed symptoms such as fatigue, under par, underweight, and nervousness, as a result of vitamin or mineral deficiencies, nor has any other large proportion of our population.

Chronic conditions of underweight do not usually arise from mere failure to ingest sufficient calories, but are usually a manifestation of some long-standing conditions which cannot be remedied by the administration of Ovaltine or the food products contained therein; and even in the relatively few cases of individuals who are underweight because of failure to ingest enough calories, the addition of Ovaltine to the diet would not enable them to gain weight at any predeterminable rate.

Ovaltine does not aid in digesting milk, which is digested practically in toto on the normal schedule provided by nature in the gastrointestinal tract, regardless of whether or not Ovaltine is added. Digestion of starches is not one of the primary functions of the stomach; there are comparatively few individuals who do not experience an entirely adequate and orderly digestion of starches, and any assistance which the ingestion of Ovaltine may render in digesting starches is of little or no practical value.

There are other manufactured food products on the market containing all of the nutrients found in Ovaltine. The use of Ovaltine will not enable one to successfully fight off colds and sore throat, and the consumption of Ovaltine, either by reason of its vitamin A content, or otherwise, will not prevent the incidence of or shorten the duration of

the common cold or accompanying sore throat. Although one of the characteristic effects of vitamin A deficiency is a visual impairment under dim lighting or twilight conditions, yet no such impairment is suffered under ordinary lighting conditions, and the administration of Ovaltine will not assure good eyesight nor improve the eyesight in the customary usage of that word. Human health and well-being do not require vitamins and minerals in addition to the supply thereof obtained in a well-balanced diet; on the other hand, the selection and consumption of ordinary foodstuffs will assure an adequate nutritional intake of vitamins and minerals for the promotion and maintenance of health; in addition, there are numerous causes of lack of vigor and health which have nothing to do with nutrition and the food ingredients of Ovaltine.

The nightly consumption of Ovaltine will not enable one to wake up in the morning feeling fresh, vital, vigorous, and buoyant, but might serve to induce sleep in some people, just as hot milk might do, and if such consumers awaken refreshed, it is not the result of any specific effect the Ovaltine may have had on the digestive processes, or on any other function of the body, but would be due solely to a good night's rest. Ovaltine, taken as directed, does not provide enough vitamins or minerals to correct subnutritional states resulting from vitamin or mineral deficiencies. Two glasses of Ovaltine daily, or any amount, added to three average good meals, including fruit juices, will not assure excellent health, and Ovaltine, imbibed as directed, will not assist in providing extra endurance, strength, stamina, and energy; it will not build muscles, and it is not an all-round strengthening food. It will not serve to increase one's physical strength, nor will it increase one's energy reserve in the sense of increasing his capacity for physical exertion or in any other manner which could not equally as well be fulfilled by any food substance of equivalent caloric value.

PAR. 6. The use by respondent of the aforesaid false, deceptive, and misleading statements and representations, and others similar in import and meaning not specifically set forth herein, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and because of such erroneous and mistaken belief to purchase substantial quantities of respondent's said preparation.

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

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 August 16, 1951, the initial decision in the instant matter of trial examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission.

## INITIAL DECISION BY ABNER E. LIPSCOMB, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 11, 1945, issued and subsequently served its complaint in this proceeding upon respondent, The Wander Co., a corporation, charging it with the use of unfair or deceptive acts or practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said 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, proposed findings as to the facts and conclusions presented by counsel, oral argument not having been requested, and a proposed order to cease and desist having been agreed to by counsel, with the proviso that if it were not acceptable to the trial examiner or to the Commission, the proceeding would be placed in status quo and hearings resumed. The 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, The Wander Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and headquarters located at 360 North Michigan Avenue, Chicago, Ill., and a factory in Villa Park, Ill.

PAR. 2. The respondent is now, and for several years last past has been, engaged in the sale and distribution in commerce, among and between the various States of the United States and in the District of Columbia, of a food preparation designed to be consumed as a beverage, and designated as "Ovaltine."



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PAR. 3. Respondent's said product, Ovaltine, is a homogeneous food supplement processed from barley malt, whole milk, defatted milk, soya flour, whole eggs, selected cocoa, vitamin A, vitamin B<sub>1</sub> (thiamine), vitamin C, vitamin D, riboflavin (vitamin G), niacin and calcium, phosphorus, readily available iron, salt, and artificial flavoring.

The nutritional content of nine heaping teaspoonfuls, or 1½ ounces, of Ovaltine, which is the amount recommended to be taken per day, in approximately three 8-ounce glasses of milk, is approximately as follows:

Calories.....	636.4
Protein.....	31.0 gm.
Carbohydrate.....	61.9 gm.
Fat.....	29.3 gm.
Calcium.....	1,093 mgm.
Phosphorus.....	893 mgm.
Iron.....	13.3 mgm.
Vitamin A.....	3,794 international units.
Thiamine.....	1.38 mgm.
Riboflavin.....	2.06 mgm.
Vitamin C.....	43.0 mgm.
Vitamin D.....	412 international units.
Niacin.....	8.13 mgm.

The amount of these nutritional factors which Ovaltine supplies per day to the total combination are:

Calories.....	168.4
Protein.....	7.2 gm.
Carbohydrate.....	28.6 gm.
Fat.....	2.8 gm.
Calcium.....	289 mgm.
Phosphorus.....	260 mgm.
Iron.....	12.9 mgm.
Vitamin A.....	2,714 international units.
Thiamine.....	1.14 mgm.
Riboflavin.....	0.89 mgm.
Vitamin C.....	34 mgm.
Vitamin D.....	400 international units.
Niacin.....	7.38 mgm.

The minimum daily requirements of the pertinent nutrients above-mentioned are as follows:

	Adult	Child	Infant
Vitamin A.....	4,000 units	3,000 units	1,500 units
Vitamin D.....	400 units	400 units	400 units
Vitamin B <sub>1</sub> .....	1.0 mg.	0.5-0.75 mg.	0.25 mg.
Vitamin C.....	30 mg.	20 mg.	10 mg.
Riboflavin.....	2.0 mg.	-----	0.5 mg.
Calcium.....	750 mg.	750 mg.	-----
Phosphorus.....	750 mg.	750 mg.	-----
Iron.....	10 mg.	7.5-10 mg.	-----

The term "minimum daily requirement" means a figure sufficient in quantity to supply enough of the respective vitamins or minerals to prevent any deficiency, and to provide some measure of safety, but which is not adequate in undertaking to treat a deficiency.

Directions for using Ovaltine, as shown on the label, are as follows:

Hot Ovaltine—stir 3 heaping teaspoonfuls of Ovaltine into a cup of hot (not boiled) milk. Add sugar to taste. As a bedtime drink, use 3 or more heaping teaspoonfuls. Cold Ovaltine—add 3 or more heaping teaspoonfuls of Ovaltine to a glass of ice-cold milk. Add sugar to taste. Shake in a shaker or covered jar or use a mixer.

PAR. 4. Respondent causes its said food preparation, Ovaltine, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a course of trade in its said food preparation, Ovaltine, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its business, the respondent has been and is responsible for the dissemination, by the United States mails, by insertions in newspapers, magazines, and other periodicals having national circulation, by radio broadcasts, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, of many advertisements concerning its food preparation, Ovaltine, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of such food preparation in commerce, which advertisements represent or have represented, directly and by implication, that:

1. The consumption of Ovaltine will reduce the emptying time of the stomach after a starchy meal, and thereby induce the return of hunger more quickly;

2. The consumption of Ovaltine will increase weight, correct nervous conditions, preserve and assure strength and health, and stimulate one's appetite;

3. People who are under par, run-down, thin, weak, exhausted, pale, listless, tired, fatigued, nervous, underweight or lacking in energy or strength, suffer such symptoms and conditions because of vitamin and mineral deficiencies which can be corrected by the use of Ovaltine, thus eliminating such symptoms and conditions;

4. The use of Ovaltine, as directed, will correct iron deficiency anemia and its resultant symptoms;

5. The loss of appetite is due to a lack of vitamin B<sub>1</sub>, which Ovaltine supplies in sufficient quantities to correct;

6. Three out of four people in this country are so deficient in vitamins and minerals that they have developed symptoms of fatigue, under par, underweight, and nervousness;

7. Ovaltine aids in digesting milk and starchy foods;

8. Ovaltine contains a variety and scope of food elements not to be found in any other food product;

9. The use of Ovaltine will enable one to successfully fight off colds and sore throat, and will assure good eyesight;

10. Human health and well-being require vitamins and minerals in addition to the supply thereof obtained in well-balanced diet;

11. The nightly consumption of Ovaltine will enable one to wake up in the morning feeling fresh, vital, vigorous, and buoyant;

12. The consumption of Ovaltine will significantly aid in the correction and prevention of subnutritional states caused by vitamin or mineral deficiency;

13. Two glasses of Ovaltine daily added to three average good meals, including fruit juices, will assure excellent health;

14. Ovaltine can be depended upon to assist in providing extra endurance, strength, stamina, and energy, will build muscles, and constitutes an all-round strengthening food.

PAR. 6. The statements and representations disseminated and caused to be disseminated by the respondent, as set forth in paragraph 5, above, are exaggerated, false, and misleading.

In truth and in fact, the consumption of Ovaltine will not reduce the emptying time of the stomach after a starchy meal, and will not thereby induce the return of hunger more quickly.

Symptoms such as being under par, run-down, thin, weak, exhausted, pale, listless, tired, fatigued, nervous, underweight, or lacking in energy or strength are not always caused by mineral or vitamin deficiencies, although such deficiencies may contribute thereto. When such symptoms are caused by vitamin or mineral deficiencies, Ovaltine will not constitute an adequate treatment therefor because the vitamin and mineral content of said product is insufficient for an effective dosage, except in the milder forms of vitamin and mineral deficiency, wherein the continued use of Ovaltine over a long period of time may be of benefit. In severe cases of vitamin and mineral deficiency, such as beri-beri, pellagra and scurvy, the vitamin and mineral content of Ovaltine is insufficient to produce any significant beneficial effect.

The consumption of Ovaltine in the quantities recommended may prevent, but will not cure, iron deficiency anemia or its resulting symptoms. Although Ovaltine will supply slightly more than the minimum daily requirement of vitamin B<sub>1</sub>, loss of appetite, while it may result

## Conclusion

from a lack of this vitamin, is more frequently caused by many diseases and illnesses, both mild and severe, which have no relationship with a vitamin B<sub>1</sub> deficiency.

Although a significant prevalence of undernutrition among the people of the United States has been reported in official United States Government publications in the past, such undernutrition as has existed has not justified the statement that three out of four, or 75 percent, of the people of the United States are undernourished. The present extent of such undernutrition is indeterminate, and the present state of knowledge of nutrition does not permit an accurate statistical statement of the specific percentage of people in the United States who are undernourished.

The use of Ovaltine in conjunction with milk as directed will not aid in the digestion of milk or starchy foods, except to the extent that it may serve to speed the digestion thereof.

There are other food products on the market which contain the same variety of nutrients found in Ovaltine.

Ovaltine has no value as a treatment for colds or sore throat, nor will it prevent such infections, nor have any tendency to shorten the duration thereof.

Vitamin A deficiency is one of the causes of night blindness, but night blindness has no effect upon one's eyesight in the daytime or in artificial light. Ovaltine, consumed over a prolonged period of time, may prevent night blindness resulting from vitamin A deficiency, or may serve to avoid a narrowing of the field of vision resulting from such a deficiency, but will have no other effect upon human eyesight.

A well-balanced diet provides a person with all the vitamins and minerals required for his physical well-being, and the addition of Ovaltine to such a diet will have no effect whatever upon the consumer's endurance, energy, muscles, strength, and stamina.

Although the use of Ovaltine before retiring may be beneficial in producing sound sleep, such use will not assure one of waking up in the morning feeling fresh, vital, vigorous, and buoyant.

Ovaltine, consumed alone or in connection with a well-planned diet, cannot assure sound health, and cannot be depended upon to assist in providing, building or developing extra endurance, strength, stamina, health, energy, or muscles, nor will it constitute an all-round strengthening food.

## CONCLUSION

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

Order

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## ORDER

*It is ordered,* That the respondent, The Wander Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of Ovaltine, or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

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

(a) That the consumption of Ovaltine will reduce the emptying time of the stomach after a starchy meal, or will thereby induce hunger.

(b) That the use of Ovaltine, by those who are under par, run-down, thin, weak, exhausted, pale, listless, tired, fatigued, nervous, underweight, or lacking in energy or strength, or whose appetites are impaired, will correct such conditions or other symptoms of nutritional deficiencies unless such representations are limited to those cases in which such conditions are due to the milder forms of nutritional deficiencies where the prolonged and continued use of said product as a food supplement in the quantities recommended may tend to overcome such conditions. Nothing contained herein shall be deemed to permit respondent to represent that the use of Ovaltine will correct clear-cut deficiency disease states such as, but not limited to, beri-beri, pellagra, or scurvy.

(c) That three out of four or any other specific portion of the people of this country are so deficient in vitamins and minerals that they have developed such symptoms as being under par, run-down, thin, weak, exhausted, pale, listless, tired, fatigued, nervous, or underweight, or lacking in energy and strength or whose appetites are impaired, or any other symptoms which arise by reason of lack of sufficient vitamins or minerals: *Provided, however,* That the foregoing shall not be construed to prevent the respondent from using representations accurately reflecting statements made in current documents issued by agencies of the United States Government whose functions and duties include nutritional studies and surveys bearing upon the prevalence among the people of this country of symptoms arising by reason of mineral or vitamin deficiency.

(d) That the use of Ovaltine will correct iron deficiency anemia and its resultant symptoms.

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## Order

(e) That Ovaltine will aid in the digestion of milk or starchy foods, except to the extent that it may serve to speed the digestion thereof.

(f) That no other food product on the market contains the same variety of nutriments found in Ovaltine.

(g) That the use of Ovaltine will have any effect in avoiding colds or sore throat or will exert any influence upon the severity or duration of the common cold or its accompanying sore throat; or that its use will have any effect upon the eyesight in excess of preventing night blindness resulting from vitamin A deficiency, or preventing narrowing of the field of vision resulting from vitamin A deficiency.

(h) That the health of an individual who consumes a well-planned or well-balanced diet requires additional vitamins or minerals, such as may be found in Ovaltine, or any other food supplement, or that Ovaltine, added to such a diet, will assist in providing, building, or developing endurance, strength, stamina, energy, or muscles, or act as an all-round strengthening food, or increase one's strength.

(i) That by taking Ovaltine before retiring one can be assured of feeling fresh, vigorous, vital or buoyant the next morning.

(j) That the consumption of Ovaltine will give assurance of good health.

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

## 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 August 16, 1951].

Complaint

48 F. T. C.

IN THE MATTER OF

DANIEL HUTTNER, DOING BUSINESS AS SANITARY  
FEATHER CO.

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

*Docket 5874. Complaint, Apr. 23, 1951—Decision, Aug. 16, 1951*

Where an individual engaged in the interstate sale and distribution of pillows—  
Represented that certain pillows were composed entirely of duck down and that  
such down was new and unused material, through such statements on the  
labels attached thereto as "All New Material Consisting of Duck Down" or  
"All New Material Consisting of Imported Duck Down";

The facts being that four pillows thus labeled were found to contain only 70.5,  
72.2, 69.1, and 61.6 percent duck down, respectively, with the balance con-  
sisting of duck feathers and feather fiber, and to consist also in substantial  
part of used or secondhand feathers as distinguished from new and unused  
ones;

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

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

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

*Mr. Russell T. Porter* for the Commission.

*Loesch, Scofield & Burke*, of Chicago, Ill., for respondent.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act,  
and by virtue of the authority vested in it by said act, the Federal  
Trade Commission, having reason to believe that Daniel Huttner, an  
individual doing business as Sanitary Feather Co., hereinafter re-  
ferred 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 Daniel Huttner, is an individual doing  
business as Sanitary Feather Co., with his office and principal place of  
business located at 5034 South State Street, Chicago, Ill.

PAR. 2. Respondent is now, and for several years last past, has  
engaged in the sale of pillows to dealers for resale to the public.

Respondent causes and has caused his said pillows when sold to be  
shipped from his place of business in the State of Illinois to dealers  
located in various other States of the United States and maintains,

and at all times mentioned herein has maintained, a course of trade in his said pillows, in commerce, among and between the several States of the United States. His business in such trade has been and is substantial.

PAR. 3. In the course and conduct of his business, respondent causes labels to be attached to his pillows purporting to state and set out the composition and nature of the fillings of said pillows. Typical, but not all inclusive of these labels are the following:

ALL NEW MATERIAL CONSISTING OF  
IMPORTED DUCK DOWN  
ALL NEW MATERIAL CONSISTING OF  
DUCK DOWN

PAR. 4. By means of the statements appearing on the labels of his said pillows, respondent represented that the fillings of the pillows labeled "All new material consisting of imported duck down" and the pillows labeled "All new material consisting of duck down" were composed entirely of new duck down, the undercoating of a waterfowl.

PAR. 5. The aforesaid statements are false, misleading, and deceptive. In truth and in fact the fillings of two pillows labeled "All new material consisting of imported duck down" were not composed entirely of new duck down but on the contrary contained approximately 15 and 14 percent feathers, respectively, substantial amounts of which were second-hand, and approximately 13 and 17 percent fiber, respectively. The fillings of two pillows labeled "All new material consisting of duck down" were not composed entirely of new duck down but on the contrary contained approximately 13 and 22 percent duck feathers, respectively, substantial amounts of which were second-hand, and approximately 26 and 8 percent fiber, respectively.

PAR. 6. By attaching the false, misleading, and deceptive labels to his pillows, respondent placed in the hands of dealers means and instrumentalities by and through which they may mislead the purchasing public as to the content of said pillows.

PAR. 7. The use by the respondent of the false, misleading, and deceptive labels have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public as to the content of his said pillows and to induce a substantial portion of the purchasing public to purchase respondent's said pillows because of such erroneous belief.

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



## 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 Commission and Order to File Report of Compliance," dated August 16, 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 23, 1951, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. Thereafter 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 respondent 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. While counsel for respondent reserved in the stipulation the right to file proposed findings and conclusions and to argue the matter orally before the trial examiner, such reservations were subsequently waived. 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 (no answer having been filed by respondent) 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 respondent, Daniel Huttner is an individual doing business under the name Sanitary Feather Co., with his office and principal place of business located at 5034 South State Street, Chicago, Ill.

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PAR. 2. Respondent is now, and for several years last past has been engaged in the sale of pillows, the pillows being sold to dealers for resale to the public. Respondent causes and has caused his pillows, when sold, to be shipped from his place of business in the State of Illinois to purchasers in various other States of the United States. Respondent maintains and has maintained a course of trade in his pillows in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his business respondent attaches to his pillows labels purporting to state or set forth the materials of which such pillows are made. In some instances such labels have been inaccurate and misleading. Labels attached to certain pillows read "All New Material Consisting of Duck Down" or "All New Material Consisting of Imported Duck Down," thereby representing that such pillows were composed entirely of duck down, the undercoating of ducks, and that such down was new and unused material. Of four pillows so labeled one was found to contain only 61.6 percent duck down, 8.2 percent duck feathers, and approximately 26 percent feather fiber. Another contained only 70.5 percent duck down, 17.8 percent duck feathers, and 7.5 percent feather fiber. A third contained only 72.2 percent duck down, 11 percent duck feathers, and approximately 13 percent feather fiber. And the fourth contained only 69.1 percent duck down, 10.1 percent duck feathers, and approximately 17 percent feather fiber. Moreover, in each of these instances the feather content consisted in substantial part of used or second-hand feathers as distinguished from new and unused feathers.

PAR. 4. The acts and practices of respondent as set forth above have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's products, and the tendency and capacity to cause such portion of the public to purchase respondent's products as a result of the erroneous and mistaken belief so engendered.

## CONCLUSION

The acts and practices of the respondent 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 respondent, Daniel Huttner individually and trading under the name Sanitary Feather Co. or trading under any

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other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of pillows in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting in any manner or by any means, directly or by implication, the materials of which respondent's pillows are made.
2. Representing as composed of new material any pillow which is in fact composed in whole or in part of used or second-hand material.

## ORDER TO FILE REPORT OF COMPLIANCE

*It is order,* 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 August 16, 1951].

## Complaint

## IN THE MATTER OF

## H. T. POINDEXTER &amp; SONS MERCHANDISE CO.

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 5875. Complaint, Apr. 23, 1951—Decision, Aug. 16, 1951*

Where a corporation 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 of 1939—

Misbranded certain of said products in that, labeled as 100 percent wool, they contained no "wool" as defined in said act, but were composed, exclusive of ornamentation not exceeding 5 percent of their total fiber weight, of "reprocessed wool"; their constituent fibers and the percentages thereof were not shown on the tags or labels thereon, as required, since composed, as above noted, wholly of "reprocessed wool"; and constituent fibers of interlinings were not separately set forth upon the tags or labels attached thereto:

*Held*, That such acts and practices, under the circumstances set forth, were in violation of the Wool Products Labeling Act and the rules and regulations promulgated thereunder, and were to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

While the complaint also charged that respondent removed from certain wool products, theretofore delivered to it, tags or labels purporting to contain the information required by said Wool Products Labeling Act, with intent to violate the provisions of the Act, and the stipulation established the fact of removal of the labels, it did not establish the element of intent, which was negated by affidavits executed by certain of respondent's employees; and intent being an essential element where removal of labels is charged, it was concluded that said charge in the complaint was not sustained.

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

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

*Mr. Wm. K. Poindexter*, of Kansas City, Mo., 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 H. T. Poindexter & Sons Merchandise Co., a corporation hereinafter referred to as respondent, has violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent H. T. Poindexter & Sons Merchandise Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 801 Broadway, Kansas City, Mo.

PAR. 2. Subsequent to September 1, 1949, respondent has introduced into commerce 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 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 as 100 percent wool, whereas in truth and in fact said products contained no "wool" as the term is defined in said act, but were composed, exclusive of ornamentation not exceeding 5 per centum of their total fiber weight, of "reprocessed wool" as the term is defined in said act. 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 required by the said rules and regulations, since in truth and in fact said products were composed, exclusive of ornamentation, wholly of "reprocessed wool" as that term is defined in said act.

Certain of said wool products were misbranded in that the constituent fibers of their interlinings and the percentages thereof were not separately set forth in the manner and form required by said rules and regulations upon the tags or labels attached thereto.

PAR. 4. Wool products when received by respondent at its place of business had affixed thereto stamps, tags, labels, or other means of identification purporting to contain the information required by the Wool Products Labeling Act of 1939. After said wool products were delivered to the respondent and before they were offered for sale or sold by respondent to retail stores, said respondent caused and participated in the removal thereof with intent to violate the provisions of the Wool Products Labeling Act of 1939.

PAR. 5. The aforesaid acts and practices and methods of the respondent as herein alleged were in violation of sections 3, 4, and 5 of the Wool Products Labeling Act of 1939, and rules 2, 3, and 24 of 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 August 16, 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 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 April 23, 1951, issued and subsequently served its complaint in this proceeding upon the respondent, H. T. Poindexter & Sons Merchandise Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. After the filing by respondent of its 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 respondent 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 (together with certain affidavits attached thereto), 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 respondent, H. T. Poindexter & Sons Merchandise Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 801 Broadway, Kansas City, Mo.

## Conclusion

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PAR. 2. Subsequent to September 1, 1949, respondent has introduced into commerce 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 such wool products were misbranded within the intent and meaning of said act and the rules and regulations promulgated thereunder, in that they were mislabeled with respect to the character and amount of their constituent fibers as 100 percent wool, whereas in truth and in fact said products contained no "wool" as the term is defined in said act, but were composed, exclusive of ornamentation not exceeding 5 per centum of their total fiber weight, of "reprocessed wool" as the term is defined in said act. 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 required by the said rules and regulations, since in truth and in fact said products were composed, exclusive of ornamentation, wholly of "reprocessed wool" as that term is defined in said act.

Certain of such wool products were misbranded in that the constituent fibers of their interlinings and the percentages thereof were not separately set forth in the manner and form required by said rules and regulations upon the tags or labels attached thereto.

PAR. 4. The complaint also charges that respondent has removed from certain wool products, theretofore delivered to it, tags or labels purporting to contain the information required by the Wool Products Labeling Act of 1939, such removal, according to the complaint, being with intent to violate the provisions of the act. While the stipulation establishes the fact of removal of the labels, the stipulation, in the examiner's opinion, fails to establish the element of intent, and affidavits executed by certain of respondent's employees negative the charge of intent. It is the examiner's understanding that where removal of labels is charged, intent is an essential element, and it is therefore concluded that this charge in the complaint has not been sustained.

## CONCLUSION

The acts and practices of the respondent, as set out in paragraph 3, were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and were to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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## ORDER

*It is ordered*, That the respondent, H. T. Poindexter & Sons Merchandise Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the offering for sale, sale or distribution in commerce, as "commerce" is defined in the aforesaid acts, of wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said act, do forthwith cease and desist from misbranding such products:

1. By using the unqualified word "wool" to designate or describe the constituent fibers of any product when such fibers are not, in fact, wool as defined in the Wool Products Labeling Act of 1939.

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

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

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

*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 respondent herein shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist [as required by said declaratory decision and order of August 16, 1951].



Complaint

48 F. T. C.

## IN THE MATTER OF

## DEKLE BROKERAGE CO., INC., ET AL.

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

*Docket 5880. Complaint, May 7, 1951—Decision, Aug. 16, 1951*

Where a corporation, and its president and stockholder, who was responsible for its acts and practices, engaged as a broker of fruits and vegetables, and as a jobber and wholesaler thereof in the purchase of such produce from vendors in other states and in its sales to wholesalers and retailers—

Received and accepted from such vendors commissions, brokerage or other compensation, of allowances or discounts in lieu thereof, in connection with purchases of produce made on respondent's own account, as jobber and wholesaler, in purchasing in their own name and for shipment to their places of business for resale:

*Held*, That said respondents in receiving and accepting brokerage fees, etc., from sellers under the circumstances set forth, violated the provisions of subsection (c) of section 2 of the Clayton Act as amended.

Before *Mr. Frank Hier*, trial examiner.

*Mr. Peter J. Dias* and *Mr. Richard E. Ely* for the Commission.

*Howell & Johnston*, of Mobile, Ala., for respondents.

## COMPLAINT

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

PARAGRAPH 1. Respondent Dekle Brokerage Co., Inc., is a corporation organized and existing under the laws of the State of Alabama, with its principal office and place of business located at 600 North Water Street, Mobile, Ala., and with a branch office located in Jackson, Miss.

Respondent Arthur U. Dekle is an individual with principal office and place of business located at 600 North Water Street, Mobile, Ala. He is a stockholder in and president of respondent Dekle Brokerage Co., Inc. As such, he directs, controls and is responsible for the acts and practices of said corporate respondent which are hereinafter alleged.

PAR. 2. Respondents are now and for several years have been engaged in business as a broker of fruits and vegetables, hereinafter

referred to as produce, and as a jobber and wholesaler of produce, selling said produce to both wholesalers and retailers.

In the course and conduct of their business as a jobber and wholesaler of produce, respondents are and have been engaged in commerce, as commerce is defined in the Clayton Act as amended by the Robinson-Patman Act, purchasing such produce from vendors whose places of business are located in States other than Alabama or Mississippi, and causing it to be shipped to their places of business within the States of Alabama or Mississippi or both.

PAR. 3. In the course and conduct of said jobbing and wholesaling business in commerce, said vendors pay or grant to respondents and respondents receive or accept commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof, in connection with said purchases of produce made on their own account.

PAR. 4. Among the circumstances under which respondents receive or accept the commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof alleged in paragraph 3, are those existing in the normal course and conduct of their business as a jobber and wholesaler in making said purchases of produce from said vendors for resale to wholesalers and retailers.

Such circumstances are that respondents transmit purchase orders directly to said vendors, naming themselves as purchasers. Said vendors, at respondents' request, ship said produce so ordered directly to respondents' places of business in Mobile, Ala., or Jackson, Miss., or both. Said vendors invoice respondents for said produce at the gross price agreed upon less an amount designated as brokerage, and the net amount of said invoices is paid by respondents to said vendors. Said produce so purchased is resold by respondents to wholesalers or retailers at prices satisfactory to respondents.

PAR. 5. Illustrative of respondents' acts and practices, alleged in paragraph 4, was their purchase in the name of Dekle Brokerage Co., in or about July 1949, of a carload of grapes from a vendor in California. Said grapes were shipped at respondents' request to Jackson, Miss., for partial unloading and thence to Mobile, Ala., as final destination.

At the request of said vendor, respondents informed him that their brokerage fee was \$40 which amount said vendor deducted from the gross price on the invoice sent to respondents. Respondents paid the net amount of said invoice.

Respondents resold said grapes to wholesale or retail purchasers in comparatively small quantities for their own account.

PAR. 6. The acts and practices of the respondents as above alleged

violate subsection (c) 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 August 16, 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 (15 U. S. C. 13), the Federal Trade Commission, on May 7, 1951, issued and subsequently served its complaint in this proceeding upon Dekle Brokerage Co., Inc., a corporation, and Arthur U. Dekle, individually and as president thereof, charging them with violation of subsection (c) of section 2 of said act as amended. On June 26, 1951, respondents filed their answer thereto, wherein they admitted all the material allegations of fact set forth in said complaint, waived further notice and consented to the entry of an order to cease and desist from the violations charged in the complaint. 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, conclusion drawn therefrom, and order.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Dekle Brokerage Co., Inc., is a corporation organized and existing under the laws of the State of Alabama, with its principal office and place of business located at 600 North Water Street, Mobile, Ala., and with a branch office located in Jackson, Miss.

Respondent Arthur U. Dekle is an individual with principal office and place of business located at 600 North Water Street, Mobile, Ala. He is a stockholder in and president of respondent Dekle Brokerage Co., Inc. As such, he directs, controls and is responsible for the acts and practices of said corporate respondent which are hereinafter alleged.

PAR. 2. Respondents are now and for several years have been engaged in business as a broker of fruits and vegetables, hereinafter

referred to as produce, and as a jobber and wholesaler of produce, selling said produce to both wholesalers and retailers.

In the course and conduct of their business as a jobber and wholesaler of produce, respondents are and have been engaged in commerce, as commerce is defined in the Clayton Act as amended by the Robinson-Patman Act, purchasing such produce from vendors whose places of business are located in States other than Alabama or Mississippi, and causing it to be shipped to their places of business within the States of Alabama or Mississippi or both.

PAR. 3. In the course and conduct of said jobbing and wholesaling business in commerce, said vendors pay or grant to respondents and respondents receive or accept commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof, in connection with said purchases of produce made on their own account.

PAR. 4. Among the circumstances under which respondents receive or accept the commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof found in paragraph 3, are those existing in the normal course and conduct of their business as a jobber and wholesaler in making said purchases of produce from said vendors for resale to wholesalers and retailers.

Such circumstances are that respondents transmit purchase orders directly to said vendors, naming themselves as purchasers. Said vendors, at respondents' request, ship said produce so ordered directly to respondents' places of business in Mobile, Ala., or Jackson, Miss., or both. Said vendors invoice respondents for said produce at the gross price agreed upon less an amount designated as brokerage, and the net amount of said invoices is paid by respondents to said vendors. Said produce so purchased is resold by respondents to wholesalers or retailers at prices satisfactory to respondents.

PAR. 5. Illustrative of respondents' acts and practices, found in paragraph 4, was their purchase in the name of the Dekle Brokerage Co., in or about July 1949, of a carload of grapes from a vendor in California. Said grapes were shipped at respondents' request to Jackson, Miss., for partial unloading and thence to Mobile, Ala., as final destination.

At the request of said vendor, respondents informed him that their brokerage fee was \$40 which amount said vendor deducted from the gross price on the invoice sent to respondents. Respondents paid the net amount of said invoice.

Respondents resold said grapes to wholesale or retail purchasers in comparatively small quantities for their own account.

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## CONCLUSION

In receiving and accepting brokerage fees or commissions, and allowances or discounts in lieu thereof, from sellers upon purchases of merchandise in the manner and under the circumstances as hereinabove found, respondents have violated the provisions of subsection (c) of section 2 of the Clayton Act as amended.

## ORDER

*It is ordered*, That Dekle Brokerage Co., Inc., a corporation, and its officers, and Arthur U. Dekle, individually and as president of Dekle Brokerage Co., Inc., and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the purchase of fruits, vegetables, and other produce in commerce, as "commerce" is defined in the Clayton Act as amended, do forthwith cease and desist from receiving or accepting, directly or indirectly, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, from any seller on or in connection with purchases made from such seller—

(a) When such purchases are made for respondents' own account, or

(b) When such purchases are made as agent or buying representative of the purchaser, or

(c) When, in making such purchases, respondents are acting in fact for or in behalf of, or are subject to the direct or indirect control of, the purchaser.

## 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 August 16, 1951].

## Complaint

## IN THE MATTER OF

## HAUPTMAN FEATHER COMPANY, INC., ET AL.

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

*Docket 5832. Complaint, Dec. 8, 1950—Decision, Aug. 17, 1951*

Where a corporation and its three officers, engaged in the interstate sale and distribution of pillows—

Misrepresented the materials of which their pillows were made through attaching thereto labels which represented said materials, respectively, as "50 percent White Goose Down, 50 percent White Goose Feathers"; as "Down"; as "25 percent Duck Down, 75 percent Duck Feathers"; and as "50 percent Down, 50 percent Duck Feathers";

The facts being that the first pillow contained only 33.9 percent white goose down, 47 percent white goose feathers and other materials; that labeled "Down" contained only 43.2, instead of 100 percent thereof, the third contained 10 percent duck down, 78.5 percent duck feathers and other materials; and the fourth contained only 25.4 percent down and 57 percent feathers;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their products and thereby cause it to purchase the same:

*Held*, That such act 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. Russell T. Porter* for the Commission.

*Mr. Harry Heller*, of Brooklyn, N. Y., 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 Hauptman Feather Co., Inc., a corporation, and Mitchell Hauptman, Abraham Hauptman, and Jean Rabinowitz, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hauptman Feather Co., Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business at 73-75 Wallabout Street, Brooklyn, N. Y. Respondents Mitchell Hauptman, Abraham Hauptman, and Jean Rabinowitz are the president, secre-

tary, and treasurer, respectively, of said corporate respondent. Said individual respondents have at all times mentioned herein dominated, directed, and controlled and now dominate, direct, and control the policies, affairs, and activities of corporate respondent. The addresses of the individual respondents are the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for several years last past, have been engaged in the sale of pillows to dealers for resale to the public.

Respondents caused and have caused their said pillows when sold to be shipped from their place of business in the State of New York to dealers in various other States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in their said pillows, in commerce, among and between the several States of the United States. Their business in such trade has been and is substantial.

PAR. 3. In the course and conduct of their business respondents cause labels to be attached to their pillows purporting to state and set out the composition of the filling of said pillows. Typical, but not all inclusive of these labels, are the following:

"50% White Goose Down—50% White Goose Feathers," said pillow being designated as "Madison".

"Down," said pillow being designated as "Imperial".

"25% Down—75% Duck Feathers," said pillow being designated as "Style #D".

"50% Down—50% Duck Feathers," said pillow being designated as "Style #C".

PAR. 4. By means of the statements appearing on the labels of said pillows, respondents represented that the filling of the pillow designated "Madison" was composed of 50 percent white goose down, the undercoating of a waterfowl, and 50 percent white goose feathers; that the filling of the pillow designated "Imperial" was composed entirely of down, the undercoating of waterfowl; that the filling of the pillow designated "Style #D," was composed of 25 percent down, the undercoating of waterfowl, and 75 percent duck feathers; and that the filling of the pillow designated as "Style #C" was composed of 50 percent down, the undercoating of waterfowl, and 50 percent duck feathers.

PAR. 5. The statements appearing on the labels, as aforesaid, are false, misleading, and deceptive. In truth and in fact, the filling of the pillow designated as "Madison" consisted of 33.9 percent white goose down, 54.7 percent goose feathers, 6.8 percent feather fiber, and the balance of other materials. The filling of the pillow designated as "Imperial" was composed of 33.6 percent duck feathers, 43.2 percent down, and 23.2 percent feather fiber. The filling of the pillow designated as "Style #D" contained 11.5 percent feather fiber in addi-

tion to down and duck feathers and the filling of the pillow designated as "Style #C" contained 25.4 percent down, 57 percent duck feathers, and 17.6 percent feather fiber.

PAR. 6. By attaching false, misleading and deceptive labels to their pillows, respondents placed in the hands of dealers, means and instrumentalities by and through which they may mislead the purchasing public as to the content of said pillows.

PAR. 7. The use by the respondents of the false, misleading and deceptive statements on the labels of their said products had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public as to the content of their said pillows, and to induce a substantial portion of the purchasing public to purchase their pillows because of the erroneous belief engendered by such statements.

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

#### 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 August 17, 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 December 8, 1950, 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. While counsel for respondents reserved in the stipulation the right



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to file proposed findings and conclusions and to argue the matter orally before the trial examiner, such reservations were subsequently waived. 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. Respondent Hauptman Feather Co., Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 73-75 Wallabout Street, Brooklyn, N. Y. Respondents Mitchell Hauptman, Abraham Hauptman, and Jean Rabinowitz are president, secretary, and treasurer, respectively, of respondent corporation. The individual respondents dominate, direct, and control the policies, affairs, and activities of the corporation.

PAR. 2. Respondents are now and for several years last past have been engaged in the sale of pillows, the pillows being sold to dealers for resale to the public. Respondents cause and have caused their pillows, when sold, to be shipped from their place of business in the State of New York to purchasers in various other States of the United States. Respondents maintain and have maintained a course of trade in their pillows in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business respondents attach to their pillows labels purporting to state or set forth the materials of which such pillows are made. In some instances such labels have been inaccurate and misleading. In one instance a pillow labeled "50% White Goose Down, 50% White Goose Feathers" actually contained only 33.9 percent white goose down and 47 percent white goose feathers, the remaining content being other materials. In another instance the label on a pillow read simply "Down," thereby representing that such pillow was composed entirely of down, the undercoating of waterfowl, whereas the pillow actually contained only 43.2 percent down, the remaining content being duck feathers and other materials. In a third instance a pillow labeled "25% Duck Down, 75% Duck Feathers" contained only 10 percent duck

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down and 78.5 percent duck feathers, the remaining content being other materials. In a fourth instance a pillow labeled "50% Down, 50% Duck Feathers" contained only 25.4 percent down and 57 percent duck feathers, together with certain other materials.

PAR. 4. The acts and practices of respondents as set forth above have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' products, and the tendency and capacity to cause such portion of the public to purchase respondents' products 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, Hauptman Feather Co., Inc., a corporation, and its officers, and Mitchell Hauptman, Abraham Hauptman, and Jean Rabinowitz, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of pillows in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Misrepresenting in any manner or by any means, directly or by implication, the materials of which respondents' pillows are made.

## 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 August 17, 1951].

## IN THE MATTER OF

## CLAY SEWER PIPE ASSOCIATION, INC.

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

*Docket 5484. Complaint, Feb. 14, 1947—Decision, Aug. 20, 1951*

Where an association of 12 manufacturers of vitrified clay sewer pipe, provided its members with a freight rate service and other assistance in the furtherance of their common plan to eliminate competition in the sale and distribution of their product between and among themselves; and said members and 5 other manufacturers, together operating about 25 plants in Michigan, Ohio, and Pennsylvania; in competition with one another except as below set forth—

- (a) Unlawfully cooperated among themselves in adopting and continuing a planned common course of action, whereby competition in the sale and distribution of their product was restrained and prevented; and pursuant thereto—
- (1) By combination fixed and maintained prices for vitrified clay sewer pipe and fittings;
  - (2) In combination composed and announced prices for said products at all destinations at which they sold, through use of their basic "Eastern" or "Standard" Price List, and through a freight rate compilation showing certain rates from Akron to destinations in their trade areas; and the practice of announcing prices at any given destination in terms of percentage discounts from said basic list on the basis of the carload freight rate to the zone in which destination was located;
  - (3) By combination established and maintained uniform terms and conditions of sale to dealers and the allocation of sales between themselves and dealers; and
  - (4) By combination established and maintained a list of jobbers and the terms and conditions of sale thereto, and allocated sales between themselves and jobbers; and

Where the aforesaid members—

- (b) By combination maintained and used said association as a medium for promoting, aiding and rendering more effective such concerted efforts to suppress and eliminate competition; and

Where said various manufacturers—

- (c) By combination contributed to the accomplishment and effectiveness of the aforesaid acts and results in that they—
- (1) Made simultaneous use, by two or more of them, of a zoning method of computing, formulating, and using delivered price quotations; and
  - (2) Discriminated in price between or among their respective customers by systematically charging and accepting prices which differed by the amounts necessary to produce delivered costs identical with those available from other respondent manufacturers;

Inherent effects of which concerted methods and practices, included—

1. Substantial lessening of competition among respondents; and
2. Unfair and oppressive discrimination in price among respondents' customers:

*Held*, That said alleged acts, practices, and methods had a dangerous tendency to and did suppress and eliminate competition between and among respondents in the manufacture, and in the sale and distribution in commerce of vitrified clay sewer pipe, and tended to and did unreasonably restrain such commerce; and constituted unfair methods of competition and unfair acts and practices in commerce.

Before *Mr. W. W. Sheppard* and *Mr. Frank Hier*, trial examiners. *Mr. Lynn C. Paulson*, *Mr. Rice E. Schrimsher*, *Mr. Elmer F. Bennett*, and *Mr. J. J. Gercke* for the Commission.

*Johnston, Thompson, Raymond & Mayer*, of Chicago, Ill., for respondents.

Respondents were also represented as follows:

*Thompson, Hine & Flory*, of Cleveland, Ohio, for American Vitrified Products Co.

*Driscoll, Gregory & Coppolo*, of St. Mary's, Pa., for The Brockway Clay Co. and St. Mary's Sewer Pipe Co.

*Mr. Charles T. Greenlee*, of Uhrichsville, Ohio, for The Clay City Pipe Co.

*Mr. Paul H. Torbet*, of Cleveland, Ohio, for Dennison Sewer Pipe Corp., The Junction City Clay Co., and Stillwater Clay Products Co.

*Sanders, Gravelle, Whitlock & Howrey*, of Washington, D. C., for The Evans Pipe Co. (the estate of T. T. Evans and the estate of Eugene Evans, copartners).

*Mr. R. E. Ashe*, of Kittanning, Pa., for Graff-Kittanning Clay Products Co.

*Frost & Jacobs*, of Cincinnati, Ohio, for The Logan Clay Products Co.

*Englehart & Larimer*, of Ebensburg, Pa., for Pattan Clay Manufacturing Co.

*Slabaugh, Guinther, Jeter & Pfuenger*, of Akron, Ohio, for The Robinson Clay Products Co.

*Mr. P. F. Reed* and *Mr. J. P. Reed*, of Uhrichsville, Ohio, for The Ross Clay Products Co.

*Knepper, White & Dempsey*, of Columbus, Ohio, and *Mr. John W. Porter*, of Steubenville, Ohio, for The Stratton Fire Clay Co. and Superior Clay Corp.

*McAfee, Grossman, Taplin, Hanning, Newcomer & Hazlett*, of Cleveland, Ohio, for Universal Sewer Pipe Corp.

Complaint

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## COMPLAINT

This complaint is filed to obtain relief from respondents' activities because of their violations, jointly and severally, as hereinafter alleged in Count I herein, of section 5 of an act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties; and for other purposes," commonly referred to as the Federal Trade Commission Act, as approved September 26, 1914, and amended March 21, 1938 (38 Stat. 717; 15 U. S. C. A. sec. 41; 52 Stat. 111), and because of their violations, as alleged in Count II herein, of section 2 (a) of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly referred to as the Clayton Act, as approved October 15, 1914, and amended June 19, 1938 (38 Stat. 730; 15 U. S. C. A. sec. 12, 49 Stat. 1526; 15 U. S. C. A. sec. 13, as amended).

## COUNT I

## THE CHARGE UNDER THE FEDERAL TRADE COMMISSION ACT

PARAGRAPH 1. Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated the provisions of section 5 of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

## DESCRIPTION OF RESPONDENTS

PAR. 2. Respondent Clay Sewer Pipe Association, Inc., is an Ohio corporation with its office and principal place of business located in the AIU Building, Columbus, Ohio.

American Vitrified Products Co. is a New Jersey corporation with its office and principal place of business at 1500 Union Commerce Building, Cleveland 14, Ohio.

The Brockway Clay Co. is a Delaware corporation with its office and principal place of business at Brockway, Pa.

The Clay City Pipe Co. is an Ohio corporation with its office and principal place of business at Uhrichsville, Ohio.

Dennison Sewer Pipe Corp. is an Ohio corporation with its office and principal place of business at 3334 Prospect Avenue, Cleveland 15, Ohio.

The Evans Pipe Co. is a copartnership operated by the estate of T. T. Evans and the estate of Eugene Evans, with its office and principal place of business at Uhrichsville, Ohio.

Graff-Kittanning Clay Products Co. is a Pennsylvania corporation with its office and principal place of business at Worthington, Pa.

Grand Ledge Clay Products Co. is a Michigan corporation with its office and principal place of business at Grand Ledge, Mich.

The Junction City Clay Co. is an Ohio corporation with its office and principal place of business at 3334 Prospect Avenue, Cleveland 15, Ohio.

The Kaul Clay Manufacturing Co. is an Ohio corporation with its office and principal place of business at Toronto, Ohio.

The Logan Clay Products Co. is an Ohio corporation with its office and principal place of business at Logan, Ohio.

Patton Clay Manufacturing Co. is a Pennsylvania corporation with its office and principal place of business at Patton, Pa.

The Peerless Clay Manufacturing Co. is an Ohio corporation with its office and principal place of business at Port Homer, Ohio (post office address, Toronto, R. D. No. 2, Ohio).

The Robinson Clay Product Co. is a Maine corporation with its office and principal place of business at 1100 Second National Bank Building, Akron 9, Ohio.

The Ross Clay Products Co. is an Ohio corporation with its office and principal place of business at Uhrichsville, Ohio.

St. Mary's Sewer Pipe Co. is a Pennsylvania corporation with its office and principal place of business at St. Mary's Pa.

Stillwater Clay Products Co. is an Ohio corporation with its office and principal place of business at 3334 Prospect Avenue, Cleveland 15, Ohio.

The Stratton Fire Clay Co. is an Ohio corporation with its office and principal place of business at Stratton, Ohio.

Superior Clay Corp. is an Ohio corporation with its office and principal place of business at Uhrichsville, Ohio.

The Union Clay Manufacturing Co. is an Ohio corporation with its office and principal place of business at Empire, Ohio.

Universal Sewer Pipe Corp. is an Ohio corporation with its office and principal place of business at 1500 Union Commerce Building, Cleveland 14, Ohio.

PAR. 3. Respondent Clay Sewer Pipe Association, Inc., hereinafter sometimes referred to as the association, is incorporated under the laws of the State of Ohio. Respondent, American Vitrified Products Co., Universal Sewer Pipe Corp., The Clay City Pipe Co., Dennison Sewer Pipe Corp., The Junction City Clay Co., Stillwater Clay Prod-

ucts Co., Graff-Kittanning Clay Products Co., Grand Ledge Clay Products Co., The Kaul Clay Manufacturing Co., The Logan Clay Products Co., The Robinson Clay Product Co., The Ross Clay Products Co., and Superior Clay Corp. compose its membership. It is an instrumentality for furthering the interests of its members. It has the following standing committees: Traffic, advertising, specifications, simplification, public relations, and OPA. In addition to maintaining a field organization of engineers to study specifications for proposed construction work and promote the use of clay sewer pipe on such projects, the association provides its members with a freight rate service and otherwise assists the members in the furtherance of their common plan to suppress, hinder, lessen and eliminate competition between and among themselves, as hereinafter more fully described.

PAR. 4. Respondents are engaged in the manufacture and sale of vitrified sewer pipe and other clay products. Vitrified clay sewer pipe is a clay product commonly used for all types of sewers. It is an important item in modern building construction and community development. Sewer pipe is a heavy commodity and freight costs are a substantial part of delivered costs. Respondents operate a total of approximately 25 plants in the States of Michigan, Ohio, and Pennsylvania. The vitrified clay sewer pipe industry is composed of manufacturers located in 23 States, operating a total of 75 plants.

PAR. 5. Respondents, with the exception of respondent association and possibly respondent Grand Ledge Clay Product Co. are all doing business in interstate commerce. In the course and conduct of their respective businesses each respondent member sells and distributes vitrified clay sewer pipe manufactured by it to the purchasers thereof located in the various States of the United States, and in connection with and as a part of said sales, transports or causes to be transported said product to said purchasers thereof located in the various States of the United States other than the States of origin. The respondents are therefore engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Each of the respondent members has been and is in competition with one or more of the other respondent members in making or seeking to make sales in commerce between and among the various States of the United States of vitrified sewer pipe, which they manufacture, except insofar as said competition has been hindered, lessened, restricted, or suppressed by the combination and acts and practices engaged in and as hereinafter alleged.

PAR. 7. For more than 5 years last past respondents have done and performed, and are now doing and performing, unfair acts and prac-

tices, have engaged in and are now engaging in unfair methods of competition, in violation of section 5 of the Federal Trade Commission Act in that they have acted and are still acting wrongfully and unlawfully by cooperating between and among themselves in establishing, adopting, and continuing a common course of action and agreement, resulting in substantial hindrance, frustration, restraint, suppression, and prevention of competition in the sale and distribution of vitrified sewer pipe in trade and commerce, as "commerce" is defined in the Federal Trade Commission Act.

Pursuant to, in furtherance of, and in order to effectuate the purposes and objectives of the aforesaid cooperation and common course of action, respondents as a part of their said cooperation, common course of action and agreement, have formulated, adopted, performed and put into effect, among others, the overt acts and used methods, systems, practices, and policies listed, described and set forth in the immediately succeeding subparagraphs numbered 1 to 5, inclusive, of this paragraph 7:

1. Respondents by combination have fixed and maintained prices.
2. Respondents in combination, compose and announce prices for vitrified clay sewer pipe and allied products at each and all destinations at which they sell, by using and maintaining, concertedly and collusively, a basic price list (known in the trade as the Eastern or Standard Price List for vitrified clay sewer pipe and allied products), a freight rate compilation showing certain rates from Akron, Ohio, to destinations in respondents' trade area, and the practice of announcing prices at any given destination in terms of percentage discounts from the basic list on the basis of the carload freight rate to the freight zone in which the destination is located, as shown in the freight rate compilation.
3. Respondents, by combination, concertedly and collusively establish and maintain uniform terms and conditions of sale to dealers, and the allocation of sales between themselves and dealers.
4. Respondents, by combination, concertedly and collusively establish and maintain a list of jobbers, the terms and conditions of sale to jobbers, and allocate sales between themselves and jobbers.
5. Members of respondent association as set forth above, by combination, collectively and concertedly maintain respondent Clay Sewer Pipe Association, Inc., and use said association as a medium for promoting, aiding, and rendering more effective concerted efforts to suppress and eliminate competition as described in the preceding subparagraphs 1, 2, 3, and 4 of this paragraph 7.

PAR. 8. Each of the respondents with the exception of respondent association has contributed to the accomplishment and effectiveness



of the acts, things and results alleged in the immediately preceding paragraph 7 hereof through its—

(1) Use of a zoning method of computing, formulating, and using delivered price quotations when other respondent members simultaneously do likewise and by which it is enabled to, and does, match its quotations on a delivered basis with the quotations on a delivered basis of other respondents; and

(2) Discriminating between and among its customers by demanding, charging, accepting, and receiving higher net prices from its customers located near its plant than from its customers more distantly located for goods of like grade and quality, or assisting other respondents to so discriminate, and thereby to match quotations on a delivered basis with the quotations of other respondents.

PAR. 9. The inherent effects of the adoption and maintenance by the respondents of the methods and practices described and alleged in paragraph 6 and paragraph 7 herein include all and singularly the following, to-wit:

1. Substantial lessening of competition among respondents.

2. Unfair and oppressive discrimination against portions of the purchasing public in large areas by depriving such purchasers of the advantage which would otherwise accrue to them as a result of their proximity to the factories of respondents, and by requiring such purchasers to pay increases over what the net prices to such purchasers would have been if such net prices had been fixed by competition among respondents.

PAR. 10. The above alleged acts, practices, and methods of respondents have a dangerous tendency to, and have hindered, suppressed, lessened, and eliminated competition between and among respondents in the manufacture, sale, and distribution of vitrified clay sewer pipe in commerce within the meaning of the Federal Trade Commission Act, have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said product, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

## COUNT II

### THE CHARGE UNDER THE CLAYTON ACT

PARAGRAPH 1. Pursuant to the provisions of section 2 of an act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, as amended by an act of Congress approved June 19, 1936, commonly known as

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## Complaint

the Robinson-Patman Act, the Commission, having reason to believe that the parties hereinafter named and described as respondents in this Count II have violated and are violating the provisions of said act of Congress as so amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges in such respect as follows:

DESCRIPTION OF RESPONDENTS, DEFINITIONS AND EXPLANATIONS OF TERMS,  
DESCRIPTIONS AND HISTORY OF INDUSTRY AND THE COMMERCE OF  
RESPONDENTS

PARS. 2, 3, 4, 5, AND 6: As and for paragraphs 2, 3, 4, 5, and 6 of this Count II the Commission incorporates (except the first of the unnumbered subparagraphs of paragraph 2, regarding Clay Sewer Pipe Association, Inc., and the definition of "commerce," as contained in paragraph 5) paragraphs 2, 3, 4, 5, and 6 of Count I of this complaint to precisely the same extent and effect as if each and all of them were set forth in full and repeated verbatim in this Count II. The description of "commerce" as hereinafter used in this Count II means "commerce" as defined and set forth in the Clayton Act.

## OFFENSES CHARGED

PAR. 7. For more than 5 years last past, and while engaged as aforesaid in commerce among the several States of the United States and in the District of Columbia, each of the respondents American Vitriified Products Co., The Brockway Clay Co., The Clay City Pipe Co., Dennison Sewer Pipe Corp., The Evans Pipe Co. (the estate of T. T. Evans and the estate of Eugene Evans, copartners), Graff-Kittanning Clay Products Co., Grand Ledge Clay Product Co., The Junction City Clay Co., The Kaul Clay Manufacturing Co., The Logan Clay Products Co., Patton Clay Manufacturing Co., The Peerless Clay Manufacturing Co., The Robinson Clay Product Co., The Ross Clay Products Co., St. Mary's Sewer Pipe Co., Stillwater Clay Products Co., The Stratton Fire Clay Co., Superior Clay Corp., The Union Clay Manufacturing Co., and Universal Sewer Pipe Corp. has been and is now in the course of such commerce discriminating in price between purchasers of said commodities of like grade and quality sold for use, consumption or resale within the several States of the United States and the District of Columbia in that each of the respondents has been and is now systematically selling such commodities to many purchasers at a price higher than the price at which commodities of like grade and quality are sold by it to other purchasers and users.

PAR. 8. Each of the respondents uses a delivered pricing system and practice for such determining, calculating, making up, using, announcing, publishing, and distributing its quotations and offers to its respective customers in selling vitrified clay sewer pipe and other clay products in commerce. Each of the respondents in using its said delivered pricing system for quoting its delivered prices, and in making sales of its products in commerce in accordance and in connection therewith, discriminates as between its customers in net prices realized on its products of like grade and quality. The discriminations by each said respondent thus effected are systematic and result in part because of its failure to "make only due allowance for differing methods or quantities in which such commodities are to such purchasers sold or delivered," and are discriminatory to such an extent that the net prices paid by customers located at or near its factory door in many instances amount to much more than the net prices realized by such respondent on its products of like grade and quantity sold to its customers located hundreds of miles away. The systematic discriminations in net prices thus effected by each of the respondents against nearby customers and in favor of its more distantly located customers are inherent in the use of the aforesaid delivered pricing system of each of the respondents. There are also involved in said system "Matched" delivered price quotations so that such customer in considering or accepting any of such offers is denied the opportunity ordinarily afforded under price competition to bargain with one respondent against another.

PAR. 9. Each of the said respondents practices the aforesaid systematic discriminations in price for the purpose and with the effect of enabling all the respondents to exactly "Match" their delivered price offers to sell its products of like grade and quantity in commerce to any given prospective purchaser at any given destination and to maintain such matched offers.

#### EFFECTS OF PRICE DISCRIMINATIONS PRACTICED BY RESPONDENTS

PAR. 10. The inherent and necessary effect of the practice by the respondents of the discriminations described and alleged in this Count II includes all and singularly the following, to wit:

- (1) The elimination of price competition between respondents; and
- (2) The maintenance of monopolistic, unfair, and oppressive discrimination against purchasers of vitrified clay sewer pipe and other clay products in large areas of the United States by depriving such purchasers of the advantage in cost which would otherwise accrue to them from their proximity to the factories of respondents.

PAR. 11. Further effects of the said discriminations in price made by said respondents, as alleged and described in this Count II herein, may be substantially to lessen competition between the buyers of respondents' products from respondents receiving said lower discriminatory prices and other buyers from respondents competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a monopoly in the lines of commerce in which buyers from respondents are engaged; and to injure, destroy, and prevent competition in the lines of commerce in which those who purchase from respondents are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices as well as to lessen competition in the lines of commerce in which respondents are engaged.

#### CONCLUSION

PAR. 12. The aforesaid acts of each of the said respondents constitute violations of the provisions of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (49 Stat. 1526; 15 U. S. C. A. sec. 13, as amended.)

#### 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 August 20, 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 to the provisions of an act of Congress, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act approved June 19, 1936, the Federal Trade Commission, on February 4, 1947, 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 methods of competition in commerce, and unfair and deceptive acts and practices in commerce, in violation of the provisions of section 5 of the Federal Trade Commission Act, and with having discriminated in price in the sale of vitrified sewer pipes and fittings in violation of the provisions of subsection (a) of section 2 of said Clayton Act as amended.

After the issuance of the complaint and the filing of respondents' answers thereto, denying in substantial part the allegations of the complaint, a hearing was held before W. W. Sheppard, a trial examiner theretofore duly designated by the Commission, at Columbus, Ohio, on December 9, 1947, at which hearing offers of settlement were made and agreed to by all counsel for submission to the Commission. The Commission, after duly considering the same and after further negotiation between all counsel, rejected the settlement tendered and thereafter directed the hearing to be held for trial of the issues, designating Frank Hier as substitute trial examiner, W. W. Sheppard having been retired from the Government service. On June 12, 1951, a hearing was held at Columbus, Ohio, before Frank Hier as substitute trial examiner, at which hearing testimony was received in support of the allegations of the complaint, pursuant to an arrangement between counsel in support of the complaint and counsel for respondents, looking toward an agreed settlement. At this hearing, respondents by their counsel tendered waivers which were incorporated into the record by which they waived the right to offer any testimony in opposition to the charges in the complaint, the right to submit any findings and conclusions, the right of oral argument and any challenge or contest to the validity of the record herein or to the findings of fact or conclusion of the trial examiner and the Commission if such findings of fact and conclusion shall be the same as those agreed upon by counsel, on the ground that such findings do not have substantial support in the record or that they do not support the order of the trial examiner or the Commission. Thereafter the proceeding regularly came on for final consideration upon the complaint, the answers, evidence, waivers, proposed findings as to the facts and conclusion, and the proposed order agreed to and submitted by all counsel, and the trial examiner, having duly considered the matter, 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 Clay Sewer Pipe Association, Inc., is an Ohio corporation with its office and principal place of business located at 5 East Long Street, Columbus, Ohio.

American Vitrified Products Co. is a New Jersey corporation with its office and principal place of business at National City Bank Building, Cleveland 14, Ohio.

The Brockway Clay Co. is a Delaware corporation with its office and principal place of business at Brockway, Pa.

The Clay City Pipe Co. is an Ohio corporation with its office and principal place of business at Uhrichsville, Ohio.

Dennison Sewer Pipe Corp. is an Ohio corporation with its office and principal place of business at 3334 Prospect Avenue, Cleveland 15, Ohio.

The Evans Pipe Co. at or prior to the date of issuance of the complaint herein was a copartnership operated by the estate of T. T. Evans and the estate of Eugene Evans, with its office and principal place of business at Uhrichsville, Ohio; but is not now engaged in the manufacture and sale of vitrified clay sewer pipe and fittings.

Graff-Kittanning Clay Products Co. is a Pennsylvania corporation with its office and principal place of business at Worthington, Pa.

Grand Ledge Clay Product Co. is a Michigan corporation with its office and principal place of business at Grand Ledge, Mich.

The Junction City Clay Co. is an Ohio corporation with its office and principal place of business at 3334 Prospect Avenue, Cleveland 15, Ohio.

The Kaul City Manufacturing Co. is an Ohio corporation with its office and principal place of business at Toronto, Ohio.

The Logan Clay Products Co. is an Ohio corporation with its office and principal place of business at Logan, Ohio.

Patton Clay Manufacturing Co. is a Pennsylvania corporation with its office and principal place of business at Patton, Pa.

The Peerless Clay Manufacturing Co. at or prior to the date of issuance of the complaint herein was an Ohio corporation with its office and principal place of business at Port Homer, Ohio (post office address, Toronto, R. D. No. 2, Ohio), but is not now engaged in the manufacture and sale of vitrified clay sewer pipe and fittings.

The Robinson Clay Product Co. is a Maine corporation with its office and principal place of business at 1100 Second National Bank Building, Akron 9, Ohio.

The Ross Clay Products Co. is an Ohio corporation with its office and principal place of business at Uhrichsville, Ohio.

St. Mary's Sewer Pipe Co. is a Pennsylvania corporation with its office and principal place of business at St. Mary's, Pa.

Stillwater Clay Products Co. is an Ohio corporation with its office and principal place of business at 3334 Prospect Avenue, Cleveland 15, Ohio.

The Stratton Fire Clay Co. is an Ohio corporation with its office and principal place of business at Stratton, Ohio.

Superior Clay Corp. is an Ohio corporation with its office and principal place of business at Uhrichsville, Ohio.

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The Union Clay Manufacturing Co. at or prior to the date of issuance of the complaint was an Ohio corporation with its office and principal place of business at Empire, Ohio, but is not now engaged in the manufacture and sale of vitrified clay sewer pipe and fittings.

Universal Sewer Pipe Corp. is an Ohio corporation with its office and principal place of business at 1500 Union Commerce Building, Cleveland 14, Ohio.

PAR. 2. Respondent Clay Sewer Pipe Association, Inc., hereinafter sometimes referred to as the Association, is incorporated under the laws of the State of Ohio. Respondents, American Vitrified Products Co., The Clay City Pipe Co., Dennison Sewer Pipe Corp., The Junction City Clay Co., Stillwater Clay Products Co., Graff-Kittanning Clay Products Co., Grand Ledge Clay Products Co., The Kaul Clay Manufacturing Co., The Logan Clay Products Co., The Robinson Clay Product Co., The Ross Clay Products Co., and Superior Clay Corp. compose its membership. It is an instrumentality for furthering the interests of its members. It has the following standing committees: Traffic, advertising, specifications, simplification, public relations, and OPA. In addition to maintaining a field organization of engineers to study specifications for proposed construction work and promote the use of clay sewer pipe on such projects, the association provides its members with a freight rate service and otherwise assists the members in the furtherance of their common plan to suppress, hinder, lessen and eliminate competition between and among themselves, as hereinafter more fully described.

PAR. 3. Respondents (with the exception of respondent association and respondents The Evans Pipe Co., The Peerless Clay Manufacturing Co., and The Union Clay Manufacturing Co.) are engaged in the manufacture and sale of vitrified clay sewer pipe and fittings. Vitrified clay sewer pipe is a clay product commonly used for all types of sewers. It is an important item in modern building construction and community development. Sewer pipe is a heavy commodity and freight costs are a substantial part of delivered costs. Respondents operate a total of approximately 25 plants in the States of Michigan, Ohio, and Pennsylvania. The vitrified clay sewer pipe industry is composed of manufacturers located in 23 States, operating a total of 75 plants.

PAR. 4. Respondents, with the exception of respondent association and respondents The Evans Pipe Co., The Peerless Clay Manufacturing Co., and The Union Clay Manufacturing Co., and possibly respondent Grand Ledge Clay Product Co., are all doing business in interstate commerce. In the course and conduct of their respective

businesses each respondent (other than respondent association and respondents The Evans Pipe Co., The Peerless Clay Manufacturing Co., and The Union Clay Manufacturing Co.) sells and distributes vitrified clay sewer pipe manufactured by it to the purchasers thereof located in the various States of the United States, and in connection with and as a part of said sales, transports or causes to be transported said product to said purchasers thereof located in the various States of the United States other than the States of origin. The respondents are therefore engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Each of the respondents (except respondent association and respondents The Evans Pipe Co., The Peerless Clay Manufacturing Co., and The Union Clay Manufacturing Co.) has been and is in competition with one or more of the other respondents in making or seeking to make sales in commerce between and among various States of the United States of vitrified sewer pipe, which they manufacture, except insofar as said competition has been hindered, lessened, restricted or suppressed by the combination and acts and practices engaged in and as hereinafter set forth.

PAR. 6. For more than 5 years preceding the date of the issuance of the complaint herein respondents have done and performed, and are now doing and performing, unfair acts and practices, have engaged in and are now engaging in unfair methods of competition, in violation of section 5 of the Federal Trade Commission Act in that they have acted and are still acting wrongfully and unlawfully by cooperating between and among themselves in establishing, adopting and continuing a planned common course of action, resulting in substantial hinderance, frustration, restraint, suppression and prevention of competition in the sale and distribution of vitrified sewer pipe in trade and commerce, as "commerce" is defined in the Federal Trade Commission Act.

Pursuant to, in furtherance of, and in order to effectuate the purposes and objectives of the aforesaid planned common course of action, respondents have formulated, adopted, performed and put into effect, among others, the overt acts and used the methods, systems, practices and policies listed, described and set forth in the immediately succeeding subparagraphs numbered 1 to 5, inclusive, of this paragraph 6:

1. Respondents by combination have fixed and maintained prices for vitrified clay sewer pipe or fittings.
2. Respondents in combination have composed and announced prices for vitrified clay sewer pipe or fittings at each and all destina-



tions at which they sell, by using and maintaining a basic price list (known in the trade as the Eastern or Standard Price List) for vitrified clay sewer pipe or fittings, a freight rate compilation showing certain rates from Akron, Ohio, to destinations in respondents' trade area, and the practice of announcing prices at any given destination in terms of percentage discounts from the basic list on the basis of the carload freight rate to the freight zone in which the destination is located, as shown in the freight rate compilation.

3. Respondents, by combination, have established and maintained uniform terms and conditions of sale to dealers, and the allocation of sales between themselves and dealers.

4. Respondents, by combination, have established and maintained a list of jobbers, the terms and conditions of sale to jobbers, and allocated sales between themselves and jobbers.

5. Members of respondent association, as set forth above, by combination, have maintained respondent Clay Sewer Pipe Association, Inc., and have used said association as a medium for promoting, aiding, and rendering more effective concerted efforts to suppress and eliminate competition as described in the preceding subparagraphs 1, 2, 3, and 4 of this paragraph 6.

PAR. 7. The respondents with the exception of respondent association by combination have contributed to the accomplishment and effectiveness of the acts, things and results alleged in the immediately preceding paragraph 6 hereof through:

(1) Simultaneous use by two or more respondents of a zoning method of computing, formulating and using delivered price quotations; and

(2) Discriminating in price between or among their respective customers by systematically charging and accepting prices which differ by the amounts necessary to produce delivered costs to purchasers identical with delivered costs available to such purchasers through purchases from other respondents.

PAR. 8. The inherent effects of the adoption and maintenance by the respondents of the concerted methods and practices described in paragraph 5 and paragraph 6 herein include all and singularly the following, to wit:

1. Substantial lessening of competition among respondents.
2. Unfair and oppressive discrimination in price between or among their respective customers by systematically charging and accepting prices which differ by the amounts necessary to produce delivered costs to purchasers identical with delivered costs available to such purchasers through purchases from other respondents.

## CONCLUSION

The above alleged acts, practices and methods of respondents have a dangerous tendency to, and have hindered, suppressed, lessened and eliminated competition between and among respondents in the manufacture, sale and distribution of vitrified clay sewer pipe in commerce within the meaning of the Federal Trade Commission Act, have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said product, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

## ORDER

*It is ordered,* That the respondents, American Vitrified Products Co., The Brockway Clay Co., Clay City Pipe Co., Dennison Sewer Pipe Corp., Graff-Kittaning Clay Products Co., Grand Ledge Clay Product Co., The Junction City Clay Co., The Kaul Clay Manufacturing Co., The Logan Clay Products Co., Patton Clay Manufacturing Co., Robinson Clay Product Co., The Ross Clay Products Co., St. Mary's Sewer Pipe Co., The Stillwater Clay Products Co., The Stratton Fire Clay Co., Superior Clay Corp., and Universal Sewer Pipe Corp., and their respective officers, agents, representatives, and employees, in or in connection with the offering for sale, sale or distribution in commerce between and among the several States of the United States and in the District of Columbia of vitrified clay sewer pipe, or fittings, 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 or among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts, practices or things:

1. Fixing or maintaining prices for vitrified clay sewer pipe or fittings.
2. Composing or announcing prices for vitrified clay sewer pipe or fittings, for any destination at which the respondents quote prices or sell their products, through the use of or in accordance with a basic price list, or percentage discounts therefrom.
3. Using in common any freight rate compilation as a factor in fixing or announcing prices of vitrified clay sewer pipe or fittings.
4. Using in common a zoning method of computing or formulating delivered price quotations for any such products.
5. Discriminating in price between or among their respective customers by systematically charging and accepting prices which differ

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by the amounts necessary to produce delivered costs to purchasers identical with delivered costs available to such purchasers through purchases from other respondents.

6. Establishing or maintaining uniform terms or conditions of sales to dealers, or allocating sales between and among the respondents or dealers.

7. Establishing or maintaining a list of jobbers, the terms and conditions of sales to jobbers, or allocating sales between and among the respondents or jobbers.

*Provided, however,* That wherever and whenever the terms "continuing" and "planned common course of action" are used herein, the Federal Trade Commission interprets the said terms as set forth in the decision of the Supreme Court of the United States in the case entitled *Federal Trade Commission v. Cement Institute*, and reported in 333 United States Reports 683, at pages 727 and 728,<sup>1</sup> and in the decision of the United States Circuit Court of Appeals, Fourth Circuit, in the case entitled *American Chain & Cable Co. v. Federal Trade Commission*, and reported in 139 Federal Reporter, Second Series, 622,<sup>2</sup> and in including said terms in this order, uses them, and each of them, in the meaning set forth in said decisions.

*It is further ordered,* That the respondents, American Vitrified Products Co., Clay City Pipe Co., Dennison Sewer Pipe Corp., Graff-Kittaning Clay Products Co., Grand Ledge Clay Product Co., The Junction City Clay Co., The Kaul Clay Manufacturing Co., The Logan Clay Products Co., Robinson Clay Product Co., The Ross Clay Products Co., The Stillwater Clay Products Co., and Superior Clay Corp., and their respective officers, agents, representatives, and employees, do forthwith cease and desist from collectively, concertedly, or by combination of two or more of said respondents, using or maintaining the Clay Sewer Pipe Association, Inc., as a medium for promoting, aiding, or rendering more effective any cooperative or concerted efforts to suppress or eliminate competition in any of the respects set forth in the immediately preceding paragraphs 1 to 7, inclusive, of this order.

*It is further ordered,* That each of the respondents, Clay Sewer Pipe Association, Inc., American Vitrified Products Co., The Brockway Clay Co., Clay City Pipe Co., Dennison Sewer Pipe Corp., Graff-Kittaning Clay Products Co., Grand Ledge Clay Product Co., The Junction City Clay Co., The Kaul Clay Manufacturing Co., The Logan Clay Products Co., Patton Clay Manufacturing Co., Robinson Clay Product Co., The Ross Clay Products Co., St. Marys Sewer Pipe Co., The Stillwater Clay Products Co., The Stratton Fire Clay Co.,

<sup>1</sup> 44 F. T. C. 1460, at p. 1491.

<sup>2</sup> 38 F. T. C. 825.

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## Order

Superior Clay Corp., and Universal Sewer Pipe Corp., and their respective officers, agents, representatives, and employees, do forthwith cease and desist from knowingly contributing to the accomplishment of any of the acts, practices, or things prohibited in paragraphs 1 to 7, inclusive, of this order.

*It is further ordered,* That nothing contained in this order shall be construed as prohibiting the establishment or maintenance of any lawful bona fide agreements, discussions, or other action solely between any corporate respondent and its directors, officers and employees, or between any corporate respondent and any of its subsidiaries or affiliates, and relating solely to the carrying on of the business of such corporation and its subsidiaries or affiliates, when not for the purpose or with the effect of restricting competition.

*Provided, however,* That nothing contained in this order or the understandings in connection herewith 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 part any provision of this order whenever in the opinion of the Federal Trade Commission conditions of fact or of law have so changed as to 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.

*It is further ordered,* For reasons appearing in the Commission's findings as to the facts in this proceeding, that the allegations of Count I of the complaint herein be, and they hereby are, dismissed as to The Evans Pipe Co. (the estate of T. T. Evans and the estate of Eugene Evans, copartners), The Peerless Clay Manufacturing Co., and The Union Clay Manufacturing Co., and that the allegations of Count II of the complaint be, and they hereby are, dismissed as to all of the respondents.

*It is further ordered,* That the respondents (except The Evans Pipe Co. [the estate of T. T. Evans and the estate of Eugene Evans, copartners], The Peerless Clay Manufacturing Co., and The Union Clay Manufacturing Co.) shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

## ORDER 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 August 20, 1951].